

YUKON
TERRITORY

REVISED
STATUTES

CONSOLIDATION
1986

VOLUME 1
CHAPTERS
1-100

Revised Statutes of the Yukon, 1986

**A Revision and Consolidation of the Statutes
of the Legislature of the Yukon Territory**

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Volume 1 Chapters 1 to 100

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REVISED STATUTES ACT

Interpretation

1. In this Act, "Revised Statutes of the Yukon, 1986" means the statutes set out in Schedule A.

Commencement

2.(1) Subject to this Act, the Revised Statutes of the Yukon, 1986 are hereby declared to be law as though they were enacted by this Act.

(2) The Revised Statutes of the Yukon, 1986 shall come into force on a day to be fixed by the Commissioner in Executive Council.

Repeal of old laws

3. Subject to this Act, from the coming into force of the Revised Statutes of the Yukon, 1986, the Acts and portions of Acts referred to in Schedule B are repealed to the extent set out in the fourth column of that schedule.

Effect of repeal

4. The repeal of the Acts and portions of Acts as set out in Schedule B pursuant to section 3 does not revive any Act or provision of law repealed by any of them, nor does the repeal prevent the effect of any saving clause in any of those Acts or portions of Acts, or of any Act or provision of law formerly in force, to any transaction, matter or thing anterior to the repeal to which they would otherwise apply.

Effect of repeal

5. The repeal of the Acts and portions of Acts as set out in Schedule B pursuant to section 3 does not defeat, disturb, invalidate or affect

- (a) any penalty, forfeiture or liability, civil or criminal, incurred prior to the time of the repeal, or any proceeding for enforcing it, had, done, completed or pending at the time of the repeal,
- (b) any indictment, information, conviction, order, sentence or prosecution had, done, completed or pending at the time of the repeal,
- (c) any action, suit, petition, judgment, decree, certificate, execution, distress, process, order or rule, or any proceeding, matter or thing whatsoever respecting it, had, done, made, entered, granted, completed, pending, existing or in force at the time of the repeal,
- (d) any act, deed, right, title, interest, grant, assurance, descent, will, registry, filing, bylaw, rule, order in council, proclamation, regulation, order, contract, lien, charge, status, capacity, immunity, matter or thing had, done, made, acquired, established or existing at the time of the repeal,
- (e) any office, appointment, commission, salary, remuneration, allowance, security or duty, or any matter or thing appertaining thereto, at the time of the repeal,

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- (f) any marriage, marriage certificate or registry thereof lawfully had, made, granted or existing before or at the time of the repeal, or
- (g) any other matter or thing whatsoever had, done, completed, existing or pending at the time of the repeal,

and the same and the force and effect thereof shall remain and continue as if the repeal had not taken place and, so far as necessary, may and shall be continued, prosecuted, enforced and proceeded with under the Revised Statutes of the Yukon, 1986 and the other statutes and laws in force in the Yukon, and, subject to the provisions of the several statutes and laws, as if the repeal had not taken place.

Effect of the Revised Statutes

6.(1) The Revised Statutes of the Yukon, 1986 shall not be held to operate as new laws, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the Acts and portions of Acts so repealed, and for which the Revised Statutes of the Yukon, 1986 are substituted.

(2) The various provisions of the Revised Statutes of the Yukon, 1986 corresponding to, and substituted for, the provisions of the Acts and portions of Acts so repealed shall, where they are the same in effect as the Acts and portions of Acts so repealed, be held to operate retrospectively as well as prospectively and to have been enacted or to have become effective upon the days respectively upon which the Acts and portions of Acts so repealed came into effect or from which they were stated to be effective, as the case may be.

(3) If, upon any point, the provisions of the Revised Statutes of the Yukon, 1986 are not in effect the same as those of the repealed Acts and portions of Acts for which they are substituted, then as respects all transactions, matters and things subsequent to the coming into force of the Revised Statutes of the Yukon, 1986, the provisions contained in the Revised Statutes of the Yukon, 1986 shall prevail, but as respects all transactions, matters and things anterior to that time, the provisions of the repealed Acts and portions of Acts shall prevail.

References to old statutes

7. A reference in any Act enacted prior to the coming into force of the Revised Statutes of the Yukon, 1986 and remaining in force after that time, or in any instrument or document, to any Act or portion of any Act so repealed shall, from and after the coming into force of the Revised Statutes of the Yukon, 1986, be held as regards any subsequent transaction, matter or thing to be a reference to the enactments in the Revised Statutes of the Yukon, 1986 having the same effect as the repealed Act or portion of it.

Effect of Schedule B

8. The inclusion of any Act in Schedule B shall not be construed as a declaration that the Act or any portion of it was or was not in force immediately prior to the coming into force of the Revised Statutes of the Yukon, 1986.

Evidence

9.(1) Copies of the Revised Statutes of the Yukon, 1986 or Schedule B of this Act purporting to be printed by the Queen's Printer shall be received as evidence of such Revised Statutes of the Yukon, 1986 or Schedule B of this Act in all courts and places whatsoever, without further proof of any kind.

(2) Copies of the Revised Statutes of the Yukon, 1986 or Schedule B of this Act in fact printed by the Queen's Printer shall be received as conclusive evidence of such Revised Statutes of the Yukon, 1986 or Schedule B of this Act in all courts and places whatsoever, without further proof of any kind.

Printing

10. This Act shall be printed with the Revised Statutes of the Yukon, 1986, and shall be subject to the same rules of construction as the Revised Statutes of the Yukon, 1986.

Acts to be included

11.(1) Any Act of the Legislature that comes into force prior to the date on which the Revised Statutes of the Yukon, 1986 come into force may be included in whole or in part in the Revised Statutes of the Yukon, 1986 or consolidated with the Revised Statutes of the Yukon, 1986, and shall be deemed for that purpose to have been included in that form in Schedule A of this Act at the time when this Act comes into force.

(2) For the purposes of subsection (1), where an Act included in Schedule A is amended by an Act that comes into force prior to the date on which the Revised Statutes of the Yukon, 1986 come into force, the consolidation of those Acts shall include such renumbering and minor editorial activities as may be necessary to establish uniformity of style throughout the Revised Statutes of the Yukon, 1986.

(3) Prior to the date fixed under subsection (2) for the coming into force of the Revised Statutes of the Yukon, 1986, correction of typographical errors and other minor editorial activities may be undertaken in respect of the Acts included in Schedule A of this Act.

(4) To the extent that an Act referred to in subsection (1) is included in the Revised Statutes of the Yukon, 1986, it shall be deemed to have been included in Schedule B of this Act at the time when this Act comes into force.

Acts not in force

12.(1) Where an Act or a portion of an Act contained in Schedule A of this Act is not in force prior to the day fixed for the coming into force of the Revised Statutes of the Yukon, 1986,

- (a) it shall be deleted from the Revised Statutes of the Yukon, 1986, in which case it shall be deemed not to have been included in Schedule A of this Act at the time when this Act comes into force, or
- (b) it may be kept in the Revised Statutes of the Yukon, 1986, in which case
 - (i) the Act or part of the Act as set out in Schedule A to this Act shall come into force on a day to be fixed by the Commissioner in Executive Council, and

REVISED STATUTES ACT

- (ii) until the Act or part of the Act comes into force, copies of the Revised Statutes of the Yukon, 1986 printed by the Queen's Printer shall contain a prominent notation that the Act or part of the Act is subject to proclamation.

(2) For the purposes of the deletion of an Act or a part of an Act from the Revised Statutes of the Yukon, 1986 pursuant to paragraph (1)(a), such renumbering and minor editorial activities may be conducted as may be necessary to establish uniformity of style throughout the Revised Statutes of the Yukon, 1986.

Elections

13.(1) Notwithstanding any other provision of this Act, the Commissioner in Executive Council may make such regulations as the Commissioner in Executive Council considers necessary for the orderly conduct of elections to delay the coming into force of the Elections Act as set out in the Revised Statutes of the Yukon, 1986 until some time after the remainder of the Revised Statutes of the Yukon, 1986 comes into force.

(2) Where the coming into force of the Elections Act is delayed under subsection (1), the date of the coming into force of the Revised Statutes of the Yukon, 1986 for the purposes of this Act shall be deemed to be the date on which the remainder of the Revised Statutes of the Yukon, 1986 comes into force and not the date on which the Elections Act comes into force.

Schedule A
Revised Statutes of the Yukon Territory, 1986

CHAPTER 1

ACCESS TO INFORMATION ACT

Interpretation

1. In this Act,

“archivist” means the person appointed as the archivist under the Archives Act;

“department” means

- (a) any department, branch or unit of the public service of the Government of the Yukon, and
- (b) any board, commission, foundation, corporation or other similar agency established as an agent of the Government of the Yukon;

“information” means information in any form including information that is written, photographed, recorded or stored in any manner whatsoever;

“public business” means any activity or function carried on or performed by a department;

“record” means the form in which information is kept.

Purpose of the Act

2. The purpose of this Act is to provide reasonable access by the public to information in records of departments and to subject that right only to specific and limited exceptions necessary for the effective operation of departments in the public interest.

Access to information

3. Subject to this Act, every person shall have access to information relating to the public business of the Government of the Yukon.

Request for information

4.(1) Any person may request information in a record of a department by applying to the archivist.

(2) The request may be made orally or in writing, and if the request is made orally the person who receives it shall make a written record of the relevant particulars of the request.

(3) The person who makes the request shall describe the record or the subject matter of the information he wants with enough detail about time, place, person or event to enable a person familiar with the subject matter to identify the relevant record.

(4) If the record containing the requested information cannot be identified, the archivist shall, in writing, tell the person who made the request that the record cannot be identified and ask him to give more details that might help a departmental official identify the relevant record.

(5) If the record containing the requested information can be identified but the information cannot be supplied immediately or the record cannot be located, the archivist shall, in writing, tell the person who made the request when he can return for the information.

(6) If the record that contained the information no longer exists the archivist shall, in writing, tell the person who made the request that the record no longer exists and, if possible, when it was destroyed.

(7) A request for information shall be made during the regular working hours of the office of the archivist.

Time for grant or denial of request

5.(1) A request for information shall be granted or denied within 30 days after the day on which the request is made.

(2) A request for information that is not granted within 30 days of the day on which the request was made or within the extended time allowed under subsection (3), shall be deemed to have been denied and the reasons for the denial shall be provided.

(3) If the record containing the requested information cannot be identified and the person who requested it has been asked to give more details to help identify the relevant record, the request shall be granted or denied within 30 days after enough additional details are given to enable the record to be identified.

Grant of request

6. If the request for information is granted and the prescribed fee has been paid the archivist shall make the information available and provide copies of the record upon request.

Exceptions

7. There is no right to information under this Act where access to it or its release

- (a) would disclose information the confidentiality of which is protected by law,
- (b) would reveal information concerning another person's identity, residence, dependents, marital status, employment, financial transactions, income, assets and liabilities, credit worthiness, education, character, reputation, health, physical or personal characteristics, or mode of living, where that information was given in the reasonable expectation that its confidentiality would be protected,
- (c) would violate the confidentiality of information that was given by another government,
- (d) would violate the confidentiality of information that was given by another person and is of a kind consistently treated as confidential by that person,
- (e) would likely cause a financial loss to or gain for a person or department, or affect the competitive position of a person or department,
- (f) would jeopardize negotiations in relation to an existing or proposed agreement or contract,

- (g) would disclose the substance of proposed legislation or regulations,
- (h) would disclose the existence or content of opinions or recommendations communicated to, between, or from members of the Executive Council on matters relating to the formulation of government policy and the making of government decisions,
- (i) would disclose any agenda for or record of the deliberations of the Executive Council,
- (j) would disclose legal opinions or advice given to a person or department, or privileged communications as between lawyer and client in a matter of departmental business,
- (k) would be detrimental to the proper enforcement of any law of Canada or of the Yukon, the conduct of lawful investigations in respect of such laws, the administration of justice, or the proper custody, control or supervision of persons under sentence,
- (l) would violate any right respecting intellectual property, including any copyright, patent right or trademark right,
- (m) would hamper an audit in progress or reveal an auditing program or auditing operation plan, or
- (n) would likely prejudice the outcome of judicial proceedings in progress.

Exception for portions of records

8.(1) If a record contains some information that cannot be disclosed, that portion of the record shall not be disclosed and the remainder shall be disclosed.

(2) If it is not practical to separate the portion of the record that can be disclosed from the portion that cannot be disclosed, the portion that can be disclosed shall, if the prescribed fee is paid, be transcribed into a form that can be disclosed to and used by the person who requests the information.

Denial of request

9.(1) A request for information may only be denied

- (a) where the record of the information does not exist, or
- (b) in accordance with section 7.

(2) If a request for information is denied the archivist shall give to the person who made the request

- (a) written reasons for the denial, and
- (b) a written description of the right and procedure for appealing against the denial.

Appeal from denial of request

10.(1) If the request for information is denied, the person who made the request may appeal the denial by delivering to the archivist a written notice of appeal within 15 days after the day his request was denied.

(2) The appeal shall be considered and decided by the Executive Council Member charged with responsibility for the department to whose operation the information relates.

(3) The appeal to the Executive Council Member is not a judicial proceeding and he may review the request and the denial in any manner and consult with any person and hear any representations and receive any recommendations as he thinks appropriate.

(4) The Executive Council Member shall, within 30 days after the notice of appeal is delivered to the archivist, uphold, vary or overrule the denial and shall give reasons for the decision.

(5) If the Executive Council Member overrules or varies the denial, he shall issue appropriate instructions to ensure that the requested information, or the portion that he decides can be released, is made available to the person who made the request.

Further appeal to Supreme Court

11.(1) If the request for information has been denied by the Executive Council Member, the person who requested the information may appeal by means of a petition to a judge of the Supreme Court.

(2) On the appeal to him the Supreme Court judge may require the production of and may inspect the information that is the subject of the appeal, if the information exists, but that inspection shall be conducted without the presence of any person and the confidentiality of the information shall be preserved pending the judge's decision about whether the person who requests the information has a right to it.

(3) Upon hearing the appeal, the Supreme Court judge may

- (a) order that the archivist grant the request for some or all of the requested information,
- (b) order that the denial of the request be upheld in relation to some or all of the information, or
- (c) make any order in consequence of, or to implement, an order under paragraphs (a) and (b) that seems necessary and just in the circumstances.

(4) If under section 7 there is no right to the requested information the Supreme Court judge shall not order the archivist to grant the request.

Regulations

12. The Commissioner in Executive Council may make regulations

- (a) prescribing fees for the purposes of this Act;
- (b) without requiring the use of any particular form, prescribing forms that may be used under this Act;
- (c) prescribing such procedures as are not established by the Act as may be necessary to carry out the purposes of the Act.

CHAPTER 2

AGE OF MAJORITY ACT

Majority at age 19

1.(1) Every person attains the age of majority, and ceases to be a minor, on attaining the age of 19 years.

(2) Every person who, on March 1, 1972, has attained the age of 19 years but has not attained the age of 21 years, attains the age of majority and ceases to be a minor on March 1, 1972.

Application and rules of law

2. Section 1 applies for the purposes of any rule of law in respect of which the Legislature has jurisdiction.

Meaning of similar expressions

3.(1) In the absence of an express definition or an indication of a contrary intention, section 1 applies in respect of the expressions “adult”, “full age”, “infant”, “infancy”, “minority” and similar expressions

- (a) in any Act or any regulation, rule, order or bylaw made under an Act enacted or made before or after March 1, 1972, and
- (b) in any deed, will or other instrument of whatever nature made after March 1, 1972.

(2) The use of expressions set out in subsection (1) or similar expressions shall not in itself be deemed to indicate a contrary intention for the purpose of this section without some further indication of a contrary intention.

Twenty-one means 19 in other laws

4.(1) In any regulation, rule, order or bylaw made under an Act, a reference to the age of 21 years shall be read as a reference to the age of 19 years.

(2) Where, by an Act of the Yukon, any Act of Canada or a province or any provision thereof is made to apply in respect of any Act, matter or thing over which the Legislature has jurisdiction, in applying the Act of Canada or a province or provision thereof in respect of such Act of the Yukon, matter or thing, any reference to the age of 21 years in the Act of Canada or a province or provision thereof shall be read as a reference to the age of 19 years.

Court orders

5.(1) In any order or direction of a court made before March 1, 1972, in the absence of an indication of a contrary intention, a reference to the age of 21 years or to any age between 19 and 21 years or to any expressions set out in subsection 3(1) or similar expressions, shall be read as a reference to the age of 19 years.

(2) The use of the words “21 years” or words stating an age between 19 and 21 years in an order or direction to which reference is made in subsection (1) shall not itself be deemed to indicate a contrary intention for the purposes of this section without some further indication of a contrary intention.

Right of action and defence preserved

6. Where a right of action or a defence to an action that is based upon the age of a party was in existence on March 1, 1972, the law that was in force immediately prior to March 1, 1972, shall apply.

Time of attaining age

7.(1) The time at which a person attains a particular age expressed in years shall be the commencement of a relevant anniversary of the date of his birth.

(2) Subsection (1) applies only where the relevant anniversary falls after March 1, 1972, and in relation to any Act or any regulation, rule, order, or bylaw made under an Act or any deed, will or other instrument has effect subject to the provisions thereof.

Accumulations

8. This Act does not invalidate any direction or accumulation expressed in a settlement or other disposition made by a deed, will or other instrument and executed before March 1, 1972 that, but for this Act, was a permissible period of accumulation.

Limitations of actions

9. Where, on March 1, 1972, a person has

- (a) attained the age of 19 years but has not attained the age of 21 years, and
- (b) a right of action in respect of which the period of limitation applicable to the bringing of the action would have commenced to run on his attaining the age of 21 years had this Act not been enacted,

the period of limitation in respect of that right of action commences to run on March 1, 1972.

Transitional

10. Notwithstanding any rule of law, a will, or codicil executed before March 1, 1972, shall be deemed, for the purposes of this Act, not to have been made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

Exemption re existing statutory provisions

11. This Act does not affect the construction of a provision of an Act or a regulation, rule, order or bylaw made thereunder that is incorporated in and has effect as part of a deed, will or other instrument if the construction of the deed, will, or other instrument is not affected by section 1.

Perpetuities not affected

12. This Act does not apply so as to affect the law relating to perpetuities.

Regulations

13. The Commissioner in Executive Council may make such regulations and prescribe such forms as he deems necessary for carrying out the purposes and provisions of this Act.

CHAPTER 3

AGRICULTURAL PRODUCTS ACT

Interpretation

1. In this Act,

“agricultural product” means any product of commercial or domestic agriculture, horticulture, animal husbandry, bee-keeping, berry-picking, fishing, hunting or other similar activity, grown, raised, harvested, collected, caught, taken, picked, packaged, processed or otherwise produced or processed in the Yukon for human consumption including, without limiting the generality of the foregoing, meat, honey, fish, poultry, eggs, milk, yogurt, teas, vegetables, nuts, mushrooms, berries, fruit and grains, whether wild or domestic;

“contaminated” means sprayed, coated, mixed with or in any way in contact with dirt, toxic substances, or unsanitary substances, or altered by heat, chemical, biological or other actions;

“inspector” means an inspector appointed under this Act;

“regulated product” means an agricultural product that has been declared by the regulations to be a regulated product;

“sell” includes any transaction in respect of the possession of any regulated product made for any consideration or in hope or expectation thereof, including

- (a) commercial promotions where regulated products are ostensibly given away for free, and
- (b) transactions in which a regulated product is made available to a person for no consideration, but the product is to be or is in fact processed or altered after the product is made available for any consideration, or in hope or expectation thereof, by the person making the product available in the first place.

Appointment of inspectors

2. The Commissioner in Executive Council shall appoint such inspectors as are considered necessary for the administration and enforcement of this Act.

Entry upon lands

3. In the performance of duties under this Act, an inspector and any person accompanying an inspector at his or her request for the purpose of assisting in the performance of his or her duties, may enter upon any land, and while so engaged they are liable only for any actual damage wilfully or negligently caused by them.

Enforcement of the Act and issuance of licences

4. Every inspector has the authority to enforce the provisions of this Act and to issue any licence that may be issued under this Act.

Inspection of agricultural products

5. An inspector may inspect any agricultural product found in a place to which the public has access.

Inspection of premises

6.(1) An inspector may at any reasonable time enter any premises in respect of which a licence has been issued under this Act in order to inspect the premises for the purposes of this Act related to the licence.

(2) Where an inspector is refused entry to any premises under subsection (1), the Executive Council Member may suspend or cancel the licence.

Inspection of records

7.(1) An inspector may at any reasonable time require a person to produce for inspection any records the person is required to keep under this Act, and the inspector may take extracts from them or make copies of them.

(2) Where a person refuses to produce within a reasonable time any record for the inspection of an inspector under subsection (1), the inspector may apply to a justice of the peace for an order for the seizure of the record to enable extracts to be taken or copies made.

(3) Records seized under subsection (2) shall be returned to the person from whom they were seized as soon as practicable after the necessary extracts are taken or copies made.

Searches

8.(1) Subject to subsection (2), where an inspector has reasonable and probable grounds to believe and does believe that there is in any place any agricultural product in respect of which anything has been done or omitted to be done in contravention of this Act, or any object used for the commission of an offence under this Act, the inspector may search the place.

(2) An inspector shall not search any place unless, immediately before the search, the inspector obtains the permission of a lawful occupant to do so, or unless the inspector obtains a search warrant authorizing the search.

(3) A search warrant may be issued by a justice of the peace where he or she is satisfied by information upon oath that there are reasonable grounds for believing that there is in any place

- (a) any papers, books, films, pictures, recordings or records that may afford evidence of the commission of an offence under this Act, or
- (b) any agricultural product or object referred to in subsection (1).

(4) In the carrying-out of a search under this section, an inspector may use all force that is necessary in the circumstances, including the breaking of any lock or fastening, but the inspector shall

- (a) ensure that the premises are left as secure after the search as they were at the commencement of the search, and
- (b) make a reasonable effort forthwith after the search to give notice of any action under this subsection to the owner or other person entitled to possession of the place searched.

(5) Where the owner or other person authorized to occupy a dwelling house that is not vacant is absent from the premises, an inspector shall not exercise any power under subsection (4) unless

- (a) he or she is accompanied by a member of the Royal Canadian Mounted Police, and
- (b) he or she has made a reasonable effort to give advance notice of the search to the owner or other person.

(6) Where an inspector is carrying out a search under this section he or she may be accompanied by any person who may be of assistance in carrying out the search.

(7) A search warrant issued under this section shall be executed by day unless the justice, by the warrant, authorizes execution of it by night.

(8) In this section “place” includes any land, building, dwelling house, tent, camper, trailer, motor home, aircraft or watercraft.

Seizures

9.(1) An inspector may seize any agricultural product in whole or in part where he or she is of the opinion that

- (a) it may be evidence of the commission of an offence under this Act,
- (b) it may disclose evidence of disease,
- (c) it may be so contaminated as to make it unfit for human consumption, or
- (d) it is found with any agricultural product that is seized under paragraph (a), (b) or (c) and it is not easily distinguishable therefrom.

(2) Where an inspector finds anything that he or she reasonably believes may be evidence of the commission of an offence under this Act, he or she may seize it.

Seizure without removal from premises

10. An agricultural product may be seized without removing it from the premises or place at which it is located at the time of the seizure.

Receipt for seizure

11. Upon the seizure of anything under this Act, a receipt reasonably descriptive of the seized products or things shall be issued to the person from whom they were seized, but if there is no such person present

- (a) the receipt shall be left in a prominent place at the place of the seizure, if the seizure is made on private property, and
- (b) notice of the seizure shall be given by newspaper advertisement or such other means as reasonably might bring the seizure to the attention of interested persons, if the seizure is not made on private property.

Release from seizure

12.(1) Subject to subsection (2), the Executive Council Member may release from seizure any agricultural product or other thing seized under section 9.

(2) No agricultural product shall be released from seizure, and no court shall make any order to that effect, if the product is unfit for human consumption, unless appropriate conditions are imposed for its disposal or destruction.

Diseased or contaminated products under seizure

13.(1) Notwithstanding any other provision of this or any other Act or law, where an agricultural product that has been seized is found to be diseased or contaminated so as to render it unfit for human consumption, an inspector may issue an order for its destruction or other disposition.

(2) An order under subsection (1) may provide for the destruction of an agricultural product without its removal from the premises or place where it is located, notwithstanding that it may be located on private property.

Compensation for spoilage of seized products

14.(1) Where an agricultural product is seized under paragraph 9(1)(b) or (c) and no evidence of disease or contamination is subsequently found, it shall forthwith be released from seizure, but if the product has spoiled while under seizure the Executive Council Member may pay to the owner compensation for the loss not exceeding the fair market value the product might reasonably have been expected to bring if it had not been seized.

(2) Compensation under subsection (1) shall be paid to the owner where the spoilage of the agricultural product has resulted from the wilful or negligent failure of the inspector or the Executive Council Member, or anyone acting on behalf of the inspector or the Executive Council Member, to take reasonable care of the product during the seizure.

(3) In the absence of agreement between the Executive Council Member and the owner of an agricultural product under subsection (1) or (2), the Agricultural Products Appeal Board may, upon the application of either party, determine the fair market value the agricultural product might reasonably have been expected to bring if it had not been seized.

Exemption from liability

15. Except as provided by section 14, no liability attaches to the Crown, the Executive Council Member or an inspector, or to any person assisting the Executive Council Member or an inspector at his or her request, for loss or damage arising from the seizure, disposal or destruction of any diseased or contaminated agricultural product under this Act.

Order for cleansing or closure of premises

16. An inspector may issue an order for the cleansing or closure of any premises, other than a dwelling house, where it is found to have contained any diseased or contaminated agricultural product.

Form and content of orders

17.(1) Every order under section 13, 16 or 20 shall be in writing and shall specify with reasonable particularity the persons who are to comply with the order and the actions that are to be taken by them.

(2) An inspector may, in writing, vary or revoke any order he or she has made.

Regulated products

18.(1) The Commissioner in Executive Council may, by regulation, declare any agricultural product to be a regulated product.

(2) A regulation under subsection (1) may be general, or it may restrict its operation in whole or in part to products coming from

- (a) any specified area of the Yukon,
- (b) any specified agricultural activity or enterprise, or
- (c) any place outside the Yukon.

(3) The Commissioner in Executive Council may make regulations

- (a) prescribing the records to be kept by any person producing, processing, selling, storing, transporting or delivering regulated products;
- (b) regulating the handling, processing, packaging, storage, transportation and sale of regulated products;
- (c) prescribing inspection requirements for regulated products;
- (d) prescribing quality standards for regulated products;
- (e) prescribing methods for marking or otherwise certifying regulated products after inspection.

Sale of regulated products

19.(1) No person shall sell a regulated product or offer a regulated product for sale to any person unless the product has been approved by an inspector in accordance with regulations applying to that product.

(2) Subsection (1) does not prohibit a person from making an occasional private sale of a live animal raised by the person, whether or not he or she assists the purchaser with the slaughter or butchering of the animal.

Regulated products unfit for consumption

20. Where an inspector finds a regulated product that is diseased, contaminated or otherwise unfit for human consumption, the inspector shall

- (a) mark or identify it in the prescribed manner, and
- (b) subject to the regulations, issue a written order giving directions for the destruction or other disposition of the product.

Agricultural Products Appeal Board

21.(1) The Commissioner in Executive Council shall establish an Agricultural Products Appeal Board for the purposes of section 14 and to hear appeals from decisions and orders of inspectors under this Act.

(2) The Agricultural Products Appeal Board shall consist of the prescribed number of members appointed in accordance with the regulations for the prescribed term.

(3) Subject to the regulations, the Agricultural Products Appeal Board may determine its own rules of procedure.

(4) A member of the Agricultural Products Appeal Board may be paid transportation, accommodation and living expenses incurred in connection with the performance of his or her duties as a member of the board away from his or her ordinary place of residence but, except as otherwise provided by the regulations, the payment of such expenses shall conform as nearly as possible in all respects to the payment of such expenses for members of the public service of the Yukon.

(5) All evidence received by the Agricultural Products Appeal Board shall be given under oath or affirmation, which may be administered as the board may direct, and the board may receive evidence orally or by affidavit or declaration as it may deem proper.

(6) Except as provided under subsection (5), the Agricultural Products Appeal Board is not bound by the technical rules of evidence applying to judicial proceedings.

Exemptions

22. The Commissioner in Executive Council may make regulations exempting any person or transaction in agricultural products, or any class thereof, from the application of all or part of this Act.

Offence and penalty

23.(1) Every person who fails to obey an order of an inspector under this Act commits an offence.

(2) Every person who commits an offence under this Act is liable on summary conviction to a fine of up to \$1,000 or to imprisonment for a term of up to six months, or both.

Regulations

24. The Commissioner in Executive Council may make regulations

- (a) prescribing forms;
- (b) prescribing fees to be paid in respect of any form, service, inspection or other matter under this Act;
- (c) establishing grades for agricultural products;
- (d) prescribing standards for and regulating all aspects of the operation of premises where animals are slaughtered or meat or fish is cut, wrapped, frozen, cured, smoked or aged;
- (e) prescribing standards for and regulating all aspects of the operation of premises where agricultural products other than those referred to in paragraph (d) are processed;
- (f) providing for the licensing of premises referred to in paragraphs (d) and (e) or any other undertaking for the processing, packaging, storing, transporting, handling or selling of agricultural products;
- (g) governing the slaughter of animals;
- (h) prescribing diseases which render agricultural products unfit for human consumption;
- (i) providing for the exemption, with or without conditions, of any person or agricultural product, or class of persons or products, from the operation of this Act, or any provision of this Act;

- (j) providing for any matter required to be prescribed under any other provision of this Act;
 - (k) generally, respecting any other matter the Commissioner in Executive Council considers necessary for carrying the purposes and provisions of this Act into effect.
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CHAPTER 4

AGRICULTURE DEVELOPMENT ACT

Interpretation

1. In this Act, “lands” means properties to which the Lands Act applies.

Agriculture Development Council

2. The Commissioner in Executive Council shall establish an Agriculture Development Council.

Membership

3.(1) The Agriculture Development Council shall consist of three members appointed by the Commissioner in Executive Council to hold office for not more than three years at a time.

(2) One of the members shall be appointed chairperson, and another, vice-chairperson.

Chairperson

4.(1) The chairperson of the Agriculture Development Council is its chief executive officer, and he shall

- (a) supervise and direct the work of the council, and
- (b) preside at sittings of the council.

(2) Where the chairperson is unable at any time for any reason to exercise the powers or perform the duties of his office, the vice-chairperson may act in his place.

Quorum

5. A quorum is two members of the Agriculture Development Council, but a vacancy in the membership of the council does not impair the right of the remainder to act.

Expenses of members

6. A member of the Agriculture Development Council who is not a member of the public service of the Yukon may be paid transportation, accommodation and living expenses incurred in connection with the performance of his duties away from his ordinary place of residence but, except as otherwise provided by the regulations, the payment of such expenses shall conform as nearly as possible in all respects to the payment of such expenses for members of the public service of the Yukon.

Terms of reference for the council

7. The Executive Council Member may establish terms of reference to be followed by the Agriculture Development Council in the performance of its duties under this Act.

Functions of the council

8. Subject to the directions of the Executive Council Member, for the purpose of advising the Executive Council Member respecting agriculture in the Yukon, the functions of the Agriculture Development Council extend to and include all matters relating to

- (a) the disposition of lands for agricultural purposes, including
 - (i) agricultural development plans,
 - (ii) eligibility criteria for applicants and conditions respecting the disposition of such lands,
 - (iii) minimum and maximum parcel sizes, and rules for the laying out of such lands,
 - (iv) terms to be contained in agreements for sale or lease, or other agreements,
 - (v) land use and subdivision controls for such lands, and
 - (vi) prices for disposition of such lands, and methods of payment,
- (b) the inspection, storage and marketing of agricultural products, and the provision of related services,
- (c) research, promotional or educational programs relating to agriculture, and
- (d) the collection and dissemination of information respecting agriculture in the Yukon.

Responsibilities of the council

9. The Agriculture Development Council shall, at the request of the Executive Council Member and at any time it considers it appropriate to do so, advise the Executive Council Member generally respecting agriculture in the Yukon and, in particular, with respect to any of the following matters:

- (a) the assessment of the agricultural potential of the Yukon, including the identification and evaluation of agricultural land, agricultural research, and analysis of markets, transportation and other factors affecting agriculture;
- (b) the development of the agricultural potential of the Yukon including
 - (i) the establishment and maintenance of farms and other agricultural enterprises,
 - (ii) the clearing and improvement of land for agriculture,
 - (iii) the disposition of Crown land for agricultural purposes,
 - (iv) irrigation and the supply of water for agricultural purposes,
 - (v) the provision of technical and other assistance to persons engaged in agriculture, and
 - (vi) the coordination of agricultural programs of the Yukon with programs of Canada or any province;
- (c) the preservation, protection and management of the agricultural potential of the Yukon, including
 - (i) the preservation of agricultural land for agriculture,
 - (ii) soil conservation,
 - (iii) the control of agricultural diseases, pests and weeds,
 - (iv) the zoning of agricultural land, and
 - (v) grazing and other agricultural uses of public land;

- (d) the taxation of farms and other agricultural enterprises, and the taxation of agricultural land and activities on such land;
- (e) the regulation of agricultural activities for the benefit of the agricultural community or the public, including
 - (i) the control of livestock running at large,
 - (ii) the operation of agricultural equipment on public highways,
 - (iii) seed control,
 - (iv) the branding of livestock and the administration of the Brands Act, and
 - (v) the establishment and maintenance of pound districts and the administration of the Pounds Act;
- (f) the development and implementation of agricultural programs and policies by the Government of the Yukon;
- (g) such further matters as the Executive Council Member may require.

Regulations

10. The Commissioner in Executive Council may make regulations

- (a) respecting the expenses that may be paid to members of the Agriculture Development Council;
 - (b) establishing agricultural programs of the Government of the Yukon;
 - (c) providing for the participation of the Agriculture Development Council in the disposition of land for agricultural purposes;
 - (d) providing for the coordination of policies and programs under this Act with policies and programs of the Government of Canada in the Yukon;
 - (e) generally making provision for such matters as he considers necessary for carrying this Act into effect.
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CHAPTER 5

ANIMAL PROTECTION ACT

Interpretation

1. In this Act,

“animal” includes mammals, birds and fish, but does not include wildlife;

“distress” means the state of

- (a) being in need of proper care, food or shelter,
- (b) being injured, sick or in pain or suffering, or
- (c) being abused or subject to undue or unnecessary hardship, privation or neglect;

“humane society” means an organization that is approved as a humane society under section 8;

“peace officer” means a member of the Royal Canadian Mounted Police, an enforcement officer of a municipality who has been sworn as a peace officer pursuant to the Municipal Act and who is carrying out his duties within the municipality by whom he is employed pursuant to that Act or a special officer appointed for the purposes of this Act;

“veterinary surgeon” means a person who is entitled to practise veterinary medicine in a province or in the State of Alaska;

“wildlife” means any vertebrate animal of any species that is wild by nature in the Yukon.

Powers of peace officer

2.(1) Where an animal is found in distress in a public place or, subject to section 3, in any other place, and

- (a) the owner or person in charge of the animal does not forthwith take appropriate steps to relieve its distress, or
- (b) the owner or person in charge of the animal is not present and cannot be found promptly,

a peace officer may, subject to this Act, take such action as he considers necessary or desirable to relieve its distress, and for that purpose he may

- (c) take custody of the animal,
- (d) arrange for any necessary transportation, food, care, shelter and medical treatment of the animal, and
- (e) deliver the animal into the custody of a humane society.

(2) Before acting under subsection (1) a peace officer shall take reasonable steps to find the owner or person in charge of the animal and, if found, shall endeavour to obtain his cooperation to relieve the animal’s distress.

(3) If the owner of the animal is not present or promptly found and informed of the animal’s distress by a peace officer pursuant to subsection (2), the humane society into whose custody the animal is delivered shall take reasonable steps to find the owner and, if found, to inform him of the action taken.

Entry of premises

3.(1) Where he has reasonable and probable grounds for believing, and does believe, that an animal is in distress,

- (a) in or upon any premises, other than a dwelling place, or
- (b) in any vehicle or other chattel,

and where he has made every reasonable effort to first obtain a warrant but is unable to do so, for any reason other than the refusal of a justice to issue the warrant, a peace officer may, without a warrant, enter

- (c) in or upon the premises, other than a dwelling place, or
- (d) any vehicle or other chattel,

and search for the animal, and may exercise his powers under section 2 with respect to any animal in distress found therein.

(2) Where it appears to a justice, on information laid before him on oath, that there are reasonable and probable grounds for believing there is an animal in distress in or upon any premises, including a dwelling place, vehicle or other chattel within his jurisdiction, the justice may issue a warrant authorizing a peace officer to enter, by force if necessary, the premises, dwelling place, vehicle or other chattel specified in the warrant and search for the animal, and thereupon the peace officer may exercise his powers under section 2 with respect to any animal in distress found therein.

(3) Before entering any premises, dwelling place, vehicle or other chattel pursuant to this section a peace officer shall take reasonable steps to find the owner or person in charge of the premises, dwelling place, vehicle or other chattel and endeavour to obtain his cooperation to relieve the animal's distress.

(4) Where a peace officer uses force in entering or searching any premises, dwelling place, vehicle or other chattel, he shall use no more force than is reasonably required under the circumstances.

Relieving of distress of animals

4.(1) Notwithstanding anything in this Act to the contrary, where an animal taken into custody pursuant to section 2 is in such distress that,

- (a) in the opinion of a veterinary surgeon,
- (b) if a veterinary surgeon is not readily available, in the unanimous opinion of a peace officer and two reputable citizens, or
- (c) in a critical situation where a veterinary surgeon or two reputable citizens are not readily available, in the opinion of a peace officer,

the animal cannot be relieved of its distress so as to live thereafter without undue suffering, the peace officer or humane society having such custody may cause the animal to be destroyed.

(2) Where an animal is to be destroyed pursuant to this section but the animal's suffering will not be unduly prolonged thereby, the peace officer or the humane society having custody of the animal shall take reasonable steps to find the owner of the animal and endeavour to obtain his consent to its destruction.

Recovery of expenses by society

5.(1) A humane society has a lien upon any animal delivered or taken into its custody under this Act for any expenses properly incurred with respect to the animal for transportation, food, care, shelter and medical treatment and may require the owner to pay those expenses before delivering the animal to the owner.

(2) Expenses properly incurred may be recovered by the humane society in an action in debt against the owner of the animal or person who, with the consent, express or implied, of the owner of the animal, was in charge of the animal at the time the animal was taken into custody pursuant to section 2.

Minimum time limits before animal may be sold or given away

6.(1) Subject to subsection (2), where the owner of an animal is not found within 72 hours after the animal came into the custody of a humane society pursuant to this Act or, if found,

(a) does not, within 72 hours after being informed that the animal was taken into the custody of the society,

(i) pay to the society, or

(ii) undertake to pay to the society within an agreed time,

the expenses properly incurred by the society with respect to the animal, or

(b) does not pay those expenses within the time agreed upon under clause (a)(ii),

the society may sell or give the animal to any person.

(2) Notwithstanding subsection (1), where the animal bears an obvious identification tattoo, brand, mark, tag or licence, the applicable time limit in any event under subsection (1) shall be ten days from the time the animal was taken into the custody of a humane society.

(3) Where a humane society sells or gives an animal to any person pursuant to this section,

(a) the animal becomes the property of the person to whom it is sold or given, and

(b) any money paid to the society with respect to the animal is the property of the society.

Animal may be destroyed

7.(1) Where an animal has been delivered into the custody of a humane society pursuant to this Act and, after the expiry of the periods prescribed under section 6, the society is unable to sell or give the animal away, the society may cause the animal to be destroyed.

(2) Where an animal is given to a humane society and the society is unable to sell or give the animal away, the society may cause the animal to be destroyed.

Approval of humane society

8.(1) The Commissioner in Executive Council

(a) may approve as a humane society for the purposes of this Act any organization having as a principal object the prevention of cruelty to animals, and

- (b) may suspend or revoke the approval.

(2) The Commissioner in Executive Council may appoint any officer or employee of a humane society as a special officer with authority to exercise the powers of a peace officer for the purposes of this Act.

Inspection of animal exhibitions, sales

9. If authorized by or under the regulations, and subject thereto, a peace officer,

- (a) without a warrant and in ordinary business hours, and
- (b) for the purpose of enforcing this Act and the regulations,

may enter and inspect any premises other than a dwelling place where animals are kept for sale, hire or exhibition.

Regulations

10. The Commissioner in Executive Council may make regulations

- (a) governing the approval and the suspension and revocation of approval of organizations as humane societies;
- (b) prescribing the qualifications required or persons to be appointed special officers for the purposes of this Act;
- (c) respecting the manner of taking an animal into custody;
- (d) defining what constitutes taking reasonable steps to find the owner of an animal in distress;
- (e) prescribing a tariff of expenses which may be charged to the owner of an animal taken into custody under this Act for transportation, food, care, shelter and medical treatment of the animal;
- (f) prescribing, with respect to animals kept for sale, hire or exhibition, the standard of care with which the animals shall be maintained;
- (g) respecting the authorization of peace officers, in general or, in particular, to exercise the powers specified in section 9 subject to such conditions and restrictions as are considered desirable in the public interest;
- (h) respecting any other matter necessary or desirable to give effect to the intent of this Act.

Offence and penalty

11. Any person who contravenes this Act or the regulations thereunder is guilty of an offence and liable on summary conviction, to a fine of not more than \$500 and in default of payment to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

Immunity of officers and society from prosecution

12. No action lies against a peace officer or a humane society or any officer or employee of a humane society for any thing done in good faith and purporting to be done under this Act or the regulations thereunder.

Other Acts prevail

13. Nothing in this Act shall be construed as affecting any right, power, duty or prohibition relating to animals conferred or imposed by or under any other Act and where any conflict exists between the provisions of this Act or the regulations thereunder and that other Act or the regulations thereunder, the provisions of that other Act or regulations thereunder shall prevail.

CHAPTER 6

APPRENTICE TRAINING ACT

Interpretation

1. In this Act,

“apprentice” means a person who has entered into an agreement with the Executive Council Member, pursuant to section 6, under which that person undertakes to pursue a course of training in a designated occupation;

“designated occupation” means an occupation designated by the Commissioner in Executive Council.

Director of apprentice training

2. The Executive Council Member shall designate a member of the public service of the Yukon to be director of apprentice training who shall be responsible for the administration of this Act and shall perform the duties and have the powers that are or may be assigned to him or her under this Act.

Appointment of advisory committees

3. The director shall appoint the members of such trade advisory committees as may be established by the Commissioner in Executive Council.

Inspectors of apprentice training

4. The Executive Council Member may designate members of the public service of the Yukon to be inspectors of apprentice training who shall act under the supervision of the director of apprentice training and shall perform the duties and have the powers that are or may be assigned to them under this Act.

Apprentice Advisory Board

5.(1) There shall be a board of not less than five members to be known as the Apprentice Advisory Board.

(2) The director of apprentice training shall be a member and the chairperson of the Apprentice Advisory Board, and the other members of the board shall be appointed by the Commissioner in Executive Council.

(3) Of the members of the Apprentice Advisory Board appointed by the Commissioner in Executive Council, half shall be employers of persons in a designated occupation and half shall be employees in a designated occupation.

(4) A member of the Apprentice Advisory Board may be paid such remuneration as may be prescribed and may also be paid transportation, accommodation and living expenses incurred in connection with the performance of his or her duties as a member of the board away from his or her ordinary place of residence but, except as otherwise prescribed, the payment of

such expenses shall conform as nearly as possible in all respects to the payment of such expenses for members of the public service of the Yukon.

(5) The Apprentice Advisory Board shall perform such duties and have such powers as may be assigned to it under this Act.

Agreement with apprentice

6.(1) The Executive Council Member may enter into a written agreement with any person who

- (a) wishes to pursue a course of training in a designated occupation,
- (b) is at least 16 years of age, and
- (c) resides in the Yukon,

upon such terms and conditions as the Executive Council Member may think fit, to provide for the training of that person in a designated occupation.

(2) An agreement referred to in subsection (1) is not binding upon the parties unless it is in writing and is signed

- (a) by the Executive Council Member,
- (b) by the person who wishes to pursue a course of training in a designated occupation, and
- (c) by a parent or guardian if such person is a minor and resides with his parent or guardian.

(3) An agreement entered into by a minor pursuant to this section is binding upon such minor as if he had been of full age and capacity at the time the agreement was entered into.

Agreement with employer

7. The Executive Council Member may enter into an agreement with any person who

- (a) wishes to employ an apprentice, and
- (b) is capable of providing a course of practical training in a designated occupation,

upon such terms and conditions as the Executive Council Member may think fit, to provide for the practical training of an apprentice in that designated occupation.

Grants to apprentices and others

8. The Executive Council Member may make grants of money and provide goods or services to apprentices or to other persons employed in designated occupations, upon such terms and conditions as the Commissioner in Executive Council may prescribe.

Regulations

9.(1) The Commissioner in Executive Council may make regulations,

- (a) designating occupations to which this Act applies;
- (b) prescribing the qualifications necessary to become an apprentice in any designated occupation and the manner of establishing qualifications;
- (c) prescribing the duration, nature and scope of the practical and theoretical training to be received by an apprentice in any designated occupation;

- (d) providing for changes in the duration, nature and scope of practical or theoretical training of apprentices who have had experience in a designated occupation before becoming apprentices;
- (e) prescribing the conditions under which agreements entered into pursuant to section 6 or 7 may be terminated or cancelled;
- (f) prescribing the duties and obligations that shall be imposed upon and observed by an apprentice in respect of his employer;
- (g) prescribing the duties and obligations that shall be imposed upon and observed by an employer in respect of the apprentices employed by him;
- (h) providing for the appointment of examining boards and prescribing the duties and remuneration of members;
- (i) establishing trade advisory committees, prescribing their duties and functions and prescribing the remuneration of their members;
- (j) providing for the examination of apprentices, persons wishing to become apprentices and persons employed in designated occupations, and establishing the standards for examination;
- (k) providing for the issuance of certificates of status, certificates of completion of apprenticeship and other certificates of competence or proficiency, and prescribing the conditions for the issuance of the certificates;
- (l) providing for the issuance of identification cards and requiring the production of such cards under certain conditions;
- (m) providing for the recognition of certificates of occupational status or their equivalent, issued by any province and prescribing the conditions for the issuance of certificates of status, certificates of completion of apprenticeship or other certificates of competence or proficiency to the holders thereof;
- (n) prescribing the working conditions, hours of labour and rates of wages for apprentices;
- (o) prescribing the powers and duties of the Apprentice Advisory Board;
- (p) prescribing the powers and duties of the director of apprentice training;
- (q) prescribing the powers and duties of the inspectors of apprentice training;
- (r) providing for inspection of the training of apprentices;
- (s) providing for a system for recording the progress of the training of apprentices;
- (t) providing for the keeping of records accessible to the public;
- (u) providing for the making of grants of money to apprentices and other persons employed in designated occupations, and prescribing the conditions for eligibility for, the amount of and the manner of repayment of grants;
- (v) providing for the provision of goods or services to apprentices and other persons employed in designated occupations and prescribing the conditions for eligibility for such provision, the amounts to be provided and the manner of providing goods or services;
- (w) providing for the repayment of any grant made to an apprentice or to a person employed in a designated occupation, providing for the repayment of the value of any goods or services directed to an apprentice or to a person employed in a designated occupation, and prescribing the conditions upon which such repayment is required and the manner in which such repayment is made;

- (x) prescribing forms used for the purpose of this Act and the regulations;
- (y) requiring payment of fees and prescribing the amount of fees paid in respect of any agreement, examination, perusal or search of records, for the issuance of any certificate or other document or for any other service provided pursuant to this Act or the regulations;
- (z) prescribing a fine not exceeding \$500 or imprisonment not exceeding six months or both fine and imprisonment to be imposed upon summary conviction as a penalty for violation of a regulation;
- (aa) generally for the carrying out of the purposes and to give effect to the provisions of this Act.

(2) Notwithstanding any other provision of this Act, the Commissioner in Executive Council may make regulations establishing standards, and providing for the issuance of certificates of occupational status, competency or proficiency for occupations, whether or not a program of apprentice training is provided in respect thereof under this Act.

CHAPTER 7

ARBITRATION ACT

Interpretation

1.(1) In this Act,

“arbitrator” includes an umpire and a referee in the nature of an arbitrator;

“award” includes umpirage and a certificate in the nature of an award;

“submission” means a written agreement to submit differences to arbitration, whether or not an arbitrator is named in the agreement.

(2) The Commissioner in Executive Council may make rules of practice and procedure, including tariffs of fees and costs, for the better carrying out of the purposes of this Act and for regulating the practice hereunder, and, until other rules are so made, the Rules of Court established under the Judicature Act apply mutatis mutandis to all causes, matters and proceedings under this Act.

Application of the Act

2. This Act applies to every arbitration under any Act whenever passed as if the arbitration were pursuant to a submission, except insofar as this Act is inconsistent with the Act regulating the arbitration or with rules or procedure authorized or recognized by that Act.

Reference by submission

3.(1) Unless a contrary intention is expressed in a submission or a judge allows a submission to be revoked, a submission is irrevocable and has the same effect as if it had been made an order of a judge.

(2) A submission is not revoked by the death of the parties to it or either of them.

Single arbitrator

4. Where no other mode of reference is provided in a submission, the reference shall be to a single arbitrator.

Umpire

5. Where the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

Where arbitrator or umpire fails to act

6.(1) Where an arbitrator refuses to act or is incapable of acting or dies, the party by whom he was appointed may appoint an arbitrator in his stead, and this power may be exercised as vacancies occur.

(2) Where an umpire refuses to act or is incapable of acting or dies, the arbitrators by whom he was appointed may appoint an umpire in his stead, and this power may be exercised as vacancies occur.

Umpire to act where arbitrators cannot agree

7. Where the arbitrators have allowed their time or extended time to expire without making an award or have delivered to any party to the submission or to the umpire a notice, in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

Removal for misconduct

8. Where a judge is satisfied upon evidence submitted to him by a party to the submission that an arbitrator or umpire has misconducted himself in the arbitration, the judge may remove the arbitrator or umpire and may appoint an arbitrator or umpire in his stead.

Stay of proceedings

9. Where a party to a submission or a person claiming through or under him commences legal proceedings against any other party to the submission or any person claiming through or under him, in respect of a matter agreed to be referred, a party to such proceedings may, after service upon him of a statement of claim and before he takes any step in the proceedings, apply to a judge for a stay of proceedings, and the judge, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was, at the time when the proceedings were commenced, ready and willing to do all things necessary to the proper conduct of the arbitration and still remains ready and willing to do so, may make an order staying the legal proceedings.

Appointment of arbitrator or umpire by a judge

10.(1) In any of the following cases:

- (a) where a submission provides that the reference is to a single arbitrator and the persons whose concurrence is necessary do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b) where an arbitrator or an umpire is to be appointed by any person and that person does not make the appointment;
- (c) where an arbitrator or umpire refuses to act or is incapable of acting or dies and the person having the right to appoint a person to fill the vacancy has not made the appointment;

a party may serve the other party or the arbitrators or the person who has the right to make the appointment, as the case may be, with a written notice to concur in the appointment of a single arbitrator or to appoint an arbitrator or umpire.

(2) Where an appointment is not made within seven clear days after the service of the notice referred to in subsection (1), a judge may, on application by the person who gave notice, appoint an arbitrator or umpire.

(3) An arbitrator or umpire appointed under subsection (2) has the like powers to act in the reference and to make an award as if he had been appointed by consent of all parties.

Powers of arbitrators

11.(1) Unless a submission expresses a contrary intention, an arbitrator or umpire acting under the submission has power

- (a) to administer oaths to the parties and witnesses,
- (b) to state an award as to the whole or any part thereof in the form of a special case for the opinion of a judge, and
- (c) to correct, in an award, any clerical mistake or error arising from an accidental slip or omission.

(2) An arbitrator or umpire may at any stage of the proceedings and shall, if so directed by a judge, state in the form of a special case for the opinion of a judge any question of law arising in the course of the reference.

Application of Evidence Act

12. All provisions of the Evidence Act that are not inconsistent with this Act apply to proceedings under this Act.

Compulsory attendance of witnesses

13. A party to a submission may obtain a subpoena or other notice under the Rules of Court to compel the attendance of a witness, but no person is compelled to produce a document that he would not have to produce on the trial of an action.

Evidence de bene esse

14.(1) Where a party to a submission desires to procure for use upon the reference the evidence of a person to be taken de bene esse or to be taken out of the Yukon, an order may be made for the examination of such person or for the issue of a commission in the like circumstances and with the like effect as a similar order made in an action.

(2) The Judicature Act and Rules of Court apply to an order or commission under subsection (1) and to the proceedings thereon and the evidence taken thereunder.

Duty of parties

15. A party to a reference or a person claiming under him shall, subject to any legal objection, submit to be examined by an arbitrator or umpire on oath in relation to the matters in dispute and shall, subject to any legal objection, produce before the arbitrator or umpire all books, deeds, papers, goods, documents and things in his possession or power that are required or called for and shall do all other things that during the proceedings on the reference the arbitrator or umpire requires.

Oath

16. Witnesses on a reference shall be examined on oath.

Evidence of prisoners

17. A judge may order a sheriff, gaoler or other officer who has the custody of a prisoner to produce him for examination before an arbitrator or an umpire.

Copies of documents

18. An arbitrator or an umpire, where no special reason appears to him to exist for filing an original book, paper or document as an exhibit, may allow a copy of the whole or a portion thereof as he may deem material to be substituted as an exhibit in the place of the original book, paper or document.

Arbitrator's time to make award

19. An arbitrator shall make his award in writing

- (a) within three months after entering on the reference,
- (b) within three months after having been called on to act by notice in writing from a party to the submission, or
- (c) on or before any later date to which all the parties to the submission, by a writing signed by them, may increase the time for making the award.

Umpire's time to make award

20. An umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired or on or before any later date to which the persons who appointed him, by any writing signed by them, may increase the time for making his award.

Extension of time by judge

21. Upon application made to a judge by an arbitrator or umpire, time for making an award may be increased by the judge, whether or not the time for making the award has expired.

Remission of award

22.(1) Where, upon an application by a party to a submission, a judge is satisfied that a reference requires further consideration by an arbitrator or an umpire, the judge may remit the matters referred or any of them to the arbitrator or the umpire for further consideration.

(2) Unless the judge otherwise directs, where a reference is remitted to an arbitrator or an umpire under subsection (1), the arbitrator or the umpire shall make the award within three months after the date of the remission.

Delivery of award

23. An award shall be delivered to any of the parties to a submission requiring the same and the personal representatives of a deceased party may require delivery of the award.

Enforcement of award

24. An award may, by leave of a judge, be enforced in the same manner as a judgment or an order to the same effect.

Award is final

25. Subject to sections 26 and 27 respecting appeals and setting aside awards, an award made by an arbitrator or by a majority of arbitrators or by an umpire is final and binding on all the parties to the reference and the persons claiming under them respectively.

Where submission allows an appeal

26.(1) Where it is agreed by the terms of a submission that there may be an appeal from the award, the reference shall be conducted and an appeal lies to a judge within the time stated in the submission or if no time is stated within six weeks after the delivery of the award to the appellant.

(2) The evidence of the witnesses examined upon the reference shall be taken down in writing and together with the exhibits, shall, at the request of either party, be transmitted by the arbitrator or the umpire to the judge.

(3) Where the award of an arbitrator or an umpire is based wholly or partly upon his physical examination of property or upon special knowledge or skill possessed by him, he shall transmit to the judge a written statement thereof that will enable the judge to form an opinion of the weight that should be attached to the physical examination performed by the arbitrator or umpire or to his special knowledge or skill in reaching the award.

Setting aside award

27.(1) Whether or not a submission provides for an appeal from an award, a party to a submission or a person claiming under him may apply to a judge to set aside an award on the grounds

- (a) that an arbitrator or umpire has misconducted himself, or
- (b) that an arbitration or an award has been improperly procured,

and the judge may, in his discretion, dismiss the application or set aside the award.

(2) Upon an application under subsection (1), a party may by notice require any other party to produce, and the party so required shall produce, upon the hearing of the application, any original book, paper or document in his possession that has been used as an exhibit or given in evidence upon the reference and that has not been filed with the deposition supporting the application.

Time for appeal

28. Unless by leave of a judge, application to set aside an award, other than by way of appeal, shall not be made after six weeks from the delivery of the award to the applicant.

Costs of appeal

29. Where an appeal from an award is allowed or an award is set aside the judge who allowed the appeal or set aside the award may give directions as to the costs of the appeal or of the application to set aside the award and the costs of the reference and award.

Costs of reference

30. The costs of a reference and award are in the discretion of the arbitrator or umpire who may direct to and by whom and in what manner the costs or any part thereof shall be paid.

Costs of orders

31. A judge may make an order under this Act on such terms as to costs or otherwise as he thinks just.

Fees fixed by agreement

32. Where an arbitrator or umpire takes upon himself the burden of a reference and award in respect of which a submission or other agreement between the parties to the submission has, to their knowledge, set out his fees for each day's attendance or a gross sum for the entire reference, the fees or sum so set out are substituted for the fees prescribed by the Commissioner in Executive Council.

Fees of non-professional arbitrators

33. Subject to section 32, an arbitrator or umpire who is not by profession a lawyer, professional engineer, architect, chartered accountant or Canada land surveyor, is not entitled to demand or take for his attendance and services as an arbitrator or umpire any greater fees than those prescribed by the Commissioner in Executive Council.

Fees of professional arbitrators

34. Subject to section 32, an arbitrator or umpire who is by profession a lawyer, professional engineer, architect, chartered accountant or Canada land surveyor, is not entitled to demand or take for his attendance and services as an arbitrator or umpire any greater fees than those prescribed by the Commissioner in Executive Council.

Limit of witness fees

35. No greater fees are taxable in respect of a person called as a witness before an arbitrator than would be taxed in an action.

Where no business done at meeting

36.(1) Where, at an arbitration meeting in respect of which due notice has been given, no proceedings are taken as a result of the absence of any party to a submission or as a result of a postponement at the request of any party, the arbitrator shall make up an account of the costs of the meeting, including the proper charges for his own attendance and that of any witnesses and of the lawyer of the party present who does not desire the postponement, and, unless he considers that it would be unjust to do so, he shall charge the amount thereof against the party in default or at whose request the postponement is made.

(2) The party in default or who has requested a postponement shall where an amount is charged against him under subsection (1) pay the same to the other party, whatever may be the event of the reference, and the arbitrator shall, in the award, make any direction necessary for that purpose and the amount so charged may be set off against and deducted from any amount awarded in his favour.

Taxation of costs

37. A party to an arbitration is entitled to have the costs of the arbitration, including the fees of the arbitrator, or, if he so wishes, the arbitrator's fees alone, taxed by the clerk of the Supreme Court upon an appointment which may be given by the clerk of the Supreme Court for that purpose.

Penalty for excessive fees

38.(1) An arbitrator who, having entered upon a reference, refuses or delays after the expiration of one month from the publication of the award to deliver the award until a larger sum is paid to him for his fees than is permitted under this Act or who received for his award or for his fees as an arbitrator such larger sum, shall forfeit and pay to the party who has demanded delivery of the award or who has paid to the arbitrator such larger sum in order to obtain the award or as a consideration for having obtained it, an amount three times the excess demanded or received by the arbitrator contrary to this Act.

(2) The penalty referred to in subsection (1) may be recovered by action before a judge.

Action for fees

39. Where an award has been made, an arbitrator may maintain an action for his fees if the same have been taxed and, in the absence of an express agreement to the contrary, he may maintain such action against all parties to the reference, jointly or severally.

Appointment of valuers

40.(1) A judge has power to appoint a valuator or an appraiser where it is provided by a written agreement that a valuation or an appraisal shall be made by a valuator or an appraiser.

(2) A valuator or appraiser appointed under subsection (1) shall have the like powers to make a valuation or appraisal as if he had been appointed by consent of all parties to the agreement.

Regulations

41.(1) Subject to section 34, the Commissioner in Executive Council may prescribe limits on the fees that may be charged by arbitrators or umpires.

(2) The Commissioner in Executive Council may make regulations prescribing the forms to be used under this Act.

CHAPTER 8

ARCHIVES ACT

Interpretation

1. In this Act, “public records” means all original documents, parchments, manuscripts, records, books, pamphlets, magazines, periodicals, maps, plans, photographs, letters, copies of letters, papers of all kinds or other documentary materials regardless of physical form or characteristic, deposited, on file, or held with or in any department or agency of the Government of the Yukon or any municipal or other public office in the Yukon, and includes any such documentary materials that were formerly part of the records or files of any such department, agency or office.

Appointment of archivist

2. The Commissioner in Executive Council may appoint an archivist to carry out the provisions of this Act.

Custody of all public records

3. Subject to the regulations all public records shall be delivered to the archivist for safe keeping and custody within 30 years from the date on which such public records cease to be in current use.

Responsibility of archivist

4. The archivist is authorized and directed to receive and grant discharges for all public records transferred to him under this Act and the archivist is thereafter responsible for the safe keeping of the public records so transferred.

Objects of Act

5. The objects of this Act are

- (a) the classification, safe-keeping, indexing and cataloguing of all public records transferred to the archivist under section 3,
- (b) the discovery, collection and preservation of material having any bearing upon the history of the Yukon,
- (c) the copying and printing of important public documents relating to the legislative or general history of the Yukon,
- (d) the collecting of all documents having in any sense a bearing upon the political or social history of the Yukon and upon its agricultural, industrial, commercial and financial development,
- (e) the collecting of municipal, school and church records,
- (f) the collection and preservation of pamphlets, maps, charts, manuscripts, papers, books, photographs and other documentary materials regardless of physical form or characteristic, of general or local historic interest in the Yukon,

- (g) the collection and preservation of information respecting the early settlers of the Yukon including pioneer experience, customs, mode of living, prices, wages, boundaries, areas cultivated or mined, home and social life,
- (h) the collection and preservation of the correspondence of settlers, documents in private hands relating to public and social affairs and reports of local events of historic interest in domestic and public life,
- (i) the conducting of research with a view to preserving the memory of the indigenous peoples in the Yukon and their mode of living and customs,
- (j) the conducting of research with a view to preserving the memory of pioneer settlers in the Yukon and of their early exploits and the part taken by them in opening up and developing the Yukon, and
- (k) the stimulation of public interest in the history of the Yukon by the dissemination of information to the public, by exhibitions and displays of materials preserved in the archives and by granting to the public access to items preserved in the archives subject to such precautions as may be necessary for their preservation.

Preservation of official documents

6. Subject to the regulations no public records shall be destroyed or permanently removed without the knowledge and concurrence of the archivist.

Certified copies

7. A copy of any original document in the custody of the archivist, certified under his hand to be a true copy, is prima facie evidence of the authenticity and correctness of such document.

When documents may be made public

8. Where the public interest so requires the Executive Council Member may direct that any document transferred to the archives will not be made available for public inspection for such period of time as the Executive Council Member determines.

Acquisition of documents under conditions

9. The archivist may acquire by gift, bequest, loan or purchase and place in the archives for preservation, any document having any bearing upon the history of the Yukon upon such terms and conditions as may be stated by the person giving, bequeathing, lending or selling the document.

Delivery of public records to archivist

10. Where any person is in possession or control of any public record he shall at the request of the Executive Council Member or his authorized officer forthwith deliver such public record to the archivist.

Regulations

11. The Commissioner in Executive Council may make regulations

- (a) respecting the duties of the archivist;

- (b) prescribing the public records that shall be transferred to the archivist under this Act and extending or reducing the period that shall elapse before any such public records are transferred to him;
- (c) for the classification of archives in the custody of the archivist and the preparation of proper calendars, catalogues and indexes for the purpose of making archives accessible for official, scientific and historical research;
- (d) directing the manner in which public records shall be disposed of from time to time and the class of documents, papers, pamphlets or reports that shall be deemed to be archives;
- (e) generally for carrying out the purposes and provisions of this Act into effect;
- (f) prescribing any fees that may be required under this Act.

Destruction of documents

12. Nothing in this Act shall be taken or be deemed to authorize the destruction or other disposition of any official document, paper, map, plan, report, memorandum or other matter in contravention of an Act or an order of a court or the Executive Council Member.

CHAPTER 9

AREA DEVELOPMENT ACT

Interpretation

1. In this Act, “development area” means an area designated as such by the Commissioner in Executive Council.

Designation of development area

2. The Commissioner in Executive Council may designate as a development area any area in the Yukon where he considers that it will be necessary in the public interest to regulate the orderly development of such area as contemplated by this Act.

Regulations

3.(1) The Commissioner in Executive Council may make regulations for the orderly development of a development area respecting

- (a) the zoning of the area, including the allocation of land in the area for agricultural, residential, business, industrial, educational, public or other purposes;
- (b) the regulation or prohibition of the erection, maintenance, alteration, repair or removal of buildings;
- (c) streets, roads, lanes, sidewalks, parks, street lighting and street transit;
- (d) public health, including the supply, treatment and purification of water, the collection and disposal of garbage and other sewage, hospitals, and the burial of destitute persons;
- (e) fire protection;
- (f) animals;
- (g) the regulation or the prohibition of the discharge of guns or other firearms within a development area.

(2) The Commissioner in Executive Council may provide for the making of decisions by persons appointed by him by name or class in respect of the matters set out in subsection (1) and for appeals from such decisions made pursuant to paragraphs (1)(a) and (b).

(3) The Executive Council Member shall cause to be tabled any regulation made by the Commissioner in Executive Council at the session of the Legislative Assembly next following the making of the regulation.

Power to order remedy of default

4.(1) Where by a regulation under this Act a certain matter or thing is directed to be done and is not done or a certain matter or thing is directed to be not done and is done by any person, the Executive Council Member or any person authorized by him may order the person who is in default under the regulation to remedy his default and if he fails to do so within 30 days of the day on which the Executive Council Member’s order is served on him or mailed to him at his

last known address by registered mail, the Executive Council Member or any person authorized by him may

- (a) take such action as he sees fit to have the default remedied, and
- (b) recover from such person the expenses with costs of action in any court of competent jurisdiction.

(2) The action taken by the Executive Council Member or any person authorized by him to have any default remedied may include the destruction, alteration or removal of any buildings, structures or portions thereof.

Penalty for violation of regulations

5. Every person who violates any regulation is guilty of an offence and is liable on summary conviction to a fine not exceeding \$200.

CHAPTER 10

ASSESSMENT AND TAXATION ACT

Interpretation

1. In this Act,

- “arrears of taxes” means taxes unpaid and outstanding after the expiry of the year in which they were imposed, and includes penalties for default in payment;
- “assessment roll” means the assessment roll in respect of the taxing authority within whose jurisdiction the property assessed lies;
- “assessor” includes the chief assessor;
- “assessed value” means the value of land or improvements, or both, as determined under section 10, 11 or 12, as the case may be;
- “authority” means a taxing authority;
- “collector” or “collector of taxes” means
- (a) in respect of areas not within a municipality, the Executive Council Member, and
 - (b) in respect of a municipality, the treasurer of the municipality;
- “depreciation” means loss in value attributable to any cause;
- “improvement” means an improvement to real property and includes
- (a) anything erected or placed in, upon or under land or affixed to land so that without special mention it would be transferred by a transfer of land, and
 - (b) anything erected or placed in or upon, or affixed to an improvement so that without special mention it would be transferred by a transfer of land;
- “land” means physical land and includes land covered by water, but does not include coal, minerals, oil, gas, gravel or other substances occurring naturally in or under land;
- “local improvement” means any of the following works or any combination of them:
- (a) opening, widening, straightening, extending, grading, levelling, diverting or paving a street,
 - (b) constructing a sidewalk, footcrossing, curbing, bridge, culvert or embankment forming part of a street, or constructing a system of storm drainage,
 - (c) making, deepening, enlarging, or lengthening a common sewer or water main,
 - (d) making sewer or water service connections to the street line on land abutting the main,
 - (e) constructing a conduit for wires or pipes along or under a street,
 - (f) providing other services normally found in organized communities, and
 - (g) reconstructing or replacing any of the works mentioned;
- “mobile home” means any structure whether equipped with wheels or not and whether self-propelled or not, that
- (a) is used or designed for use as a dwelling or sleeping place, and
 - (b) is constructed or manufactured to be moved from one point to another by being towed or carried;

“occupant” or “occupier” means a person who occupies property that is exempt from taxation under paragraph 49(1)(a) or (b), and includes a squatter on such property;

“owner” means an owner of real property and includes a person who, for the time being,

- (a) is entitled to the possession of the property,
- (b) is in possession of the property, or
- (c) has any right, title, estate or interest in real property,

but does not include an occupant or mortgagee;

“person” includes a partnership;

“pipeline” means any pipe designed for or used in the commercial conveyance or transmission of any substance;

“prescribed” means prescribed by a regulation of the Commissioner in Executive Council or a bylaw of a municipality;

“real property” means land and improvements;

“registrar” means the Registrar of Land Titles for the Yukon Land Registration District;

“regulation” means in the case of the Commissioner in Executive Council, a regulation pursuant to this Act, and in the case of a municipality, a bylaw of the municipality;

“taxes” includes

- (a) taxes or charges levied under this Act or the Municipal Act,
- (b) taxes or charges levied in relation to real property for local improvements under the Dawson City Utilities Replacement Act, the Community Assistance Act or the Financial Administration Act,
- (c) taxes under the School Act,
- (d) any interest or penalties payable in respect of unpaid taxes or charges, and
- (e) charges placed on a tax roll for collection;

“taxing authority” means

- (a) in respect of real property outside of a municipality, the Commissioner in Executive Council, and
- (b) in respect of real property in a municipality, the municipality;

“trailer” means any structure, other than a mobile home, whether ordinarily equipped with wheels or not, that is constructed or manufactured to be moved from one point to another by being towed or carried;

“trustee” means an executor, administrator, guardian, committee, receiver or any person having or taking upon himself the possession, administration or control of property affected by an express trust, or having by law possession, management and control of the property of a person under any legal disability.

Trailers and mobile homes

2.(1) A trailer or mobile home is not an improvement while it is registered or deemed to be registered under the Motor Vehicles Act.

(2) Notwithstanding subsection (1) or section 1, a trailer or mobile home shall be deemed to be an improvement for the time being if

- (a) it has remained for a period of 12 months on the land on which it is found, or
- (b) it is ordinarily used for any purpose on the land on which it is found.

(3) Unoccupied mobile homes and trailers that are the stock in trade of a dealer in mobile homes or trailers shall not be assessed for the purposes of this Act.

(4) The taxing authority may make regulations providing for the exemption of trailers and mobile homes from the application of subsection (2).

(5) The Commissioner in Executive Council may by regulation, and any other taxing authority may by bylaw, provide for

- (a) the registration of mobile homes and trailers that are improvements under this Act, and
- (b) the keeping of a register by owners or operators of places where trailers or mobile homes in use for the living, sleeping or eating accommodation of persons are kept.

(6) An owner of a trailer or mobile home who fails to register his trailer or mobile home when required to do so under subsection (5) commits an offence.

(7) Where the owner of a trailer or mobile home is unknown to the chief assessor, any person who is in possession of the trailer shall be deemed to be the owner.

(8) A register kept as required under paragraph (5)(b) shall be open to inspection to any person authorized by the taxing authority to inspect it.

ASSESSMENT

Assessors

3.(1) The Commissioner in Executive Council shall appoint a chief assessor and such other assessors as the Commissioner in Executive Council may deem necessary.

(2) The chief assessor shall

- (a) supervise and direct the work of assessors,
- (b) ensure that assessment rolls are prepared and corrected by assessors as required by this Act,
- (c) ensure that assessors comply with the provisions of this Act in the performance of their duties, and
- (d) perform such other duties and exercise such other powers as may be prescribed.

(3) The chief assessor shall be deemed to be a party to all proceedings under this Act, and no decision shall be made in respect of any proceedings under this Act unless the chief assessor has been heard or has by notice been given a reasonable opportunity to be heard in connection with the proceedings.

Right of entry

4.(1) An assessor is entitled to enter any real property other than a dwelling at any reasonable time in order to assess the property for the purposes of this Act.

(2) The owner or person in charge of any real property other than a dwelling entered by an assessor shall give the assessor all reasonable assistance in his power and furnish the assessor with such information as the assessor reasonably may require in order to assess the property for the purposes of this Act.

(3) Every person who obstructs an assessor in the exercise of his authority under subsection (1), and every person who fails to comply with subsection (2), commits an offence.

Entry of dwelling

5.(1) An assessor is not entitled to enter a dwelling in order to assess the property of which the dwelling is a part unless the assessor is granted permission to do so by an adult person who is actually or apparently in possession of the dwelling.

(2) Where an assessor does not receive permission to enter a dwelling, he may deliver a demand for permission in the prescribed form to the owner or occupant by mailing it to the address of the owner or occupant contained in the assessment roll.

(3) Where an assessor does not receive permission to enter a dwelling within 21 days after mailing a demand for permission under subsection (2),

- (a) the assessor may assess the property of which the dwelling forms a part on the basis of the information available to the assessor, and
- (b) in any proceedings relating to the assessment, the onus of proof is on the owner or occupant to establish that the assessed value of the property should be different from the value determined by the assessor.

(4) Subject to subsection (1), an owner or occupant of a dwelling shall give to the assessor all reasonable assistance in his power and furnish the assessor with such information as the assessor reasonably may require in order to assess the property of which the dwelling forms a part for the purposes of this Act.

(5) Every person who fails to comply with subsection (4) commits an offence.

Demand for information

6.(1) An assessor may deliver to an owner or occupant of assessable property, other than a dwelling, a notice in the prescribed form requiring the owner or occupant to furnish the assessor with a statement in writing setting forth such information as the assessor reasonably may require in order to assess the property for the purposes of this Act.

(2) A statement required to be furnished under subsection (1) shall be signed by the owner or occupant and may be delivered to the assessor by leaving it at or by mailing it to his office.

(3) An assessor is not bound by any information furnished to him under subsection (2).

(4) Every person commits an offence who

- (a) fails to comply with a notice delivered to him under subsection (1) by delivering the required statement to the assessor within 60 days of the receipt of the notice by him, or

- (b) makes a false or misleading statement in response to a notice delivered to him under subsection (1).

Delivery of notices

7.(1) Where an assessor is required by this Act to send a notice to any person, he may deliver it to the person personally or he may send it to him by certified or registered mail addressed to

- (a) the address of the person set forth in the assessment roll, or
- (b) such other address of which the assessor has received notice.

(2) Where an assessor has not received written notice of the address of a person and his address is not set forth in the assessment roll, the assessor may deliver any notice to that person by publishing it in one edition of a newspaper circulating in the territorial jurisdiction of the taxing authority within which any real property lies that is owned or occupied by that person.

(3) A person who is an owner or occupant of real property for the purposes of this Act is entitled to receive from the assessor any notices required to be mailed in respect of the real property where his name is on the assessment roll or he has advised the assessor of his name, address and the description of the property.

Confidentiality and identification certificates

8.(1) Every assessor who communicates to any person not authorized by the regulations any information obtained by the assessor in the course of the performance of his duties commits an offence.

(2) Subsection (1) does not apply to information required to be shown on an assessment roll pursuant to this Act.

(3) An assessor shall be issued with a certificate of identification in the prescribed form, and upon entering or seeking to enter any real property for the purposes of this Act the assessor shall, if so required, produce the certificate to the owner, occupant or person in charge.

Assessable property and cost of assessment

9.(1) For the purposes of this Act, all real property shall be assessed for tax purposes, excepting

- (a) unsurveyed, unoccupied Crown land,
- (b) in the case of real property used primarily for residential purposes, improvements provided primarily for the beautification of the property, including fences, sidewalks and driveways, and
- (c) in the case of real property other than real property referred to in paragraph (b), improvements provided primarily for the beautification of the real property, excluding fences, sidewalks and driveways.

(2) The Commissioner in Executive Council may make regulations requiring a municipality to reimburse the Government of the Yukon for the cost, or portion of the cost, of assessing real property located within the municipality.

Land

10.(1) Land shall be assessed at its fair value, and a determination of the fair value shall take into consideration

- (a) the advantages and disadvantages of the location of the land,
- (b) the quality of the soil,
- (c) the consideration given for recent purchases of similar land,
- (d) the purposes for which the land may be used, and
- (e) such other considerations as the assessor may deem proper.

(2) Notwithstanding subsection (1), where land is used chiefly for single-family residential purposes,

- (a) other purposes for which the land may be used, and
- (b) the value of any landscaping,

shall not be taken into consideration in determining the fair value of the land.

Improvements

11.(1) Improvements shall be assessed at a value equivalent to their replacement cost.

(2) In this section, “replacement cost” means the cost of providing similar improvements in the City of Whitehorse on the date of the assessment.

(3) The Commissioner in Executive Council may make regulations respecting the manner in which replacement costs are to be determined for the purposes of subsection (1).

(4) Notwithstanding subsection (3), a determination of the replacement cost of an improvement for the purposes of subsection (1) shall take into consideration

- (a) the type of construction and materials used,
- (b) the quality of construction,
- (c) the age of the improvement, and
- (d) the condition of the improvement.

Public utilities, railroads and pipelines

12. The pole lines, cables, towers, poles and wires of a communications or power operation, the tracks of a railway company, the pipes of a pipeline corporation used for the transportation of petroleum, petroleum products, gas or other material, whether located on a privately owned right-of-way or public right-of-way, shall for the purposes of this Act be assessed and taxed as real property and the assessed value thereof shall be computed in a manner prescribed by the Commissioner in Executive Council.

Assessment roll

13.(1) An assessment roll prepared under this Act shall be in the prescribed form and shall set forth, to the best of the information, belief and judgement of the assessor who prepares the assessment roll,

- (a) the name and address of each person who is the owner or occupant of real property that is required by this Act to be assessed,

- (b) for each person referred to in paragraph (a), a description of the land and improvements sufficient to distinguish them from land and improvements that may be owned or occupied by another person,
- (c) the assessed value of each parcel of land described under paragraph (b),
- (d) subject to subsection (5), the assessed value of the improvements described under paragraph (b),
- (e) the total of the assessed values of each parcel of land described under paragraph (b) and, subject to subsection (5), improvements located on the land, and
- (f) such further information as may be required by the regulations.

(2) Notwithstanding paragraph (1)(b), surveyed boundaries between parcels of land shall not be disregarded for assessment purposes where

- (a) the parcels of land are not assessed in the name of the same person,
- (b) the boundary between the parcels is not reasonably cohesive,
- (c) the parcels are not used as a unit for the same principle use,
- (d) all of the parcels are vacant, or
- (e) none of the parcels is being used actively or productively.

(3) The Commissioner in Executive Council may make regulations respecting the disregarding of surveyed boundaries between parcels of land for assessment purposes.

(4) Where a surveyed boundary between parcels of land is disregarded, all of the parcels involved shall be treated as one parcel for assessment purposes.

(5) The assessed value of all improvements located on land that is, or that is treated as, one parcel for assessment purposes, shall be expressed on the assessment roll as a total value.

(6) The assessed values of improvements located on parcels of land that are not treated as one parcel for assessment purposes shall not be expressed together as part of the same total value on an assessment roll.

(7) Subject to subsection (5), the total assessed value of all improvements located on a parcel of land that is, or that is treated as, one parcel for assessment purposes shall be added to the assessed value of the parcel of land, and the sum of the assessed values of the land and improvements is the total assessed value of the real property.

Validity of assessments

14.(1) No assessment shall be invalid by reason of

- (a) any defect in form,
- (b) the omission of assessable property from the assessment roll,
- (c) the non-return of the assessment roll from the taxing authority to the assessor,
- (d) an error in any notice, or
- (e) property having been entered in any class or column of the assessment roll in which it does not belong.

(2) Failure to enter in an assessment roll any of the particulars required by this Act shall not affect the liability of any person to taxation by a taxing authority.

(3) Where a person is named on an assessment roll as the owner of real property and is in fact not the owner thereof, any taxes levied against the property shall nevertheless be a valid charge against that property.

Annual assessment rolls

15.(1) The chief assessor shall ensure that an assessment roll is prepared annually for each taxing authority by an assessor.

(2) An assessment roll prepared under subsection (1) shall be completed and sent to the collector by the chief assessor not later than November 15 in the year preceding the year in which taxes are to be levied upon the basis of the assessment roll.

Return of roll from collector

16.(1) Where an assessment roll has been sent to a collector by the chief assessor, he shall return it to the chief assessor within 15 days of the day on which he received it, and the collector shall note any errors or omissions found by him in the assessment roll.

(2) Forthwith upon the receipt of an assessment roll returned to him under subsection (1), the chief assessor shall make the necessary corrections to the assessment roll.

(3) No material errors or omissions in an assessment roll shall be corrected under this section after the mailing of assessment notices under section 18.

(4) Clerical errors or omissions in an assessment roll may be corrected by an assessor at any time prior to the commencement of the sittings of the assessment review board.

(5) Except as provided by this section, an assessment roll shall not be corrected except by order of the Assessment Appeal Board or an assessment review board.

Statement as to corrections

17. Where an assessment roll is prepared or corrected by an assessor, a statement in the prescribed form sworn to or affirmed by the assessor shall be affixed to the assessment roll.

Assessment notices

18.(1) Forthwith upon the return of a copy of a corrected assessment roll to a collector under section 16, the chief assessor shall

- (a) send by mail to every person listed in the assessment roll whose real property or interest in real property is assessed an assessment notice in the prescribed form, and
- (b) give public notice of the delivery of a copy of the corrected assessment roll to the collector by posting the notice in the office of the taxing authority and publishing the notice for at least two consecutive weeks in a newspaper circulating within the municipality or the area of the Yukon to which the assessment roll relates.

(2) Any number of parcels of land assessed in the name of the same person may be dealt with in one assessment notice.

(3) A public notice given under paragraph (1)(b) shall contain statements that

- (a) the assessment roll has been deposited in the offices of the assessor and the taxing authority and will remain open for the inspection of any person for a period of 30 days from the date of the notice, and
- (b) any person desiring to complain against the assessment must lodge his complaint in writing in the office of the assessor within 30 days of the mailing of the assessment notice.

ASSESSMENT REVIEW BOARDS

Establishment and jurisdiction

19.(1) The Commissioner in Executive Council shall establish from time to time one or more assessment review boards, and he shall prescribe their territorial jurisdiction so that all assessable real property is within the territorial jurisdiction of one board or another.

(2) Each assessment review board shall consist of not less than three members appointed by the Commissioner in Executive Council, one of whom shall be appointed as the chairperson, and another as the vice-chairperson.

(3) Every member of an assessment review board shall, before entering upon his duties, take and subscribe such oath or affirmation of office as may be prescribed.

Chairperson

20.(1) The chairperson of an assessment review board is the chief executive officer of the board and he shall

- (a) supervise and direct the work of the board, and
- (b) preside at sittings of the board.

(2) If the chairperson is unable at any time for any reason to perform the duties of his office, or if his office is vacant, the vice-chairperson has and may exercise all the powers and functions of the chairperson.

Quorum and vacancy

21.(1) A majority of the members of an assessment review board constitutes a quorum, but a vacancy in the membership of the board does not impair the right of the remainder to act.

(2) Where a quorum of the members of an assessment review board is not present at the time at which a sitting is to be held, the sitting shall be adjourned to the next day that is not a holiday, and so on from day to day until there is a quorum.

(3) All questions respecting the revision of an assessment roll and the deciding of any complaints with respect thereto shall be decided by a majority of the votes of the members sitting.

(4) The Commissioner in Executive Council may make regulations respecting the conduct of proceedings before assessment review boards.

Conflict of interest

22.(1) No person interested directly or indirectly in any real property in connection with any assessment to which a complaint relates shall act as a member of the assessment review board for the hearing of and adjudication upon the complaint.

(2) Where any or all of the members of an assessment review board are prevented from acting by subsection (1), the Commissioner in Executive Council may appoint a new board, or new members to the board, for the purpose of hearing and adjudicating upon the complaint.

Date for sittings

23.(1) The Commissioner in Executive Council shall prescribe annually the date on which each assessment review board shall commence its sittings, but in any event each board shall commence its sittings on or before February 15 in the year in which taxes are to be levied upon the basis of the assessment roll.

(2) The chief assessor shall deliver each assessment roll to the appropriate assessment review board on or before the date upon which the board is required to commence its sittings under subsection (1).

Duties of board

24.(1) An assessment review board shall

- (a) hear and adjudicate upon all assessment complaints made to it pursuant to this Act in respect of real property within the territorial jurisdiction of the board, and
- (b) investigate and adjudicate upon assessments, classes of assessments and assessment rolls within its territorial jurisdiction as the board may deem necessary to ensure that the assessments and assessment rolls are equitable and that they represent fairly the assessment values provided for by this Act.

(2) An assessment review board has original jurisdiction to determine all questions respecting the revision of an assessment roll and the adjudication of complaints with respect thereto.

(3) Where a question respecting the revision of an assessment roll or the adjudication of a complaint with respect thereto is not wholly within the territorial jurisdiction of one assessment review board, the Commissioner in Executive Council may decide which board shall deal with the matter.

Complaints

25.(1) A complaint relating to an entry on an assessment roll in relation to real property may be made to the assessment review board within whose territorial jurisdiction the property lies, where the complainant alleges that

- (a) the name of a person has been wrongfully inserted in or omitted from the roll,
- (b) real property has been wrongfully entered upon or omitted from the roll,
- (c) real property has been valued at too high or too low an amount,
- (d) land has been improperly classified according to region, class or use, or
- (e) an exemption has been improperly allowed or disallowed.

(2) A complaint shall not be made by any person except

- (a) a person whose name appears on the assessment roll, or who is entitled to have his name placed on the assessment roll,
- (b) an assessor, or
- (c) the taxing authority in respect of which the assessment roll has been prepared.

(3) Every complaint shall be mailed to or left with the assessor within 30 days of the mailing of the assessment notice.

(4) Every complaint shall be in writing, signed by or on behalf of the complainant, and shall

- (a) state in general terms the grounds for and nature of the complaint,
- (b) describe the property that is the subject matter of the complaint, and
- (c) set forth the name and address of the complainant.

(5) A person authorized to make a complaint may make the complaint through his lawyer or agent, in which case the complaint shall set forth the name and address of the lawyer or agent as well as the name and address of the complainant.

(6) Any notice required to be given to a complainant who makes a complaint through his lawyer or agent under subsection (5) shall be deemed to have given to the complainant if it is given to the lawyer or agent at the address set out in the complaint.

Notice of sittings

26.(1) The assessor shall give every complainant not less than ten days written notice of the time, date and place fixed for the sitting of the assessment review board that will hear the complaint.

(2) Where a complaint relates to real property of which a person other than the complainant is the owner or occupant, the assessor shall give each such person not less than ten days written notice of the time, date and place fixed for the sitting of the assessment review board that will hear the complaint, and the notice shall specify the nature of the complaint.

Witnesses and documents

27.(1) An assessment review board has power to require the attendance, swearing and examination of witnesses and the production and inspection of documents.

(2) A party in any proceedings before an assessment review board may obtain from a member of the board a subpoena requiring the attendance of any person as a witness to give evidence at the hearing of the complaint before the board, and the subpoena shall be signed by the member of the board who issues it.

(3) Every witness served with a subpoena described in subsection (2) and paid the required witness fee as in an action before a judge shall be bound to attend and give evidence to the assessment review board.

(4) Every person who fails to comply with a subpoena or an order of an assessment review board under this section commits an offence.

Hearing of complaints

28.(1) An assessment review board may hear all complaints arising out of an assessment roll on the same day or, if deemed advisable, adjourn from time to time until all complaints have been heard and determined.

(2) An assessment review board may hear and determine a complaint whether the complainant or any other person is present or not.

(3) An assessment review board may, after hearing a complaint, postpone consideration thereof to some future time and the complainant shall, if required by the board, produce all relevant books, papers and documents, answer all proper questions and give all necessary information affecting the property or matter under consideration.

Complaints not heard

29.(1) Where an assessment review board is of the opinion that a complaint is frivolous, it may refuse to hear or adjudicate upon the complaint in whole or in part.

(2) Where an assessment review board omits, neglects or refuses to hear or adjudicate upon a complaint by the date fixed under subsection 31(1), the assessor shall immediately advise the complainant in writing of his right to appeal, and the notice shall be sent by mail to the post office address contained in the complaint.

Notice of decision

30. Not later than six days following completion of the sittings of an assessment review board, the assessor shall notify in writing by registered or certified mail, each complainant and person affected as to the decision of the assessment review board in respect of the complaint.

Completion of hearings

31.(1) Each assessment review board shall, before March 15 in each year,

- (a) complete the hearing and determination of all complaints made to it under this Act,
- (b) complete its investigation of assessments, classes of assessments and assessment rolls within its territorial jurisdiction, and

- (c) direct an assessor to amend assessment rolls within the territorial jurisdiction of the board to give effect to the findings and decisions of the board.

(2) Where an assessor is directed to amend an assessment roll under paragraph (1)(c), he shall do so within seven days, and he shall return the roll forthwith to the chairperson of the assessment review board.

(3) Amendments made to the assessment roll by an assessor in accordance with the instructions of an assessment review board shall be dated and initialled by the assessor, or stamped with a symbol representing the date and his initials.

(4) Forthwith upon the receipt of an amended assessment roll under subsection (2), the chairperson shall

- (a) verify that the roll has been amended according to the directions of the board,
- (b) authenticate the roll by affixing to it a sworn or affirmed statement in the prescribed form, and
- (c) forward the authenticated assessment roll to the taxing authority.

ASSESSMENT APPEAL BOARD

Establishment

32.(1) The Commissioner in Executive Council shall establish an Assessment Appeal Board.

(2) The Assessment Appeal Board shall consist of three members appointed by the Commissioner in Executive Council, one of whom shall be appointed as the chairperson, and another as the vice-chairperson.

(3) Every member of the Assessment Appeal Board shall, before entering upon his duties, take and subscribe such oath or affirmation of office as may be prescribed.

Chairperson

33.(1) The chairperson of the Assessment Appeal Board is the chief executive officer of the board and he shall

- (a) supervise and direct the work of the board, and
- (b) preside at sittings of the board.

(2) If the chairperson is unable at any time for any reason to perform the duties of his office, or if his office is vacant, the vice-chairperson has and may exercise all the powers of the chairperson.

Quorum and vacancy

34. A majority of the members of the Assessment Appeal Board constitutes a quorum, but a vacancy in the membership of the board does not impair the right of the remainder to act.

Conflict of interest

35.(1) No person interested directly or indirectly in any real property in connection with any assessment to which a proceeding before the board relates shall act as a member of the board in relation thereto.

(2) Where any or all of the members of the Assessment Appeal Board are prevented from acting under subsection (1), the Commissioner in Executive Council may appoint a new board, or new members to the board, for the purposes of the proceeding.

Secretary

36.(1) There shall be a secretary of the Assessment Appeal Board, who shall be appointed by the Commissioner in Executive Council.

(2) The secretary of the Assessment Appeal Board shall

- (a) keep a record of all proceedings conducted before the board or any member of the board,
- (b) have the custody and care of all records, regulations, documents and orders made by or pertaining to the board, and
- (c) obey the directions given to him by the chairperson or the board relating to his office.

Evidence

37.(1) All evidence received by the Assessment Appeal Board shall be given under oath or affirmation, which may be administered as the board may direct, and the board may receive evidence orally or by affidavit or declaration as it may deem proper.

(2) The Assessment Appeal Board may make rules regulating the conduct of its proceedings.

General and exclusive jurisdiction

38.(1) The Assessment Appeal Board shall have

- (a) exclusive appellate jurisdiction throughout the Yukon to hear and adjudicate upon questions of fact, and
- (b) appellate jurisdiction throughout the Yukon to hear and adjudicate upon questions of law, and questions of mixed fact and law,

arising out of proceedings before or decisions of assessment review boards, and the Assessment Appeal Board shall have all the powers of an assessment review board to investigate, hear and adjudicate upon questions of fact and law, and questions of mixed fact and law.

(2) Without limiting the generality of anything contained in this Act, the Assessment Appeal Board shall have appellate jurisdiction to determine the extent, if any, to which

- (a) land or improvements have been valued at too high or too low an amount,
- (b) land or improvements have been properly classified as to region, class or use,
- (c) land or improvements have been wrongfully entered on or omitted from the assessment roll,

- (d) the value at which an individual parcel of land or an individual improvement is assessed bears a fair and just relation to the value at which similar land or improvements are assessed in the area within which it is situated, and
- (e) an exemption has been properly allowed or disallowed.

(3) The Assessment Appeal Board shall have original jurisdiction to investigate and adjudicate upon assessments, classes of assessments and assessment rolls to ensure that the assessments and assessment rolls are equitable and that they represent fairly the assessment values provided for by this Act.

(4) On an appeal from the decision of an assessment review board in respect of the assessment of real property, the Assessment Appeal Board may reopen the whole question of assessment on that property so that omissions from or errors in the assessment roll may be corrected, and an accurate entry of assessment for that property may be placed on the assessment roll.

(5) The Assessment Appeal Board shall not refuse to hear and adjudicate upon any appeal made to it pursuant to this Act.

Appeals to board

39.(1) An appeal on a question of fact arising out of proceedings before or a decision of an assessment review board lies to the Assessment Appeal Board at the instance of

- (a) any person who was a party to the proceedings or who is an owner or occupant of property that is affected by the decision,
- (b) the authority in respect of which the assessment roll has been prepared, or
- (c) an assessor.

(2) Except by special leave of the Assessment Appeal Board, an appeal to the Assessment Appeal Board shall not be commenced after the expiration of 30 days from the mailing of the notice of the decision of the assessment review board pursuant to section 30.

(3) An appeal shall be commenced by delivering a notice of appeal in the prescribed form to the assessor either personally or by registered or certified mail.

(4) An appellant shall, with his notice of appeal, deposit with the assessor the sum of \$10 in respect of each property to which the appeal relates, and in the event of the complaint being allowed the sum deposited shall be returned to the appellant, but otherwise it shall form part of the general revenue of the Yukon Consolidated Revenue Fund.

(5) As soon as the time for the commencement of appeals has passed, the assessor shall notify the board of any appeals, giving the names and mailing addresses of the appellants and a brief statement of the grounds of each appeal.

(6) The board shall appoint a time, date and place for the hearing of appeals.

(7) At least ten days before an appeal is to be heard, the board shall inform the appellant and the assessor of the time, date and place fixed for the hearings.

(8) On the appeal witnesses may be produced by any of the persons affected by the appeal and may be required to give evidence and to produce books, papers, documents or writings in their possession relating to the appeal.

(9) A party to an appeal may obtain from the board a subpoena requiring the attendance of a witness at the hearing of the appeal.

(10) An appeal may be heard and determined whether or not the person against whom or by whom it is made is present.

Inquiry on appeal

40.(1) The Assessment Appeal Board may authorize the assessor or any other person to make an inquiry and report on matters relating to proceedings before the board, and the board may direct by whom, and in what proportions and amounts the costs and expenses of the inquiry and report are to be paid.

(2) The board may authorize one of its members to conduct any of the business of the board for and on behalf of the board, and a member authorized to conduct such business has and may exercise all of the powers and functions of the board, but an order made by one such member for the final determination of an appeal does not become absolute until it has been confirmed by an order of the board.

Costs

41. The costs of proceedings before the Assessment Appeal Board may be paid or apportioned between the persons affected by the appeal in such manner as the board deems fit, and the order of the board in that regard may be filed in the Supreme Court and is enforceable in the same manner as if it were an order of the Supreme Court.

Report to assessor

42.(1) After the Assessment Appeal Board has heard and determined all the appeals it shall report to the assessor, who shall forthwith make the changes, if any, ordered to be made in the assessment roll, initial and date each change in red ink, and attach a copy of the report to the assessment roll.

(2) The Assessment Appeal Board shall forthwith mail a copy of its decision to the parties in the appeal, to the collector, and to the chairperson of the assessment review board appealed from.

Effect of decision

43. Every decision of the Assessment Appeal Board prevails over a decision of an assessment review board to the extent of any conflict between their decisions.

Proof of documents

44.(1) Copies of official documents and orders filed in the office of the Assessment Appeal Board, certified by the chairperson or secretary to be true copies of the originals, are admissible as evidence without proof of the signature in all courts in the Yukon.

(2) Any person may, upon payment of the prescribed fee, obtain from the secretary a certified copy of any order of the Assessment Appeal Board.

Offence

45. A person who fails to comply with a direction or order of the Assessment Appeal Board commits an offence.

No increase of assessment

46. An assessment review board or the Assessment Appeal Board shall not direct the assessor to amend an assessment roll to reflect an increase in the assessed value of any real property unless all persons whose names appear on the assessment roll in respect of that property have been heard or have by notice been given a reasonable opportunity to be heard by the board in connection with the increase.

Submissions to court

47.(1) Where a question of law arises in the course of proceedings relating to an appeal before the Assessment Appeal Board, the board may, on its own initiative or at the request of a person who may be affected by the proceedings, submit the question of law to the Supreme Court for decision.

(2) The board may make a submission to the Supreme Court under subsection (1) at any time during the proceedings, but the proceedings shall be adjourned and the decision of the board upon the appeal shall not be given,

- (a) until after the expiration of 30 days from the day the decision of the Supreme Court is pronounced, or within such additional time as the judge who made the order or a judge of the Court of Appeal may allow, or
- (b) where a notice of appeal in respect of the decision of the Supreme Court is given to the Court of Appeal within the time limited by paragraph (a), until the decision of the Court of Appeal is pronounced.

(3) Where a submission is made to the Supreme Court in respect of proceedings before the Assessment Appeal Board, the decision of the board upon the appeal shall comply with the decision of the Supreme Court, or the Court of Appeal, as the case may be.

(4) The costs of proceedings before a court under this section shall be in the discretion of the court.

(5) The Commissioner in Executive Council may make regulations respecting the manner and form in which questions may be submitted to the Supreme Court under this section.

(6) Where a question is submitted to the Supreme Court under subsection (1), it shall be brought on for hearing before the presiding judge in chambers within one month from the date upon which the submission is filed in the registry of the Supreme Court, and the Supreme Court shall pronounce its decision upon the submission and transmit a copy of its decision to the board within two months of the date on which the submission is first brought on for hearing.

Appeal to court

48.(1) An appeal lies to the Supreme Court on a point of law from any decision of the Assessment Appeal Board at the instance of any party to the proceedings in respect of which the appeal is made.

(2) No appeal shall be commenced under subsection (1) after the expiration of 30 days from the mailing of the notice of the decision of the Assessment Appeal Board under subsection 42(2).

TAXATION AND EXEMPTIONS

Taxable property

49.(1) All real property that is required by this Act to be assessed is taxable, except real property

- (a) of which Her Majesty is the beneficial owner,
- (b) of which the municipality within which the property is located is the beneficial owner,
- (c) that is used exclusively as a cemetery, or
- (d) that consists of any land or any improvement, or any part of any land or improvement, that is held by or for the use of any religious body and is used chiefly for divine service, public worship, religious education or community service.

(2) Notwithstanding paragraph (1)(d), real property of which a religious body is the beneficial owner is taxable in respect of local improvements and the provision of utility services to the property.

Taxes payable

50.(1) Except as otherwise provided by this or any other Act, taxes levied under this Act by a taxing authority are payable in respect of all taxable property within the jurisdiction of the taxing authority.

(2) Taxes payable under subsection (1) are a debt due to the taxing authority by the person who is, for the time being, the owner of the property, and where there is more than one owner in respect of any real property, the taxes are a debt due by them to the authority jointly and severally.

(3) Where real property that is exempt from taxation under paragraph 49(1)(a) or (b) is occupied for the time being by any person otherwise than in an official capacity as an agent or servant of the municipality, Her Majesty, or a member of the visiting forces as defined in the Visiting Forces Act (Canada),

- (a) taxes shall be levied by the taxing authority in respect of the real property, and
- (b) the taxes levied under paragraph (a) are a debt due to the taxing authority by the occupant of the real property, and where there is more than one occupant of any real property, the taxes are a debt due by them to the taxing authority jointly and severally.

Exemptions by regulation

51.(1) The Commissioner in Executive Council by regulation may exempt any person or class of persons wholly or partially from their liability to pay taxes levied by the Commissioner in Executive Council under this Act, and to the extent of the exemption granted the taxes thereafter shall be deemed not to have been levied.

(2) The Commissioner in Executive Council shall review every regulation made under subsection (1) each year before the anniversary date of the making of the regulation.

(3) An exemption may be granted under subsection (1) for a fixed term.

Person named on roll

52.(1) Where a person is named on an assessment roll as the owner or occupant of land or improvements, he shall be deemed in the absence of evidence to the contrary to be the owner or occupant of the land or improvements for the purposes of this Act.

(2) The owner of real property shall be deemed for the purposes of this Act to be the owner of improvements located on the property, but where exempt property is occupied under subsection 50(3), the occupant shall be deemed for the purposes of this Act to be the owner or occupant of improvements located on the property.

(3) Where the name of the owner of real property is unknown, a person who is in possession of the real property shall be deemed in the absence of evidence to the contrary to be the owner of the property.

(4) Where a person is named in the records of the land titles office as the owner of real property, he shall be deemed in the absence of evidence to the contrary to be the owner of the property for the purposes of this Act.

(5) Where real property is held in trust, the trustee in his representative character shall be deemed to be the owner of the real property for the purposes of this Act.

(6) In any proceedings under this Act, the onus of proof that a person

- (a) is not an owner or occupant of land or improvements under subsection (1),
- (b) is not the owner or occupant of improvements under subsection (2),
- (c) is not the owner of real property under subsection (3) or (4), or
- (d) holds property in a representative character under subsection (5),

is on the person making the allegation.

(7) More than one person may be entered upon the assessment roll as the owners or occupiers of any real property.

Levy of taxes

53.(1) The Commissioner in Executive Council shall, by regulation made on or before April 15 in each year, levy taxes in accordance with this Act upon all taxable real property that is not within a municipality.

(2) Each taxing authority other than the Commissioner in Executive Council shall, by bylaw made on or before April 15 in each year, levy taxes in accordance with this Act upon all taxable real property that is within its jurisdiction.

(3) A taxing authority may, in respect of taxes levied under this section,

- (a) vary tax rates from year to year,
- (b) divide its jurisdiction into regions, and vary the tax rate from region to region, and
- (c) establish different classes of real property, and vary the tax rate according to the class of real property to be taxed.

School tax

54.(1) The Commissioner in Executive Council shall, by regulation made on or before April 1 in each year, levy school taxes in accordance with this Act on all taxable real property in the Yukon.

(2) The Commissioner in Executive Council may, in respect of taxes levied under this section,

- (a) vary tax rates from year to year,
- (b) divide the Yukon into regions, and vary the tax rate from region to region, and
- (c) establish different classes of real property, and vary the tax rate according to the class of real property to be taxed.

(3) Notwithstanding subsection 50(2), taxes levied under this section in respect of real property within a municipality are a debt due to the municipality.

(4) Subject to section 66, school taxes collected by a municipality are a charge on the revenue of the municipality and shall be paid in full to the Executive Council Member at such times as the Executive Council Member may direct.

(5) Where the Executive Council Member is of the opinion that a municipality is not making a reasonable effort to collect any delinquent school taxes, he may give a notice to the municipality to pay the delinquent taxes to the Executive Council Member, and upon the receipt of the notice the amount of the delinquent taxes specified in the notice shall be deemed, as between the Executive Council Member and the municipality, to have been collected by the municipality.

Amount of taxes

55. The amount of taxes payable in respect of taxes levied under section 53 or 54 shall be determined by applying the tax rate to the assessed value of the real property.

Local improvement taxes

56.(1) Where a local improvement is constructed outside a municipality, the Commissioner in Executive Council may by regulation levy a local improvement tax upon real property that abuts upon, or that benefits directly or indirectly from, the construction of the local improvement.

(2) Where, in the opinion of the Commissioner in Executive Council the construction of a local improvement benefits a region at large directly or indirectly,

- (a) the Commissioner in Executive Council may by regulation define the region, and it shall be deemed to be benefitted by the construction of the local improvement, and
- (b) the liability of a person to pay the local improvement tax shall not be greater in relationship to the total amount sought to be raised by the local improvement tax than the amount of tax that the person is liable to pay under section 53 bears in relationship to the total amount payable under section 53 in respect of the region.

(3) Paragraph (2)(b) does not apply where the local improvement is the provision of or making available of electrical utility services to areas not within a municipality, and in such cases, notwithstanding subsections (4) and (6), the liability of persons to pay the local improvement tax may be fixed by the Commissioner in Executive Council in such manner as in the opinion of the Commissioner in Executive Council is best suited to the nature of the region to be served and the requirements of the residents.

(4) Where in the opinion of the Commissioner in Executive Council the construction of a local improvement benefits property that abuts upon the improvement or property that the Commissioner in Executive Council deems to be property that abuts upon the improvement, the local improvement tax shall be levied in respect of the property benefitted at a uniform rate per metre of assessable frontage.

(5) The Commissioner in Executive Council may levy a local improvement tax partly under subsection (2) and partly under subsection (4) where he considers it appropriate to do so.

(6) The amount of tax payable in respect of a tax levied under this section shall be determined

- (a) in the case of a local improvement that benefits a region under subsection (2), by applying the tax rate to the assessed value of taxable real property in the region, and
- (b) in the case of a local improvement tax that benefits only property that abuts upon or is deemed to abut upon the improvement under this section, by applying the tax rate to the assessable frontage of the property that abuts upon or is deemed to abut upon the improvement.

(7) No local improvement tax shall be levied under this section on the basis of assessable frontage unless the assessable frontage of each parcel of real property upon which the tax is to be levied is shown in the most recently authenticated assessment roll that applies to the real property.

(8) No local improvement tax shall be levied by the Commissioner in Executive Council under this section except in accordance with the wishes of the majority of the persons who will be liable to pay the tax.

(9) The Commissioner in Executive Council may make regulations respecting

- (a) the manner in which the wishes of persons are to be ascertained for the purposes of subsection (8), and
- (b) the manner in which assessable frontage of property that abuts upon or is deemed to abut upon an improvement shall be determined for the purposes of this section.

Tax rates

57. A regulation or bylaw for the levying of taxes other than local improvement taxes shall express tax rates as a percentage of assessed values.

Charges for service

58.(1) Charges payable to a taxing authority for the provision of water or sewerage utility service may be recovered from an owner or occupant of real property or through proceedings against the property in the same manner as if the charges were taxes payable under this Act.

(2) Notwithstanding the provisions of this or any other Act, taxes and service charges imposed in respect of the local improvements on property pursuant to the Municipal Act, the Dawson City Utilities Replacement Act, the Community Assistance Act and the Financial Administration Act shall be deemed to be taxes under this Act, and the remedies for collection and all other provisions with respect to taxes and tax arrears shall apply as if the taxes had been imposed under this Act.

Minimum tax

59.(1) Except as provided by subsections (2) and (3), the minimum tax payable in any year under section 53 is \$100 in respect of the total assessed value of any real property under subsection 13(7).

(2) A municipality may by bylaw provide for a different amount for the minimum tax payable under subsection (1) in respect of real property located within the municipality, and it may establish a minimum amount of tax for land on which there are no improvements that is different from the minimum amount of tax for other real property.

(3) The minimum tax payable in any year under subsection (1) or (2) shall be reduced by the amount of the school taxes payable in that year under section 54 in respect of the same real property.

(4) This section applies to taxes payable in respect of exempt property to which subsection 50(3) applies.

Abatement, remission and discharge

60.(1) Except as provided by this section, no person is entitled to any abatement of taxes imposed under this Act.

(2) Where in any year improvements are removed from land, or where improvements are damaged or destroyed in any year so as to render them unfit for further use or occupation in that year, the taxing authority may by regulation remit or discharge such portion of the taxes as the authority considers proper.

Tax roll

61.(1) Where an assessment roll has been authenticated by the chairperson of an assessment review board and the taxing authority has levied taxes upon real property dealt with in the roll, the collector shall prepare forthwith a tax roll in which shall be entered all real property described in the assessment roll.

- (2) A tax roll shall set forth in respect of all real property described in the assessment roll
- (a) the description of the property,
 - (b) the name and address of the owner or occupant of the property, or the owners or occupants of the property, as the case may be,
 - (c) a statement that the property is or is not taxable,
 - (d) a statement, where applicable, that the owner or occupant has been exempted by the Commissioner in Executive Council from his liability to pay taxes and the extent of the exemption,
 - (e) the assessed value of each parcel of land described under paragraph (a),
 - (f) subject to subsection 13(5), the assessed value of each improvement described under paragraph (a),
 - (g) the total of the assessed values of each parcel of land described under paragraph (a) and, subject to subsection 13(5), the improvements located on the land,
 - (h) the tax rate applicable to the property, and if the rate varies within the territorial jurisdiction of the taxing authority, the region or class of the property,
 - (i) the total amount of taxes levied on the property for the current year,
 - (j) any amount set forth in a previous tax roll in respect of the property that remains unpaid, and any penalty or accrued interest on the amount and the penalty,
 - (k) the amount of any charge for the current year, other than taxes, placed on the tax roll for collection,
 - (l) the amount of the taxes for the current year that are school taxes,
 - (m) the amount of the taxes for the current year that are local improvement taxes,
 - (n) the total amount required to be paid in respect of the real property, and
 - (o) such further or other information as may be prescribed by the Commissioner in Executive Council.

(3) Information that is contained in an assessment roll that has been authenticated under this Act shall be deemed to be conclusive for the purposes of the preparation of the tax roll, and the taxes levied upon the basis of that information are due and payable by the persons in the amounts and at the times provided for by this Act whether or not

- (a) an appeal affecting the information has been decided but the assessment roll has not been amended to give effect to the decision,
- (b) an appeal affecting the information is pending or has not been decided, or
- (c) the time for making any appeal has not expired.

(4) Where the results of an appeal affect the information contained in an assessment roll, the tax roll shall be amended forthwith by the collector, and

- (a) any overpayment of taxes shall be refunded forthwith by the collector to the person who made the overpayment, and
- (b) in the case of an underpayment of taxes or a failure to pay taxes, a revised tax notice under section 62 shall be mailed forthwith by the collector to the person liable to pay the taxes.

Tax notices

62.(1) Every collector shall, on or before May 15 in each year, mail a tax notice to each person named on the tax roll as an owner or occupant of taxable real property in respect of which taxes are payable in relation to the current year or any preceding year.

(2) A tax notice shall set forth

- (a) the description of the property,
- (b) the name and address of the person to whom the tax notice is addressed,
- (c) the total amount of taxes levied on the property for the current year,
- (d) any amount set forth in a previous tax roll in respect of the property that remains unpaid, and any penalty or accrued interest on the amount and the penalty,
- (e) the amount of any charge for the current year, other than taxes, placed on the tax roll for collection,
- (f) the amount of the taxes for the current year that are school taxes,
- (g) the amount of the taxes for the current year that are local improvement taxes,
- (h) the total amount required to be paid in respect of the real property,
- (i) a statement of the date upon which penalties for non-payment will be added, and
- (j) such further or other information as may be required by regulation.

(3) More than one parcel of land that is or that is treated as one parcel for assessment purposes may be dealt with in one tax notice, and any such notice shall be deemed to be sufficient if it identifies a parcel as a block or parts of a block, or as a series of lots, without giving the full description of the parcel as it appears on the tax roll.

(4) Parcels of land to which differing tax rates apply shall be dealt with separately in a tax notice.

(5) Where a tax notice is mailed under this section, the collector shall enter the date of the mailing on the tax roll, and the entry on the tax roll is prima facie proof of the mailing of the tax notice on the date specified.

Due date for taxes, charges, penalties and interest

63.(1) Taxes levied under this Act shall be considered to have been imposed on and from January 1 of the calendar year in which they are levied.

(2) Taxes levied under this Act for the current year and any charges for the current year, other than taxes, placed on the tax roll for collection, are due and payable on July 2 in the current year.

(3) Penalties imposed in respect of a failure to pay taxes or charges by the date specified in subsection (2) are due and payable on the day on which they are imposed by this Act.

(4) Interest imposed in respect of a failure to pay taxes or charges by the date specified in subsection (2) accrues from day to day from the day on which it is imposed, and the interest is due and payable each day thereafter in the accrued amount.

Place, time and manner of payment

64.(1) Any amount required to be paid under this Act is payable at the office of the taxing authority to whom the amount is due.

(2) A taxing authority may make regulations respecting the manner and form in which amounts due to it under this Act may be paid.

(3) Notwithstanding subsection 63(1) and section 65, the Commissioner in Executive Council may by regulation and any other taxing authority may by bylaw

- (a) provide for the payment of taxes and other amounts under this Act before they are due and payable;
- (b) establish the terms and conditions upon which amounts paid under paragraph (a) are to be held, including the payment of interest;
- (c) provide for the payment of taxes and other amounts under this Act by regular instalments, including the imposition of penalties and interest on instalment payments not received by the time they are required to be paid.

Penalty

65.(1) Where an amount is not paid by the date specified in subsection 63(2), the unpaid amount shall be increased on the next day by a penalty in an amount equal to ten percent of the unpaid amount.

(2) Where an unpaid amount is increased under subsection (1) by the imposition of a penalty, the new amount shall bear interest from the date on which the penalty is imposed at a rate equivalent to the prime lending rate of the Bank of Canada in effect on the most recently preceding July 2.

Application of payments received

66.(1) Payments received by a collector in respect of any amount payable under this Act shall be applied and credited in the following order:

- (a) first, against any amount in respect of a previous tax roll that remains unpaid, and any penalty or accrued interest on the amount and the penalty;
 - (b) second, against any interest payable in respect of taxes levied under this Act for the current year, or any charges for the current year, other than taxes, placed on the tax roll for collection, including interest payable on a penalty imposed in respect of the current year;
 - (c) third, against any penalty imposed in respect of the current year;
 - (d) fourth, against any school taxes levied in respect of the current year;
 - (e) fifth, against any local improvement taxes levied in respect of the current year;
 - (f) sixth, against any charges for the current year, other than taxes, placed on the tax roll for collection;
 - (g) seventh, against any other taxes levied in respect of the current year.
- (2) A collector has no authority
- (a) to waive the liability of any person under this Act to pay in full any amount due and payable to the taxing authority,
 - (b) to extend the time within which the payment is to be made, or
 - (c) to postpone proceedings that may be taken by the taxing authority to collect any amount due and payable to the taxing authority.

REMEDIES TO ENFORCE PAYMENT OF TAXES**Tax lien**

67.(1) Unless otherwise provided for by this or any other Act, taxes due and payable in respect of any taxable real property shall be a lien on that property having preference and priority over the claim, lien, privilege or encumbrance of any person except Her Majesty, and the lien shall not require registration in order to be preserved.

(2) No change of ownership or possession and no seizure by a sheriff, bailiff, landlord or other person shall defeat the lien created under subsection (1).

Seizure

68.(1) Notwithstanding anything in this Act, where property upon or in respect of which taxes are due and payable

- (a) is seized by a sheriff, bailiff, landlord or other person, or
- (b) comes into the possession of a trustee in bankruptcy or a liquidator,

the sheriff, bailiff, landlord, trustee, liquidator or other person shall pay the taxes owing in respect of that property to the extent of the proceeds of the property coming into his hands and prior to the payment of any other fees, charges, liens or claims except

- (c) the lawful fees and expenses of any seizure or of a sale thereunder, or of any proceedings to recover possession, and

- (d) claims for wages or salary not exceeding three months provided for in the Bankruptcy Act (Canada) or any law or Act relating to winding up.

(2) Liability to pay taxes under subsection (1) extends to all taxes that have become due prior to the day when the proceeds of the seizure or any part thereof become distributable and, in the case of a liquidator, prior to the date of the winding up order.

Notice to tenant

69.(1) Where taxes are due or payable on or in respect of real property occupied by a tenant, the collector may give the tenant notice in writing requesting him to pay to the collector the rent as it becomes due from time to time to the amount of the taxes due and unpaid.

(2) Payment of rent by a tenant to the collector pursuant to a notice requiring him to do so has the same effect, as between the tenant and landlord, as if the rent so paid or recovered has been paid by the tenant directly to the landlord.

Insurance money

70.(1) Where any premises in respect of which taxes are due are damaged or destroyed, any amount payable to a person under a policy of insurance upon such premises shall, to the extent of the taxes due thereon, be paid by the insurer to the collector and in default thereof the authority may sue for and recover the unpaid taxes from the insurer.

(2) Every insurer shall, within 48 hours after receiving notice of loss under the policy of insurance, notify the collector of the loss by registered mail, and shall not pay any amount under the policy of insurance to the insured or to any other person entitled thereto until the taxes outstanding against the insured premises have been paid.

(3) The requirements of subsection (1) as to payment by the insurer to the collector of the insurance money apply only to the extent of the amount of the insurance money not used or to be used in or towards rebuilding, reinstating or repairing the premises damaged or destroyed or in or toward acquiring, constructing or repairing other premises to take the place of the premises so destroyed or damaged.

(4) Any payment by an insurer to the collector pursuant to this section has the same effect as between the insurer and the insured as if the amount so paid had been paid by the insurer directly to the insured.

Saving

71. Nothing in sections 67 to 70 shall be held to prevent or impair any other remedy available to the authority for the recovery of taxes.

Transfer of taxes

72. Every person removing a building, trailer, mobile home or structure without the consent of the authority from the land on which it is situated when the taxes are unpaid on the building, trailer, mobile home or structure commits an offence and is liable upon summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

Distress for taxes

73.(1) Where a person fails to pay his taxes within 30 days after they become due and payable, the authority may, subject to the exemptions contained in the Landlord and Tenant Act, levy the taxes or any part thereof with costs by distress and sale of any goods or chattels found on the premises on which the taxes have been levied or in the possession of the person liable to pay the taxes wherever found, but no distress or sale shall be made on goods or chattels of any person other than the person liable to pay the taxes if the other person owns or is entitled to possession of the goods and chattels.

(2) The restriction contained in subsection (1) upon the distress and sale of goods and chattels of a person other than the person liable to pay the taxes does not apply

- (a) to the interest of the person so liable in any goods and chattels in his possession under a contract for purchase or by which he may or is to become the owner thereof upon the performance of a condition, or
- (b) where the goods and chattels are claimed by the spouse, child, or child-in-law of the person so liable, or by any other relative of his if this other relative lives as a member of his family on the same premises, or by any person whose title is derived from any of them.

Warrant by collector

74.(1) The authority may, by order, authorize the collector to issue a warrant on behalf of the authority authorizing the person named therein to levy taxes in arrears by distress or sale in the manner provided in section 73.

(2) The order directing the levy and distress may be of general application or of specific application and may provide for the levy being made for all or any part of the taxes in arrears.

(3) The costs recoverable upon distress and sale are those payable under the Distress Act.

Procedure on distress

75.(1) Any authorized person effecting a seizure of goods and chattels has the right to enter upon the real property, to break open and enter a building, yard or place in which goods and chattels liable to seizure for payment of taxes are located, to take and seize the goods and chattels, and to remove them from the premises.

(2) The person effecting seizure of goods and chattels shall give notice thereof to the person liable to pay the taxes by personal service or by leaving a copy of the notice with an adult member of his family at his usual place of residence or, if the person liable to pay the taxes or an adult member of his family cannot be found, a copy of the notice shall be posted in a conspicuous part of the premises where the goods and chattels are seized.

(3) In the case of a corporation, the notice referred to in subsection (2) may be served by personal service upon the manager, secretary or other executive officer of the corporation, by delivering or sending it by registered mail to the registered office of the corporation, or if the corporation has no registered office or the manager or secretary or other executive officer of the corporation cannot be found, by posting the notice in some conspicuous part of the premises where the goods and chattels are seized.

(4) Where a person or corporation whose taxes are in arrears gives a written acknowledgment to the collector that his goods and chattels are under seizure for non-payment of taxes, the acknowledgment has the same force and effect as an actual seizure made under subsection (1).

Release

76. The authority may release goods and chattels held under seizure upon part of the claim in respect of which the seizure was made being satisfied, without prejudice to its right to recover for the balance of the claim.

Third parties and liability of the authority

77.(1) Where the authority receives notice that a person whose goods and chattels have been seized under section 72 is liable for rent due and payable to a third person or that a third person claims an interest in the goods and chattels seized, the collector shall forthwith mail to the third person a notice of the seizure and the authority shall not make any release of the seizure until at least ten days after the collector has mailed to the third person a notice of its intention to do so.

(2) The authority is not responsible for the loss or destruction of goods and chattels while under seizure, unless the loss or destruction

- (a) is due to the negligence of the authority or its officers or servants, or
- (b) is due to their having been moved, where the goods and chattels are moved from the premises where the seizure was effected.

Sale on distress

78.(1) Public notice of the time and place at which goods and chattels distrained are to be sold and of the name of the person liable for the payment of the taxes shall, at least eight days before the sale, be posted up in at least two public places in the neighborhood where the distress was made and published in one issue of a newspaper published or circulated in the area in which the goods and chattels are located.

(2) At the time fixed in the notice, the collector or person authorized by him shall sell at public auction the goods and chattels distrained or so much thereof as are necessary to realize the taxes and costs.

(3) Where property distrained is sold for more than the amount of the taxes and costs, and if no claim to the surplus is made by any other person, it shall be paid to the person in whose possession the property was when the distress was made, but if other claim to the surplus is made, it shall be paid over by the collector to the clerk of the Supreme Court, who shall retain the money until the rights of all parties have been determined.

Fraudulent removal

79. If at any time after a demand for taxes has been made and before the time for payment thereof expires the collector has reason to believe that a person liable for payment of taxes is about to remove goods and chattels that would be otherwise subject to distress under this Act, the collector may make an affidavit to that effect before a judge and the judge may issue a warrant to the collector or other person named therein authorizing him to levy for the taxes, costs and expenses in the manner provided by this Act.

Remedies against occupier

80. Where the taxes imposed in respect of any right, interest or estate of a person occupying or leasing Crown lands are in arrears, the following proceedings, among others, may be taken:

- (a) the collector may serve upon the occupier or tenant of such lands a notice in the prescribed form, signed by him;
- (b) the notice may be served upon the occupier or tenant
 - (i) personally,
 - (ii) by depositing it in some conspicuous place on the premises,
 - (iii) by leaving it with some adult person at the premises, or
 - (iv) by registered letter addressed to the tenant or occupier at his last address as shown in the records of the collector;
- (c) if the arrears are not paid in accordance with the notice, the authority may, after the expiration of 30 days, file the notice and an affidavit of service thereof with the clerk of the Supreme Court who shall thereupon enter the matter on the list of cases to be disposed of at the next sittings of the Supreme Court;
- (d) at the sittings of the Supreme Court the judge may hear any of the parties and may make such order as he thinks proper for payment of the taxes, penalties, interest and costs, and the order shall be deemed to be a judgment of the Supreme Court upon which execution may be issued and the execution shall have priority over any other execution or encumbrance or claim of any kind.

Tax roll evidence

81. The production of a tax roll or a copy thereof or so much thereof as relates to the taxes payable by a person, purporting to be certified by the collector as a true copy, shall in any action, cause or proceeding be received in evidence and be prima facie proof that the taxes are payable as and by the person disclosed therein and that the demand for taxes entered therein as given was fully given.

TAX LIEN PROCEDURE**List of delinquencies**

82.(1) When the whole or a portion of the taxes on any land or improvements has been due and unpaid for more than six months after the taxes became due and payable, the land shall be liable to be dealt with under this Act and, subject to subsection (2), the collector shall in each year submit to the authority a list in duplicate of all such lands with the amount of the arrears against each parcel set opposite the parcel.

(2) The list need not include any parcel in respect of which a tax lien has been filed under section 88 unless the lien has been withdrawn.

(3) Subject to subsection (4), the list shall not include any land the title to which is vested in the Crown or any other land exempt from taxation.

(4) Notwithstanding anything in this or any other Act, land, title to which is in the name of the authority, may with the consent of the authority be placed on the list and section 88 shall thereafter apply to that land.

(5) The authority shall authenticate the lists by affixing to both copies the seal of the authority.

Completion and publication of list

83.(1) The collector shall prepare a copy of the list adding to the amount of the arrears charged against each parcel an administration charge which copy shall contain a statement showing what sum has been added and he shall cause the copy to be published in a newspaper circulating in the Yukon.

(2) The publication shall be made not less than 60 days preceding the date on which the tax lien mentioned in section 88 is forwarded to the registrar.

(3) The administration charge mentioned in subsection (1) shall be ten percent of the arrears or \$25, whichever is the greater, and this charge shall be added to and form part of the taxes.

Notice of intention to register tax lien

84. The advertisement shall contain a notification that, unless arrears of taxes and costs are sooner paid, the collector will at the expiration of the period of 60 days from the date of the advertisement, proceed to register a tax lien in accordance with section 88.

Posting and inspection of list

85.(1) One copy of the list required to be published pursuant to section 83 shall be posted in the collector's office and shall be accessible to the public at all times during business hours for a period of 60 days.

(2) Copies of the list shall be posted in public places in the area where the property is situated.

Penalty for interference with lists

86. A person tearing, defacing or destroying any of the lists or removing any of those posted commits an offence and is liable on summary conviction to a fine not exceeding \$250 and, in default of payment, to imprisonment for a term not exceeding three months, or to both fine and imprisonment.

Effect of omission from list

87. Omission to include in the list any land liable to be dealt with under this Act shall not be held to prevent its inclusion on any future occasion with respect to all arrears of taxes that may be due thereon.

Registration of lien

88.(1) The collector shall, after the expiration of the period of 60 days mentioned in section 84 and not later than April 30 next following, cause to be forwarded to the office of the registrar a tax lien in duplicate with respect to every parcel of land included in the list published pursuant to section 83 the taxes against which are in arrears at the time of forwarding the tax lien.

(2) The registrar shall file the tax lien and note upon one copy thereof the date of filing together with particulars of registration, which copy he shall return to the collector.

(3) The registrar shall not file a tax lien which is received by him later than June 30 and he shall return such tax lien to the collector forthwith after receipt thereof, stating the reason for its return.

(4) A tax lien may be filed notwithstanding any distress that may be upon the land.

(5) The collector shall not be bound before forwarding the tax lien to the registrar to inquire into or form an opinion of the value of the land.

(6) A tax lien filed under this Act has the effect of a duly registered caveat but does not need to be verified by oath, and the registrar does not need to send the notice mentioned in section 134 of the Land Titles Act (Canada).

(7) The fee for services rendered by the registrar under this section

- (a) shall be paid to the authority by the person redeeming the land, and
- (b) shall be paid to the registrar by the authority when forwarding a withdrawal of tax lien under section 91 or 97, or when making application for title under section 100.

(8) Where a tax lien has been registered against a parcel of land and has not been withdrawn by the authority or vacated by the registrar, it shall not be necessary to file a further tax lien in respect of subsequent arrears of taxes on the same parcel.

(9) A tax lien shall be deemed to be registered not only with respect to the unpaid taxes mentioned in subsection 82(1) but also with respect to all other taxes to which this Act applies that were or are in arrears at the date of registration of the lien, notwithstanding that a tax lien should have been previously registered under this Act with respect to such other taxes or any portion thereof.

Apportionment of arrears on subdivided land

89.(1) When land upon which arrears of taxes are outstanding is subdivided before a tax lien is registered, the assessor may, before registration of the lien, upon application by the collector or by or on behalf of the owner of any part of the land, and upon being paid the prescribed fee together with a deposit to cover any necessary disbursements, apportion the arrears of taxes in accordance with the subdivision, and may determine the amount chargeable against each parcel.

(2) Notice of the apportionment shall be given in the same manner and to the same persons as a notice of assessment unless all the parties entitled to a notice agree in writing to the apportionment.

(3) A complaint against an apportionment under subsection (1) may be made to the assessment review board within whose territorial jurisdiction the land is located, and proceedings in respect of the complaint shall be the same as nearly may be in the case of a complaint relating to an entry on an assessment roll.

(4) The arrears of taxes as apportioned under this section shall be deemed for all purposes to be the arrears of taxes due respectively in respect of the parcels of land affected.

Duration of lien

90. Except as mentioned in section 108, after the tax lien has been filed it shall not be removed until the collector directs its removal or the lien is removed pursuant to section 97 or until a certificate of title is issued to the authority as provided in section 104.

Withdrawal of lien improperly filed

91. If through an error, mistake or misdescription or from any other cause, a tax lien has been improperly filed in respect of any land, the collector shall forthwith cause to be forwarded to the registrar a withdrawal of tax lien as to that land, the fee mentioned in section 88 and the prescribed fee for registration of the withdrawal, and upon receipt thereof the registrar shall endorse on the certificate of title a memorandum that the lien has been withdrawn.

Taxation of land under lien

92. Until the time for redemption has elapsed the land shall continue to be liable to assessment and taxation in the name of the owner and the taxes in respect of which the tax lien has been registered shall continue to be liable to the penalties for default in payment as provided in this Act.

Power to recover taxes by other means

93. Notwithstanding that a lien has been registered under this Act an authority may, at any time prior to obtaining title, exercise any powers conferred upon it by this or any other Act for the recovery of taxes due in respect of the land.

Protection of land and improvements

94.(1) After the registration of a tax lien, the authority shall be entitled by action or otherwise to protect the land from spoilation or waste until the expiration of the term during which the land may be redeemed, but shall not have any right to the possession of the land, to cut hay or timber growing thereon, or in any way to injure the land, and shall not be liable for damage done to the property during the time the tax lien remains in force.

(2) Buildings upon land in respect of which a tax lien has been registered may be insured by the authority against loss or damage to the property to the amount of all taxes outstanding and costs incurred in proceedings to acquire title.

Prevention of material deterioration

95.(1) After the registration of a tax lien the authority may, upon affidavit of the collector setting forth

- (a) that he has reason to believe that buildings on the land against which the tax lien has been registered are materially deteriorating in value, or are likely so to deteriorate unless preventive measures are taken, and
- (b) that the owner has abandoned the property, or
- (c) that the property is unoccupied and that the owner has been requested to prevent deterioration or further deterioration as the case may be, within a designated reasonable period, and that the deponent has reason to believe that the owner has failed to do so,

apply to a judge for an order authorizing entry on the land and into the buildings at any time during a specified period for the purpose of preventing deterioration or further deterioration thereof, as the case may be, or for an order abridging the period which under this Act must elapse between the date of the filing of the tax lien and the issue of certificate of title, and if an abridgement order is made the collector shall file with the registrar a copy of the order duly certified by the clerk of the Supreme Court.

(2) If the judge makes an order he may impose such conditions as he deems expedient and may by the same or a subsequent order, as the case may be, on the application of the authority, require that the whole or any portion of the costs of and incidental to the applications and of the work done pursuant to the first mentioned order shall be added to and form part of the amount required to redeem the land, in which case the sum ordered to be added shall form part of the amount required to redeem the land.

(3) No application shall be made under subsection (1) or (2) unless 14 days notice of intention to make the application has been given to the assessed owner of the land and to all persons appearing by the records of the land titles office or otherwise to have an interest in the land.

(4) The notice shall be sent by registered mail and shall be deemed to have been sent on the date of mailing.

Removal of improvements

96.(1) Where a tax lien has been registered against any land, no improvements shall be removed from the land without the consent of the taxing authority.

(2) Where an improvement is removed from land in contravention of subsection (1), the taxing authority may enter any place to which the improvement has been removed, seize the improvement, and return it to its former location.

(3) Costs incurred by a taxing authority under subsection (2) may be recovered by the taxing authority from the person who removed the improvement in contravention of subsection (1).

Redemption of land and withdrawal of lien

97.(1) If the owner of any land against which a tax lien has been registered under this Act or his executors, administrators or assigns, or any other person on his or their behalf but in his or their name only, pays to the collector

- (a) the arrears of taxes,
- (b) the expired portion of any insurance premium paid by the authority under subsection 94(2),
- (c) the administration charge mentioned in section 83,
- (d) the fee mentioned in section 88,
- (e) the amount of any disbursements necessarily made by the authority, or by any person acting on behalf of the authority, in proceeding to acquire title, exclusive of any amounts payable under paragraph (f),
- (f) the sum, if any, paid or payable to any person for services rendered in proceedings to acquire title, not exceeding \$25 plus \$2 for each person after the first who is required to be served with notice of the application for title, except that where two or more parcels of land are included in one application for title and one or more but not all of such parcels are redeemed, the sum payable under this paragraph shall be in the same proportion to the sum otherwise payable as the number of parcels redeemed bears to the total number of parcels included in the application, and
- (g) the fee for registration of a withdrawal of the tax lien,

or if the land is redeemed under section 98, the collector shall forthwith cause to be forwarded to the registrar a withdrawal of tax lien as to that land, and pay the fee mentioned in section 88 and the fee for registration of the withdrawal.

(2) Where the registrar has received a withdrawal of lien forwarded to him pursuant to subsection (1), and the fee mentioned in section 88 and the fee for registration of the withdrawal have been paid to him, the registrar shall endorse on the certificate of title a memorandum that the lien has been withdrawn.

(3) The collector may accept payment in instalments of the arrears of taxes and other sums referred to in subsection (1), but a partial payment shall not affect the right of the authority to apply for title under section 100.

Redemption by execution creditor, mortgagee or lienholder

98.(1) A creditor having an execution in the sheriff's hands affecting land against which a tax lien has been registered may redeem the land under the conditions mentioned in subsection 97(1) and may file the receipt for the redemption money with the sheriff, who shall thereupon add the amount of the redemption money to the sum remaining unpaid upon the execution.

(2) The amount so added shall bear legal interest from the date of redemption, and the sheriff in his return to the writ shall refer to the amount and to the manner of its addition.

(3) The holder of a registered mechanic's lien against such land may redeem the land and may file his receipt for the money with the registrar, who shall thereupon note upon the claim of lien filed, the date of redemption and the amount paid.

(4) The amount of the lienholder's claim shall be increased by the sum paid for redemption, and the rights of the lienholder and of all other parties shall be such as they would have been if the amount of the addition had been originally included in the claim of lien and had been justly due for work or services done or materials placed or furnished.

(5) The holder of a mortgage or encumbrance against the land may redeem the land and may add the amount of the redemption money to the sum secured by the mortgage or encumbrance, bearing interest from the date of payment at the same rate as and otherwise subject to all terms and conditions of the mortgage or encumbrance.

Redemption of part

99.(1) Any portion of a parcel of land in respect of which a tax lien has been registered may be redeemed by payment of a proportionate amount of the arrears of taxes and costs, if the consent of the authority is first obtained in writing.

(2) The collector or any person entitled to redeem such portion may apply to the assessor to apportion the arrears and costs and the assessor shall thereupon proceed to do so, and the provisions of section 89 as to notice, appeal, procedure, the duties and powers of the Court of Revision and of any officers with respect to the appeal, and the effect of apportionment shall apply *mutatis mutandis*.

(3) Nothing in this section shall be deemed to authorize redemption if the size of any lot to be redeemed or left unredeemed would be less than the minimum size required under any law in force respecting lot size.

APPLICATION FOR TITLE

Application for title failing redemption

100.(1) At any time after the expiration of one year from the date of filing the tax lien the authority may authorize application for title to any parcel of land included in the list in respect of which the arrears of taxes have not been paid and the lien has not been withdrawn, and such application shall in all respects be deemed to be and shall be dealt with by the registrar as an application to bring land under the Land Titles Act (Canada) or for a transmission under that Act, as the case may be.

(2) An application by an authority under this Act for transmission of title shall be accepted by the registrar although title to the land is in the name of the authority.

(3) An application for title shall include only land contained in one certificate of title, except where

- (a) lands held under different certificates belong to the same registered owner, or
- (b) the ownership of a parcel is composed of undivided interests covered by different certificates,

but an application may include any number of lots or blocks according to the same plan.

No time limit for application

101. Notwithstanding anything in the Limitation of Actions Act, there is no limitation to the time within which an application for title may be made under section 100.

Postponement of final application for title

102. Where the registrar has received a copy of an order made under section 9 of the Mediation Board Act prohibiting final application for title, he shall when final application for title is made direct notice thereof to be sent by registered mail to the persons mentioned in section 103 and shall not issue certificate of title until 30 days after such notice has been given, except that this subsection does not apply to the parcels mentioned in subsection 105(2).

Issuance of title to the authority

103.(1) Subject to sections 102 and 105, upon receipt from an authority of an application for title under this Act, the registrar shall direct to be served on all persons who appear by the records of the land titles office and by the last revised assessment roll of the authority at the time of the registration of the application, to be interested in the land a notice requiring them, within a period of six months from the date of the service of the notice upon them, to contest the claim of the authority or to redeem the land.

(2) The registrar shall not direct that the notice mentioned in subsection (1) be served on the authority or on a person whose interest in the land will, by virtue of section 106, not be affected by the issue of a certificate of title to the authority.

(3) The registrar shall not be affected by any irregularity in respect of the assessment of the land for taxes or in any proceedings relating to the enforcement of payment of the taxes before the filing of the tax lien.

(4) The name and address of the assessed owner of the land and the assessed value of the land according to the last revised assessment roll of the authority shall be proven by a certificate under the seal of the authority, and the registrar shall accept such evidence without further proof.

(5) Where application is made for title to a lot or parcel of land that at the date of the application has an assessed value of \$1,000 or less,

- (a) the notice mentioned in subsection (1) may be served on any person directed to be served by sending to him a true copy thereof by registered mail, postage prepaid, in an envelope addressed to him at his address as shown by the records of the land titles office and by the last revised assessment roll of the authority,
- (b) the service shall be deemed to be sufficient if a receipt from the postmaster for the envelope containing the copy is annexed to a declaration of service, and
- (c) the notice shall be deemed to have been served on the day of the date of the receipt from the postmaster for the envelope.

(6) Where application is made for title to a lot or a parcel of land that at the date of the application has an assessed value exceeding \$1,000,

- (a) subsection (5) applies mutatis mutandis with respect to service of notice on all persons other than the registered owner and first mortgagee of the land, and
- (b) the registered owner and the first mortgagee, if any, may be served with the notice by forwarding to him by registered mail a true copy thereof,

and service on the registered owner and the first mortgagee pursuant to this subsection shall be deemed to be sufficient if a receipt from the postmaster for the envelope containing the copy, and a post office receipt for the envelope purporting to be signed by the person to be served, are produced as exhibits to an affidavit of service in the prescribed form.

(7) A notice served on the registered owner or first mortgagee under subsection (6) shall be deemed to have been served on the day of the date of the receipt that purports to be signed by the owner or mortgagee.

(8) If the address of a person to be served as shown in the assessment roll is different from the address as shown in the records of the land titles office, notice shall be sent to him at each of those addresses.

(9) Where notices are served by registered mail under this section, not more than one notice shall be enclosed in any one envelope.

(10) Notwithstanding anything in subsections (5) and (6), service of the notice therein mentioned may be affected by personal service on the registered owner or first mortgagee or any other interested person, but the costs of personal service included in the amount required to redeem the land shall not exceed the costs of service that would have been included if the service had been made by registered mail under subsection (5) or (6), as the case may be.

(11) The period of six months provided for in a notice directed by the registrar pursuant to subsection (1) to be served shall be deemed to have expired upon the expiration of six months after the latest of the dates on which the persons required to be served with the notice were respectively served.

(12) Subject to the Mediation Board Act and this Act, upon the expiration of the period of six months provided for in a notice served under this section the registrar shall, if the land has not been redeemed, issue a certificate of title to the authority, and thereupon the interests and liens of all persons in or upon the land that accrued or commenced to accrue before the issue of the certificate of title shall, subject to subsection (13), be deemed to be extinguished.

(13) Where a certificate of title is issued pursuant to subsection (12), the land therein described shall remain subject to the easements, agreements, caveats, rights and other things mentioned in paragraphs 106(a) to (d).

Substitutional service of notices

104. The registrar may in his discretion order that the notice mentioned in section 103 and notice of any subsequent proceedings may be served substitutionally, and such substitutional service shall have the same effect as personal service of the notice or proceedings upon the person intended to be affected thereby.

Proceedings in land titles office

105.(1) Subject to subsection (2), upon receipt of an application for title as provided in section 100, the registrar shall direct the collector to send the notice required by section 102.

(2) Notwithstanding subsection (1), where the application for title

- (a) is in respect of one or more vacant lots in a municipality, each having a value according to the last revised assessment roll of not more than \$25, and
- (b) contains a statement that it is an application with respect to which this subsection applies,

the notice required by section 102 shall be served only upon the assessed owner and subsections (5) to (9) of this section and sections 6 and 9 of the Mediation Board Act do not apply with respect to the application.

(3) The final application for title in the cases mentioned in subsection (2) shall be accompanied by an affidavit of the collector stating in respect of the parcels included in such application,

- (a) the value of each lot according to the last revised assessment roll,
- (b) that the arrears of taxes imposed against such lots have not been paid,
- (c) that none of the lots contain buildings, and
- (d) that the lots are outside the built-up area of the municipality or are unfit for building purposes.

(4) Subject to sections 6 and 9 of the Mediation Board Act and subsections (5) to (9), after the expiration of six months from the date of service of the last notice required to be served by or on behalf of the authority, if the land is not redeemed the registrar shall upon receipt of written final application for title issue to the authority a certificate of title under the Land Titles Act (Canada), and the certificate of title shall in every respect be of the same force and validity and have the same effect as any other certificate of title issued under the Land Titles Act (Canada).

(5) Subject to subsection (6), upon receipt of the written final application the registrar shall register the application but shall not issue a certificate of title to the authority until the collector has given or caused to be given to all persons appearing, at the time of the registration of the application, by the records of the land titles office and the last revised assessment roll to have an interest in the land, written notice that the authority intends to make a final request for the issue of a certificate of title upon the expiration of 30 days from the date of mailing or delivery of the notice.

(6) The notice mentioned in subsection (5) does not need to be given to a person whose interest in the land will, by virtue of section 106, not be affected by the issue of a certificate of title to the authority.

(7) The authority shall not make a final request for the issue of title before the expiration of 30 days after the date of mailing or delivery of the notice given pursuant to subsection (5), and the land may be redeemed at any time before issue of the certificate of title.

(8) Where notice has been given pursuant to subsection (5) and the Mediation Board, pursuant to the Mediation Board Act, files with the registrar an order prohibiting the continuance of the application and subsequently thereto files with the registrar a consent to the continuance of the application, the authority shall not make a final request for the issue of title to the authority until it has thereafter given or caused to be given a further notice to persons mentioned in subsection (5) that the authority intends to make a final request for the issue of a certificate of title upon the expiration of 30 days from the date of mailing or delivery of the notice, and in such a case, subsection (7) shall apply *mutatis mutandis*.

(9) The notice mentioned in subsection (5) and the further notice mentioned in subsection (8) may be served by sending it by registered mail, addressed to the person to be served, and proof by affidavit of the sending or delivery of the notice shall be filed with the registrar.

Certain interests not affected by issue of title

106. After the issue of a certificate of title, no person except the authority or those claiming through or under the authority shall be deemed to be rightly entitled to the land included therein or to any part thereof, or to any interest therein or lien thereon, whose rights in respect thereof accrued or commenced to accrue prior to the issue of the certificate of title, save that the land shall remain subject to

- (a) existing registered easements and party wall agreements and any caveat registered in respect of an easement of party wall agreement,
- (b) rights of easement acquired by any public utilities,
- (c) caveats registered by or on behalf of the Crown, and
- (d) the rights under section 113 of a person in actual occupation of the land.

No inquiries necessary by registrar

107. The registrar shall not be obliged to ascertain or inquire into the regularity of the tax enforcement proceedings or of any proceedings prior to or having relation to the assessment of the land.

Liability to assurance fund

108. The authority shall be liable to the registrar for all losses and damage sustained to the assurance fund on account of incorrect information given by it in consequence of any error in any list, statement or other documents given to him by the authority under this Act.

Removal of tax lien

109.(1) Notwithstanding any defect in the assessment, levy or other proceedings, no tax lien shall be removed except where the taxes for the year or years in respect of which the tax lien was registered have been paid, or where the land was not liable to taxation for the year or years in respect of which the tax lien was registered.

(2) All actions, suits or other proceedings to remove a tax lien shall be brought or taken against the authority, but no such action, suit or proceeding shall be brought or taken after the issue of certificate of title to the authority.

(3) After the issue of certificate of title to the authority, the former owner or his assigns shall have no claim for damages against the authority or against the assurance fund.

Disposal of lands

110. The authority may after obtaining title to the land under this Act lease the land or sell and convey it in a similar manner to any other land belonging to the authority.

Removal of taxes from tax roll

111. After the issue of certificate of title to the authority, the collector shall remove the taxes and other charges from the tax roll and transfer them to a record in such form as may be prescribed.

MISCELLANEOUS

Limitation of action against municipality

112. No action for the return by the authority of any money paid to it, whether under protest or otherwise, on account of a claim, whether valid or invalid, made by the authority for taxes shall be commenced after the expiration of six months from the date of payment of the money, and after the expiration of such period of six months without an action having been commenced, the payment made to the authority shall be deemed to have been a voluntary payment.

Application of Landlord and Tenant Act

113.(1) Subject to subsection (2), a person in occupation of land when certificate of title thereto issues under this Act shall be deemed to be tenant to the authority named in the certificate of title, and the Landlord and Tenant Act shall apply as if the relationship of landlord and tenant had been constituted by agreement between the parties on the basis of a weekly tenancy unless an agreement to the contrary has been entered into between the parties.

(2) Where, on the issue of title, the person in occupation holds the land under a subsisting lease for a year or longer or agreement for lease for a year or longer from the former owner of the land, the rights and liabilities of that person under the lease against and in favour of the former owner shall continue against and in favour of the new owner for the current year of the lease.

Regulations

114.(1) The Commissioner in Executive Council may make such regulations and prescribe such forms as he deems necessary for the carrying out of the purposes and provisions of this Act.

(2) The Commissioner in Executive Council may by order extend the time within which anything is required to be done under this Act by an assessor, a collector, a taxing authority, an assessment review board or the Assessment Appeal Board and anything done within the extended period of time is as valid as if it had been done within the time otherwise provided for by this Act.

Effect of the Act

115. The provisions of this Act prevail over the provisions of every other Act.

Penalty

116. Every person who commits an offence under this Act is liable on summary conviction to a fine of not more than \$500 or to imprisonment for not more than six months, or to both fine and imprisonment.

CHAPTER 11

BOILER AND PRESSURE VESSELS ACT

Interpretation

1. In this Act,

- “accident” means an accident that results in damage to property or injury to or the death of a person;
- “approved and registered” means approved and registered in accordance with this Act or any regulation made under this Act;
- “boiler” means a vessel in which steam or other vapour can be generated under pressure or in which a liquid can be put under pressure by the direct application of a heat source;
- “boiler rating” means the rating for measuring the capacity of a boiler in kilowatts as determined in the regulations;
- “certificate of competency” means a certificate of competency specified or referred to in section 33;
- “certificate of registration” means a certificate of registration issued by an inspector pursuant to section 24;
- “chief inspector” means the person appointed as chief inspector for the purposes of this Act and the regulations;
- “expandable fluid” means
- (a) any vapour or gaseous substance, or
 - (b) any liquid under a pressure and at a temperature that is such that the liquid will change to a gas or vapour when the pressure is reduced to atmospheric pressure;
- “fitting” means any valve, gauge, regulating and controlling device, flange, pipe fitting or any other appurtenance which is attached to or forms part of a boiler, pressure vessel or pressure piping system in a power plant, heating plant or pressure plant;
- “heating plant” means
- (a) any one or more boilers in which steam or other vapour may be generated at a pressure not exceeding 103 kilopascals and a temperature not exceeding 121 degrees Celsius,
 - (b) any one or more boilers in which water or other liquid may be heated to a pressure not exceeding 1100 kilopascals and a temperature not exceeding 121 degrees Celsius at or near the outlet of the boiler, or
 - (c) any system or arrangement of boilers referred to in paragraph (a) or (b), and the engines, turbines, pressure vessels, pressure piping system, machinery and ancillary equipment of any kind used in connection therewith;
- “inspector” means a person appointed as an inspector for the purposes of this Act and the regulations, and includes the chief inspector;
- “power plant” means
- (a) any one or more boilers in which steam or other vapour is generated at more than 103 kilopascals,

(b) any one or more boilers containing liquid and having a working pressure exceeding 1100 kilopascals and a temperature exceeding 121 degrees Celsius or either one of them, or

(c) any system or arrangement of boilers referred to in paragraphs (a) or (b), and the engines, turbines, pressure vessels, pressure piping system, machinery and ancillary equipment of any kind used in connection therewith;

“pressure piping system” means pipe, tubes, conduits, fittings, gaskets, bolting and other components making up a system the sole purpose of which is the conveyance of an expansible fluid under pressure and the control of the flow of an expansible fluid under pressure between two or more points;

“pressure plant” means any one or more pressure vessels of any system or arrangement of pressure vessels and the engines, turbines, pressure piping system, machinery and ancillary equipment of any kind used in connection therewith;

“pressure vessel” means any receptacle of a capacity exceeding 0.0425 cubic metres that contains or is intended to contain an expansible fluid under pressure.

GENERAL

Application of the Act

2.(1) Except as provided in subsection (2), this Act and any regulation made under this Act applies to all boilers, pressure vessels, power plants, heating plants and pressure plants.

(2) This Act or any regulation made under this Act does not apply to

(a) a boiler having a boiler rating of 10 kilowatts or less in capacity which forms the whole or part of a power plant,

(b) a boiler having a boiler rating of 20 kilowatts or less in capacity, installed in a heating plant,

(c) a boiler that is intended to be used in connection with a hot water heating system and that has no valves or other obstructions to prevent circulation between the boiler and an expansion tank which is fully vented to the atmosphere,

(d) a pressure vessel of 152 millimetres or less in internal diameter,

(e) a pressure vessel which is used for the storage of hot water and has an internal diameter of 610 millimetres or less,

(f) a pressure vessel or pressure piping system operating at and with relief valves set at 103 kilopascals or less,

(g) a pressure vessel intended to be installed in a closed hot water heating system having a working pressure of 207 kilopascals or less and having an internal diameter of 610 millimetres or less,

(h) any pressure piping system and machinery and equipment ancillary thereto by which refrigerants are vapourized, compressed and liquified in the refrigerating cycle and that has a capacity of 10.5 kilowatts or less, or

(i) the inspection and registration of an air receiver, air/oil receiver, cushion tank, hydropneumatic tank, hydropneumatic or pneumatic valve operating cylinder, and its pressure piping system, not exceeding 0.15 cubic metres in capacity and 1725 kilopascals design pressure.

(3) Where any calculation is made with respect to the application of this Act or any regulation made under this Act, the calculation shall be made and determined in accordance with the regulations.

(4) This Act applies to boilers, pressure vessels, pressure plants, power plants and heating plants which are connected to a pipeline, but does not apply to any other part of a pipeline.

Chief inspector and staff

3.(1) The Commissioner in Executive Council may appoint a chief inspector and such other persons as may be required for the purposes of administering this Act and any regulation made under this Act.

(2) Where the chief inspector is given any power or duty under this Act or any regulation made under this Act, he may authorize one or more inspectors to exercise or perform that power or duty upon such conditions or in such circumstances as the chief inspector prescribes, and thereupon that power or duty may be exercised or performed by the inspector or inspectors so authorized in addition to the chief inspector.

DESIGN, CONSTRUCTION AND SALE

Application for approval of design

4.(1) Where a person intends to construct or use in the Yukon

- (a) a boiler or pressure vessel, or
- (b) a pressure piping system,

the design of which has not been approved and registered, he shall apply to the chief inspector for approval and registration of the design.

(2) The applicant shall submit such drawings, specifications and other information as may be required by the chief inspector.

(3) Where the chief inspector is satisfied that the design of the boiler, pressure vessel or pressure piping system meets the requirements of this Act or any regulation made under this Act, the design shall be approved and registered and the applicant notified accordingly.

(4) No person shall commence the construction or use of any boiler, pressure vessel or pressure piping system in the Yukon unless the design of the boiler, pressure vessel or pressure piping system has been approved and registered.

Importing boilers, pressure vessels or piping

5. Any person who brings into the Yukon a new or used boiler, pressure vessel or pressure piping system, the design of which has not been approved and registered, shall apply to the chief inspector for approval and registration of the design.

Alteration of design

6.(1) Where a person wishes to change an approved and registered design he shall apply to the chief inspector for approval and registration of the change.

(2) Where the chief inspector is satisfied that the change to the design meets the requirements of this Act and any regulation made under this Act, the change shall be approved and registered and the applicant notified accordingly.

(3) Where the design of a boiler, pressure vessel or pressure piping system is changed, no person shall commence construction in accordance with the change in design until the change is approved and registered.

Effect of approval

7. The approval and registration of a design or any change to a design of a boiler, pressure vessel or pressure piping system shall not relieve the owner of the design from the responsibility for ensuring that the design complies with this Act or any regulation made under this Act, nor shall it relieve any person constructing to the design from ensuring that the construction complies with this Act or any regulation made under this Act.

Withdrawal of approval

8.(1) Where the design of a boiler, pressure vessel or pressure piping system has been approved and registered, but the chief inspector determines that

- (a) it is no longer safe to construct the boiler, pressure vessel or pressure piping system in accordance with the design, or
- (b) the design no longer meets the requirements of this Act or any regulation made under this Act,

the chief inspector shall give notice in writing to the owner of the design that from a date specified in the notice no boiler, pressure vessel or pressure piping system shall be constructed in the Yukon for use in the Yukon in accordance with the design.

(2) Upon receipt of a notice referred to in subsection (1), the owner of the design shall forward copies of the notice to every person who is permitted to construct a boiler, pressure vessel or pressure piping system in accordance with the design referred to in the notice.

(3) No person shall construct a boiler, pressure vessel or pressure piping system in the Yukon for use contrary to a notice referred to in subsection (1).

(4) No person shall use, sell or otherwise dispose of any boiler, pressure vessel or pressure piping system in the Yukon as a boiler, pressure vessel or pressure piping system

- (a) that is of a design that is the subject of a notice referred to in subsection (1), or
- (b) that was constructed after the date prohibiting construction specified in the notice referred to in subsection (1).

Application for approval of fittings

9.(1) Any person who intends to construct and use in the Yukon a fitting for use in connection with any boiler, pressure vessel or pressure piping system, shall apply to the chief inspector for approval and registration of the fitting.

(2) Where an inspector is satisfied, upon receipt of an application made pursuant to subsection (1), that the fitting is to be constructed and used in compliance with this Act or any regulation made under this Act, the fitting shall be approved and registered and the applicant notified accordingly.

(3) No person shall commence construction of or use any fitting in the Yukon for use in the Yukon unless the fitting has been approved and registered pursuant to this section.

Importation of fittings

10. Any person who brings into the Yukon a new or used fitting which has not been approved or registered in accordance with this Act or any regulation made under this Act shall apply to the chief inspector for approval and registration of the fitting.

Alteration of fittings

11.(1) Where a person wishes to make any change in the manner or method of constructing or using a fitting that is approved and registered, he shall apply to the chief inspector for approval and registration of the change.

(2) Where the chief inspector is satisfied that the change in the manner or method of constructing or using a fitting meets the requirements of this Act or any regulation made under this Act, the change shall be registered and the applicant notified accordingly.

(3) Where the manner or method of constructing or using a fitting is changed, no person shall commence construction or use of the fitting in accordance with the change until the change is approved and registered.

Withdrawal of approval

12.(1) Where a fitting has been approved and registered, but the chief inspector determines that

- (a) the construction or use of the fitting is no longer safe, or
- (b) the construction or use of the fitting no longer meets the requirements of this Act or any regulation made under this Act,

the chief inspector shall give notice in writing to the person who registered the fitting that, from a date specified in the notice, the fitting described therein shall not be constructed or used in the Yukon in connection with a boiler, pressure vessel or pressure piping system.

(2) Upon receipt of a notice referred to in subsection (1), the person who registered the fitting shall forward copies of the notice to every person who is constructing or using the fitting referred to in the notice.

(3) No person shall construct or use a fitting in the Yukon contrary to a notice referred to in subsection (1).

(4) No person shall sell or otherwise dispose of any fitting in the Yukon that is intended for use in connection with a boiler, pressure vessel or pressure piping system that is the subject of a notice referred to in subsection (1).

Yukon identification number

13. Before an inspector issues a certificate of registration with respect to any boiler or pressure vessel, he shall, unless the boiler or pressure vessel is to be used or operated outside the Yukon, ensure that the boiler or pressure vessel is stamped with a number to be known as the Yukon identification number.

Construction to comply with Act

14.(1) A person proposing to construct a boiler, pressure vessel or pressure piping system for use or operation in the Yukon, the design of which has been approved and registered, shall ensure that it is constructed, identified, inspected and tested in accordance with this Act and any regulation made under this Act.

(2) No person shall sell, rent, exchange or otherwise dispose of a new boiler or pressure vessel for use or operation in the Yukon

- (a) unless the design of the boiler or pressure vessel has been approved and registered, and
- (b) unless a certificate of inspection has been issued in respect thereof.

Fittings to comply with Act

15.(1) A person proposing to construct a fitting for use in the Yukon shall ensure that it is designed, constructed, identified, inspected, tested, approved and registered in accordance with this Act and any regulation made under this Act.

(2) No person shall sell or otherwise dispose of a fitting for use in the Yukon unless it is approved and registered in accordance with this Act and any regulation made under this Act.

(3) No person shall install or cause or permit to be installed any fitting unless it has been approved and registered in accordance with this Act and any regulation made under this Act.

Transfer of used boilers, etc.

16. Where a person sells, exchanges or otherwise disposes of a used boiler or pressure vessel previously installed in the Yukon that is intended to be used or operated in the Yukon, he shall, upon request, notify the chief inspector of

- (a) the new owner and location of the boiler and pressure vessel, if any, and
- (b) the Yukon identification number thereon.

Approval and inspection required

17.(1) No person shall

- (a) install any pressure piping system unless its design has been approved and registered in accordance with this Act or any regulation made under this Act, or

- (b) use, operate or place under pressure or cause or permit any pressure piping system to be used, operated or placed under pressure unless it has been inspected and tested in accordance with this Act or any regulation made under this Act.

(2) No person shall install or cause or permit any boiler or pressure vessel to be installed unless the design of the boiler or pressure vessel has been approved and registered in the Yukon.

(3) Subject to subsection (4), no person shall use, operate or place under pressure or cause or permit any boiler or pressure vessel to be used, operated or placed under pressure unless a certificate of registration has been issued therefor.

(4) Subsection (3) does not apply

- (a) with respect to any boiler or pressure vessel where, pursuant to this Act or any regulation made under this Act, a certificate of registration is not required, or
- (b) with respect to any boiler, hot water tank, cushion tank or heating plant installed, used, operated or placed under pressure in any premises containing not more than four dwelling units.

Fees

18.(1) The owner of every boiler or pressure vessel which is to be used or operated in any calendar year, shall pay to the Government of the Yukon a fee in respect of that boiler or pressure vessel of such amount, at such times and in such manner as may be prescribed.

(2) The payment of any fee pursuant to subsection (1) shall entitle the owner of any boiler or pressure vessel in respect of which the fee was paid to an annual inspection, but in no event is the issuance of a certificate of registration subject to the performance of such inspection.

INSPECTIONS

Inspections

19.(1) An inspector may inspect the construction, installation, method of testing and inspecting, condition, maintenance, repair, operation or use of a boiler, pressure vessel, power plant, heating plant or pressure plant.

(2) For the purpose of an inspection under this Act, an inspector may issue an order in writing requiring the owner or person in charge of the boiler, pressure vessel, power plant, heating plant or pressure plant to prepare it in such a manner as to permit an internal inspection by him.

(3) Where the inspector is not satisfied with respect to the construction, installation, method of testing and inspecting, condition, maintenance, repair, operation or use of anything inspected, he may

- (a) issue an order in writing stating the changes required to be made for the purpose of making the thing inspected comply with this Act and the regulations made under this Act, where the boiler, pressure vessel, power plant, heating plant or pressure plant is unsafe and immediate action is necessary to prevent an accident, or
- (b) issue an order in writing, forbidding the installation, operation or use thereof or any part used in connection therewith until the requirements of the order are complied with.

(4) Where an inspector issues an order under subsection (2) or paragraph (3)(a), the person to whom the order is issued shall comply with the order within the time specified in the order.

(5) Where an inspector issues an order under paragraph (3)(b), no person shall install, operate or use the boiler, pressure vessel, power plant, heating plant or pressure plant, until he has

- (a) complied with the order of the inspector, and
- (b) notified the inspector in writing that the order has been complied with.

Powers of inspector

20. An inspector may, for the purpose of any inspection concerning any boiler, pressure vessel, power plant, heating plant or pressure plant,

- (a) inspect and examine all books and records that in any way relate to its construction, installation, method of testing and inspecting, condition, maintenance, repair, operation or use,
- (b) take extracts from or make copies of any entry in the books and records mentioned in paragraph (a), and for that purpose may remove them after notifying the person in charge thereof for a period not exceeding one month,
- (c) require any person to make full disclosure either orally or in writing of any matter concerning its construction, installation, method of testing and inspecting, condition, maintenance, repair, operation or use and to produce and deliver to him all records or documents or copies thereof that he has in his possession or under his control that in any way relate to the boiler, pressure vessel, power plant, heating plant, or pressure plant, and
- (d) take or remove or order the removal of samples of any material, substance or thing and shall notify either the owner, manufacturer or contractor of the sample, substance or thing taken or removed.

Right of entry

21.(1) Subject to subsection (2), for the purpose of this Act or any regulation made under this Act, an inspector may at any reasonable time and upon giving notice to the owner or person in charge or apparently in charge, enter upon any property, place or thing, other than a private dwelling, used in connection with the construction, installation, testing and inspecting, condition, maintenance, repair, operation or use of a boiler, pressure vessel, power plant, heating plant or pressure plant to inspect the same.

(2) For the purpose of this Act or any regulation made under this Act, the inspector may where in his opinion an emergency situation exists, enter upon any property, place or thing, other than a private dwelling, used in connection with the construction, installation, testing and inspecting, condition, maintenance, repair, operation, or use of a boiler, pressure vessel, power plant, heating plant or pressure plant to inspect the same at any time and without giving notice to the owner or person in charge or apparently in charge.

(3) An inspector shall be furnished by the Executive Council Member with a certificate of his appointment, and, on entering any place used in connection with the construction, installation, testing and inspecting, condition, maintenance, repair, operation or use of a boiler, pressure vessel, power plant, heating plant, or pressure plant, shall, if so required by the owner or person in charge or apparently in charge thereof, produce the certificate for inspection by that person.

(4) For the purposes of this section, "private dwelling" means a place occupied by a person or persons for purposes of habitation and sustenance of life in private.

Obstruction of inspector

22.(1) No person shall

- (a) refuse admission to an inspector, or
- (b) obstruct or hinder an inspector,

who presents his certificate of appointment and who is engaged in carrying out any inspection under this Act or any regulation made under this Act.

(2) No person shall make a false or misleading statement either orally or in writing to an inspector engaged in carrying out any inspection under this Act or any regulation made under this Act.

(3) An inspector or a person lawfully accompanying an inspector is not required to sign or give any release or waiver of responsibility before entering any place pursuant to this Act, and any such release is void.

(4) While acting pursuant to this Act or the regulations, an inspector, or a person lawfully accompanying an inspector, is not liable for any injury, loss or damage occasioned thereby.

Assistance to be rendered

23.(1) The owner or person in charge or apparently in charge of the construction, installation, testing and inspecting, condition, maintenance, repair, operation or use of a boiler, pressure vessel, power plant, heating plant or pressure plant, and every person employed by him or in connection therewith, shall give an inspector all reasonable assistance to enable the inspector to carry out his inspection.

(2) The owner or person in charge or apparently in charge of a boiler, pressure vessel, power plant, heating plant or pressure plant shall ensure, during any inspection by an inspector, that

- (a) there is a person in attendance who is capable of taking all the necessary precautions to ensure the safety of the inspector, and
- (b) any safety equipment that the inspector considers necessary is immediately available for his use.

Issuance of certificate

24.(1) Where a certificate of registration is required by this Act or any regulation made under this Act, an inspector shall issue the certificate of registration if, after an inspection, he is satisfied that the boiler or pressure vessel complies with this Act and the regulations made under this Act.

(2) A certificate of registration for a boiler or pressure vessel shall show

- (a) the Yukon identification number of the boiler or pressure vessel,
- (b) the maximum allowable pressure at which the boiler or pressure vessel is permitted to be operated or used,
- (c) any other condition under which the boiler or pressure vessel is to be operated or used, and
- (d) such other information as the chief inspector may require.

(3) No person shall operate or use or permit to be operated or used any boiler or pressure vessel

- (a) in excess of the maximum allowable pressure specified on the certificate of registration, or
- (b) contrary to any other condition specified on the certificate of registration.

Display of certificate

25.(1) Every owner or person in charge or apparently in charge of a boiler or pressure vessel shall ensure that a certificate of registration

- (a) is conspicuously placed adjacent to the boiler or pressure vessel to which it relates where it can be easily read, or
- (b) is retained and safeguarded in a manner approved by the inspector.

(2) The owner or person in charge or apparently in charge of a boiler or pressure vessel shall produce the certificate of registration applicable thereto on demand of an inspector or a peace officer.

(3) Every owner or person in charge or apparently in charge of a boiler or pressure vessel mounted on a vehicle shall ensure that the certificate of registration or a copy thereof is retained on the vehicle and produced upon demand of an inspector or a peace officer.

OPERATION AND SUPERVISION PLANTS

Application of section

26.(1) This section does not apply to the owner or person in charge or apparently in charge of

- (a) a power plant which
 - (i) is used for heating in a process where the heat is generated as a result of burning or any other reaction inherent in the process, and

- (ii) does not generate steam, or
- (b) a power plant which heats a fluid other than water in a process where the fluid heated is inherent in the process.

(2) Except for a power plant exempted under subsection (1), no owner or person in charge or apparently in charge of a power plant shall operate or permit it to be operated unless

- (a) it is operated under the general supervision of the holder of a certificate of competency, the classification of which qualifies the holder to act as chief steam engineer of the power plant, and
- (b) it is operated under the continuous supervision of the holder of a certificate of competency, the classification of which qualifies the holder to act as shift engineer under the general supervision of a person referred to in paragraph (a).

(3) Where in the opinion of the chief inspector there are insufficient engineers to exercise satisfactory supervision over a power plant, the chief inspector may direct the owner or person in charge or apparently in charge of the plant to employ sufficient engineers to exercise satisfactory supervision of the plant.

Operation of heating plants

27.(1) No owner of a heating plant of a capacity specified in the regulations made under this Act which is used primarily for the purpose of heating one or more buildings shall operate it or permit or cause it to be operated unless it is under the general supervision of the holder of a certificate of competency, the classification of which qualifies the holder to exercise general supervision of and be responsible for the heating plant.

(2) Where any question arises as to whether the primary purpose of a heating plant is for the heating of one or more buildings, the matter shall be referred to the chief inspector, whose decision is final.

(3) Where in the opinion of the chief inspector there are insufficient persons responsible for the supervision of one or more heating plants, the chief inspector may direct the owner or person in charge or apparently in charge of the plant to employ a sufficient number of persons who are holders of a certificate of competency the classification of which qualifies them to exercise general supervision of and be responsible for the heating plant.

Incompetent supervisors

28.(1) Where pursuant to this Act or any regulation made under this Act the operation of a boiler, pressure vessel, power plant or heating plant requires the supervision of the holder of a certificate of competency, no person shall assign duties or issue orders to the holder of a certificate of competency to operate the boiler, pressure vessel, power plant or heating plant contrary to the provisions of this Act or the regulations.

(2) Where supervision by the holder of a certificate of competency is not required by this Act or any regulation made under this Act, the owner is responsible for the proper care and safe operation of the boiler, pressure vessel, power plant, heating plant or pressure plant.

Interference with fittings

29. No person shall interfere with or render inoperative or do away with any fitting that is, by this Act or any regulation made under this Act, required to be part of a power plant, heating plant or pressure plant unless he has written permission from an inspector to do so.

Notice of unsafe conditions

30. The owner or person in charge or apparently in charge of the operation of a boiler, pressure vessel or pressure piping system shall notify the chief inspector immediately upon discovery of anything that renders it or may render it unsafe to operate or use.

Accident report

31.(1) Where any accident concerning a boiler, pressure vessel, power plant, heating plant or pressure plant occurs, the owner or person in charge or apparently in charge thereof shall send a full report in writing by registered or certified mail to the chief inspector as soon as possible after the accident, and shall specify in the report

- (a) the exact place of the accident,
- (b) the name of any person killed or injured as a result of the accident,
- (c) a description of any damage to property, and
- (d) the cause and particulars of the accident, as far as can be ascertained.

(2) After an accident referred to in subsection (1), nothing shall be removed or interfered with in, on or about the place where the accident occurred until an inspector has made an inspection thereof, except in so far as may be necessary for the purpose of preventing death or injury or protecting property.

Investigations

32.(1) Where in the opinion of the chief inspector it is necessary to investigate any matter relating to the construction, installation, testing and inspecting, condition, maintenance, repair, operation or use of a boiler, pressure vessel, power plant, heating plant or pressure plant or any accident in connection therewith, the chief inspector may investigate the matter or may direct any other person to do so.

(2) The person making the investigation shall give to the owner or person in charge or apparently in charge of the boiler, pressure vessel, power plant, heating plant or pressure plant in respect of which an investigation is to be held, not less than 24 hours notice in writing of the commencement of the investigation and its purpose.

(3) Where the person making the investigation is not an inspector, that person has all the powers of an inspector for the purpose of making the investigation.

CERTIFICATES OF COMPETENCY

Application for certification

33.(1) A person may, in accordance with the regulations, apply to the chief inspector for any certificate of competency specified in this section or any other certificate of competency as may be prescribed.

(2) There shall be the following certificates of competency:

- (a) First Class Engineer's Certificate of Competency;
- (b) Second Class Engineer's Certificate of Competency;
- (c) Third Class Engineer's Certificate of Competency;
- (d) Fourth Class Engineer's Certificate of Competency;
- (e) Fireman's Certificate of Competency;
- (f) Special Oil Well Operator's Certificate of Competency;
- (g) Pressure Welder's Certificate of Competency;
- (h) Building Operator's Certificate of Competency;
- (i) such other certificates of competency and any grade or class thereof as may be prescribed.

(3) Where a person meets the qualifications required by this Act or any regulation made under this Act and passes any examinations required to be passed by this Act or any regulation made under this Act, he shall be granted the appropriate certificate of competency by the chief inspector.

Engineer's certificate

34. The holder of a certificate of competency the classification of which authorizes him to act as an engineer may sketch, construct, install, test, inspect, operate, repair, maintain, use and give advice on all things pertaining to any power, heating or pressure plant in which he is employed, but shall not perform any pressure welding unless he holds a certificate of competency permitting him to do so.

Pressure Welder's Certificate and card

35.(1) No person shall

- (a) weld or offer to weld a boiler, pressure vessel or pressure piping system or any fitting unless that person is the holder of both a certificate of competency and a valid performance qualification card issued pursuant to the regulations, authorizing him to do that type of welding, or
- (b) require, cause or permit the welding of a boiler, pressure vessel or pressure piping system or any fitting unless the person required, caused or permitted to do the welding is the holder of both a certificate of competency and a valid performance qualification card issued pursuant to the regulations, authorizing him to do that type of welding.

(2) No person shall alter or repair a boiler or pressure vessel by welding unless he is authorized to do so by an inspector.

Cancellation, suspension and renewal

36.(1) The chief inspector may cancel, suspend or refuse to renew the certificate of competency of any person who

- (a) is incompetent or negligent in the discharge of his duties as an operating engineer,
- (b) has obtained his certificate through misrepresentation or fraud,
- (c) allows another person to operate under his certificate,

- (d) attempts to obtain a certificate of competency by false means for another person,
- (e) furnishes information for the use of the chief inspector respecting an applicant for a certificate of competency knowing that the information is false, or
- (f) contravenes any of the provisions of this Act or any regulation made under this Act.

(2) Where the chief inspector cancels, suspends or refuses to renew a certificate of competency pursuant to this section, he shall inform the applicant or the certificate holder, as the case may be, and the Executive Council Member of his reasons, in writing, for doing so, the effective date of his action and, in the case of a suspension, the duration of such suspension.

Powers of the Executive Council Member

37.(1) Where the chief inspector cancels, suspends or refuses to renew a certificate of competency, the Executive Council Member may continue or rescind such cancellation, suspension or refusal to renew, as the case may be, and may publish notice of any such cancellation, suspension or refusal to renew, as the case may be.

(2) In determining whether to continue or rescind a cancellation, suspension or refusal to renew a certificate of competency pursuant to subsection (1), the Commissioner in Executive Council may, and when so requested in writing by the certificate holder shall, appoint three persons as members of the Boiler and Pressure Vessel Advisory Board, one of whom shall be designated as chairperson, to make recommendations with respect to any matter of cancellation, suspension or refusal to renew a certificate of competency as may be referred to it by the Executive Council Member.

(3) At least two persons appointed as members of the advisory board shall be holders of a certificate of competency issued pursuant to this Act or any similar enactment of a province.

(4) The advisory board shall hold a hearing into any matter referred to it by the Executive Council Member pursuant to subsection (2) and shall make a report to the Executive Council Member with such recommendation as it considers just, including a recommendation with respect to publication of a notice of any cancellation, suspension or refusal to renew any certificate of competency as it considers necessary for the protection of the public.

(5) For the purposes of carrying out their duties in connection with the hearing and determination of any matter referred to it by the Executive Council Member pursuant to subsection (2), the advisory board shall be deemed to have the same powers as are vested in the chief inspector under this Act or any regulation made under this Act.

REGULATIONS AND OFFENCES

Regulations

38.(1) For the purpose of carrying into effect the provisions of this Act according to the true intent and meaning thereof the Commissioner in Executive Council may make such regulations as may be deemed necessary and not inconsistent with the spirit of this Act, and

without restricting the generality of the foregoing, the Commissioner in Executive Council may make regulations

- (a) concerning the survey, approval and registration of designs and changes thereto of boilers, pressure vessels, power plants, heating plants, pressure plants and concerning the registration of fittings;
- (b) concerning the construction, testing, installation, condition, inspection, repair, maintenance, operation and use of boilers, pressure vessels, pressure plants, power plants, heating plants and fittings;
- (c) adopting, with or without changes, any code or body of rules of any province relating to the design, construction, testing, installation, condition, inspection, repair, maintenance, operation or use of boilers, pressure vessels, power plants, heating plants, pressure plants or fittings;
- (d) authorizing the chief inspector to accept or provide for methods of evaluating designs submitted to him for approval and registration if they are of an equivalent standard of safety as those codes or bodies of rules adopted by the regulations;
- (e) governing applications for approval and registration of designs and changes to a design and the classification of boilers and pressure vessels for the purpose of inspection, operation and use;
- (f) governing the allocation of identification numbers of boilers and pressure vessels;
- (g) governing the method of preparing boilers and pressure vessels for inspection and the times at which an inspection is to be made;
- (h) prescribing types of certificates of competency in addition to those specified in this Act, the grades or classes within each type of certificate and the manner in which each certificate of competency and grade or class thereof may be obtained, and prescribing for any certificate of competency
 - (i) the qualifications, tests and examinations required to be met,
 - (ii) the conditions precedent and subsequent to the issue of a certificate of competency, and
 - (iii) the person authorized to issue them;
- (i) governing with respect to each certificate of competency, the matters that the holder of a certificate of competency is authorized to do;
- (j) prohibiting any person from doing any act or thing to or operating or having charge of any type of pressure vessel, including a pressure vessel under the size of .0425 cubic metres, that is a potential hazard to the public unless he is the holder of a certificate of competency which qualifies him to operate or have charge of the pressure vessel;
- (k) specifying for the purposes of paragraph (j) what constitutes a hazard to the public;
- (l) concerning the making of any inspection or investigation and any matter required in connection therewith;
- (m) concerning the issue, renewal, suspension or cancellation of any certificate of competency;
- (n) concerning the amount of fees payable and the method of payment for any matter or thing under this Act and the regulations;

- (o) concerning any calculation to be made under this Act or the regulations;
- (p) requiring data and reports of inspections from any person and the matters to be contained in the report and the times at which it is to be submitted;
- (q) governing welding procedures relating to the construction of boilers, pressure vessels, fittings and pressure piping systems;
- (r) providing for a system of inspection, approval and registration of welding procedures and matters relating thereto and providing for tests, the issue of performance qualification cards and governing the persons who may issue the cards and the conditions attached to them;
- (s) governing the issue and removal of performance qualification cards issued to a welder.

(2) Any regulation made under this Act may be specific or general in its application or apply to the whole or any part of the Yukon.

(3) Where any code or body of rules relating to the design, construction, testing, installation, inspection, repair, maintenance, operation or use of a power plant, heating plant, pressure plant or any fitting is adopted by regulation and any conflict arises between the code or body of rules and other regulations made under this section, the provisions of the other regulations prevail.

General offence and penalty

39.(1) Any person who contravenes any provision of this Act or any regulation made under this Act is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 and, in default of payment, to imprisonment for a term not exceeding one year, or to both fine and imprisonment.

(2) The owner of any power plant, heating plant or pressure plant which is involved in any contravention of this Act or any regulation made under this Act is guilty of an offence and is liable on summary conviction to a fine of not more than \$5,000 and, in default of payment, to imprisonment for a term not exceeding one year, or to both fine and imprisonment, unless he proves to the satisfaction of the judge that at the time of the offence, the power plant, heating plant or pressure plant was not being operated in accordance with his instructions, express or implied.

CHAPTER 12

BRANDS ACT

Interpretation

1. In this Act,

- “brand” means any character or combination of characters impressed or intended to be impressed upon the skin or hide of stock for the purpose of denoting the ownership thereof;
- “cattle” means any bull, cow, ox, heifer, steer or calf;
- “horse” means any horse, mare, gelding, colt or filly and includes any ass or mule;
- “owner” means any person in whose name a brand is registered, and includes the agent of such person;
- “register” means the register of brands referred to in section 5;
- “registered” means recorded in the register;
- “representative” means a member of the Royal Canadian Mounted Police, a health officer appointed under the Public Health Act or a conservation officer appointed under the Wildlife Act;
- “stallion” means an entire male horse over two years old;
- “stock” means cattle or horses.

Application for registration

2.(1) Any person may make a written application to the Executive Council Member for registration of a brand.

(2) Every person who is the owner of a stallion shall make a written application to the Executive Council Member for registration of a brand.

(3) An application referred to in this section shall

- (a) state the name and address of the applicant,
- (b) state the part of the animal where the brand is to be impressed,
- (c) be accompanied by a facsimile of the brand that the applicant wishes to use, and
- (d) be signed by the applicant or his agent.

Refusal of application

3.(1) The Executive Council Member may refuse to approve an application made under subsection 2(1) or (2).

(2) Where the Executive Council Member refuses to approve an application made under subsection 2(2) he may, after consultation with the applicant, register an alternative brand and the provisions of this Act shall apply thereto.

(3) The Executive Council Member shall not approve an application made under subsection 2(1) or (2) where the application requests the registration of a brand that, in the opinion of the Executive Council Member, is identical with or closely resembles a royal cipher, a registered brand, the initials "R.C.M.P." or the brand used by the Royal Canadian Mounted Police.

Registration and brand certificate

4.(1) Subject to subsection (2), where the Executive Council Member approves an application made under subsections 2(1) or (2), he shall

- (a) register the brand in the name of the applicant, and
- (b) issue a brand certificate to the applicant that
 - (i) shows a facsimile of the brand,
 - (ii) states the part of the animal where the brand is to be impressed,
 - (iii) states the name and address of the owner, and
 - (iv) shows the date of the registration.

(2) Where an application for registration of a brand is made by a corporation, the corporation shall designate an individual in whose name the brand shall be registered and to whom the brand certificate referred to in subsection (1) shall be issued.

Registration of brands

5.(1) There shall be maintained at the office of the Executive Council Member, or at such other place or places as the Executive Council Member may designate, a register of brands in which shall be recorded

- (a) each registered brand,
- (b) the name and address of each owner, and
- (c) the name and address of each person in whose name a brand has been registered.

(2) There shall not be entered in the register any notice of any trust.

(3) The register shall be open for inspection by the public at all reasonable times.

Term of registration

6.(1) A brand shall remain registered in the name of its owner until

- (a) the owner makes a written request to the Executive Council Member for cancellation of the registration,
- (b) the Executive Council Member pursuant to section 10 registers a brand in the name of the person to whom it has been transferred, or
- (c) the Executive Council Member is satisfied that the owner does not have a bona fide intention of using the brand in respect of stock.

(2) Notwithstanding subsection (1), where an owner dies the Executive Council Member may upon written application

- (a) cancel the registration of the brand, if he is satisfied that the brand is no longer borne by any stock, or

- (b) transfer the brand

if notice of the intended cancellation or transfer has been published by the owner's executor or the transferee in a newspaper that is circulated in the Yukon.

Change of address of owner

7. The Executive Council Member may change the address of an owner as shown in the register and on his brand certificate on receipt of a written application from the owner requesting such change.

Property in registered brand

8. A brand registered under this Act is the personal property of its owner who has the exclusive right to its use.

Effect and size of brand

9.(1) Where an impression of a registered brand is placed upon any stock in accordance with subsection (2), that fact shall be received in all courts and legal proceedings as prima facie proof that the owner of the brand is the owner of that stock.

(2) An impression of a brand in stock shall be made by an iron

- (a) that has a face that is in no place less than six millimetres in width, and
- (b) that is capable of making an impression of the brand not less than 75 millimetres in either height or width, as the case may be.

Transfer of brands

10.(1) Where an owner wishes to transfer a registered brand, he shall deliver to the transferee

- (a) the brand certificate issued to him under paragraph 4(1)(b), and
- (b) a declaration in the prescribed form.

(2) Where a transferee receives a certificate and declaration referred to in subsection (1), he shall forthwith forward that certificate and declaration to the Executive Council Member accompanied by

- (a) a written application for registration of the brand that was transferred, if at the time of application he is not an owner, or
- (b) a written application for cancellation of the brand that was transferred, or the registered brand of which he is an owner, if at the time of application he is an owner.

(3) An application made pursuant to paragraphs (1)(a) or (b) shall be in the prescribed form and shall contain such information as may be required.

(4) Where the Executive Council Member receives an application made pursuant to paragraph (2)(a), he shall

- (a) register the brand in the name of the transferee,
- (b) deliver to the transferee a new brand certificate, and

- (c) cancel the registration and brand certificate of the transferor.

(5) Where the Executive Council Member receives an application made pursuant to paragraph (2)(b), he shall cancel the registration and brand certificate requested by the transferee.

Sale of stock

11.(1) Where any stock is sold, the vendor shall deliver to the purchaser a signed memorandum setting forth

- (a) the place and date of sale,
- (b) the number of stock sold,
- (c) the kind, age, sex and colour of each head of stock sold, and
- (d) a full description of and the location of all brands impressed on each head of stock.

(2) Every person who ships or moves stock impressed with a brand other than a brand registered in his name shall, at the request of the Executive Council Member or his representative, produce a memorandum of sale listing the stock and signed by the owner of that brand.

Concealment or alteration of brands

12.(1) No person, without the written authority of the Executive Council Member or his representative, shall obliterate, alter, deface or remove any brand on the hide of any stock whether that stock is dead or alive.

(2) No person shall remove the hide from the carcass of any stock that is found dead, unless that person is the owner of the stock or an agent of the owner.

(3) Every person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not less than \$250 and in default of payment, to imprisonment for a term not exceeding two years.

Seizure of stock and hides

13.(1) Where the Executive Council Member or his representative finds any stock with a mutilated brand or any hide that he believes has been improperly removed from a carcass, he may seize and, where he deems necessary, take away such stock or hides.

(2) The Executive Council Member or his representative shall deliver up possession of any stock or hides seized under subsection (1) to any person who

- (a) supplies evidence of ownership of the stock or hides that is satisfactory to the Executive Council Member or his representative,
- (b) at the request of the Executive Council Member, pays the complete cost and expenses incurred for seizing, taking away and detaining the stock or hides, and
- (c) undertakes to indemnify the Executive Council Member or his representative in respect of all claims by other persons having a superior claim to the stock or hides.

(3) Subject to subsection (2), the Executive Council Member may at any time sell by public auction any stock or hides seized under subsection (1).

(4) Where money obtained from the sale of stock or hides seized under subsection (1) is not claimed within six months following the date of sale, it shall be paid into the Yukon Consolidated Revenue Fund.

Stallions

14.(1) The owner of a stallion shall impress, or cause to be impressed, his brand upon such stallion upon the part set out in the brand certificate.

(2) The owner of a stallion shall keep such stallion confined within a building, corral or fenced field.

(3) The Executive Council Member or his representative may destroy or geld any stallion found running at large.

Unlawful use of brands

15.(1) Every person who

- (a) impresses or assists in impressing upon any stock a brand that is not registered,
- (b) impresses or assists in impressing upon any stock a brand other than the registered brand of the owner of the stock,
- (c) being the owner of a brand, permits the use of his branding-iron by a person who is not his agent or servant,
- (d) is the owner of or has in his possession any stallion on which a registered brand has not been impressed, or
- (e) permits his stallion to run at large,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$800 and in default of payment, to imprisonment for a term not exceeding two years.

(2) Where a person is charged with an offence under paragraph (1)(a) and it is shown that he was the owner of or in possession of any stock impressed with a brand that is not registered, that fact shall be received as prima facie proof that he impressed or assisted in impressing that brand upon such stock.

(3) Where a person is charged with an offence under paragraph (1)(b), the onus of proving that he is the owner of the stock alleged to have been impressed with a brand other than the registered brand of the owner shall be on the accused.

Offence to obstruct or interfere

16. Any person who obstructs or interferes with the Executive Council Member or his representative in carrying out any provision of this Act is guilty of an offence.

General penalty

17. Every person who violates any provision of this Act for which no penalty is prescribed is guilty of an offence and liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

Publication of registered brands

18. The Executive Council Member may publish in the Yukon Gazette from time to time a complete list of registered brands together with the name and address of each owner and the area within which each owner's stock is usually found.

Regulations

19. The Commissioner in Executive Council may make regulations

- (a) prescribing forms required under this Act;
 - (b) prescribing fees for registration and transfer of registration;
 - (c) generally for carrying out the purposes and provisions of this Act.
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CHAPTER 13

BUILDING STANDARDS ACT

Interpretation

1. In this Act,

“building code” means

- (a) the National Building Code of Canada 1980 as amended or replaced from time to time, and
- (b) the Canada Building Code for the North 1968 as amended or replaced from time to time;

“structure” means anything constructed or erected which requires location on the ground or is attached to something having a location on the ground.

Exemption

2. This Act does not apply to any building or structure within a municipality.

Regulations

3. The Commissioner in Executive Council may from time to time make regulations

- (a) applying the provisions or standards of any building code in whole or in part, with or without modifications, to any area not within a municipality;
 - (b) respecting the issuing of building permits and fixing fees for issuing building permits in any area not within a municipality;
 - (c) exempting any area of the Yukon or any class of structure from the provisions of this Act;
 - (d) generally, for the purpose of carrying out the provisions of this Act.
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CHAPTER 14

BULK SALES ACT

Interpretation

1. In this Act,

“buyer” means a person who acquires stock under a sale in bulk;

“creditor” means any creditor, including an unsecured trade creditor and a secured trade creditor;

“proceeds of the sale” includes the purchase price and any security therefor or for any part thereof, and any other consideration payable to the seller or passing from the buyer to the seller on a sale in bulk, and the money realized by a trustee under a security or by the sale or other disposition of any property coming into his hands as the consideration or part of the consideration for the sale, less the proper and reasonable costs of the seller’s lawyer for completing the sale;

“registrar” means the registrar of personal property appointed under the Personal Property Security Act;

“sale”, whether used alone or in the expression “sale in bulk”, includes a transfer, conveyance, barter or exchange, but does not include a pledge, charge or mortgage;

“sale in bulk” means a sale of stock or part thereof, out of the usual course of business or trade of the seller;

“secured trade creditor” means a person to whom a seller is indebted, whether or not the debt is due,

(a) for stock, money or services furnished for the purpose of enabling the seller to carry on business, or

(b) for rental of premises in or from which the seller carries on business, and who holds security or is entitled to a preference in respect of his claim;

“seller” means a person who sells stock under a sale in bulk;

“stock” means

(a) the goods, wares, merchandise or chattels in which a person trades or that he produces or that are the output of business, or

(b) the fixtures, goods and chattels with which a person carries on a trade or business;

“unsecured trade creditor” means a person to whom a seller is indebted for stock, money or services, furnished for the purpose of enabling the seller to carry on a business, whether or not the debt is due, and who holds no security or who is entitled to no preference in respect of his claim.

Application of the Act

2.(1) This Act applies only to sales in bulk by

(a) persons who, as their ostensible occupation or part thereof, buy and sell goods, wares or merchandise,

(b) commission merchants,

(c) manufacturers, and

- (d) proprietors of hotels, motels, autocourts, rooming houses, restaurants, motor vehicle service stations, oil or gasoline stations or machine shops.

(2) Nothing in this Act applies to or affects a sale in bulk by an executor, an administrator, a trustee of the estate of a mentally incompetent or incapable person, a creditor realizing upon his security, a receiver, an assignee or trustee for the benefit of creditors, a trustee under the Bankruptcy Act (Canada), a liquidator or official receiver, or a public official acting under judicial process.

Judicial exemption

3.(1) A seller may apply to the Supreme Court for an order exempting a sale in bulk from the application of this Act and the Supreme Court, if it is satisfied on such evidence as it thinks necessary that the sale is advantageous to the seller and will not impair his ability to pay his creditors in full, may make the order, and thereafter this Act, except section 7, does not apply to the sale.

(2) The Supreme Court may require notice of the application for the order to be given to the creditors of the seller or such of them as it directs and it may in the order impose such terms and give such directions with respect to the disposition of the proceeds of the sale or otherwise as it thinks fit.

Statement as to creditors

4.(1) The buyer, before paying or delivering to the seller any part of the proceeds of the sale other than the part mentioned in section 6, shall demand of and receive from the seller, and the seller shall deliver to the buyer, a statement as to the seller's creditors in the prescribed form verified by the affidavit of the seller.

(2) The statement shall show the names and addresses of the unsecured trade creditors and the secured trade creditors of the seller and the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by the seller to each of them and, with respect to the claims of the secured trade creditors, the nature of their security and whether their claims are due or, in the event of sale, become due on the date fixed for the completion of the sale.

Preference or priority

5. From and after the delivery of the statement mentioned in section 4, no preference or priority is obtainable by any creditor of the seller in respect of the stock, or the proceeds of the sale thereof, by attachment, garnishment proceedings, contract or otherwise.

Down payment

6. The buyer may, before he receives the statement mentioned in section 4, pay to the seller on account of the purchase price a sum not exceeding ten percent of the purchase price which shall form part of the proceeds of sale and which the seller shall hold in trust

- (a) for the buyer until completion of the sale, or if the sale is not completed and the buyer becomes entitled to repayment of it, until it is repaid to the buyer, or

- (b) where the sale is completed and a trustee has been appointed, for the trustee until the seller complies with paragraph 11(b).

Particulars for creditor

7. Any creditor of a seller is entitled to demand of the buyer particulars in writing of the sale in bulk, in which case the buyer shall forthwith deliver such particulars in writing to the creditor.

Payment to seller and creditors

8.(1) Where the buyer has received the statement mentioned in section 4, he may pay or deliver the proceeds of the sale to the seller and thereupon acquire the property of the seller in the stock,

- (a) if the statement discloses that the claims of the unsecured trade creditors of the seller do not exceed of a total of \$2,500 and that the claims of the secured trade creditors of the seller do not exceed a total of \$2,500 and the buyer has no notice that the claims of the unsecured trade creditors of the seller exceed a total of \$2,500 or that the claims of the secured trade creditors of the seller exceed a total of \$2,500,
- (b) if the seller delivers a statement verified by his affidavit showing that the claims of all unsecured trade creditors and all secured trade creditors of the seller of which the buyer has notice have been paid in full, or
- (c) if adequate provision has been made for the immediate payment in full of
 - (i) all claims of the unsecured trade creditors of the seller of which the buyer has notice, and
 - (ii) all claims of secured trade creditors of the seller which are or become due and payable upon completion of the sale of which the buyer has notice,

but, where any such creditor has delivered a waiver in the prescribed form, no provision need be made for the immediate payment of his claim.

(2) Where a sale is completed in accordance with paragraph (1)(c), the buyer shall ensure that all such claims are paid in full forthwith after the completion of the sale.

Payment to trustee

9.(1) Where the buyer has received the statement mentioned in section 4 and if section 8 does not apply, he may pay or deliver the proceeds of the sale to the trustee appointed under subsection 10(1) and thereupon acquire the property of the seller in the stock, if the seller delivers to the buyer

- (a) the consent to the sale in the prescribed form of unsecured trade creditors of the seller representing not less than 60 percent in number and amount of the claims that exceed \$500 of all the unsecured trade creditors of the seller of whose claims the buyer has notice, and
- (b) an affidavit of the seller deposing
 - (i) that he has delivered to all unsecured trade creditors and secured trade creditors personally or by certified mail addressed to them at their latest known addresses at least 14 days before the date fixed for the completion of the sale copies of the contract of the

sale in bulk, or if there is no written contract, written particulars of the sale, the statement mentioned in section 4, and the statement of affairs in the prescribed form, and

- (ii) that the affairs of the seller as disclosed in the statement of affairs have not materially changed since it was made.

(2) Copies of the documents mentioned in paragraph (1)(b) shall be attached as exhibits to the affidavit mentioned therein.

Appointment of trustee

10.(1) Where a sale in bulk is being completed under section 9, a trustee shall be appointed

- (a) by the seller with the consent in the prescribed form of his unsecured trade creditors representing not less than 60 percent in number and amount of the claims that exceed \$500 of the unsecured trade creditors as shown by the statement mentioned in section 4, or
- (b) by the Supreme Court upon the application of any person interested where the unsecured trade creditors of the seller representing not less than 60 percent in number and amount of the claims that exceed \$500 as shown by the statement mentioned in section 4, have consented to the sale in bulk but have not consented to the appointment of a trustee, or where the trustee appointed under paragraph (a) is unable or unwilling to act.

(2) Every trustee shall, unless the Supreme Court otherwise orders, forthwith give security in cash or by bond satisfactory to the Supreme Court for the due accounting for all property received by him as trustee and for the due and faithful performance of his duties, and the security shall be deposited with the clerk of the Supreme Court, shall be given in favour of the creditors generally and may be enforced by any succeeding trustee or by any one of the creditors on behalf of all by direction of the Supreme Court and the amount of the security may be increased or decreased by the Supreme Court at any time.

Sale with trustee

11. Where a sale in bulk is being completed under section 9,

- (a) the seller shall deliver to the trustee a statement verified by the affidavit of the seller showing the names and addresses of all creditors of the seller and the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by the seller to each of them,
- (b) the seller shall pay to the trustee all money received by him from the buyer on account of the purchase price under section 6, and
- (c) the buyer shall pay or deliver the balance of the proceeds of the sale to the trustee.

Affidavit after completion

12.(1) Within five days after the completion of a sale in bulk, the buyer shall file in the office of the registrar an affidavit setting out the particulars of the sale, including the subject matter thereof and the name and address of the trustee, if any, and exhibiting copies of the statement mentioned in section 4, the statement, if any, mentioned in paragraph 8(1)(b), the

waivers, if any, mentioned in paragraph 8(1)(c) and the consent and affidavit, if any, mentioned in section 9.

- (2) If the buyer fails to comply with subsection (1), the Supreme Court may at any time,
- (a) upon the application of the trustee or any creditor, order the buyer to comply therewith,
 - (b) upon the application of the buyer, extend the time for compliance with subsection (1), or
 - (c) upon the application of the buyer after the lapse of one year from the date of the completion of the sale in bulk and upon being satisfied
 - (i) that the claims of all unsecured trade creditors and secured trade creditors of the seller existing at the time of the completion of the sale, have been paid in full,
 - (ii) that no action or proceeding is pending to set aside the sale or to have the sale declared void, and
 - (iii) that the application is made in good faith and not for any improper purpose,
- make an order dispensing with compliance with subsection (1).

Distribution by trustee

13.(1) Where the proceeds of the sale are paid or delivered to a trustee under section 11, the trustee is a trustee for the general benefit of the creditors of the seller and he shall distribute the proceeds of the sale among the creditors of the seller, and in making the distribution all creditors claims shall be proved in like manner and are subject to like contestation before a judge and are entitled to like priorities as in the case of a distribution under the Bankruptcy Act (Canada) and shall be determined as of the date of the completion of the sale.

(2) Before making the distribution, the trustee shall cause a notice thereof to be published in at least two issues of a newspaper having general circulation in the locality in which the stock was situated at the time of the sale, and the trustee shall not make the distribution until at least 14 days after the last of such publications.

Fee of trustee

14.(1) The Commissioner in Executive Council may make regulations establishing a tariff of fees for trustees and, when any of the fees payable to a trustee is to be deducted from the money to be paid to the creditors, the fee paid may not exceed the amount fixed by the tariff.

(2) Subject to subsection (3) and in the absence of an arrangement between the seller and the trustee to the contrary, the fee, together with any disbursements made by the trustee, shall be deducted by him from the money to be paid to the creditors.

(3) Where the proceeds of the sale exceed the amount required to pay in full all indebtedness of the seller to his creditors, the fee of the trustee together with any disbursements made by the trustee shall be deducted by him from the excess proceeds to the extent of that excess, and any portion of the trustee's fee remaining unpaid thereafter shall be deducted as provided in subsection (2).

Persons who may make affidavits

15.(1) Subject to subsections (2) and (3), an affidavit required to be made under this Act by a seller may be made by an authorized agent of the seller and, if the seller is a corporation, by an officer, director or manager of the corporation.

(2) Where the seller is a partnership, the affidavit shall be made severally by each of the partners or his authorized agent.

(3) An affidavit by a person other than the seller may be made only by a person who has a personal knowledge of the facts sworn to, and the fact that he has the personal knowledge shall be stated in the affidavit.

Non-complying sales

16.(1) Unless the buyer has complied with this Act, a sale in bulk is voidable as against the creditors of the seller.

(2) Where a sale in bulk is set aside or declared void and the buyer has received or taken possession of the stock in bulk, he is personally liable to account to the creditors of the seller for the value thereof, including all money, security or property realized or taken by him from, out of, or on account of the sale or other disposition by him of the stock in bulk.

Action to set sale aside

17. An action or proceeding to set aside or have declared void a sale in bulk may be brought or taken by any creditor of the seller and, if the seller is adjudged bankrupt, by the trustee of his estate.

Burden of proof

18. In an action or proceeding in which a sale in bulk is attacked or comes in question, whether directly or indirectly, the burden of proof that this Act has been complied with is upon the person upholding the sale in bulk.

Limitation period

19. No action shall be brought or proceeding taken to set aside or have declared void a sale in bulk for failure to comply with this Act unless the action is brought or the proceeding is taken either before the documents are filed under section 12 or within six months after the date on which the documents were so filed.

Regulations

20. The Commissioner in Executive Council may make regulations prescribing the forms to be used under this Act and requiring the payment of fees in respect of documents filed with the registrar under section 12.

CHAPTER 15

BUSINESS CORPORATIONS ACT

PART 1

INTERPRETATION AND APPLICATION

Definitions

1. In this Act,

- “affairs” means the relationships among a corporation, its affiliates and the shareholders, directors and officers of those bodies corporate but does not include the business carried on by those bodies corporate;
- “affiliate” means an affiliated body corporate within the meaning of subsection 2(1);
- “articles” means the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of arrangement, articles of dissolution and articles of revival, and includes an amendment to any of them;
- “associate” when used to indicate a relationship with any person means
- (a) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than ten percent of the voting rights under all circumstances or under any circumstances that have occurred and are continuing, or a currently exercisable option or right to purchase those shares or those convertible securities,
 - (b) a partner of that person acting on behalf of the partnership of which they are partners,
 - (c) a trust or estate in which that person has a substantial interest or in respect of which he serves as a trustee or in a similar capacity,
 - (d) a spouse of that person, or
 - (e) a relative of that person or of his spouse if that relative has the same residence as that person;
- “auditor” includes a partnership of auditors;
- “beneficial interest” means an interest arising out of the beneficial ownership of securities;
- “beneficial ownership” includes ownership through a trustee, legal representative, agent or other intermediary;
- “body corporate” includes a company or other body corporate wherever or however incorporated;
- “Canada corporation” means a body corporate incorporated by or under an Act of the Parliament of Canada;
- “corporation” means a body corporate incorporated or continued under this Act and not discontinued under this Act;
- “debt obligation” means a bond, debenture, note or other evidence of indebtedness or guarantee of a corporation, whether secured or unsecured;

- “director” means a person occupying the position of director by whatever name called and “directors” and “board of directors” includes a single director;
- “distributing corporation” means a corporation
- (a) any of whose issued shares, or securities which may or might be exchanged for or converted into shares, were part of a distribution to the public, and
 - (b) which has more than 15 shareholders;
- “extra-territorial corporation” means a body corporate which is not a corporation or a Yukon company;
- “incorporator” means a person who signs articles of incorporation;
- “individual” means a natural person;
- “liability” includes a debt of a corporation arising under section 42, subsection 193(19) or paragraph 243(3)(g) or (h);
- “ordinary resolution” means a resolution
- (a) passed by a majority of the votes cast by the shareholders who voted in respect of that resolution, or
 - (b) signed by all the shareholders entitled to vote on that resolution;
- “person” includes an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative;
- “prescribed” means prescribed by the regulations;
- “professional corporation” means a corporation that has the words “Professional Corporation” as the last words of its name;
- “redeemable share” means a share issued by a corporation that the corporation, by its articles
- (a) is required to purchase or redeem at a specified time or on the happening of a certain event,
 - (b) is required to purchase or redeem on the demand of a shareholder, or
 - (c) may purchase or redeem on demand of the corporation,
- and includes a share issued by a corporation that is purchased or redeemed by a combination of any of the methods referred to in paragraphs (a) to (c);
- “registrar” means the registrar of corporations or a deputy registrar of corporations appointed under section 263;
- “registrar of securities” means the registrar appointed under the securities Act;
- “security”, except in Part 6, means a share of any class or series of shares or a debt obligation of a corporation and includes a certificate evidencing such a share or debt obligation;
- “security interest” means an interest in or charge on property of a corporation to secure payment of a debt or performance of any other obligation of the corporation;
- “send” includes deliver;
- “series” means, in relation to shares, a division of a class of shares;
- “special resolution” means a resolution passed by a majority of not less than two-thirds of the votes cast by the shareholders who voted in respect of that resolution or signed by all the shareholders entitled to vote on that resolution;
- “unanimous shareholder agreement” means
- (a) a written agreement to which all the shareholders of a corporation are or are deemed to be parties, whether or not any other person is also a party, or
 - (b) a written declaration by a person who is the beneficial owner of all the issued shares of a corporation,
- that provides for any of the matters enumerated in subsection 148(1);

“Yukon company” means a body corporate incorporated and registered or deemed to have been incorporated or registered or otherwise subject to the provisions of the Companies Act or any of its predecessors but does not include a body corporate incorporated pursuant to the provisions of the Societies Act or the Cooperative Associations Act.

Relationship of corporations

2.(1) For the purposes of this Act,

- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person, and
- (b) if two bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other.

(2) For the purposes of this Act, a body corporate is controlled by a person if

- (a) securities of the body corporate to which are attached more than 50 percent of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of that person, and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

(3) For the purposes of this Act, a body corporate is the holding body corporate of another if that other body corporate is its subsidiary.

(4) For the purposes of this Act, a body corporate is a subsidiary of another body corporate if

- (a) it is controlled by
 - (i) that other,
 - (ii) that other and one or more bodies corporate, each of which is controlled by that other, or
 - (iii) two or more bodies corporate, each of which is controlled by that other, or
- (b) it is a subsidiary of a body corporate that is that other’s subsidiary.

Distribution to the public

3.(1) For the purposes of this Act, securities of a corporation

- (a) issued on a conversion of other securities, or
- (b) issued in exchange for other securities

are deemed to be securities that are part of a distribution to the public if those other securities were part of a distribution to the public.

(2) Subject to subsection (3), for the purposes of this Act, a security of a body corporate

- (a) is part of a distribution to the public if, in respect of the security, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange takeover bid circular or similar document under the laws of Canada, a province or territory of Canada or a jurisdiction outside Canada, or

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

(3) On the application of a corporation, the registrar of securities may determine that a security of the corporation is not or was not part of a distribution to the public if he is satisfied that his determination would not prejudice any security holder of the corporation.

Execution in counterpart

4. A document or writing required or permitted by this Act may be signed or executed in separate counterparts and the signing or execution of a counterpart shall have the same effect as the signing or execution of the original.

Application of the Act

5.(1) This Act applies to every corporation and Yukon company, except where it is otherwise expressly provided.

(2) Notwithstanding the repeal of the Companies Act

- (a) all memoranda of association and amendments thereto,
- (b) all cancellations, suspensions, proceedings, acts, registrations, strike-offs and things, and
- (c) all affidavits, declarations, articles of association, resolutions, special resolutions, and documents

lawfully granted, issued, imposed, made, taken, done, commenced, filed or passed, under any provision of that Act or any of its predecessors, shall be conclusively deemed to have been granted, issued, imposed, made, taken, done, commenced, filed or passed, under this Act and shall be continued under this Act as though they had, in fact, been granted, issued, imposed, made, taken, done, commenced, filed or passed, under this Act.

(3) A Yukon Company in existence when this Act comes into force or revived under this Act shall be deemed to be continued under this Act.

(4) Where any provision of the memorandum of association or any amendment thereto, articles of association, resolutions or special resolutions of a Yukon company, except a provision which contravenes section 124, that was valid and in force at the time that this Act comes into force, is inconsistent with, repugnant to, or not in compliance with this Act, such provision continues to be valid and in effect for a period of two years after the date of the coming into force of this section, but any amendment to any such provision shall be made in accordance with this Act.

(5) Unless otherwise specifically provided for by this Act, any provision to which subsection (4) applies that has not been amended in accordance with this Act within the two year period shall be deemed upon the expiry of such period to have been amended to the extent necessary to bring the terms of the provision into conformity with this Act.

Yukon companies

6.(1) Where the words “the objects for which the company is established are”, or words of like effect, are contained in the memorandum of association of a Yukon company, those words shall be deemed to be struck out and the words “the businesses that the corporation is permitted to carry on are restricted to the following” shall be deemed to be substituted therefore.

(2) Subject to subsection 19(3), where the memorandum of association of a Yukon company excludes or is deemed to exclude any of the powers authorized by any former Companies Act, it is deemed to restrict the corporation from exercising the power so excluded.

PART 2 INCORPORATION

Incorporation

7. One or more persons may incorporate a corporation by signing articles of incorporation and complying with section 9.

Articles of incorporation

8.(1) Articles of incorporation shall be in the prescribed form and shall set out, in respect of the proposed corporation,

- (a) the name of the corporation,
- (b) the classes and any maximum number of shares that the corporation is authorized to issue, and
 - (i) if there are two or more classes of shares, the special rights, privileges, restrictions and conditions attaching to each class of shares, and
 - (ii) if a class of shares may be issued in series, the authority given to the directors to fix the number of shares in, and to determine the designation of each series, and the rights, privileges, restrictions and conditions attaching to the shares of each series,
- (c) if the right to transfer shares of the corporation is to be restricted, a statement that the right to transfer shares is restricted and either
 - (i) a statement of the nature of the restrictions, or
 - (ii) a statement that the nature of the restrictions appears in a unanimous shareholder agreement,
- (d) the number of directors or, subject to paragraph 108(a), the minimum and maximum number of directors of the corporation, and
- (e) any restrictions on the businesses that the corporation may carry on.

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

(3) Subject to subsection (4), if the articles or a unanimous shareholder agreement require a greater number of votes of directors or shareholders than that required by the Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.

(4) The articles may not require a greater number of votes of shareholders to remove a director than the number required by section 110.

Delivery of articles of incorporation

9.(1) An incorporator shall send to the registrar

- (a) articles of incorporation, and
- (b) the documents required by subsection 14(3) and sections 22 and 107.

(2) If the name of the corporation set out in the articles of incorporation contains the words “Professional Corporation”, the incorporator shall also send to the registrar satisfactory evidence of the approval of the articles by or on behalf of the governing body or licensing agency of the appropriate profession or occupation.

Certificate of incorporation

10. On receipt of the documents required under section 9 and the prescribed fees, the registrar shall issue a certificate of incorporation in accordance with section 266.

Effect of certificate of incorporation

11.(1) A corporation comes into existence on the date shown in the certificate of incorporation.

(2) A certificate of incorporation is conclusive proof for the purposes of this Act and for all other purposes

- (a) that the provisions of this Act in respect of incorporation and all requirements precedent and incidental to incorporation have been complied with, and
- (b) that the corporation has been incorporated under this Act as of the date shown in the certificate of incorporation.

Corporate name

12.(1) The word “Limited”, “Limitee”, “Incorporated”, “Incorporee” or “Corporation” or the abbreviation “Ltd.”, “Ltee”, “Inc.” or “Corp.” shall be the last word of the name of every corporation but a corporation may use and may be legally designated by either the full or the abbreviated form notwithstanding that the full or abbreviated form appears on its certificate of incorporation.

(2) Notwithstanding subsection (1), the words “Professional Corporation” shall be the last words of the name of every professional corporation whose incorporation is specifically permitted by any other Act.

(3) No person other than a body corporate shall carry on business within the Yukon under any name or title that contains the word “Limited”, “Limitee”, “Incorporated”, “Incorporee” or “Corporation”, or the abbreviation “Ltd.”, “Ltee.”, “Inc.” or “Corp.”, or the words “Professional Corporation”.

(4) A person carrying on business in contravention of subsection (3) is guilty of an offence and liable to a fine of not more than \$5,000.

(5) Subject to subsection 14(1), a corporation may set out its name in its articles in an English form or a French form or an English and French form or in a combined English and French form and the corporation may use and may be legally designated by any of those forms.

(6) Subject to subsection 14(1), a corporation may, outside Canada, use and may be legally designated by a name in any language form.

(7) A corporation shall set out its name in legible characters in or on all contracts, invoices, negotiable instruments, written advertisements and orders for goods or services, issued or made by or on behalf of the corporation.

(8) Subject to subsections (7) and (9) and subsection 14(1) and to section 87 of the Partnership Act, a corporation may carry on business under or identify itself by a name other than its corporate name.

(9) Where a corporation carries on business or identifies itself by a name other than its corporate name, the name shall not contain a word referred to in subsection (3).

Reservation of name

13.(1) The registrar may, on request, reserve for 90 days a name for

- (a) an intended corporation,
- (b) a corporation about to change its name, or
- (c) an extra-territorial corporation about to continue as a corporation pursuant to section 190.

(2) If requested to do so by the incorporators, a corporation or an extra-territorial corporation referred to in paragraph (1)(c), the registrar shall assign to the corporation as its name a designated number determined by him.

Prohibited names

14.(1) A corporation shall not have a name

- (a) that is prohibited by the regulations or contains a word or expression prohibited by the regulations,
- (b) except in the circumstances and on the conditions prescribed by the regulations, that is identical to the name of
 - (i) a corporation or intended corporation reserved under subsection 13(1),
 - (ii) a body corporate incorporated under the laws of the Yukon whether in existence or not,
 - (iii) an extra-territorial corporation registered in the Yukon, or
 - (iv) a Canada corporation,
- (c) except in the circumstances and on the conditions prescribed by the regulations, that is similar to the name of
 - (i) a corporation or intended corporation reserved under subsection 13(1),
 - (ii) a body corporate incorporated under the laws of the Yukon,

- (iii) an extra-territorial corporation registered in the Yukon, or
 - (iv) a Canada corporation,
- if the use of that name is confusing or misleading, or
- (d) that does not meet the requirements prescribed by the regulations.

(2) Where a body corporate incorporated under the laws of the Yukon gives an undertaking to dissolve or change its name and the undertaking is not carried out within the time specified, the registrar may, by notice in writing giving reasons, direct the body corporate to change its name within 60 days of the date of the notice to a name of which the registrar approves.

(3) The prescribed documents relating to corporate names shall be sent to the registrar.

Direction to corporation to change its name

15.(1) If, through inadvertence or otherwise, a corporation comes into existence with a name or acquires a name that contravenes section 12 or 14, the registrar may, by notice in writing giving reasons, direct the corporation to change its name within 60 days of the date of the notice to a name of which the registrar approves.

(2) The registrar may give a notice under subsection (1) on his or her own initiative or at the request of a person who feels aggrieved by the name that contravenes section 12 or 14, as the case may be.

(3) If a corporation is directed to change its name under subsection (1) or subsection 14(2) and does not appeal the request of the registrar within 60 days of the date of the notice, the registrar may revoke the name of the corporation and assign to it a number designated or a name approved by the registrar and, until changed in accordance with section 175, the name of the corporation is the number or name so assigned.

(4) If the registrar is satisfied that a professional corporation has ceased to be the holder of a subsisting permit as a professional corporation issued under an Act governing a profession or occupation, the registrar may, on giving notice to the professional corporation of his or her intention to do so, change the name of the corporation to exclude the words "Professional Corporation" and replace them with any other word referred to in subsection 12(3).

Certificate of amendment

16.(1) When a corporation has had its name revoked or changed and a name assigned to it under subsection 15(3) or (4), the registrar shall issue a certificate of amendment showing the new name of the corporation.

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

Pre-incorporation contracts

17.(1) This section applies unless the person referred to in subsection (2) and all parties to the contract referred to in that subsection

- (a) believe that the body corporate exists and is incorporated under, or

(b) intend that the body corporate is to be incorporated under the laws of a jurisdiction other than the Yukon.

(2) Except as provided in this section, if a person enters into a written contract in the name of or on behalf of a body corporate before it comes into existence,

- (a) that person is deemed to warrant to the other party to the contract
 - (i) that the body corporate will come into existence within a reasonable time, and
 - (ii) that the contract will be adopted within a reasonable time after the body corporate comes into existence,
- (b) that person is liable to the other party to the contract for damages for a breach of that warranty, and
- (c) the measure of damages for that breach of warranty shall be the same as if the body corporate existed when the contract was made, the person who made the contract on behalf of the body corporate had no authority to do so and the body corporate refused to ratify the contract.

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

- (a) the corporation is bound by the contract and is entitled to the benefits of the contract as if the corporation had been in existence at the date of the contract and had been a party to it, and
- (b) a person who purported to act in the name of or on behalf of the corporation ceases, except as provided in subsection (5), to be liable under subsection (2) in respect of the contract.

(4) If a person enters into a contract in the name of or on behalf of a corporation before it comes into existence and the contract is not adopted by the corporation within a reasonable time after it comes into existence, that person or the other party to the contract may apply to the Supreme Court for an order directing the corporation to restore to the applicant, in specie or otherwise, any benefit received by the corporation under the contract.

(5) Except as provided in subsection (6), whether or not a written contract made before the coming into existence of a corporation is adopted by the corporation, a party to the contract may apply to the Supreme Court for an order

- (a) fixing obligations under the contract as joint or joint and several, or
- (b) apportioning liability between or among the corporation and a person who purported to act in the name of or on behalf of the corporation,

and on the application the Supreme Court may make any order it thinks fit.

(6) A person who enters into a written contract in the name of or on behalf of a body corporate before it comes into existence is not in any event liable for damages under subsection (2) if the contract expressly provides that he is not to be so liable.

PART 3 CAPACITY AND POWERS

Capacity of a corporation

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

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

Restriction on powers

19.(1) It is not necessary for a bylaw to be passed in order to confer any particular power on the corporation or its directors.

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

(3) No act of a corporation, including any transfer of property to or by a corporation, is invalid by reason only that the act or transfer is contrary to its articles or this Act.

No constructive notice

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

Authority of directors, officers and agents

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

- (a) that the articles, bylaws or any unanimous shareholder agreement have not been complied with,
- (b) that the persons named in the most recent notice filed by the registrar under section 107 or 114 are not the directors of the corporation,
- (c) that the place named as the registered office in the most recent notice filed by the registrar under section 22 is not the registered office of the corporation,
- (d) that the post office box designated as the address for service by mail in the most recent notice filed by the registrar under section 22 is not the address for service by mail of the corporation,
- (e) that a person held out by the corporation as a director, an officer or an agent of the corporation
 - (i) has not been duly appointed, or
 - (ii) has no authority to exercise a power or perform a duty which the director, officer or agent might reasonably be expected to exercise or perform,

- (f) that a document issued by any director, officer or agent of the corporation with actual or usual authority to issue the document is not valid or not genuine, or
- (g) that financial assistance referred to in section 46 or a sale, lease or exchange of property referred to in section 192 was not authorized,

unless the person has, or by virtue of his position with or relationship to the corporation ought to have, knowledge of those facts at the relevant time.

PART 4

REGISTERED OFFICE, RECORDS AND SEAL

Registered office, records office, address for service by mail

22.(1) A corporation shall at all times have a registered office within the Yukon.

(2) A notice of

- (a) the registered office,
- (b) a separate records office, if any, and
- (c) the post office box designated as the address for service by mail, if any,

shall be sent to the registrar in the prescribed form together with the articles of incorporation.

(3) Subject to subsection (4), the directors of the corporation may at any time

- (a) change the address of the registered office within the Yukon,
- (b) designate or revoke or change a designation of a records office within the Yukon, or
- (c) designate or revoke or change a designation of a post office box within the Yukon as the address for service by mail of the corporation.

(4) A post office box designated as the corporation's address for service by mail shall not be designated as the corporation's records office or registered office.

(5) A corporation shall send to the registrar, within 15 days of any change under subsection (3), a notice of that change in the prescribed form, and the registrar shall file it.

(6) The corporation shall ensure that its registered office and its records office are

- (a) accessible to the public during normal business hours, and
- (b) readily identifiable from the address or other description given in the notice referred to in subsection (2).

(7) Unless the directors designate a separate records office, the registered office of a corporation is also its records office.

Corporate records

23.(1) A corporation shall prepare and maintain at its records office records containing

- (a) the articles and the bylaws, all amendments to the articles and bylaws, a copy of any unanimous shareholder agreement and any amendment to a unanimous shareholder agreement,

- (b) minutes of meetings and resolutions of shareholders,
- (c) copies of all notices required by section 107 or 114,
- (d) a securities register complying with section 50,
- (e) copies of the financial statements, reports and information referred to in section 157, and
- (f) a register of disclosures made pursuant to section 122.

(2) Notwithstanding subsection (1), a central securities register may be maintained at an office in the Yukon of a corporation's agent referred to in paragraph 50(2)(a), and a branch securities register may be kept at any place in or out of the Yukon designated by the directors.

(3) If a central securities register is maintained under subsection (2) at a place other than the records office, the corporation shall maintain at its records office a record containing the names and addresses of all agents and offices at which those registers are maintained and descriptions of those registers.

(4) A corporation which

- (a) complies with subsection 23(2), and
- (b) maintains in Canada a register or record referred to in subsection 23(3)

complies with subsection (1).

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

(6) For the purposes of subsection (1), if a body corporate is continued under this Act, "records" includes similar records required by law to be maintained by the body corporate before it was so continued.

(7) The records described in subsection (5) shall be kept at the registered office or records office of the corporation or at any other place the directors think fit and shall at all reasonable times be open to examination by the directors.

(8) If accounting records of a corporation are kept at a place outside the Yukon, there shall be kept at the registered office or records office, or at any other place in the Yukon the directors think fit, accounting records adequate to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis, and those records shall at all reasonable times be open to examination by the directors.

(9) A corporation that, without reasonable cause, contravenes this section is guilty of an offence and liable to a fine not exceeding \$5,000.

Access to corporate records

24.(1) The directors and shareholders of a corporation, their agents and legal representatives may examine the records referred to in subsection 23(1) during the usual business hours of the corporation free of charge.

(2) A shareholder of a corporation is entitled on request and without charge to one copy of the articles and bylaws and of any unanimous shareholder agreement, and amendments to them.

(3) Creditors of a corporation and their agents and legal representatives may examine the records referred to in paragraphs 23(1)(a), (c) and (d), other than a unanimous shareholder agreement or an amendment to a unanimous shareholder agreement, during the usual business hours of the corporation on payment of a reasonable fee, and may make copies of those records.

(4) Any person may examine the records referred to in paragraphs 23(1)(c) and (d) during the usual business hours of the corporation on payment of a reasonable fee, and may make copies of those records.

(5) If the corporation is a distributing corporation, any person, on payment of a reasonable fee and on sending to the corporation or its agent the statutory declaration referred to in subsection (9), may on application require the corporation or its agent to furnish within ten days from the receipt of the statutory declaration a list, in this section referred to as the "basic list", made up to a date not more than ten days before the date of receipt of the statutory declaration setting out

- (a) the names of the shareholders of the corporation,
- (b) the number of shares owned by each shareholder, and
- (c) the address of each shareholder,

as shown on the records of the corporation.

(6) A person requiring a corporation to supply a basic list may, if he states in the statutory declaration referred to in subsection (5) that he requires supplemental lists, require the corporation or its agent on payment of a reasonable fee to furnish supplemental lists setting out any changes from the basic list in the information provided in it for each business day following the date the basic list is made up to.

(7) The corporation or its agent shall furnish a supplemental list required under subsection (6)

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

(8) A person requiring a corporation to supply a basic list or a supplemental list may also require the corporation to include in that list the name and address of any known holder of an option or right to acquire shares in the corporation.

(9) The statutory declaration required under subsection (5) shall state

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

- (c) that the basic list and any supplemental lists obtained pursuant to subsection (6) will not be used except as permitted under subsection (11).

(10) If the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

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

- (a) an effort to influence the voting of shareholders of the corporation,
- (b) an offer to acquire shares of the corporation, or
- (c) any other matter relating to the affairs of the corporation.

(12) A person who, without reasonable cause, contravenes this section is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than 6 months, or to both.

Form of records

25.(1) All registers and other records required by this Act to be prepared and maintained may be in a bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

(2) If a person is entitled to examine any register or record that is maintained by a corporation in a form other than a written form and makes a request of the corporation to do so, the corporation shall

- (a) make available to that person within a reasonable time a reproduction of the text of the register or record in legible written form, or
- (b) provide facilities to enable that person to examine the text of the register or record in a legible written form otherwise than by providing a reproduction of that text, and shall allow that person to make copies of that register or record.

(3) A corporation and its agents shall take reasonable precautions to

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

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

(4) A person who, without reasonable cause, contravenes this section is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or both.

Corporate seal

26.(1) A corporation may adopt and change a corporate seal that shall contain the name of the corporation.

(2) A document executed on behalf of a corporation by a director, an officer or an agent of the corporation is not invalid only because the corporate seal is not affixed to the document.

(3) Share certificates of a corporation may be issued under its corporate seal or a facsimile of that corporate seal.

(4) A document requiring authentication by a corporation may be signed by a director or the secretary or other authorized officer of the corporation and need not be under its corporate seal.

(5) A corporation may adopt a facsimile of its corporate seal for use in any other jurisdiction outside the Yukon where use of a facsimile complies with the laws of that jurisdiction.

PART 5

CORPORATE FINANCE

Shares and classes of shares

27.(1) Shares of a corporation shall be in registered form and shall be without nominal or par value.

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

(3) If a corporation has only one class of shares, the rights of the holders of those shares are equal in all respects and include the rights

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

(4) The articles may provide for more than one class of shares and, if they so provide,

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out in the articles, and
- (b) the rights set out in subsection (3) shall be attached to at least one class of shares but all of those rights are not required to be attached to one class.

(5) Subject to section 30, if a corporation has more than one class of shares, the rights of the holders of the shares of any class are equal in all respects.

Issue of shares

28.(1) Subject to the articles, the bylaws and any unanimous shareholder agreement and to section 31, shares may be issued at the times and to the persons and for the consideration that the directors determine.

(2) Shares issued by a corporation are non-assessable and the holders are not liable to the corporation or to its creditors in respect of those shares.

(3) A share shall not be issued until the consideration for the share is fully paid in money or in property or past service that is not less in value than the fair equivalent of the money that the corporation would have received if the share had been issued for money.

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

(5) For the purposes of this section “property” does not include a promissory note or promise to pay given by the allottee.

Stated capital accounts

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

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

(3) Notwithstanding subsection 28(3) and subsection (2) of this section, if a corporation issues shares

(a) in exchange for

- (i) property, other than a promissory note or promise to pay, or
- (ii) issued shares of the corporation of a different class or series, and all the shares issued by the corporation in the exchange are redeemable shares created for that purpose, or shares which the corporation is required to issue pursuant to conversion rights or privileges attached to the shares to be exchanged at the time that they were issued, or

(b) pursuant to

- (i) an amalgamation agreement referred to in section 184 or 189, or
- (ii) an arrangement referred to in paragraph 195(1)(b) or (c)

to shareholders of an amalgamating body corporate who receive the shares in addition to or instead of securities of the amalgamated body corporate,

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

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

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

- (a) the amount to be added was not received by the corporation as consideration for the issue of shares, and
- (b) the corporation has issued any outstanding shares of more than one class or series,

the addition to the stated capital account must be approved by special resolution unless all the issued and outstanding shares are shares of not more than two classes of convertible shares referred to in subsection 40(5).

(6) When a body corporate is continued under this Act, it may add to a stated capital account any consideration received by it for a share it issued.

(7) A corporation at any time may, subject to subsection (5), add to a stated capital account any amount it credited to a retained earnings or other surplus account.

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

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

(10) When a body corporate is continued under this Act, the stated capital of each class and series of shares of the corporation immediately following its continuation is deemed to equal the paid up capital of each class and series of shares of the body corporate immediately prior to its continuance.

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

(12) Subsections (1) to (11) and any other provisions of this Act relating to stated capital do not apply to an open-end mutual fund.

(13) In subsection (12), “open-end mutual fund” means a corporation that makes a distribution to the public of its shares and that carries on only the business of investing the consideration it receives for the shares it issues, and all or substantially all of those shares are redeemable on the demand of a shareholder.

Shares in series

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

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

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section shall confer on a series a priority in respect of voting, dividends or return of capital over any other series of shares of the same class that are then outstanding.

(4) Subsection (3) does not apply to a right or privilege to exchange a share or shares for, or to convert a share or shares into, a share or shares of another class.

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

(6) On receipt of articles of amendment designating a series of shares, the registrar shall issue a certificate of amendment in accordance with section 266.

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

Shareholder's pre-emptive right

31.(1) If the articles or a unanimous shareholder agreement so provides, no shares of a class shall be issued unless the shares have first been offered to the shareholders holding shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at the same price and on the same terms as those shares are to be offered to others.

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

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

Options and other rights to acquire securities

32.(1) A corporation may issue certificates, warrants or other evidences of conversion privileges, options or rights to acquire securities of the corporation, and shall set out their conditions

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

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

(3) If a corporation has granted privileges to convert any securities issued by the corporation into shares, or into shares of another class or series, or has issued or granted options or rights to acquire shares, the corporation shall reserve and continue to reserve sufficient authorized shares to meet the exercise of those conversion privileges, options and rights.

Prohibited share holdings

33.(1) Except as provided in subsection (2) and sections 34 to 37, a corporation

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

(2) Not more than one percent of the issued shares of each class of shares of a holding body corporate may be held by all the subsidiaries of the holding body corporate.

(3) Subject to subsections (2) and (4), a corporation shall cause a subsidiary body corporate of the corporation that holds shares of the corporation to sell or otherwise dispose of those shares within five years from the date

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

(4) Subsection (3) does not apply to shares acquired by the subsidiary body corporate before the commencement of this Act.

Exception

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

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

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

- (a) holds the shares in the capacity of a legal representative, and
- (b) has complied with section 155.

Acquisition by corporation of its own shares

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

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

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due, or
- (b) the realizable value of the corporation's assets would after the payment be less than the aggregate of its liabilities and stated capital of all classes.

(3) Subject to any unanimous shareholder agreement, a corporation that is not a distributing corporation shall, within 30 days of the purchase of any of its issued shares, notify its shareholders in accordance with section 255

- (a) of the number of shares it has purchased,
- (b) of the names of the shareholders from whom it has purchased the shares,
- (c) of the price paid for the shares,
- (d) if the consideration was other than cash, of the nature of the consideration given and the value attributed to it, and
- (e) of the balance, if any, remaining due to shareholders or to the shareholder from whom it purchased the shares.

(4) Subject to any unanimous shareholder agreement, a shareholder of a corporation other than a distributing corporation is entitled on request and without charge to a copy of the agreement between the corporation and any of its other shareholders under which the corporation has agreed to purchase, or has purchased, any of its own shares.

Alternative acquisition by corporation of its own shares

36.(1) Notwithstanding subsection 35(2), a corporation may, subject to subsection (3) and to its articles, purchase or otherwise acquire shares issued by it to

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

(2) Notwithstanding subsection 35(2), a corporation may purchase or otherwise acquire shares issued by it to

- (a) satisfy the claim of a shareholder who dissents under section 193, or
- (b) comply with an order under section 243.

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

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

Redemption of shares

37.(1) Notwithstanding subsection 35(2) or 36(3), a corporation may, subject to subsection (2) and to its articles, purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price of those shares stated in the articles or calculated according to a formula stated in the articles.

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

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

Donated and escrowed shares

38.(1) A corporation may accept from any shareholder a share of the corporation

- (a) that is surrendered to it as a gift, or
- (b) that has been held in escrow pursuant to an escrow agreement required by the registrar of securities of a province or by a provincial securities commission and that is surrendered pursuant to that agreement.

(2) The corporation may not extinguish or reduce a liability in respect of an amount unpaid on a share surrendered under paragraph (1)(a) except in accordance with section 39.

Other reduction of stated capital

39.(1) Subject to subsection (3), a corporation may by special resolution reduce its stated capital for any purpose including, without limiting the generality of the foregoing, the purpose of

- (a) extinguishing or reducing a liability in respect of an amount unpaid on any share,
- (b) distributing to the holders of the issued shares of any class or series of shares an amount not exceeding the stated capital of the class or series, and
- (c) declaring its stated capital to be reduced by an amount that is not represented by realizable assets.

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

(3) A corporation shall not reduce its stated capital for any purpose other than the purpose mentioned in paragraph (1)(c), if there are reasonable grounds for believing that

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

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

- (a) to pay to the corporation an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section, or

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

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

(6) This section does not affect any liability that arises under section 119.

Adjustment of stated capital account

40.(1) On a purchase, redemption or other acquisition by a corporation under section 35, 36, 37 or 193, or paragraph 243(3)(g) of shares or fractions of shares issued by it, the corporation shall deduct from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares or fractions of shares of that class or series purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A corporation shall deduct the amount of a payment made by the corporation to a shareholder under paragraph 243(3)(h) from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A corporation shall adjust its stated capital account or accounts in accordance with a special resolution referred to in subsection 39(2).

(4) On a conversion or a change under section 175, 194, 195 or 243 of issued shares of a corporation into shares of another class or series, the corporation shall

- (a) deduct from the stated capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series converted or changed, divided by the number of issued shares of that class or series immediately before the conversion or change, and
- (b) add the result obtained under paragraph (a) and any additional consideration pursuant to the conversion or change to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been converted or changed.

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

(6) Shares or fractions of shares issued by a corporation and purchased, redeemed or otherwise acquired by it shall either be cancelled or restored to the status of authorized but unissued shares.

(7) For the purposes of this section, a corporation holding shares in itself as permitted by subsections 34(1) and (2) is deemed not to have purchased, redeemed or otherwise acquired those shares.

(8) Shares issued by a corporation and converted pursuant to their terms or changed under section 175, 194, 195 or 243 into shares of another class or series shall become issued shares of the class or series of shares into which the shares have been converted or changed.

(9) If issued shares of a class or series have become, pursuant to subsection (8), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series shall, unless the articles of amendment or reorganization otherwise provide, be increased by the number of shares that, pursuant to subsection (8), became shares of another class or series.

Repayment, acquisition and reissue of debt obligations

41.(1) Debt obligations issued, pledged, hypothecated or deposited by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged, hypothecated or deposited is repaid, and those obligations remain obligations of the corporation until they are discharged.

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

Enforceability of contract against corporation

42.(1) A contract with a corporation providing for the purchase by it of shares of the corporation is specifically enforceable against the corporation except to the extent that the corporation cannot perform the contract without being in breach of section 35 or 36.

(2) In an action brought on a contract referred to in subsection (1), the corporation has the burden of proving that performance of the contract is prevented by section 35 or 36.

(3) Until the corporation has fully performed a contract referred to in subsection (1), the other party to that contract retains the status of a claimant and is entitled to be paid as soon as the corporation is lawfully able to do so or, in liquidation, to be ranked subordinate to the rights of creditors and to the rights of any class of shareholders whose rights were in priority to the rights given to the class of shares which he contracted to sell to the corporation, but in priority to the rights of the other shareholders.

Commission on sale of shares

43. The directors may authorize the corporation to pay a reasonable commission to any person in consideration of his purchasing or agreeing to purchase shares of the corporation from the corporation or from any other person, or procuring or agreeing to procure purchasers for shares of the corporation.

Dividends

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

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

Form of dividend

45.(1) A corporation may pay a dividend by issuing fully paid shares of the corporation and, subject to section 44, a corporation may pay a dividend in money or property.

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

Prohibited financial assistance

46.(1) Except as permitted under subsection (2), a corporation shall not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise

- (a) to a shareholder or director of the corporation or of an affiliated corporation,
- (b) to an associate of a shareholder or director of the corporation or of an affiliated corporation, or
- (c) to any person for the purpose of or in connection with a purchase of a share issued or to be issued by the corporation or an affiliated corporation,

if there are reasonable grounds for believing that

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

(2) A corporation may give financial assistance by means of a loan, guarantee or otherwise

- (a) to any person in the ordinary course of business if the lending of money is part of the ordinary business of the corporation,
- (b) to any person on account of expenditures incurred or to be incurred on behalf of the corporation,

- (c) to a holding body corporate if the corporation is a wholly owned subsidiary of the holding body corporate,
- (d) to a subsidiary body corporate of the corporation, or
- (e) to employees of the corporation or any of its affiliates
 - (i) to enable or assist them to purchase or erect living accommodation for their own occupation, or
 - (ii) in accordance with a plan for the purchase of shares of the corporation or any of its affiliates to be held by a trustee.

(3) A contract made by a corporation in contravention of this section may be enforced by the corporation or by a lender for value in good faith without notice of the contravention.

(4) Unless disclosure is otherwise made by a corporation, a financial statement referred to in paragraph 157(a) shall contain the following information with respect to each case in which financial assistance is given by the corporation by way of loan, guarantee or otherwise, whether in contravention of this section or not, to any of the persons referred to in paragraph (1)(a), (b) or (c), if the financial assistance was given during the financial year or period to which the statement relates or remains outstanding at the end of that financial year or period:

- (a) the identity of the person to whom the financial assistance was given;
- (b) the nature of the financial assistance given;
- (c) the terms on which the financial assistance was given;
- (d) the amount of the financial assistance initially given and the amount, if any, outstanding.

Shareholder immunity

47.(1) The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under subsection 39(4), 119(6), 148(7) or 228(4).

(2) Subject to subsections 49(8) and (10), the articles may provide that the corporation has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the corporation, including an amount unpaid in respect of a share issued by a body corporate on the date it was continued under this Act.

(3) A corporation may enforce a lien referred to in subsection (2) in accordance with its bylaws.

(4) Except as provided in subsection 39(1), a shareholder of a Yukon company continued under section 5 remains liable for any amount unpaid in respect of an issued share and the corporation may call in and by notice in writing demand from a shareholder the whole or any part of the amount unpaid on a share, and if the call is not paid in accordance with the demand the corporation may forfeit any share on which the call is not paid.

PART 6 SECURITY CERTIFICATES, REGISTERS AND TRANSFERS

INTERPRETATION AND GENERAL

Definitions and interpretation

48.(1) The transfer or transmission of a security shall be governed by this Part.

(2) In this Part,

- “adverse claim” includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security;
- “bearer” means the person in possession of a security payable to bearer or endorsed in blank;
- “bona fide purchaser” means a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or order form or of a security in registered form
- (a) issued to him, or
 - (b) endorsed to him or endorsed in blank by an appropriate person as defined in section 65;
- “broker” means a person who is engaged for all or part of his time in the business of buying and selling securities and who, in the transaction concerned, acts for, or buys a security from, or sells a security to, a customer;
- “delivery” means voluntary transfer of possession;
- “fiduciary” means
- (a) a trustee, guardian, committee, curator or tutor,
 - (b) an executor, administrator or representative of a deceased person, and
 - (c) any other person acting in a fiduciary capacity;
- “fungible” means, in relation to securities, securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit;
- “genuine” means free of forgery or counterfeiting;
- “good faith” means honesty in fact in the conduct of the transaction concerned;
- “holder” means a person in possession of a security issued or endorsed to him or to bearer or in blank;
- “issuer” includes a corporation
- (a) that is required by this Act to maintain a securities register, or
 - (b) that directly or indirectly creates fractional interests in its rights or property and that issues securities as evidence of those fractional interests;
- “overissue” means the issue of securities in excess of any maximum number of securities that the issuer is authorized by its articles or a trust indenture to issue;
- “purchaser” means a person who takes by sale, mortgage, hypothec, pledge, issue, reissue, gift or any other voluntary transaction creating an interest in a security;
- “security” or “security certificate” means an instrument issued by a corporation that is
- (a) in bearer, order or registered form,
 - (b) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,

- (c) one of a class or series or by its terms divisible into a class or series of instruments, and
- (d) evidence of a share, participation or other interest in or obligation of a corporation;

“transfer” includes transmission by operation of law;

“trust indenture” means a trust indenture as defined in section 82;

“unauthorized” in relation to a signature or an endorsement means one made without actual, implied or apparent authority and includes a forgery;

“valid” means issued in accordance with the applicable law and the articles of the issuer or validated under section 52.

(3) A security is a negotiable instrument except when

- (a) its transfer is restricted and noted on the security in accordance with subsection 49(8) or (10), or
- (b) it is stated conspicuously on the security certificate that it is non-negotiable.

(4) A security is in registered form if

- (a) it specifies a person entitled to the security or to the rights it evidences, and
- (b) either its transfer is capable of being recorded in a securities register or the security so states.

(5) A debt obligation is in order form if by its terms it is payable to the order or assigns of any person specified in it with reasonable certainty or to him or his order.

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

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

Security certificates

49.(1) A security holder is entitled at his option to a security certificate that complies with this Act or a non-transferable written acknowledgment of his right to obtain a security certificate from a corporation in respect of the securities of that corporation held by him.

(2) A corporation may charge a reasonable fee for a security certificate issued in respect of a transfer.

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

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

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

- (a) a security certificate representing
 - (i) a fractional share, or
 - (ii) an option or a right to acquire a security, or
- (b) a scrip certificate.

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

(7) There shall be stated on the face of each share certificate issued by a corporation

- (a) the name of the corporation,
- (b) the words “incorporated under the Business Corporations Act”,
- (c) the name of the person to whom it was issued, and
- (d) the number and class of shares and the designation of any series that the certificate represents.

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

- (a) a restriction on its transfer other than a constraint under section 176, or
- (b) a lien in favour of the corporation,

the restriction or lien is ineffective against a transferee of the security who has no actual knowledge of it unless

- (c) it or a reference to it is noted conspicuously on the security certificate,
- (d) the security certificate contains a conspicuous statement that it is non-negotiable, or
- (e) the transferee is not
 - (i) a bona fide purchaser, or
 - (ii) a purchaser against whom the owner of the security may not assert the ineffectiveness of an endorsement under section 68.

(9) A distributing corporation shall not restrict the transfer of its shares except by way of a constraint permitted under section 176.

(10) Where a Yukon company continued under section 5 has outstanding security certificates, and the words “private company” appear on the certificates, those words are deemed to be a notice of a restriction, lien, agreement or endorsement for the purposes of subsection (8).

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

- (a) the rights, privileges, restrictions and conditions attached to the shares of each class and series that exists when the share certificate is issued, or
- (b) that the class or series of shares that it represents has rights, privileges, restrictions or conditions attached to it and that the corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of

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

(12) If a share certificate issued by a corporation contains the statement mentioned in paragraph (11)(b), the corporation shall furnish to a shareholder on demand and without charge a full copy of the text of

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

(13) A corporation may issue a certificate for a fractional share or may issue in its place scrip certificates in a form that entitles the holder to receive a certificate for a full share by exchanging scrip certificates aggregating a full share.

(14) The directors may attach conditions to any scrip certificates issued by a corporation, including conditions that

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

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

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

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

Securities records

50.(1) A corporation shall maintain a securities register in which it records the securities issued by it in registered form, showing with respect to each class or series of securities

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

(2) A corporation may appoint

- (a) an agent to maintain a central securities register or registers, and

(b) an agent or agents to maintain a branch securities register or registers.

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

(4) A branch securities register shall contain particulars of securities issued or transferred at that branch.

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

(6) Neither a corporation, nor its agent nor a trustee defined in subsection 82(1) is required to produce

- (a) a cancelled security certificate in registered form, an instrument referred to in subsection 32(1) that is cancelled or a like cancelled instrument in registered form 6 years after the date of its cancellation,
- (b) a cancelled security certificate in bearer form or an instrument referred to in subsection 32(1) that is cancelled or a like cancelled instrument in bearer form after the date of its cancellation, or
- (c) an instrument referred to in subsection 32(1) or a like instrument, irrespective of its form, after the date of its expiry.

Dealings with registered holders and transmission on death

51.(1) A corporation or a trustee as defined in subsection 82(1) may, subject to sections 135, 136 and 139, treat the registered owner of a security as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the security, and otherwise to exercise all the rights and powers of an owner of the security.

(2) Notwithstanding subsection (1), but subject to a unanimous shareholder agreement, a corporation whose articles restrict the right to transfer its securities shall, and any other corporation may, treat a person as a registered security holder entitled to exercise all the rights of the security holder he represents if that person furnishes evidence as described in subsection 77(4) to the corporation that he is

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

(3) If a person on whom the ownership of a security devolves by operation of law, other than a person described in subsection (2), furnishes proof of his authority to exercise rights or privileges in respect of a security of the corporation that is not registered in his name, the corporation shall treat that person as entitled to exercise those rights or privileges.

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

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

(6) A corporation shall treat as owner of a security the survivors of persons to whom the security was issued if

- (a) it receives proof satisfactory to it of the death of any joint holder of the security, and
- (b) the security provides that the persons to whom the security was issued are joint holders with right of survivorship.

(7) Subject to any applicable law relating to the collection of taxes, a person referred to in paragraph (2)(a) is entitled to become a registered holder or to designate a registered holder, if he deposits with the corporation or its transfer agent

- (a) the original grant of probate or of letters of administration, or a copy of it certified to be a true copy by
 - (i) the court that granted the probate or letters of administration,
 - (ii) a trust company incorporated under the laws of Canada or a province, or
 - (iii) a lawyer or notary public acting on behalf of the person referred to in paragraph (2)(a), or
- (b) in the case of transmission by notarial will in the Province of Quebec, a copy of the will authenticated pursuant to the laws of that province,

together with

- (c) an affidavit, statutory declaration or declaration of transmission made by a person referred to in paragraph (2)(a), stating the particulars of the transmission, and
- (d) the security certificate that was owned by the deceased holder
 - (i) in the case of a transfer to a person referred to in paragraph (2)(a), with or without the endorsement of that person, and
 - (ii) in the case of a transfer to any other person, endorsed in accordance with section 65,

and accompanied by any assurance the corporation may require under section 77.

(8) Notwithstanding subsection (7), if the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a legal representative of the deceased holder is entitled, subject to any applicable law relating to the collection of taxes, to become a registered holder or to designate a registered holder, if he deposits with the corporation or its transfer agent

- (a) the security certificate that was owned by the deceased holder, and

- (b) reasonable proof of the governing laws, of the deceased holder's interest in the security and of the right of the legal representative or the person he designates to become the registered holder.

(9) Deposit of the documents required by subsection (7) or (8) empowers a corporation or its transfer agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in paragraph (2)(a) or to any person that the person referred to in paragraph (2)(a) may designate and, thereafter, to treat the person who thus becomes a registered holder as the owner of the security.

Overissue

52.(1) The provisions of this Part that validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue, but

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

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

(3) Subsection (2) does not apply if the issuer has purchased and delivered a security in accordance with paragraph (1)(a) or paid the amount referred to in paragraph (1)(b).

(4) A purchase or payment by an issuer under subsection (1) is not a purchase or payment to which section 35, 36, 37 or 40 applies.

Burden of proof in actions

53. In an action on a security,

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

Securities are fungible

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

ISSUE - ISSUER**Notice of defects**

55.(1) Even against a purchaser for value and without notice of a defect going to the validity of a security, the terms of the security include those stated on the security and those incorporated in it by reference to another instrument, statute, rule, regulation or order to the extent that the terms so referenced do not conflict with the stated terms, but such a reference is not of itself notice to a purchaser for value of a defect going to the validity of the security, notwithstanding that the security expressly states that a person accepting it admits such notice.

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

(3) Except as provided in section 57, the fact that a security is not genuine is a complete defence even against a purchaser for value and without notice.

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

Staleness is notice of defect

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

- (a) if the event requires the payment of money or the delivery of securities, or both, on presentation or surrender of the security, and such funds or securities are available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date, or
- (b) if the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

Unauthorized signature

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

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

Completion of alteration

58.(1) If a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect,

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

(2) A completed security that has been improperly altered, even if fraudulently altered, remains enforceable, but only according to its original terms.

Warranties of agents

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

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

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

PURCHASE

Title of purchaser

60.(1) On delivery of a security, the purchaser acquires the rights in the security that his transferor had or had authority to convey, except that a purchaser who has been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim does not improve his position by taking from a later bona fide purchaser.

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

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

(4) Nothing in subsection (2) confers any rights on a purchaser unless all necessary endorsements are made by an appropriate person as defined in section 65.

Deemed notice of adverse claims

61.(1) A purchaser of a security, or any broker for a seller or purchaser, is deemed to have notice of all adverse claims if

- (a) the security, whether in bearer or registered form, has been endorsed “for collection” or “for surrender” or for some other purpose not involving transfer, or

- (b) the security is in bearer form and has on it a statement that it is the property of a person other than the transferor, except that the mere writing of a name on a security is not such a statement.

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

Staleness as notice of adverse claims

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

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

Warranties

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

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

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

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

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

(5) A broker gives

- (a) to his customer and to a purchaser the warranties provided in subsection (2), and

(b) to the issuer the warranties provided in subsection (1).

(6) A broker has the rights and privileges of a purchaser under this section.

(7) The warranties of and in favour of a broker acting as an agent are in addition to warranties given by his customer and warranties given in favour of his customer.

Right to compel endorsement

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

Endorsement

65.(1) In this section, “appropriate person” means

- (a) the person specified by the security or by special endorsement to be entitled to the security,
- (b) if a person described in paragraph (a) is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor,
- (c) if the security or endorsement mentioned in paragraph (a) specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified,
- (d) if a person described in paragraph (a) is an individual and is without capacity to act by reason of death, incompetence, minority, or otherwise, his fiduciary,
- (e) if the security or endorsement mentioned in paragraph (a) specifies more than one person with right of survivorship and by reason of death all cannot sign, the survivor or survivors,
- (f) a person having power to sign under applicable law or a power of attorney, or
- (g) to the extent that a person described in paragraphs (a) to (f) may act through an agent, his authorized agent.

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

(3) An endorsement of a security in registered form is made when an appropriate person signs, either on the security or on a separate document, an assignment or transfer of the security or a power to assign or transfer it, or when the signature of an appropriate person is written without more on the back of the security.

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

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

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

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

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

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

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

Effect of endorsement without delivery

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

Endorsement in bearer form

67. An endorsement of a security in bearer form may give notice of an adverse claim under section 61 but does not otherwise affect any right to registration that the holder has.

Effect of unauthorized endorsement

68. Unless the owner has ratified an unauthorized endorsement or is otherwise precluded from asserting its ineffectiveness, he may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued or re-registered security on registration of transfer.

Warranties or guarantees of signatures or endorsements

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

- (a) the signature was genuine,
- (b) the signer was an appropriate person as defined in section 65 to endorse, and
- (c) the signer had legal capacity to sign.

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

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

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

Constructive delivery and constructive ownership

70.(1) Delivery to a purchaser occurs when

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

(2) A purchaser is the owner of a security held for him by his broker, but a purchaser is not a holder except in the cases referred to in paragraphs (1)(b) and (c).

(3) If a security is part of a fungible bulk a purchaser of the security is the owner of a proportionate interest in the fungible bulk.

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

Delivery of security

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

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

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he

- (a) delivers the security in negotiable form to a purchaser or to a person designated by the purchaser, or
- (b) causes an acknowledgement to be made to the purchaser that the security is held for him.

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

Rights to reclaim possession of security

72.(1) A person against whom the transfer of a security is wrongful for any reason, including his incapacity but not including an unauthorized endorsement, may against any person except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or claim damages.

(2) If the transfer of a security is wrongful by reason of an unauthorized endorsement, the owner may reclaim possession of the security or obtain possession of a new security even from a purchaser for value and without notice of an adverse claim if the ineffectiveness of the purported endorsement may be asserted against such purchaser under section 68.

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

Right to requisites of transfer

73.(1) Unless otherwise agreed, a transferor shall on demand supply a purchaser with proof of his authority to transfer or with any other requisite that is necessary to obtain registration of the transfer of a security, but if the transfer is not for value a transferor need not do so unless the purchaser pays the reasonable and necessary costs of the proof and transfer.

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

Seizure of security

74. No seizure of a security of a distributing corporation or other interest evidenced by a security is effective until the person making the seizure obtains possession of the security.

No conversion if good faith delivery by agent

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

Duty to register transfer

76.(1) If a security in registered form is presented for registration of transfer, the issuer shall register the transfer if

- (a) the security is endorsed by an appropriate person, as defined in section 65,
- (b) reasonable assurance is given that that endorsement is genuine and effective,
- (c) the issuer has no duty to inquire into adverse claims or has discharged any such duty,
- (d) any applicable law relating to the collection of taxes has been complied with,
- (e) the transfer is rightful or is to a bona fide purchaser, and
- (f) any fee referred to in subsection 49(2) has been paid.

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

Assurance that endorsement is effective

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

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

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

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

(4) In paragraph (1)(b), "evidence of appointment or incumbency" means

- (a) in the case of a fiduciary appointed by a court, a copy of the order certified in accordance with subsection 51(7), and dated not earlier than 60 days before the date a security is presented for transfer, or
- (b) in any other case, a copy of a document showing the appointment or other evidence believed by the issuer to be appropriate.

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

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

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

Limited duty of inquiry as to adverse claims

78.(1) An issuer to whom a security is presented for registration of transfer has a duty to inquire into adverse claims if

- (a) written notice of an adverse claim is received at a time and in a manner that affords the issuer a reasonable opportunity to act on it before the issue of a new, reissued or re-registered security and the notice discloses the name and

address of the claimant, the registered owner and the issue of which the security is a part, or

- (b) the issuer is deemed to have notice of an adverse claim from a document that is obtained under subsection 77(7).

(2) An issuer may discharge a duty of inquiry by any reasonable means, including notifying an adverse claimant by registered mail sent to the address furnished by him or, if no such address has been furnished, to his residence or regular place of business, that a security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notice either

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

(3) Unless an issuer is deemed to have notice of an adverse claim from a document that it obtained under subsection 77(7) or has received notice of an adverse claim under subsection (1), if a security presented for registration is endorsed by the appropriate person as defined in section 65 the issuer has no duty to inquire into adverse claims, and in particular,

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

(4) A written notice of adverse claim received by an issuer is effective for 12 months from the date when it was received and thereon ceases to be effective unless the notice is renewed in writing.

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

Limitation of issuer's liability

79.(1) Except as otherwise provided in any applicable law relating to the collection of taxes, the issuer is not liable to the owner or any other person who incurs a loss as a result of the registration of a transfer of a security if

- (a) the necessary endorsements were on or with the security, and

- (b) the issuer had no duty to inquire into adverse claims or had discharged any such duty.

(2) If an issuer has registered a transfer of a security to a person not entitled to it, the issuer shall on demand deliver a like security to the owner unless

- (a) subsection (1) applies,
- (b) the owner is precluded by subsection 80(1) from asserting any claim, or
- (c) the delivery would result in overissue, in which case the issuer's liability is governed by section 52.

Rights and obligations on loss or theft

80.(1) If

- (a) a security has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the issuer of that fact by giving the issuer written notice of his adverse claim within a reasonable time after he knows of the loss, destruction or taking, and
- (b) the issuer has registered a transfer of the security before receiving such notice,

the owner is precluded from asserting against the issuer any claim to a new security.

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

- (a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser and before a purchaser described in section 68 has received a new, reissued or re-registered security,
- (b) furnishes the issuer with a sufficient indemnity bond, and
- (c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a new security under subsection (2), a bona fide purchaser of the original security presents the original security for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which case the issuer's liability is governed by section 52.

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

Rights and duties of issuer's agent

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

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

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

PART 7

CORPORATE BORROWING

Interpretation and application

82.(1) In this Part,

“event of default” means an event specified in a trust indenture on the occurrence of which

- (a) a security interest constituted by the trust indenture becomes enforceable, or
- (b) the principal, interest and other money payable under the trust indenture become or may be declared to be payable before maturity,

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

“trustee” means any person appointed as trustee under the terms of a trust indenture to which a corporation is a party and includes any successor trustee;

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

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

Conflict of interest

83.(1) No person shall be appointed as trustee if there is a material conflict of interest between his role as trustee and his role in any other capacity.

(2) A trustee shall, within 90 days after he becomes aware that a material conflict of interest exists,

- (a) eliminate the conflict of interest, or
- (b) resign from office.

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

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

Qualification of trustee

84. A trustee, or at least one of the trustees if more than one is appointed, shall be a body corporate incorporated under the laws of Canada or a province and authorized to carry on the business of a trust company.

List of security holders

85.(1) A holder of debt obligations issued under a trust indenture may, on payment to the trustee of a reasonable fee, require the trustee to furnish within 15 days after delivering to the trustee the statutory declaration referred to in subsection (4), a list setting out

- (a) the names and addresses of the registered holders of the outstanding debt obligations,
- (b) the principal amount of outstanding debt obligations owned by each of those holders, and
- (c) the aggregate principal amount of debt obligations outstanding, as shown on the records maintained by the trustee on the day that the statutory declaration is delivered to that trustee.

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

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

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

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

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

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

(6) A person who, without reasonable cause, contravenes subsection (5) is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than 6 months, or to both.

Evidence of compliance

86.(1) An issuer or a guarantor of debt obligations issued or to be issued under a trust indenture shall before the doing of any act under paragraph (a), (b) or (c), furnish the trustee with evidence of compliance with the conditions in the trust indenture relating to

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

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

Contents of declaration

87. Evidence of compliance as required by section 86 shall consist of

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

Further evidence of compliance

88. The evidence of compliance referred to in section 87 shall include a statement by the person giving the evidence

- (a) declaring that he has read and understands the conditions of the trust indenture described in section 86,
- (b) describing the nature and scope of the examination or investigation on which he based the certificate, statement or opinion, and
- (c) declaring that he has made any examination or investigation that he believes necessary to enable him to make the statements or give the opinions contained or expressed therein.

Trustee may require evidence of compliance

89.(1) On the demand of a trustee, the issuer or guarantor of debt obligations issued under a trust indenture shall furnish the trustee with evidence in any form the trustee may require as to compliance with any condition of the trust indenture relating to any action required or permitted to be taken by the issuer or guarantor under the trust indenture.

(2) At least once in each 12 month period beginning on the date of the trust indenture and at any other time on the demand of a trustee, the issuer or guarantor of debt obligations issued under a trust indenture shall furnish the trustee with a certificate that the issuer or guarantor has complied with all requirements contained in the trust indenture that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars of the failure.

Notice of default

90. The trustee shall, within 30 days after the trustee becomes aware of its occurrence, give to the holders of debt obligations issued under a trust indenture, notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interests of the holders of the debt obligations to withhold the notice and so informs the issuer or guarantor in writing.

Trustee's duty of care

91. A trustee in exercising his powers and discharging his duties shall

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

Trustee's reliance on statements

92. Notwithstanding section 91, a trustee is not liable if he relies in good faith on statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust indenture.

No exculpation of trustee by agreement

93. No term of a trust indenture or of any agreement between

- (a) a trustee and the holders of debt obligations issued under the trust indenture, or
- (b) between the trustee and the issuer or guarantor

shall operate so as to relieve a trustee from the duties imposed on him by section 91.

PART 8

RECEIVERS AND RECEIVER-MANAGERS

Functions of receiver

94. A receiver of any property of a corporation may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property and realize the security interest of those on behalf of whom he is appointed, but, except to the extent permitted by the Supreme Court, he may not carry on the business of the corporation.

Functions of receiver-manager

95. A receiver of a corporation may, if he is also appointed receiver-manager of the corporation, carry on any business of the corporation to protect the security interest of those on behalf of whom he is appointed.

Directors' powers during receivership

96. If a receiver-manager is appointed by the Supreme Court or under an instrument, the powers of the directors of the corporation that the receiver-manager is authorized to exercise may not be exercised by the directors until the receiver-manager is discharged.

Duty of court-appointed receiver or receiver-manager

97. A receiver or receiver-manager appointed by the Supreme Court shall act in accordance with the directions of the Supreme Court.

Duty under debt obligation

98. A receiver or receiver-manager appointed under an instrument shall act in accordance with that instrument and any direction of the Supreme Court made under section 100.

Duty of care

- 99.** A receiver or receiver-manager of a corporation appointed under an instrument shall
- (a) act honestly and in good faith, and
 - (b) deal with any property of the corporation in his possession or control in a commercially reasonable manner.

Powers of the court

100. On an application by a receiver or receiver-manager, whether appointed by the Supreme Court or under an instrument, or on an application by any interested person, the Supreme Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
- (b) an order determining the notice to be given to any person or dispensing with notice to any person;
- (c) an order fixing the remuneration of the receiver or receiver-manager;
- (d) an order
 - (i) requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation,
 - (ii) relieving any of those persons from any default on any terms the Supreme Court thinks fit,
 - (iii) confirming any act of the receiver or receiver-manager,
- (e) an order giving directions on any matter relating to the duties of the receiver or receiver-manager.

Duties of receiver and receiver-manager

101. A receiver or receiver-manager shall

- (a) immediately notify the registrar of his appointment or discharge,
- (b) take into his custody and control the property of the corporation in accordance with the Supreme Court order or instrument under which he is appointed,
- (c) open and maintain a bank account in his name as receiver or receiver-manager of the corporation for the money of the corporation coming under his control,
- (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager,
- (e) keep accounts of his administration that shall be available during usual business hours for inspection by the directors of the corporation,
- (f) prepare at least once in every six month period after the date of his appointment financial statements of his administration as far as is practicable in the form required by section 157, and, subject to any order of the Supreme Court, file a copy of them with the registrar within 60 days after the end of each 6 month period, and
- (g) on completion of his duties,
 - (i) render a final account of his administration in the form adopted for interim accounts under paragraph (f),

- (ii) send a copy of the final report to the registrar who shall file it, and
- (iii) send a copy of the final report to each director of the corporation.

PART 9

DIRECTORS AND OFFICERS

Directors

102.(1) Subject to any unanimous shareholder agreement, the directors shall manage the business and affairs of a corporation.

(2) A corporation shall have one or more directors, but a distributing corporation shall have not fewer than three directors, at least two of whom are not officers or employees of the corporation or its affiliates.

Bylaws

103.(1) Unless the articles, bylaws or a unanimous shareholder agreement otherwise provide, the directors may, by resolution, make, amend or repeal any bylaws that regulate the business or affairs of the corporation.

(2) The directors shall submit a bylaw, or an amendment or a repeal of a bylaw, made under subsection (1) to the shareholders at the next meeting of shareholders, and the shareholders may, by ordinary resolution, confirm, reject or amend the bylaw, amendment or repeal.

(3) A bylaw, or an amendment or a repeal of a bylaw, is effective from the date of the resolution of the directors under subsection (1) until it is confirmed, confirmed as amended or rejected by the shareholders under subsection (2) or until it ceases to be effective under subsection (4) and, if the bylaw is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.

(4) If a bylaw, or an amendment or a repeal of a bylaw, is rejected by the shareholders, or if the directors do not submit a bylaw, or an amendment or a repeal of a bylaw, to the shareholders as required under subsection (2), the bylaw, amendment or repeal ceases to be effective and no subsequent resolution of the directors to make, amend or repeal a bylaw having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the shareholders.

(5) A shareholder entitled to vote at an annual meeting of shareholders may in accordance with section 138 make a proposal to make, amend or repeal a bylaw.

General borrowing powers

104.(1) Unless the articles or bylaws of, or a unanimous shareholder agreement relating to, a corporation otherwise provide, the directors of a corporation may, without authorization of the shareholders,

- (a) borrow money on the credit of the corporation,

- (b) issue, reissue, sell or pledge debt obligations of the corporation,
- (c) subject to section 46, give a guarantee on behalf of the corporation to secure performance of an obligation of any person, and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any obligation of the corporation.

(2) Notwithstanding subsection 116(2) and paragraph 123(a), unless the articles or bylaws of or a unanimous shareholder agreement relating to a corporation otherwise provide, the directors may, by resolution, delegate the powers referred to in subsection (1) to a director, a committee of directors or an officer.

Organization meeting

105.(1) After issue of the certificate of incorporation, a meeting of the directors of the corporation shall be held at which the directors may

- (a) make bylaws,
- (b) adopt forms of security certificates and corporate records,
- (c) authorize the issue of securities,
- (d) appoint officers,
- (e) appoint an auditor to hold office until the first annual meeting of shareholders,
- (f) make banking arrangements, and
- (g) transact any other business.

(2) Subsection (1) does not apply to a body corporate to which a certificate of amalgamation has been issued under section 187 or 189 or to which a certificate of continuance has been issued under section 190.

(3) An incorporator or a director may call the meeting of directors referred to in subsection (1) by giving not less than 5 days notice of the meeting to each director, stating the time and the place of the meeting.

(4) A director may waive notice under subsection 105(3).

Qualifications of directors

106.(1) The following persons are disqualified from being a director of a corporation:

- (a) anyone who is less than 19 years of age;
- (b) anyone who
 - (i) is the subject of an order under the Mental Health Act appointing a committee of his person or estate or both, or
 - (ii) has been found to be mentally incompetent by a court elsewhere than in the Yukon;
- (c) a person who is not an individual;
- (d) a person who has the status of bankrupt.

(2) Unless the articles otherwise provide, a director of a corporation is not required to hold shares issued by the corporation.

(3) A person who is elected or appointed a director is not a director unless

- (a) he was present at the meeting when he was elected or appointed and did not refuse to act as a director, or
- (b) if he was not present at the meeting when he was elected or appointed,
 - (i) he consented to act as a director in writing before his election or appointment or within 10 days after it, or
 - (ii) he has acted as a director pursuant to the election or appointment.

(4) For the purpose of subsection (3), a person who is elected or appointed as a director and refuses under paragraph (3)(a) or fails to consent or act under paragraph (3)(b) shall be deemed not to have been elected or appointed as a director.

Election and appointment of directors

107.(1) At the time of sending articles of incorporation, the incorporators shall send to the registrar a notice of directors in the prescribed form and the registrar shall file the notice.

(2) Each director named in the notice referred to in subsection (1) holds office from the issue of the certificate of incorporation until the first meeting of shareholders.

(3) Subject to paragraph (9)(a) and section 108, shareholders of a corporation shall, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the next annual meeting of shareholders following the election.

(4) If the articles so provide, the directors may, between annual general meetings, appoint one or more additional directors of the corporation to serve until the next annual general meeting, but the number of additional directors shall not at any time exceed one third of the number of directors who held office at the expiration of the last annual meeting of the corporation.

(5) It is not necessary that all directors elected at a meeting of shareholders hold office for the same term.

(6) A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his election.

(7) Notwithstanding subsections (2), (3) and (6), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

(8) If a meeting of shareholders fails to elect the number or the minimum number of directors required by the articles by reason of the disqualification or death of any candidate, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum.

(9) The articles or a unanimous shareholder agreement may provide for the election or appointment of a director or directors

- (a) for terms expiring not later than the close of the third annual meeting of shareholders following the election, and
- (b) by creditors or employees of the corporation or by a class or classes of those creditors or employees.

Cumulative voting

108. If the articles provide for cumulative voting,

- (a) the articles shall require a fixed number and not a minimum and maximum number of directors,
- (b) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him multiplied by the number of directors to be elected, and he may cast all those votes in favour of one candidate or distribute them among the candidates in any manner,
- (c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more candidates to be elected by a single resolution,
- (d) if a shareholder votes for more than one candidate without specifying the distribution of his votes among the candidates, he is deemed to have distributed his votes equally among the candidates for whom he voted,
- (e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled,
- (f) each director ceases to hold office at the close of the first annual meeting of shareholders following his election,
- (g) a director may not be removed from office if the votes cast against his removal would be sufficient to elect him and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected, and
- (h) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director, and those votes could be voted cumulatively, at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

Ceasing to hold office

109.(1) A director of a corporation ceases to hold office when

- (a) he dies or resigns,
- (b) he is removed in accordance with section 110, or
- (c) he becomes disqualified under subsection 106(1).

(2) A resignation of a director becomes effective at the time a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later.

Removal of directors

110.(1) Subject to paragraph 108(g) or a unanimous shareholder agreement, the shareholders of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.

(2) If the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series.

(3) Subject to paragraphs 108(b) to (e), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled under section 112.

(4) A director elected or appointed under subsection 107(9) may be removed only by those persons having the power to elect or appoint that director.

Attendance at meetings

111.(1) A director of a corporation is entitled to receive notice of and to attend and be heard at every meeting of shareholders.

(2) A director who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office, or
- (c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his resignation or removal or because his term of office has expired or is about to expire,

is entitled to submit to the corporation a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(3) A corporation shall forthwith send a copy of the statement referred to in subsection (2)

- (a) to every shareholder entitled to receive notice of any meeting referred to in subsection (1), and
- (b) if the corporation is a distributing corporation, to the registrar of securities,

unless the statement is included in or attached to a management proxy circular required by section 152.

(4) No corporation or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

Filling vacancies

112.(1) A quorum of directors may, subject to subsections (3) and (4), fill a vacancy among the directors, except a vacancy resulting from an increase in the number or minimum number of directors or from a failure to elect the number or minimum number of directors required by the articles.

(2) If there is not a quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office shall forthwith call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

(3) If the holders of any class or series of shares of a corporation or any other class of persons have an exclusive right to elect one or more directors and a vacancy occurs among those directors,

- (a) subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series or from a failure to elect the number or minimum number of directors for that class or series, or
- (b) if there are no such remaining directors, any holder of shares of that class or series or any member of that other class of persons, as the case may be, may call a meeting of those shareholders or those persons for the purpose of filling the vacancy.

(4) The articles or a unanimous shareholder agreement may provide that a vacancy among the directors shall only be filled by

- (a) a vote of the shareholders,
- (b) a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series, or
- (c) the vote of any class of persons having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class of persons.

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of his predecessor.

Change in number of directors

113.(1) The shareholders of a corporation may amend the articles to increase or, subject to paragraph 108(h), to decrease the number of directors or the minimum or maximum number of directors, but no decrease shall shorten the term of an incumbent director.

(2) If the shareholders adopt an amendment to the articles of a corporation to increase the number or minimum number of directors, the shareholders may, at the meeting at which they adopt the amendment, elect an additional number of directors authorized by the amendment, and for that purpose, notwithstanding subsections 181(1) and 266(3), on the issue of a certificate of amendment the articles are deemed to be amended as of the date the shareholders adopt the amendment to the articles.

Notice of change of directors

114.(1) Within 15 days after a change is made among the directors, a corporation shall send to the registrar a notice in the prescribed form setting out the change and the registrar shall file the notice.

(2) Any interested person, or the registrar, may apply to the Supreme Court for an order to require a corporation to comply with subsection (1), and the Supreme Court may so order and make any further order it thinks fit.

Meetings of directors

115.(1) Unless the articles otherwise provide, the directors may meet at any place and on any notice the bylaws require.

(2) Subject to the articles or bylaws, a majority of the number of directors appointed constitutes a quorum at any meeting of directors, and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

(3) A notice of a meeting of directors shall specify any matter referred to in subsection 116(2) that is to be dealt with at the meeting but, unless the bylaws otherwise provide, need not specify the purpose or the business to be transacted at the meeting.

(4) A director may in any manner waive a notice of a meeting of directors, and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(5) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

(6) If a corporation has only one director, that director may constitute a meeting.

(7) A director may participate in a meeting of directors or of a committee of directors by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other if

- (a) the bylaws so provide, or
- (b) subject to the bylaws, all the directors of the corporation consent,

and a director participating in a meeting by those means is deemed for the purposes of this Act to be present at that meeting.

Delegation to managing director or committee

116.(1) Directors of a corporation may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

(2) Notwithstanding subsection (1), no managing director and no committee of directors has authority to

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders,

- (b) fill a vacancy among the directors or in the office of auditor,
- (c) issue securities except in the manner and on the terms authorized by the directors,
- (d) declare dividends,
- (e) purchase, redeem or otherwise acquire shares issued by the corporation, except in the manner and on the terms authorized by the directors,
- (f) pay a commission referred to in section 43,
- (g) approve a management proxy circular referred to in Part 12,
- (h) approve any financial statements referred to in section 157, or
- (i) adopt, amend or repeal bylaws.

Validity of acts of directors, officers and committees

117. An act of a director or officer is valid notwithstanding an irregularity in his election or appointment or a defect in his qualification.

Resolution in lieu of meeting

118.(1) Subject to the articles, the bylaws or a unanimous shareholder agreement, a resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, is as valid as if it had been passed at a meeting of directors or committee of directors.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

Liability of directors and others

119.(1) Directors of a corporation who vote for or consent to a resolution authorizing the issue of a share under section 28 for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

(2) Subsection (1) does not apply if the shares, on allotment, are held in escrow pursuant to an escrow agreement required by the registrar of securities of any province or the securities commission of any province and are surrendered for cancellation pursuant to that agreement.

(3) Directors of a corporation who vote for or consent to a resolution authorizing

- (a) a purchase, redemption or other acquisition of shares contrary to section 35, 36 or 37,
- (b) a commission on a sale of shares not provided for in section 43,
- (c) a payment of a dividend contrary to section 44,
- (d) financial assistance contrary to section 46,
- (e) a payment of an indemnity contrary to section 126, or
- (f) a payment to a shareholder contrary to section 193 or 243,

are jointly and severally liable to restore to the corporation any amounts so paid and the value of any property so distributed, and not otherwise recovered by the corporation.

(4) A director who has satisfied a judgment rendered under this section is entitled to contribution from the other directors who voted for or consented to the unlawful act on which the judgment was founded.

(5) If money or property of a corporation was paid or distributed to a shareholder or other recipient contrary to section 35, 36, 37, 43, 44, 46, 126, 193 or 243, the corporation, any director or shareholder of the corporation, or any person who was a creditor of the corporation at the time of the payment or distribution, is entitled to apply to the Supreme Court for an order under subsection (6).

(6) On an application under subsection (5), the Supreme Court may, if it is satisfied that it is equitable to do so, do any or all of the following:

- (a) order a shareholder or other recipient to restore to the corporation any money or property that was paid or distributed to him contrary to section 35, 36, 37, 43, 44, 46, 126, 193 or 243;
- (b) order the corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares;
- (c) make any further order it thinks fit.

Limitation of liability

120.(1) A director is not liable under subsection 119(1) if he proves that he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the corporation would have received if the share had been issued for money.

(2) A director is not liable under paragraph 119(3)(d) if he proves that he did not know and could not reasonably have known that the financial assistance was given contrary to section 46.

(3) An action to enforce a liability imposed by section 119 may not be commenced after two years from the date of the resolution authorizing the action complained of.

Directors' liability for wages

121.(1) Every person who is a director of a corporation is jointly and severally liable with the other directors in accordance with the Employment Standards Act, to each employee of the corporation for all debts payable to the employee for services performed for the corporation, while he is a director.

(2) If a director pays a debt referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings, he is entitled to any preference that the employee would have been entitled to, and if a judgment has been obtained, he is entitled to an assignment of the judgment.

(3) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

Disclosure by directors and officers in relation to contracts

122.(1) A director or officer of a corporation who

- (a) is a party to a material contract or proposed material contract with the corporation, or
- (b) is a director or an officer of or has a material interest in any person who is a party to a material contract or proposed material contract with the corporation,

shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his interest.

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

- (a) at the meeting at which a proposed contract is first considered,
- (b) if the director was not interested in a proposed contract at the time of the meeting referred to in paragraph (a), at the first meeting after he becomes so interested,
- (c) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested, or
- (d) if a person who is interested in a contract later becomes a director, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

- (a) forthwith after he becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors,
- (b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested, or
- (c) if a person who is interested in a contract later becomes an officer, forthwith after he becomes an officer.

(4) If a material contract or proposed material contract is one that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, a director or officer shall disclose in writing to the corporation, or request to have entered in the minutes of meetings of directors, the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(5) A director referred to in subsection (1) shall not vote on any resolution to approve the contract unless the contract is

- (a) an arrangement by way of security for money lent to or obligations undertaken by him, or by a body corporate in which he has an interest, for the benefit of the corporation or an affiliate,
- (b) a contract relating primarily to his remuneration as a director, officer, employee or agent of the corporation or an affiliate,
- (c) a contract for indemnity or insurance under section 126, or
- (d) a contract with an affiliate.

(6) For the purpose of this section, a general notice to the directors by a director or officer is a sufficient disclosure of interest in relation to any contract made between the corporation and a person in which the director has a material interest or of which he is a director or officer if

- (a) the notice declares he is a director or officer of or has a material interest in the person and is to be regarded as interested in any contract made or to be made by the corporation with that person, and states the nature and extent of his interest,
- (b) at the time disclosure would otherwise be required under subsection (2), (3) or (4), as the case may be, the extent of his interest in that person is not greater than that stated in the notice, and
- (c) the notice is given within the 12 month period immediately preceding the time at which disclosure would otherwise be required under subsection (2), (3) or (4), as the case may be.

(7) If a material contract is made between a corporation and one or more of its directors or officers, or between a corporation and another person of which a director or officer of the corporation is a director or officer or in which he has a material interest,

- (a) the contract is neither void nor voidable by reason only of that relationship, or by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or committee of directors that authorized the contract, and
- (b) a director or officer or former director or officer of the corporation to whom a profit accrues as a result of the making of the contract is not liable to account to the corporation for that profit by reason only of holding office as a director or officer, if the director or officer disclosed his interest in accordance with subsection (2), (3), (4) or (6), as the case may be, and the contract was approved by the directors or the shareholders and it was reasonable and fair to the corporation at the time it was approved.

(8) If a director or officer of a corporation fails to disclose his interest in a material contract in accordance with this section, the Supreme Court may, on the application of the corporation or a shareholder of the corporation, set aside the contract on any terms it thinks fit.

(9) This section is subject to any unanimous shareholder agreement.

Officers

123. Subject to the articles, the bylaws or any unanimous shareholder agreement,

- (a) the directors may designate the offices of the corporation, appoint as officers individuals of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the corporation, except powers to do anything referred to in subsection 116(2),
- (b) a director may be appointed to any office of the corporation, and
- (c) two or more offices of the corporation may be held by the same person.

Duty of care of directors and officers

124.(1) Every director and officer of a corporation in exercising his powers and discharging his duties shall

- (a) act honestly and in good faith with a view to the best interests of the corporation, and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, bylaws and any unanimous shareholder agreement.

(3) Subject to subsection 148(7), no provision in a contract, the articles, the bylaws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves him from liability for a breach of that duty.

(4) In determining whether a particular transaction or course of action is in the best interests of the corporation, a director, if he is elected or appointed by the holders of a class or series of shares or by employees or creditors or a class of employees or creditors, may give special, but not exclusive, consideration to the interests of those who elected or appointed him.

Dissent by director

125.(1) A director who is present at a meeting of directors or committee of directors is deemed to have consented to any resolution passed or action taken at the meeting unless

- (a) he requests that his abstention or dissent be, or his abstention or dissent is, entered in the minutes of the meeting,
- (b) he sends his written dissent to the secretary of the meeting before the meeting is adjourned,
- (c) he sends his dissent by registered or certified mail or delivers it to the registered office of the corporation immediately after the meeting is adjourned, or
- (d) he otherwise proves that he did not consent to the resolution or action.

(2) A director who votes for or consents to a resolution or action is not entitled to dissent under subsection (1).

(3) A director is not liable under section 119 or 124 if he relies in good faith on

- (a) financial statements of the corporation represented to him by an officer of the corporation or in a written report of the auditor of the corporation fairly to reflect the financial condition of the corporation, or
- (b) an opinion or report of a lawyer, accountant, professional engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Indemnification by corporation

126.(1) Except in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, a corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation or a person who acts or acted

at the corporation's request as a director or officer of a body corporate of which the corporation is or was a shareholder or creditor, and his heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of that corporation or body corporate, if

- (a) he acted honestly and in good faith with a view to the best interests of the corporation, and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

(2) A corporation may with the approval of the Supreme Court indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, to which he is made a party by reason of being or having been a director or an officer of the corporation or body corporate, against all costs, charges and expenses reasonably incurred by him in connection with the action if he fulfils the conditions set out in paragraphs (1)(a) and (b).

(3) Notwithstanding anything in this section, a person referred to in subsection (1) is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the corporation or body corporate, if the person seeking indemnity

- (a) was substantially successful on the merits in his defence of the action or proceeding,
- (b) fulfils the conditions set out in paragraphs (1)(a) and (b), and
- (c) is fairly and reasonably entitled to indemnity.

(4) A corporation may purchase and maintain insurance for the benefit of any person referred to in subsection (1) against any liability incurred by him

- (a) in his capacity as a director or officer of the corporation, except when the liability relates to his failure to act honestly and in good faith with a view to the best interests of the corporation, or
- (b) in his capacity as a director or officer of another body corporate if he acts or acted in that capacity at the corporation's request, except when the liability relates to his failure to act honestly and in good faith with a view to the best interests of the body corporate.

(5) A corporation or a person referred to in subsection (1) may apply to the Supreme Court for an order approving an indemnity under this section and the Supreme Court may so order and make any further order it thinks fit.

(6) On an application under subsection (5), the Supreme Court may order notice to be given to any interested person and that person is entitled to appear and be heard in person or by counsel.

Remuneration

127.(1) Subject to the articles, the bylaws or any unanimous shareholder agreement, the directors of the corporation may fix the remuneration of the directors, officers and employees of the corporation.

(2) Disclosure of the aggregate remuneration of directors, the aggregate remuneration of officers and the aggregate remuneration of employees shall be made as prescribed.

PART 10 INSIDER TRADING

Definitions

128. In this Part,

“corporation” does not include a distributing corporation;

“insider” means, with respect to a corporation,

- (a) the corporation, in respect of the purchase or other acquisition by it of shares issued by it or any of its affiliates,
- (b) a director or officer of the corporation,
- (c) a person who, with respect to at least ten percent of the voting rights attached to the voting shares of the corporation,
 - (i) beneficially owns, directly or indirectly, voting shares carrying those voting rights,
 - (ii) exercises control or direction over those voting rights, or
 - (iii) beneficially owns, directly or indirectly, voting shares carrying some of those voting rights and exercises control or direction over the remainder of those voting rights,
- (d) a person employed by the corporation or retained by it on a professional or consulting basis,
- (e) an affiliate of the corporation,
- (f) a person who receives specific confidential information from a person described in this section or in section 130 and who has knowledge that the person giving the information is a person described in this section or in section 130, and
- (g) a person who receives specific confidential information from the first mentioned person in paragraph (f) and who has knowledge that that person received that knowledge in the manner described in that paragraph;

“voting share” means an issued and outstanding share carrying voting rights under all circumstances or under any circumstances that have occurred and are continuing.

Deemed insiders

129. For the purposes of this Part,

- (a) a director or an officer of a body corporate that is an insider of a corporation is deemed to be an insider of the corporation,
- (b) a director or an officer of a body corporate that is a subsidiary is deemed to be an insider of its holding corporation,

- (c) a person is deemed to own beneficially shares beneficially owned by a body corporate controlled by him directly or indirectly, and
- (d) a body corporate is deemed to own beneficially shares beneficially owned by its affiliates.

Deemed insiders

130. For the purposes of this Part,

- (a) if a body corporate becomes an insider of a corporation or enters into a business combination with a corporation, a director or officer of the body corporate is deemed to have been an insider of the corporation for the previous six months or for any shorter period during which he was a director or officer of the body corporate, and
- (b) if a corporation becomes an insider of a body corporate or enters into a business combination with a body corporate, a director or an officer of the body corporate is deemed to have been an insider of the corporation for the previous six months or for any shorter period during which he was a director or officer of the body corporate.

Business combination defined

131. In section 130, "business combination" means an acquisition of all or substantially all the property of one body corporate by another or an amalgamation of two or more bodies corporate.

Civil liability of insiders

132.(1) An insider who sells to or purchases from a shareholder of the corporation or any of its affiliates a security of the corporation or any of its affiliates and in connection with such sale or purchase makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security

- (a) is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person at the time of the transaction, and
- (b) is accountable to the corporation for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

(2) An action to enforce a right created by this section may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action.

PART 11

SHAREHOLDERS

Place of shareholders' meetings

133.(1) Meetings of shareholders of a corporation shall be held at the place within the Yukon provided in the bylaws or, in the absence of such provision, at the place within the Yukon that the directors determine.

(2) Notwithstanding subsection (1), a meeting of shareholders of a corporation may be held outside the Yukon if all the shareholders entitled to vote at that meeting so agree, and a shareholder who attends a meeting of shareholders held outside the Yukon is deemed to have so agreed except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

(3) A shareholder or any other person entitled to attend a meeting of shareholders may participate in the meeting by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other if

- (a) the bylaws so provide, or
- (b) subject to the bylaws, all the shareholders entitled to vote at the meeting consent,

and a person participating in such a meeting by those means is deemed for the purposes of this Act to be present at the meeting.

(4) Notwithstanding subsections (1) and (2), if the articles so provide, meetings of shareholders may be held outside the Yukon at one or more places specified in the articles.

Calling meetings

134.(1) The directors of a corporation

- (a) shall call an annual meeting of shareholders to be held not later than 18 months after
 - (i) the date of its incorporation, or
 - (ii) the date of its certificate of amalgamation, in the case of an amalgamated corporation,

and subsequently not later than 15 months after holding the last preceding annual meeting, and

- (b) may at any time call a special meeting of shareholders.

(2) Notwithstanding subsection (1), the corporation may apply to the Supreme Court for an order extending the time in which the first or the next annual meeting of the corporation shall be held.

(3) Notice of any application under subsection (2) by a distributing corporation shall be filed with the registrar of securities.

(4) If, on an application under subsection (2), the Supreme Court is satisfied that it is in the best interests of the corporation, the Supreme Court may extend the time in which the first or the next annual meeting of the corporation shall be held, in any manner and on any terms it thinks fit.

Record dates

135.(1) For the purpose of determining shareholders

- (a) entitled to receive payment of a dividend,
- (b) entitled to participate in a liquidation distribution, or
- (c) for any other purpose except the right to receive notice of or to vote at a meeting,

the directors may fix in advance a date as the record date for that determination of shareholders, but the record date shall not precede by more than 50 days the particular action to be taken.

(2) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the directors may fix in advance a date as the record date for that determination of shareholders, but that record date shall not precede by more than 50 days or by less than 21 days the date on which the meeting is to be held.

(3) If no record date is fixed,

- (a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders shall be
 - (i) at the close of business on the last business day preceding the day on which the notice is sent, or,
 - (ii) if no notice is sent, the day on which the meeting is held, and
- (b) the record date for the determination of shareholders for any purpose other than to establish a shareholder's right to receive notice of a meeting or to vote, shall be at the close of business on the day on which the directors pass the resolution relating to that purpose.

(4) If the directors of a distributing corporation fix a record date then, unless notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the securities register at the close of business on the day the directors fixed the record date, notice of the record date shall be given not less than 7 days before the date so fixed

- (a) by advertisement in a newspaper published or distributed in the place where the corporation has its registered office and in each place in Canada where it has a transfer agent or where a transfer of its shares may be recorded, and
- (b) by written notice to each stock exchange in Canada on which the shares of the corporation are listed for trading.

Notice of meeting, adjournment, business and notice of business

136.(1) Notice of the time and place of a meeting of shareholders shall be sent not less than 21 days and not more than 50 days before the meeting,

- (a) to each shareholder entitled to vote at the meeting,
- (b) to each director, and
- (c) to the auditor of the corporation.

(2) Notwithstanding subsection 255(3), a notice of a meeting of shareholders sent by mail to a shareholder, director or auditor in accordance with subsection 255(1) is deemed to be sent to the shareholder on the day on which it is deposited in the mail.

(3) A notice of a meeting is not required to be sent to shareholders who were not registered on the records of the corporation or its transfer agent on the record date determined under subsection 135(2) or (3), but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of less than 30 days it is not necessary, unless the bylaws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the time of an adjournment.

(5) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than 90 days, subsection 151(1) does not apply.

(6) All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the financial statements, auditor's report, election of directors and reappointment of the incumbent auditor, is deemed to be special business.

(7) Notice of a meeting of shareholders at which special business is to be transacted shall state

- (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment on that business, and
- (b) the text of any special resolution to be submitted to the meeting.

(8) The text of a special resolution may be amended at a meeting of shareholders if the amendments correct manifest errors or are not material.

Waiver of notice

137. A shareholder and any other person entitled to attend a meeting of shareholders may in any manner waive notice of a meeting of shareholders, and attendance of the shareholder or other person at a meeting of shareholders is waiver of notice of the meeting, except when he attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Shareholder proposals

138.(1) A shareholder entitled to vote at an annual meeting of shareholders may

- (a) submit to the corporation notice of any matter that he proposes to raise at the meeting, in this section referred to as a "proposal", and
- (b) discuss at the meeting any matter in respect of which he would have been entitled to submit a proposal.

(2) A corporation that solicits proxies shall set out the proposal in the management proxy circular required by section 152 or attach the proposal to it.

(3) If so requested by the shareholder, the corporation shall include in the management proxy circular or attach to it a statement by the shareholder of not more than 200 words in support of the proposal, and the name and address of the shareholder.

(4) A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than five percent of the shares or five percent of the shares of a class of shares of the corporation entitled to vote

at the meeting to which the proposal is to be presented, but this subsection does not preclude nominations made at a meeting of shareholders.

- (5) A corporation is not required to comply with subsections (2) and (3) if
- (a) the proposal is submitted to the corporation at least 90 days before the anniversary date of the previous annual meeting of shareholders,
 - (b) it clearly appears that the proposal has been submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the corporation, its directors, officers or security holders or any of them, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes,
 - (c) the corporation, at the shareholder's request, included a proposal in a management proxy circular relating to a meeting of shareholders held within two years preceding the receipt of the request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting,
 - (d) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated, or
 - (e) the rights being conferred by this section are being abused to secure publicity.

(6) No corporation or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this section.

(7) If a corporation refuses to include a proposal in a management proxy circular, the corporation shall, within ten days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal from the management proxy circular and send to him a statement of the reasons for the refusal.

(8) On the application of a shareholder claiming to be aggrieved by a corporation's refusal under subsection (7), the Supreme Court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

(9) The corporation or any person claiming to be aggrieved by a proposal may apply to the Supreme Court for an order permitting the corporation to omit the proposal from the management proxy circular, and the Supreme Court, if it is satisfied that subsection (5) applies, may make any order it thinks fit.

Shareholder list

139.(1) A corporation having more than 15 shareholders entitled to vote at a meeting of shareholders shall prepare a list of shareholders entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder,

- (a) if a record date is fixed under subsection 135(2), not later than ten days after that date, or
- (b) if no record date is fixed,
 - (i) at the close of business on the last business day preceding the day on which the notice is given, or

(ii) if no notice is given, on the day on which the meeting is held.

(2) If a corporation fixes a record date under subsection 135(2), a person named in the list prepared under paragraph (1)(a) is entitled to vote the shares shown opposite his name at the meeting to which the list relates, except to the extent that

- (a) the person has transferred the ownership of any of his shares after the record date, and
- (b) the transferee of those shares
 - (i) produces properly endorsed share certificates, or
 - (ii) otherwise establishes that he owns the shares, and demands, not later than 10 days before the meeting, or any shorter period before the meeting that the bylaws of the corporation may provide, that his name be included in the list before the meeting,

in which case the transferee is entitled to vote his shares at the meeting.

(3) If a corporation does not fix a record date under subsection 135(2), a person named in a list prepared under clause (1)(b)(i) is entitled to vote the shares shown opposite his name at the meeting to which the list relates except to the extent that

- (a) the person has transferred the ownership of any of his shares after the date on which a list referred to in clause (1)(b)(i) is prepared, and
- (b) the transferee of those shares
 - (i) produces properly endorsed share certificates, or
 - (ii) otherwise establishes that he owns the shares, and demands, not later than ten days before the meeting or any shorter period before the meeting that the bylaws of the corporation may provide, that his name be included in the list before the meeting,

in which case the transferee is entitled to vote his shares at the meeting.

(4) A shareholder may examine the list of shareholders

- (a) during usual business hours at the records office of the corporation or at the place where its central securities register is maintained, and
- (b) at the meeting of shareholders for which the list was prepared.

Quorum

140.(1) Unless the bylaws otherwise provide, a quorum of shareholders is present at a meeting of shareholders, irrespective of the number of persons actually present at the meeting, if the holder or holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the bylaws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present at the opening of a meeting of shareholders, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

(4) If a corporation has only one shareholder, or only one holder of any class or series of shares, the shareholder present in person or by proxy constitutes a meeting.

Right to vote

141.(1) Unless the articles otherwise provide, each share of a corporation entitles the holder of it to one vote at a meeting of shareholders.

(2) If a body corporate or association is a shareholder of a corporation, the corporation shall recognize any individual authorized by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the corporation.

(3) An individual authorized under subsection (2) may exercise on behalf of the body corporate or association he represents all the powers it could exercise if it were an individual shareholder.

(4) Unless the bylaws otherwise provide, if two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the others vote the shares, but if two or more of those persons who are present, in person or by proxy, vote, they shall vote as one on the shares jointly held by them.

Voting

142.(1) Unless the bylaws otherwise provide, voting at a meeting of shareholders shall be by show of hands except when a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.

(2) A shareholder or proxyholder may demand a ballot either before or on the declaration of the result of any vote by show of hands.

Resolution in lieu of meetings

143.(1) A resolution in writing signed by all the shareholders entitled to vote on that resolution is as valid as it if had been passed at a meeting of the shareholders.

(2) A resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

(3) A copy of every resolution referred to in subsection (1) or (2) shall be kept with the minutes of the meetings of shareholders.

Meeting on requisition of shareholders

144.(1) The holders of not less than five percent of the issued shares of a corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

(2) The requisition referred to in subsection (1), which may consist of several documents of like form each signed by one or more shareholders, shall state the business to be transacted at the meeting and shall be sent to each director and to the registered office of the corporation.

(3) On receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition unless

- (a) a record date has been fixed under subsection 135(2) and notice of the record date has been given under subsection 135(4),
- (b) the directors have called a meeting of shareholders and have given notice of the meeting under section 136, or
- (c) the business of the meeting as stated in the requisition includes matters described in paragraphs 138(5)(b) to (e).

(4) If the directors do not within 21 days after receiving the requisition referred to in subsection (1) call a meeting, any shareholder who signed the requisition may call the meeting.

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the bylaws, this Part and Part 12.

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the corporation shall reimburse the shareholders for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Meeting called by court

145.(1) If for any reason it is impracticable to call a meeting of shareholders of a corporation in the manner in which meetings of those shareholders may be called, or to conduct the meeting in the manner prescribed by the bylaws and this Act, or if for any other reason the Supreme Court thinks fit, the Supreme Court, on the application of a director, a shareholder entitled to vote at the meeting or, if the corporation is a distributing corporation the registrar of securities, may order a meeting to be called, held and conducted in the manner the Supreme Court directs.

(2) Without restricting the generality of subsection (1), the Supreme Court may order that the quorum required by the bylaws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the corporation duly called, held and conducted.

Supreme Court review of election

146.(1) A corporation or a shareholder or director may apply to the Supreme Court to determine any controversy with respect to an election or appointment of a director or auditor of the corporation.

(2) On an application under this section, the Supreme Court may make any order it thinks fit including, without limiting the generality of the foregoing, any one or more of the following:

- (a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;

- (b) an order declaring the result of the disputed election or appointment;
- (c) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the corporation until a new election is held or appointment made;
- (d) an order determining the voting rights of shareholders and of persons claiming to own shares.

Voting agreement

147. A written agreement between two or more shareholders may provide that in exercising voting rights the shares held by them shall be voted as provided in the agreement.

Unanimous shareholder agreement

148.(1) A unanimous shareholder agreement may provide for any or all of the following:

- (a) the regulation of the rights and liabilities of the shareholders, as shareholders, among themselves or between themselves and any other party to the agreement;
- (b) the regulation of the election of directors;
- (c) the management of the business and affairs of the corporation, including the restriction or abrogation, in whole or in part, of the powers of the directors;
- (d) any other matter that may be contained in a unanimous shareholder agreement pursuant to any other provision of this Act.

(2) If a unanimous shareholder agreement is in effect at the time a share is issued by a corporation to a person other than an existing shareholder,

- (a) that person is deemed to be a party to the agreement whether or not he had actual knowledge of it when the share certificate was issued,
- (b) the issue of the share certificate does not operate to terminate the agreement, and
- (c) if he is a bona fide purchaser without actual knowledge of the unanimous shareholder agreement, that person may rescind the contract under which the shares were acquired by giving a notice to that effect to the corporation within a reasonable time after the person receives actual knowledge of the unanimous shareholder agreement.

(3) Notwithstanding subsection 49(8), if a unanimous shareholder agreement is in effect when a person who is not a party to the agreement acquires a share of a corporation, other than under subsection (2),

- (a) the person who acquired the share is deemed to be a party to the agreement whether or not he had actual knowledge of it when he acquired the share, and
- (b) neither the acquisition of the share nor the registration of that person as a shareholder operates to terminate the agreement.

(4) If

- (a) a person referred to in subsection (3) is a bona fide purchaser as defined in subsection 48(2) and did not have actual knowledge of the unanimous shareholder agreement, and
- (b) his transferor's share certificate did not contain a reference to the unanimous shareholder agreement,

that person may, within 30 days after he acquires actual knowledge of the existence of the agreement, send to the corporation a notice of objection to the agreement.

(5) If a person sends a notice of objection under subsection (4),

- (a) he is entitled to be paid by the corporation the fair value of the shares held by him, determined as of the close of business on the day on which he became a shareholder, and
- (b) subsections 193(4) and subsections 193(6) to (20) apply, necessary changes, as if the notice of objection under subsection (4) were a written objection sent to the corporation under subsection 193(5).

(6) A transferee who is entitled to be paid the fair value of his shares under subsection (5) also has the right to recover from the transferor by action the amount by which the value of the consideration paid for his shares exceeds the fair value of those shares.

(7) A shareholder who is a party or is deemed to be a party to a unanimous shareholder agreement has all the rights, powers and duties and incurs all the liabilities of a director of the corporation to which the agreement relates to the extent that the agreement restricts the powers of the directors to manage the business and affairs of the corporation, and the directors are thereby relieved of their duties and liabilities, including any liabilities under section 78 of the Employment Standards Act, to the same extent.

(8) A unanimous shareholder agreement may not be amended without the written consent of all those who are shareholders at the effective date of the amendment unless otherwise provided for in the unanimous shareholder agreement.

PART 12 PROXIES

Definitions

149. In this Part,

“form of proxy” means a written or printed form that, on completion and execution by or on behalf of a shareholder, becomes a proxy;

“proxy” means a completed and executed form of proxy by means of which a shareholder appoints a proxyholder to attend and act on his behalf at a meeting of shareholders;

“registrant” means a person required to be registered to trade or deal in securities under the laws of any jurisdiction;

“solicit” or “solicitation” includes

- (a) a request for a proxy whether or not accompanied by or included in a form of proxy,
- (b) a request to execute or not to execute a form of proxy or to revoke a proxy,
- (c) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
- (d) the sending of a form of proxy to a shareholder under section 151,

but does not include

- (e) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder,
- (f) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,
- (g) the sending by a registrant of the documents referred to in section 155, or
- (h) a solicitation by a person in respect of shares of which he is the beneficial owner;

“solicitation by or on behalf of the management of a corporation” means a solicitation by any person pursuant to a resolution or the instructions of, or with the acquiescence of, the directors or a committee of the directors.

Appointing proxyholder

150.(1) A shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder and one or more alternate proxyholders, who are not required to be shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

(2) A proxy shall be executed by the shareholder or by his attorney authorized in writing.

(3) A proxy is valid only at the meeting in respect of which it is given or any adjournment of that meeting.

(4) A shareholder may revoke a proxy

- (a) by depositing an instrument in writing executed by him or by his attorney authorized in writing
 - (i) at the registered office of the corporation at any time up to and including the last business day preceding the day of the meeting, or an adjournment of that meeting, at which the proxy is to be used, or
 - (ii) with the chairperson of the meeting on the day of the meeting or an adjournment of the meeting, or
- (b) in any other manner permitted by law.

(5) The directors may specify in a notice calling a meeting of shareholders a time not exceeding 48 hours, excluding Saturdays and holidays, preceding the meeting or an adjournment of the meeting before which time proxies to be used at the meeting must be deposited with the corporation or its agent.

Mandatory solicitation

151.(1) Subject to subsection (2), the management of a corporation shall, concurrently with giving notice of a meeting of shareholders, send a form of proxy in the prescribed form to each shareholder who is entitled to receive notice of the meeting.

(2) The management of a corporation is not required to send a form of proxy under subsection (1)

- (a) if the corporation has not more than 15 shareholders entitled to vote at a meeting of shareholders, two or more joint shareholders being counted as one shareholder, or
- (b) if all of the shareholders entitled to vote at a meeting of shareholders have agreed in writing to waive the application of subsection (1).

(3) A shareholder may revoke a waiver given under paragraph (2)(b) in respect of any meeting of shareholders by sending to the corporation a notice in writing to that effect not less than 40 days before the date of the meeting in respect of which the waiver was given.

(4) If the management of a corporation, without reasonable cause, contravenes subsection (1), the corporation is guilty of an offence and liable to a fine of not more than \$5,000.

(5) If a corporation contravenes subsection (1), then, whether or not the corporation has been prosecuted or convicted in respect of that contravention, any director or officer of the corporation who knowingly authorizes, permits or acquiesces in the contravention is also guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Soliciting proxies

152.(1) A person shall not solicit proxies unless

- (a) in the case of solicitation by or on behalf of the management of a corporation, a management proxy circular in the prescribed form, either as an appendix to or as a separate document accompanying the notice of the meeting, or
- (b) in the case of any other solicitation, a dissident's proxy circular in the prescribed form stating the purposes of the solicitation

is sent to the auditor of the corporation, to each shareholder whose proxy is solicited and, if paragraph (b) applies, to the corporation.

(2) Subsection (1) does not apply to a corporation that has 15 or fewer shareholders entitled to vote at meetings of shareholders.

(3) A person required to send a management proxy circular or dissident's proxy circular under subsection (1) shall, if the corporation is a distributing corporation, file concurrently a copy of it with the registrar of securities, together with a copy of the notice of the meeting, form of proxy and any other documents for use in connection with the meeting.

(4) A person who contravenes subsection (1) or (3) is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both.

(5) If the person who contravenes subsection (3) is a body corporate, then, whether or not the body corporate has been prosecuted or convicted in respect of the contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the

contravention is also guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Exemption orders

153. On the application of an interested person,

- (a) the registrar of securities, if the corporation is a distributing corporation, or
- (b) the Supreme Court, if the corporation is not a distributing corporation

may make an order on any terms it considers appropriate exempting that person from the application of section 151 or subsection 152(1), and the order may have retrospective effect.

Rights and duties of proxyholder

154.(1) A person who solicits a proxy and is appointed as a proxyholder shall attend in person or cause an alternate proxyholder to attend the meeting in respect of which the proxy is given and comply with the directions of the shareholder who appointed him.

(2) A proxyholder or an alternate proxyholder has the same rights as the shareholder who appointed him to speak at a meeting of shareholders in respect of any matter, to vote by way of ballot at the meeting and, except where a proxyholder or an alternate proxyholder has conflicting instructions from more than one shareholder, to vote at such a meeting in respect of any matter by way of any show of hands.

(3) Notwithstanding subsections (1) and (2), if the chairperson of a meeting of shareholders declares to the meeting that, if a ballot is conducted, the total number of votes attached to shares represented at the meeting by proxy required to be voted against what to his knowledge will be the decision of the meeting in relation to any matter or group of matters is less than five percent of the votes attached to the shares entitled to vote and represented at the meeting on that ballot, then, unless a shareholder or proxyholder demands a ballot,

- (a) the chairperson may conduct the vote in respect of that matter or group of matters by a show of hands, and
- (b) a proxyholder or alternate proxyholder may vote in respect of that matter or group of matters by a show of hands.

(4) A proxyholder or alternate proxyholder who without reasonable cause fails to comply with the directions of a shareholder under this section is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Duties of registrant

155.(1) Shares of a corporation that are registered in the name of a registrant or his nominee and not beneficially owned by the registrant shall not be voted unless the registrant, forthwith after receipt of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents, other than the form of proxy sent to shareholders by or on behalf of any person for use in connection with the meeting, sends a copy of those documents to the beneficial owner and, except where the registrant has received written voting instructions from the beneficial owner, a written request for voting instructions.

(2) A registrant shall not vote or appoint a proxyholder to vote shares registered in his name or in the name of his nominee that he does not beneficially own unless he receives voting instructions from the beneficial owner.

(3) A person by or on behalf of whom a solicitation is made shall, at the request of a registrant, forthwith furnish to the registrant at that person's expense the necessary number of copies of the documents referred to in subsection (1) other than copies of the document requesting voting instructions.

(4) A registrant shall vote or appoint a proxyholder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) If requested by a beneficial owner, a registrant shall appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.

(6) The contravention of this section by a registrant does not render void any meeting of shareholders or any action taken at a meeting of shareholders.

(7) Nothing in this section gives a registrant the right to vote shares that he is otherwise prohibited from voting.

(8) A registrant who knowingly contravenes this section is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

(9) If the registrant who contravenes this section is a body corporate, then, whether or not the body corporate has been prosecuted or convicted in respect of the contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the contravention is also guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Court orders

156. If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made, an interested person or, if the corporation is a distributing corporation the registrar of securities, may apply to the Supreme Court and the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any one or more of the following:

- (a) an order restraining the solicitation, the holding of the meeting or any person from implementing or acting on any resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;
- (b) an order requiring correction of any form of proxy or proxy circular and a further solicitation;
- (c) an order adjourning the meeting.

PART 13

FINANCIAL DISCLOSURE

Annual financial statements

157. Subject to section 158, the directors of a corporation shall place before the shareholders at every annual meeting

- (a) the following financial statements as prescribed:
 - (i) if the corporation has not completed a financial period and the meeting is held after the end of the first 6 month period of that financial period, a financial statement for the next period that began on the date the corporation came into existence and ended on a date occurring not earlier than six months before the annual meeting;
 - (ii) if the corporation has completed only one financial period, a financial statement for that year;
 - (iii) if the corporation has completed two or more financial periods, financial statements for the completed financial periods;
 - (iv) if the corporation has completed one or more financial periods but the annual meeting is held after six months has expired in its current financial period, a financial statement for the period that
 - (A) began at the commencement of its current financial period, and
 - (B) ended on a date that occurred not earlier than six months before the annual meeting,in addition to any statements required under clause (ii) or (iii),
- (b) the report of the auditor, if any, and
- (c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the bylaws or any unanimous shareholder agreement.

Exemptions

158. A distributing corporation may apply to the registrar of securities for an order authorizing the corporation to omit from its financial statements any item prescribed, or to dispense with the publication of any financial statement prescribed, and the registrar of securities may, if he reasonably believes that the disclosure of the item or statement would be detrimental to the corporation, make the order on any reasonable conditions he thinks fit.

Consolidated statements

159.(1) A corporation shall keep at its records office a copy of the financial statements of each of its subsidiary bodies corporate and of each body corporate the accounts of which are consolidated in the financial statements of the corporation.

(2) Shareholders of a corporation and their agents and legal representatives may on request examine the statements referred to in subsection (1) during the usual business hours of the corporation, and may make extracts from them, free of charge.

(3) A corporation may, within 15 days of a request to examine under subsection (2), apply to the Supreme Court for an order barring the right of any person to so examine, and the Supreme Court may, if it is satisfied that the examination would be detrimental to the corporation or a subsidiary body corporate, bar that right and make any further order it thinks fit.

(4) A corporation shall give notice of an application under subsection (3) to the person making a request under subsection (2), and that person may appear and be heard in person or by counsel.

Approval of financial statements

160.(1) The directors of a corporation shall approve the financial statements referred to in section 157 and the approval shall be evidenced by the signature of one or more directors.

(2) A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 157 unless the financial statements are

- (a) approved and signed in accordance with subsection (1), and
- (b) accompanied by the report of the auditor of the corporation, if any.

Copies to shareholders

161.(1) A corporation shall, not less than 21 days before each annual meeting of shareholders or before the signing of a resolution under subsection 143(2) in lieu of the annual meeting, send a copy of the documents referred to in section 157 to each shareholder, except to a shareholder who has informed the corporation in writing that he does not want a copy of those documents.

(2) A corporation that, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$5,000.

Copies to registrar

162.(1) A distributing corporation shall, not less than 21 days before each annual meeting of shareholders or forthwith after the signing of a resolution under subsection 143(2) in lieu of the annual meeting, and in any event not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed, file a copy of the documents referred to in section 157 with the registrar of securities.

(2) If a distributing corporation

- (a) sends to its shareholders, or
- (b) is required to file with or send to a public authority or a stock exchange

interim financial statements or related documents, the corporation shall forthwith file copies of them with the registrar of securities.

(3) A subsidiary corporation is not required to comply with this section if

- (a) the financial statements of its holding corporation are in consolidated or combined form and include the accounts of the subsidiary, and

- (b) the consolidated or combined financial statements of the holding corporation are included in the documents filed with the registrar of securities by the holding corporation in compliance with this section.

(4) A corporation that contravenes this section is guilty of an offence and liable to a fine of not more than \$5,000.

Qualifications of the auditor

163.(1) Subject to subsection (5), a person is disqualified from being an auditor of a corporation if he is not independent of the corporation and its affiliates and the directors and officers of the corporation and its affiliates.

(2) For the purposes of this section,

- (a) independence is a question of fact, and
- (b) a person is deemed not to be independent if he or his business partner
 - (i) is a business partner, a director, an officer or an employee of the corporation or any of its affiliates, or a business partner of any director, officer or employee of the corporation or any of its affiliates,
 - (ii) beneficially owns or controls, directly or indirectly, an interest in the securities of the corporation or any of its affiliates, or
 - (iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within two years of his proposed appointment as auditor of the corporation.

(3) An auditor who becomes disqualified under this section shall, subject to subsection (5), resign forthwith after becoming aware of his disqualification.

(4) An interested person may apply to the Supreme Court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

(5) An interested person may apply to the Supreme Court for an order exempting an auditor from disqualification under this section and the Supreme Court may, if it is satisfied that an exemption would not unfairly prejudice the shareholders, make an exemption order on any terms it thinks fit, which order may have retrospective effect.

Auditor's appointment and remuneration

164.(1) Subject to section 165, shareholders of a corporation shall, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 105 is eligible for appointment under subsection (1).

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until his successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders or, if not so fixed, may be fixed by the directors.

Dispensing with auditor

165.(1) The shareholders of a corporation other than a distributing corporation may resolve not to appoint an auditor.

(2) A resolution under subsection (1) is valid only until the next succeeding annual meeting of shareholders.

(3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

Auditor ceasing to hold office

166.(1) An auditor of a corporation ceases to hold office when

- (a) he dies or resigns, or
- (b) he is removed pursuant to section 167.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

Removal of auditor

167.(1) The shareholders of a corporation may by ordinary resolution at a special meeting remove from office the auditor, other than an auditor appointed by the Supreme Court under section 169.

(2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if not so filled, may be filled under section 168.

Filling vacancy

168.(1) Subject to subsection (3), the directors shall forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office shall, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors, the meeting may be called by any shareholder.

(3) The articles of a corporation may provide that a vacancy in the office of auditor shall only be filled by vote of the shareholders.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.

(5) Subsections (1) and (2) do not apply if the shareholders have resolved under section 165 not to appoint an auditor.

Court appointed auditor

169.(1) If a corporation does not have an auditor, the Supreme Court may, on the application of a shareholder or, if the corporation is a distributing corporation the registrar of securities, appoint and fix the remuneration of an auditor who holds office until an auditor is appointed by the shareholders.

(2) Subsection (1) does not apply if the shareholders have resolved under section 165 not to appoint an auditor.

Rights and liabilities of auditor or former auditor

170.(1) The auditor of a corporation is entitled to receive notice of every meeting of shareholders and, at the expense of the corporation, to attend and be heard at every meeting on matters relating to his duties as auditor.

(2) If a director or shareholder of a corporation, whether or not the shareholder is entitled to vote at the meeting, gives written notice to the auditor or a former auditor of the corporation not less than ten days before a meeting of shareholders, the auditor or former auditor shall attend the meeting at the expense of the corporation and answer questions relating to his duties as auditor.

(3) A director or shareholder who sends a notice referred to in subsection (2) shall send concurrently a copy of the notice to the corporation.

(4) An auditor or former auditor of a corporation who without reasonable cause contravenes subsection (2) is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

(5) An auditor who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of directors or shareholders called for the purpose of removing him from office,
- (c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire, or
- (d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 165 is to be proposed,

is entitled to submit to the corporation a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(6) The corporation shall forthwith

- (a) send to every shareholder entitled to receive notice of any meeting referred to in subsection (1), and
- (b) file with the registrar of securities, if the corporation is a distributing corporation,

a copy of the statement referred to in subsection (5), unless the statement is included in or attached to a management proxy circular required by section 152.

(7) No person shall accept an appointment as or consent to be appointed as auditor of a corporation if he is replacing an auditor who has resigned or been removed or whose term of office has expired or is about to expire until he has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he is to be replaced.

(8) Notwithstanding subsection (7), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a corporation if, within 15 days after making the request referred to in that subsection, he does not receive a reply.

Auditor's duty to examine

171.(1) An auditor of a corporation shall make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except those financial statements or parts of those statements that relate to the earlier of the two financial years referred to in clause 156(a)(iii).

(2) Notwithstanding section 172, an auditor of a corporation may reasonably rely on the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the corporation.

(3) For the purpose of subsection (2), reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding corporation reported on by the auditor are in consolidated form.

Auditor's right to information

172.(1) On the demand of the auditor of a corporation, the present or former directors, officers, employees or agents of the corporation and the former auditors of the corporation shall furnish any

- (a) information and explanations, and
- (b) access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries

that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 171 and that the directors, officers, employees, agents or former auditors are reasonably able to furnish.

(2) On the demand of the auditor of a corporation, the directors of the corporation shall

- (a) to the extent they are reasonably able to do so, obtain from the present or former directors, officers, employees, agents or auditors of any subsidiary of the corporation the information and explanations that the present or former directors, officers, employees, agents or auditors are reasonably able to furnish and that are, in the opinion of the corporation's auditor, necessary to enable him to make the examination and report required under section 171, and
- (b) furnish the information and explanations so obtained to the corporation's auditor.

Audit committee

173.(1) Subject to subsection (3), a distributing corporation shall, and any other corporation may, have an audit committee.

(2) The audit committee of a distributing corporation shall be composed of not less than three directors of the corporation, a majority of whom are not officers or employees of the corporation or any of its affiliates.

(3) A distributing corporation may apply to the registrar of securities for an order authorizing the corporation to dispense with an audit committee, and the registrar of securities may, if he is satisfied that the shareholders will not be prejudiced by such an order, permit the corporation to dispense with an audit committee on any reasonable conditions that he thinks fit.

(4) An audit committee shall review the financial statements of the corporation before they are approved under section 160.

(5) The auditor of a corporation is entitled to receive notice of every meeting of the audit committee and, at the expense of the corporation, to attend and be heard at the meeting, and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

(6) The auditor of a corporation or a member of the audit committee may call a meeting of the committee.

(7) A director or an officer of a corporation shall forthwith notify the audit committee and the auditor of any error or misstatement of which he becomes aware in a financial statement that the auditor or a former auditor has reported on.

(8) If the auditor or a former auditor of a corporation is notified or becomes aware of an error or misstatement in a financial statement on which he has reported, and if in his opinion the error or misstatement is material, he shall inform each director accordingly.

(9) When under subsection (8) the auditor or a former auditor informs the directors of an error or misstatement in a financial statement,

- (a) the directors shall prepare and issue revised financial statements or otherwise inform the shareholders, and
- (b) if the corporation is a distributing corporation, the corporation shall file the revised financial statements with the registrar of securities or inform the registrar of securities of the error or misstatement in the same manner that the shareholders were informed of it.

(10) Every director or officer of a corporation who knowingly contravenes subsection (7) or (9) is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Qualified privilege

174. Any oral or written statement or report made under this Act by the auditor or a former auditor of a corporation has qualified privilege.

PART 14

FUNDAMENTAL CHANGES

Amendment of articles

175.(1) Subject to sections 178 and 179, the articles of a corporation may by special resolution be amended to

- (a) change its name, subject to section 14,
- (b) add, change or remove any restriction on the business or businesses that the corporation may carry on,
- (c) change any maximum number of shares that the corporation is authorized to issue,
- (d) create new classes of shares,
- (e) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued,
- (f) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series,
- (g) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of that series,
- (h) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of that series,
- (i) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series,
- (j) revoke, diminish or enlarge any authority conferred under paragraphs (h) and (i),
- (k) increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 108 and 113,
- (l) subject to subsection 49(8), add, change or remove restrictions on the transfer of shares, or
- (m) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

(2) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted on without further approval of the shareholders.

(3) Notwithstanding subsection (1), but subject to section 14, where a corporation has a designating number as a name, the directors may amend its articles to change that name to a verbal name.

Constrained shares

176.(1) In this section “resident Canadian” means an individual who is

- (a) a Canadian citizen ordinarily resident in Canada,
- (b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or
- (c) a permanent resident within the meaning of the Immigration Act, 1976 (Canada) and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he first became eligible to apply for Canadian citizenship.

(2) Subject to sections 178 and 179, a distributing corporation may by special resolution amend its articles in accordance with the regulations to constrain the issue or transfer of its shares

- (a) to persons who are not resident Canadians, or
- (b) to enable the corporation or any of its affiliates to qualify under any law of Canada or any province referred to in the regulations
 - (i) to obtain a licence to carry on any business,
 - (ii) to become a publisher of a Canadian newspaper or periodical, or
 - (iii) to acquire shares of a financial intermediary as defined in the regulations.

(3) A corporation referred to in subsection (2) may by special resolution amend its articles to remove any constraint on the issue or transfer of its shares.

(4) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under subsection (2), revoke the resolution before it is acted on without further approval of the shareholders.

(5) The Commissioner in Executive Council may make regulations with respect to a corporation that constrains the issue or transfer of its shares prescribing

- (a) the disclosure required of the constraints in documents issued or published by the corporation,
- (b) the duties and powers of the directors to refuse to issue or register transfers of shares in accordance with the articles of the corporation,
- (c) the limitations on voting rights of any shares held contrary to the articles of the corporation,
- (d) the powers of the directors to require disclosure of beneficial ownership of shares of the corporation and the right of the corporation and its directors, employees and agents to rely on such disclosure and the effects of such reliance, and
- (e) the rights of any person owning shares of the corporation at the time of an amendment to its articles constraining share issues or transfers.

(6) An issue or a transfer of a share or an act of a corporation is valid notwithstanding any contravention of this section or the regulations.

Proposal for amendment of articles

177.(1) Subject to subsection (2), a director or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 138, make a proposal to amend the articles.

(2) Notice of a meeting of shareholders at which a proposal to amend the articles is to be considered shall set out the proposed amendment and, if applicable, shall state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 193, but failure to make that statement does not invalidate an amendment.

Class votes

178.(1) The holders of shares of a class or, subject to subsection (2), of a series are entitled to vote separately as a class or series on a proposal to amend the articles to

- (a) increase or decrease any maximum number of authorized shares of that class, or increase the maximum number of authorized shares of a class having rights or privileges equal or superior to the rights or privileges attached to the shares of that class,
- (b) effect an exchange, reclassification or cancellation of all or part of the shares of that class,
- (c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, without limiting the generality of the foregoing,
 - (i) remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,
 - (ii) add, remove or change prejudicially redemption rights,
 - (iii) reduce or remove a dividend preference or a liquidation preference, or
 - (iv) add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, rights to acquire securities of a corporation or sinking fund provisions,
- (d) increase the rights or privileges of any class of shares having rights or privileges equal or superior to the rights or privileges attached to the shares of that class,
- (e) create a new class of shares having rights or privileges equal or superior to the rights or privileges attached to the shares of that class,
- (f) make the rights or privileges of any class of shares having rights or privileges inferior to the rights or privileges of the shares of that class equal or superior to the rights or privileges of the shares of that class,
- (g) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of that class, or
- (h) constrain the issue or transfer of the shares of that class or extend or remove that constraint.

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if the series is affected by an amendment in a manner different from other shares of the same class.

(3) Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

(4) A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately on the amendment as a class or series have approved the amendment by a special resolution.

Delivery of articles of amendment

179.(1) Subject to any revocation under subsection 175(2) or 176(4), after an amendment has been adopted under section 175, 176 or 178, articles of amendment in the prescribed form shall be sent to the registrar.

(2) Where an amendment changes the name of a corporation, the prescribed documents relating to the change of name shall be sent to the registrar, unless otherwise stipulated by the registrar.

(3) If an amendment effects or requires a reduction of stated capital, subsections 39(3) and (4) apply.

Certificate of amendment

180. On receipt of articles of amendment, the registrar shall issue a certificate of amendment in accordance with section 266.

Effect of certificate

181.(1) An amendment becomes effective on the date shown in the certificate of amendment and the articles are amended accordingly.

(2) No amendment to the articles affects an existing cause of action or claim or liability to prosecution in favour of or against the corporation or any of its directors or officers, or any civil, criminal or administrative action or proceeding to which a corporation or any of its directors or officers is a party.

Restated articles of incorporation

182.(1) A corporation may at any time, and shall when reasonably so directed by the registrar, restate by special resolution the articles of incorporation as amended.

(2) Restated articles of incorporation in the prescribed form shall be sent to the registrar.

(3) On receipt of restated articles of incorporation, the registrar shall issue a certificate of registration of restated articles in accordance with section 266.

(4) Restated articles of incorporation are effective on the date shown in the certificate of registration of restated articles and supersede the original articles of incorporation and all amendments to them.

Amalgamation

183.(1) Two or more corporations, including holding and subsidiary corporations, may amalgamate and continue as one corporation.

(2) Subsection (1) does not apply if one or more of the corporations is a professional corporation.

Amalgamation agreement

184.(1) Each corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out

- (a) the provisions that are required to be included in articles of incorporation under section 8,
- (b) the name and address of each proposed director of the amalgamated corporation,
- (c) the manner in which the shares of each amalgamating corporation are to be converted into shares or other securities of the amalgamated corporation,
- (d) if any shares of an amalgamating corporation are not to be converted into securities of the amalgamated corporation, the amount of money or securities of any body corporate that the holders of those shares are to receive in addition to or instead of securities of the amalgamated corporation,
- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated corporation or of any other body corporate the securities of which are to be received in the amalgamation,
- (f) whether the bylaws of the amalgamated corporation are to be those of one of the amalgamating corporations and, if not, a copy of the proposed bylaws, and
- (g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation.

(2) If shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement shall provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect of those shares, and no provision shall be made in the agreement for the conversion of those shares into shares of the amalgamated corporation.

Shareholder approval of amalgamation agreement

185.(1) The directors of each amalgamating corporation shall submit the amalgamation agreement for approval to a meeting of the holders of shares of the amalgamating corporation of which they are directors and, subject to subsection (4), to the holders of each class or series of those shares.

(2) A notice of a meeting of shareholders complying with section 136 shall be sent in accordance with that section to each shareholder of each amalgamating corporation and shall

- (a) include or be accompanied by a copy or summary of the amalgamation agreement, and

- (b) state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 193, but failure to make that statement does not invalidate an amalgamation.

(3) Each share of an amalgamating corporation carries the right to vote in respect of an amalgamation whether or not it otherwise carries the right to vote.

(4) The holders of shares of a class or series of shares of an amalgamating corporation are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those holders to vote as a class or series under section 178.

(5) Subject to subsections (4) and (6), an amalgamation agreement is adopted when the shareholders of each amalgamating corporation have approved of the amalgamation by special resolutions.

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement may be terminated by the directors of an amalgamating corporation, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating corporations.

Vertical and horizontal short form amalgamation

186.(1) A holding corporation and one or more of its wholly-owned subsidiary corporations may amalgamate and continue as one corporation without complying with sections 184 and 185 if

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation, and
- (b) the resolutions provide that
 - (i) the shares of each amalgamating subsidiary corporation shall be cancelled without any repayment of capital in respect of those shares,
 - (ii) except as may be prescribed, the articles of amalgamation will be the same as the articles of incorporation of the amalgamating holding corporation, and
 - (iii) no securities shall be issued by the amalgamated corporation in connection with the amalgamation.

(2) Two or more wholly-owned subsidiary corporations of the same holding body corporate may amalgamate and continue as one corporation without complying with sections 184 and 185 if

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation, and
- (b) the resolutions provide that
 - (i) the shares of all but one of the amalgamating subsidiary corporations shall be cancelled without any repayment of capital in respect of those shares,

- (ii) except as may be prescribed, the articles of amalgamation will be the same as the articles of incorporation of the amalgamating subsidiary corporation whose shares are not cancelled, and
- (iii) the stated capital of the amalgamating subsidiary corporations whose shares are cancelled shall be added to the stated capital of the amalgamating subsidiary corporation whose shares are not cancelled.

Delivery of articles of amalgamation and statutory declaration to registrar

187.(1) Subject to subsection 185(6), after an amalgamation agreement has been adopted under section 185 or an amalgamation has been approved under section 186, articles of amalgamation in the prescribed form shall be sent to the registrar together with the documents required by sections 22 and 107 and, if the name of the amalgamated company is not the same as one of the amalgamating companies, the prescribed documents relating to corporate names.

(2) The articles of amalgamation shall have attached to them the amalgamation agreement, if any, and a statutory declaration of a director or an officer of each amalgamating corporation that establishes to the satisfaction of the registrar that

- (a) there are reasonable grounds for believing that
 - (i) each amalgamating corporation is and the amalgamated corporation will be able to pay its liabilities as they become due, and
 - (ii) the realizable value of the amalgamated corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes, and
- (b) there are reasonable grounds for believing that
 - (i) no creditor will be prejudiced by the amalgamation, or
 - (ii) adequate notice has been given to all known creditors of the amalgamating corporations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of subsection (2), adequate notice is given if

- (a) a notice of the proposed amalgamation in writing is sent to each known creditor having a claim against the corporation that exceeds \$1,000,
- (b) a notice of the proposed amalgamation is published once in a newspaper published or distributed in the place where the corporation has its registered office and reasonable notice of the proposed amalgamation is given in each province in Canada where the corporation carries on business, and
- (c) each notice states that the corporation intends to amalgamate with one or more specified corporations in accordance with this Act unless a creditor of the corporation objects to the amalgamation within 30 days from the date of the notice.

(4) On receipt of articles of amalgamation and the other documents required by subsections (1) and (2), and on receipt of the prescribed fees, the registrar shall issue a certificate of amalgamation in accordance with section 266.

Effect of certificate of amalgamation

188. On the date shown in a certificate of amalgamation

- (a) the amalgamation of the amalgamating corporations and their continuance as one corporation become effective,
- (b) the property of each amalgamating corporation continues to be the property of the amalgamated corporation,
- (c) the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation,
- (d) an existing cause of action, claim or liability to prosecution is unaffected,
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating corporation may be continued to be prosecuted by or against the amalgamated corporation,
- (f) a conviction against, or ruling, order or judgement in favour of or against, an amalgamating corporation may be enforced by or against the amalgamated corporation, and
- (g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated corporation and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated corporation.

Amalgamation with extra-territorial corporation

189.(1) A corporation may amalgamate with an extra-territorial corporation and continue as one corporation under this Act if

- (a) the extra-territorial corporation is authorized to amalgamate with the corporation by the laws of the jurisdiction in which the extra-territorial corporation is incorporated, and
- (b) one is the wholly-owned subsidiary of the other.

(2) Subsection (1) does not apply if the corporation is a professional corporation.

(3) A corporation and an extra-territorial corporation proposing to amalgamate shall enter into an amalgamation agreement setting out the terms and means of effecting the amalgamation and, in particular,

- (a) providing for the matters enumerated in paragraphs 184(1)(a), (b) and (g),
- (b) providing that the shares of the wholly-owned subsidiary shall be cancelled without any repayment of capital in respect of those shares, and
- (c) providing that no securities shall be issued by the amalgamated corporation in connection with the amalgamation.

(4) An amalgamation under this section is adopted when

- (a) the agreement is approved by the directors of the corporation,
- (b) the agreement is approved by the directors or comparable governing body of, or the members of, the extra-territorial corporation, whichever body is required under the laws of the jurisdiction of incorporation of the extra-territorial corporation to approve it, and
- (c) the extra-territorial corporation has otherwise complied with the law of the jurisdiction in which it is incorporated.

(5) An amalgamation agreement under this section may provide that at any time before the issue of a certificate of amalgamation, the agreement may be terminated by the directors of the corporation or the directors or comparable governing body of the extra-territorial corporation, notwithstanding any previous approval of the agreement.

(6) Sections 187 and 188 apply to an amalgamation under this section as if both of the amalgamating bodies corporate were corporations except that the notice referred to in paragraph 187(3)(b) shall also be published or distributed in each jurisdiction outside Canada where either body corporate carries on business.

Continuance of an extra-territorial corporation as a Yukon corporation

190.(1) An extra-territorial corporation may, if so authorized by the laws of the jurisdiction where it is incorporated, apply to the registrar for a certificate of continuance.

(2) The provisions of the articles of continuance of an extra-territorial corporation may, without so stating, vary from the provisions of the extra-territorial corporation's act of incorporation, articles, letters patent or memorandum or articles of association, if the variation is one which a corporation incorporated under this Act could effect by way of amendment to its articles.

(3) Articles of continuance in the prescribed form shall be sent to the registrar together with the documents required by subsection 14(3) and sections 22 and 107.

(4) On receipt of articles of continuance and the documents required by subsection 14(3) and sections 22 and 107, the registrar shall issue a certificate of continuance in accordance with section 266.

(5) On the date shown in the certificate of continuance

- (a) the extra-territorial corporation becomes a corporation to which this Act applies as if it had been incorporated under this Act,
- (b) the articles of continuance are deemed to be the articles of incorporation of the continued corporation, and
- (c) the certificate of continuance is deemed to be the certificate of incorporation of the continued corporation.

(6) The registrar shall forthwith send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act was authorized.

(7) When an extra-territorial corporation is continued as a corporation under this Act,

- (a) the property of the extra-territorial corporation continues to be the property of the corporation,
- (b) the corporation continues to be liable for the obligations of the extra-territorial corporation,
- (c) an existing cause of action, claim or liability to prosecution is unaffected,

- (d) a civil, criminal or administrative action or proceeding pending by or against the extra-territorial corporation may be continued to be prosecuted by or against the corporation, and
- (e) a conviction against, or ruling, order or judgment in favour of or against, the extra-territorial corporation may be enforced by or against the corporation.

(8) Subject to subsection 49(8), a share of an extra-territorial corporation issued before the extra-territorial corporation was continued under this Act is deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance irrespective of whether the share is fully paid and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share, and continuance under this section does not deprive a holder of any right or privilege that he claims under, or relieve him of any liability in respect of, an issued share.

(9) Notwithstanding subsection 27(1), if a corporation continued under this Act had, before it was so continued, issued a share certificate in registered form that is convertible to a share certificate in favour of bearer, the corporation may, if a holder of such a share certificate exercises the conversion privilege attached to it, issue a share certificate in favour of bearer for the same number of shares to the holder.

(10) For the purposes of subsections (8) and (9), “share” includes an instrument referred to in subsection 32(1), a share warrant or a like instrument.

(11) If the registrar determines on the application of an extra-territorial corporation, that it is not practicable to change a reference to the nominal or par value of shares of a class or series that it was authorized to issue before it was continued under this Act, the registrar may, notwithstanding subsection 27(1), permit the extra-territorial corporation to continue to refer in its articles to those shares, whether issued or unissued, as shares having a nominal or par value.

(12) A corporation shall set out in its articles the maximum number of shares of a class or series referred to in subsection (11) and may not amend its articles to increase that maximum number of shares or to change the nominal or par value of those shares.

Continuance of a Yukon corporation into another jurisdiction

191.(1) Subject to subsection (9), a corporation may, if it is authorized by the shareholders in accordance with this section, apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued as if it had been incorporated under the laws of that other jurisdiction.

(2) A notice of a meeting of shareholders complying with section 136 shall be sent in accordance with that section to each shareholder and shall state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 193, but failure to make that statement does not invalidate a discontinuance under this Act.

(3) Each share of the corporation carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote.

(4) An application for continuance becomes authorized when the shareholders voting on it have approved of the continuance by a special resolution.

(5) The directors of a corporation may, if authorized by the shareholders at the time of approving an application for continuance under this section, abandon the application without further approval of the shareholders.

(6) On receipt of notice satisfactory to him that the corporation has been continued under the laws of another jurisdiction, and on giving his approval under subsection (1), the registrar shall file the notice and issue a certificate of discontinuance.

(7) Section 266 applies with the necessary changes to the notice filed under subsection (6) as though the notice were articles that conform to law.

(8) On the date shown in the certificate of discontinuance, the corporation becomes an extra-territorial corporation as if it had been incorporated under the laws of the other jurisdiction.

(9) A corporation shall not be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that

- (a) the property of the corporation continues to be the property of the body corporate,
- (b) the body corporate continues to be liable for the obligations of the corporation,
- (c) an existing cause of action, claim or liability to prosecution is unaffected,
- (d) a civil, criminal or administrative action or proceeding pending by or against the corporation may be continued to be prosecuted by or against the body corporate, and
- (e) a conviction against, or ruling, order or judgment in favour of or against the corporation may be enforced by or against the body corporate.

Extraordinary sale, lease or exchange of property

192.(1) A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in accordance with subsections (2) to (6).

(2) A notice of meeting of shareholders complying with section 136 shall be sent in accordance with that section to each shareholder and shall

- (a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange, and
- (b) state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 193, but failure to make that statement does not invalidate a sale, lease or exchange referred to in subsection (1).

(3) At the meeting referred to in subsection (2) the shareholders may authorize the sale, lease or exchange and may fix or authorize the directors to fix any of its terms and conditions.

(4) Each share of the corporation carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1) whether or not it otherwise carries the right to vote.

(5) The holders of shares of a class or series of shares of the corporation are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (1) only if that class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

(6) A sale, lease or exchange referred to in subsection (1) is adopted when the holders of each class or series entitled to vote on it have approved of the sale, lease or exchange by a special resolution.

(7) The directors of a corporation may, if authorized by the shareholders approving a proposed sale, lease or exchange, and subject to the rights of third parties, abandon the sale, lease or exchange without further approval of the shareholders.

Shareholder's right to dissent

193.(1) Subject to sections 194 and 243, a holder of shares of any class of a corporation may dissent if the corporation resolves to

- (a) amend its articles under section 175 or 176 to add, change or remove any provisions restricting or constraining the issue or transfer of shares of that class,
- (b) amend its articles under section 175 to add, change or remove any restrictions on the business or businesses that the corporation may carry on,
- (c) amalgamate with another corporation, otherwise than under section 186 or 189,
- (d) be continued under the laws of another jurisdiction under section 191, or
- (e) sell, lease or exchange all or substantially all its property under section 192.

(2) A holder of shares of any class or series of shares entitled to vote under section 178 may dissent if the corporation resolves to amend its articles in a manner described in that section.

(3) In addition to any other right he may have, but subject to subsection (20), a shareholder entitled to dissent under this section and who complies with this section is entitled to be paid by the corporation the fair value of the shares held by him in respect of which he dissents, determined as of the close of business on the last business day before the day on which the resolution from which he dissents was adopted.

(4) A dissenting shareholder may only claim under this section with respect to all the shares of a class held by him or on behalf of any one beneficial owner and registered in the name of the dissenting shareholder.

(5) A dissenting shareholder shall send to the corporation a written objection to a resolution referred to in subsection (1) or (2)

- (a) at or before any meeting of shareholders at which the resolution is to be voted on, or

- (b) if the corporation did not send notice to the shareholder of the purpose of the meeting or of his right to dissent, within a reasonable time after he learns that the resolution was adopted and of his right to dissent.

(6) An application may be made to the Supreme Court after the adoption of a resolution referred to in subsection (1) or (2),

- (a) by the corporation, or
- (b) by a shareholder if he has sent an objection to the corporation under subsection (5),

to fix the fair value in accordance with subsection (3) of the shares of a shareholder who dissents under this section.

(7) If an application is made under subsection (6), the corporation shall, unless the Supreme Court otherwise orders, send to each dissenting shareholder a written offer to pay him an amount considered by the directors to be the fair value of the shares.

(8) Unless the Supreme Court otherwise orders, an offer referred to in subsection (7) shall be sent to each dissenting shareholder

- (a) at least ten days before the date on which the application is returnable, if the corporation is the applicant, or
- (b) within ten days after the corporation is served with a copy of the originating notice, if a shareholder is the applicant.

(9) Every offer made under subsection (7) shall

- (a) be made on the same terms, and
- (b) contain or be accompanied by a statement showing how the fair value was determined.

(10) A dissenting shareholder may make an agreement with the corporation for the purchase of his shares by the corporation, in the amount of the corporation's offer under subsection (7) or otherwise, at any time before the Supreme Court pronounces an order fixing the fair value of the shares.

(11) A dissenting shareholder

- (a) is not required to give security for costs in respect of an application under subsection (6), and
- (b) except in special circumstances shall not be required to pay the costs of the application or appraisal.

(12) In connection with an application under subsection (6), the Supreme Court may give directions for

- (a) joining as parties all dissenting shareholders whose shares have not been purchased by the corporation and for the representation of dissenting shareholders who, in the opinion of the Supreme Court, are in need of representation,
- (b) the trial of issues and interlocutory matters, including pleadings and examinations for discovery,

- (c) the payment to the shareholder of all or part of the sum offered by the corporation for the shares,
- (d) the deposit of the share certificates with the Supreme Court or with the corporation or its transfer agent,
- (e) the appointment and payment of independent appraisers, and the procedures to be followed by them,
- (f) the service of documents, and
- (g) the burden of proof on the parties.

(13) On an application under subsection (6), the Supreme Court shall make an order

- (a) fixing the fair value of the shares in accordance with subsection (3) of all dissenting shareholders who are parties to the application,
- (b) giving judgment in that amount against the corporation and in favour of each of those dissenting shareholders, and
- (c) fixing the time within which the corporation must pay that amount to a shareholder.

(14) On

- (a) the action approved by the resolution from which the shareholder dissents becoming effective,
- (b) the making of an agreement under subsection (10) between the corporation and the dissenting shareholder as to the payment to be made by the corporation for his shares, whether by the acceptance of the corporation's offer under subsection (7) or otherwise, or
- (c) the pronouncement of an order under subsection (13),

whichever first occurs, the shareholder ceases to have any rights as a shareholder other than the right to be paid the fair value of his shares in the amount agreed to between the corporation and the shareholder or in the amount of the judgment, as the case may be.

(15) Paragraph (14)(a) does not apply to a shareholder referred to in paragraph (5)(b).

(16) Until one of the events mentioned in subsection (14) occurs,

- (a) the shareholder may withdraw his dissent, or
- (b) the corporation may rescind the resolution,

and in either event proceedings under this section shall be discontinued.

(17) The Supreme Court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting shareholder, from the date on which the shareholder ceases to have any rights as a shareholder by reason of subsection (14) until the date of payment.

(18) If subsection (20) applies, the corporation shall, within ten days after

- (a) the pronouncement of an order under subsection (13), or
- (b) the making of an agreement between the shareholder and the corporation as to the payment to be made for his shares,

notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

(19) Notwithstanding that a judgment has been given in favour of a dissenting shareholder under paragraph (13)(b), if subsection (20) applies, the dissenting shareholder, by written notice delivered to the corporation within 30 days after receiving the notice under subsection (18), may withdraw his notice of objection, in which case the corporation is deemed to consent to the withdrawal and the shareholder is reinstated to his full rights as a shareholder, failing which he retains a status as a claimant against the corporation, to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to its shareholders.

(20) A corporation shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that

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

PART 15

CORPORATE REORGANIZATION AND ARRANGEMENTS

Articles of reorganization resulting from court order

194.(1) In this section, "order for reorganization" means an order of the Supreme Court made under

- (a) section 243,
- (b) the Bankruptcy Act (Canada) approving a proposal, or
- (c) any other Act of the Parliament of Canada or an Act of the Legislature that affects the rights among the corporation, its shareholders and creditors.

(2) If a corporation is subject to an order for reorganization, its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 175.

(3) If the Supreme Court makes an order for reorganization, the Court may also

- (a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms of those debt obligations, and
- (b) appoint directors in place of or in addition to all or any of the directors then in office.

(4) After an order for reorganization has been made, articles of reorganization in the prescribed form shall be sent to the registrar together with the documents required by sections 22 and 114, if applicable.

(5) On receipt of articles of reorganization, the registrar shall issue a certificate of amendment in accordance with section 266.

(6) An order for reorganization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.

(7) A shareholder is not entitled to dissent under section 193 if an amendment to the articles of incorporation is effected under this section.

Court-approved arrangements

195.(1) In this section, "arrangement" includes, but is not restricted to

- (a) an amendment to the articles of a corporation,
- (b) an amalgamation of two or more corporations,
- (c) an amalgamation of a body corporate with a corporation that results in an amalgamated corporation subject to this Act,
- (d) a division of the business carried on by a corporation,
- (e) a transfer of all or substantially all the property of a corporation to another body corporate in exchange for property, money or securities of the body corporate,
- (f) an exchange of securities of a corporation held by security holders for property, money or other securities of the corporation or property, money or securities of another body corporate that is not a take-over bid as defined in section 196,
- (g) a liquidation and dissolution of a corporation,
- (h) a compromise between a corporation and its creditors or any class of its creditors or between a corporation and the holders of its shares or debt obligations or any class of those holders, or
- (i) any combination of the foregoing.

(2) An application may be made to the Supreme Court by a corporation or a security holder or creditor of a corporation for an order approving an arrangement in respect of the corporation.

(3) If an arrangement can be effected under any other provision of this Act, an application may not be made under this section unless it is impracticable to effect the arrangement under that other provision.

(4) In connection with an application under this section, the Supreme Court, unless it dismisses the application,

- (a) shall order the holding of a meeting of shareholders or a class or classes of shareholders to vote on the proposed arrangement,
- (b) shall order a meeting of persons who are creditors or holders of debt obligations of the corporation or of options or rights to acquire securities of the corporation, or any class of those persons, if the Supreme Court considers that those persons or that class of persons are affected by the proposed arrangement,
- (c) may, with respect to any meeting referred to in paragraph (a) or (b), give any directions in the order respecting
 - (i) the calling of and the giving of notice of the meeting,

- (ii) the conduct of the meeting,
 - (iii) subject to subsection (6), the majority required to pass a resolution at the meeting, and
 - (iv) any other matter it thinks fit, and
- (d) may make an order appointing counsel to represent, at the expense of the corporation, the interests of the shareholders or any of them.

(5) The notice of a meeting referred to in paragraph (4)(a) or (b) shall contain or be accompanied by

- (a) a statement explaining the effect of the arrangement, and
- (b) if the application is made by the corporation, a statement of any material interests of the directors of the corporation, whether as directors, security holders or creditors, and the effect of the arrangement on those interests.

(6) An order made under clause (4)(c)(iii) in respect of any meeting may not provide for any majority that is less than the following:

- (a) in the case of a vote of the shareholders or a class of shareholders, a majority of at least two-thirds of the votes cast by the shareholders voting on the resolution;
- (b) in the case of a vote of creditors or a class of creditors, a majority in number representing at least two-thirds of the amount of their claims;
- (c) in the case of a vote of the holders of debt obligations or a class of those holders, a majority in number representing at least two-thirds of the amount of their claims;
- (d) in the case of a vote of holders of options or rights to acquire securities, the majority that would be required under paragraph (a) or (c) if those holders had acquired ownership of the securities.

(7) Notwithstanding anything in subsections (4) to (6), if a resolution required to be voted on pursuant to the order under subsection (4) is in writing and signed by all the persons entitled to vote on the resolution,

- (a) the meeting required to be held by the order need not be held, and
- (b) the resolution is as valid as if it had been passed at a meeting.

(8) If the application is in respect of a distributing corporation, the applicant shall give the registrar of securities notice of the application and the registrar of securities is entitled to appear and be heard in person or by counsel.

(9) After the holding of the meetings required by an order under subsection (4) or the submission to it of written resolutions that comply with subsection (7), the Supreme Court shall hear the application and may in its discretion

- (a) approve the arrangement as proposed by the applicant or as amended by the Supreme Court, or
- (b) refuse to approve the arrangement, and make any further order it thinks fit.

(10) After an order referred to in paragraph (9)(a) has been made, the corporation shall send to the registrar

- (a) a copy of the order,
- (b) articles of arrangement in the prescribed form,
- (c) articles of amalgamation or statement of intent to dissolve pursuant to section 213 in the prescribed form, if applicable, and
- (d) the documents required by sections 22 and 114, if applicable,

and the registrar shall file them.

(11) On filing any documents referred to in paragraphs (10)(b) and (c), the registrar shall issue the appropriate certificate in accordance with section 266.

(12) An arrangement becomes effective

- (a) on the date shown in the certificate issued pursuant to subsection (11), or
- (b) if no certificate is required to be issued pursuant to subsection (11), on the date the documents are filed pursuant to subsection (10).

(13) An arrangement as approved by the Supreme Court is binding on the corporation and all other persons.

PART 16

TAKE-OVER BIDS - COMPULSORY PURCHASE

Definitions

196. In this Part,

“dissenting offeree” means an offeree who does not accept a take-over bid and a person who acquires from an offeree a share for which a take-over bid is made;

“offer” includes an invitation to make an offer;

“offeree” means a person to whom a take-over bid is made;

“offeree corporation” means a corporation whose shares are the object of a take-over bid;

“offeror” means a person, other than an agent, who makes a take-over bid, and includes two or more persons who, directly or indirectly,

- (a) make take-over bids jointly or in concert, or
- (b) intend to exercise jointly or in concert voting rights attached to shares for which a take-over bid is made;

“share” means a share with or without voting rights and includes

- (a) a security currently convertible into such a share, and
- (b) currently exercisable options and rights to acquire such a share or such a convertible security;

“take-over bid” means an offer made by an offeror to shareholders to acquire all of the shares of any class of shares of an offeree corporation not already owned by the offeror, and includes every take-over bid by a corporation to repurchase all of the shares of any class of its shares which leaves outstanding voting shares of the corporation.

Compulsory acquisition of shares of dissenting offeree

197.(1) A take-over bid is deemed to be dated as of the date on which it is sent.

(2) If within the time limited in a take-over bid for its acceptance or within 120 days after the date of a take-over bid, whichever period is the shorter, the bid is accepted by the holders of not less than 90 percent of the shares of any class of shares to which the take-over bid relates, other than shares of that class held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on the bid being so accepted and on complying with this Part, to acquire the shares of that class held by the dissenting offerees.

(3) The rights of an offeror and offeree under this Part are subject to any unanimous shareholder agreement.

Offeror's notices

198.(1) An offeror may acquire shares held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that

- (a) the offerees holding more than 90 percent of the shares to which the bid relates have accepted the take-over bid,
- (b) the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid,
- (c) a dissenting offeree is required to elect
 - (i) to transfer his shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid, or
 - (ii) to demand payment of the fair value of his shares
 - (A) by notifying the offeror, and
 - (B) by applying to the Supreme Court to fix the fair value of the shares of the dissenting offeree,
 within 60 days after the date of the sending of the offeror's notice,
- (d) a dissenting offeree who does not notify the offeror and apply to the Supreme Court in accordance with clause (c)(ii) is deemed to have elected to transfer his shares to the offeror on the same terms that the offeror acquired the shares from the offerees who accepted the take-over bid, and
- (e) a dissenting offeree shall send the share certificates of the class of shares to which the take-over bid relates to the offeree corporation within 20 days after he receives the offeror's notice.

(2) Concurrently with sending the offeror's notice under subsection (1), the offeror shall send to the offeree corporation a notice of adverse claim in accordance with section 78 with respect to each share held by a dissenting offeree.

Surrender of share certificate and payment of money

199.(1) A dissenting offeree to whom an offeror's notice is sent under subsection 198(1) shall, within 20 days after he receives that notice, send his share certificates of the class of shares to which the take-over bid relates to the offeree corporation.

(2) Within 20 days after the offeror sends an offeror's notice under subsection 198(1), the offeror shall pay or transfer to the offeree corporation the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under clause 197(1)(c)(i).

Offeree corporation's obligations

200.(1) The offeree corporation is deemed to hold in trust for the dissenting offerees the money or other consideration it receives under subsection 199(2), and the offeree corporation shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance board, and shall place the other consideration in the custody of a bank or such other body corporate.

(2) Within 30 days after the offeror sends an offeror's notice under subsection 198(1), the offeree corporation shall, if the offeror has paid or transferred to the offeree corporation the money or other consideration referred to in subsection 199(2),

- (a) issue to the offeror a share certificate in respect of the shares that were held by dissenting offerees,
- (b) give to each dissenting offeree who elects to accept the take-over bid terms under clause 197(1)(c)(i) and who sends or delivers his share certificates as required under subsection 199(1), the money or other consideration to which he is entitled, disregarding fractional shares, which may be paid for in money, and
- (c) send to each dissenting shareholder who has not sent his share certificates as required under subsection 199(1) a notice stating that
 - (i) his shares have been cancelled,
 - (ii) the offeree corporation or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his shares, and
 - (iii) the offeree corporation will, subject to sections 201 to 207, send that money or other consideration to him forthwith after receiving his shares.

Offeror's right to apply

201. If a dissenting offeree has elected to demand payment of the fair value of his shares under paragraph 198(1)(c), the offeror may, within 20 days after it has paid the money or transferred the other consideration under subsection 199(2), apply to the Supreme Court to fix the fair value of the shares of that dissenting offeree.

No security for costs

202. A dissenting offeree is not required to give security for costs in an application made under this Part.

Procedure on application

203. If more than one application is made under sections 198 and 201, the offeror or a dissenting offeree may apply to have the applications heard together.

Court to fix fair value

204. On an application under this Part, the Supreme Court shall fix a fair value for the shares of each dissenting offeree who is a party to the application.

Power of court

205. The Supreme Court may in its discretion appoint one or more appraisers to assist the Supreme Court to fix a fair value for the shares of a dissenting offeree.

Final order

206. The final order of the Supreme Court shall be made against the offeror in favour of each dissenting offeree who has elected to demand payment of the fair value of his shares for the fair value of his shares as fixed by the Supreme Court.

Additional powers of court

207. In connection with proceedings under this Part, the Supreme Court may make any order it thinks fit and, without limiting the generality of the foregoing, it may do any or all of the following:

- (a) fix the amount of money or other consideration that is required to be held in trust under subsection 200(1);
- (b) order that that money or other consideration be held in trust by a person other than the offeree corporation;
- (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his share certificates under subsection 199(1) until the date of payment;
- (d) order that any money payable to a shareholder who cannot be found be paid to the Executive Council Member and subsection 229(3) applies in respect of money so paid.

Corporation's offer to repurchase its own shares

208.(1) If the take-over bid is an offer by a corporation to repurchase its own shares, subsection 198(2) does not apply, and subsection 199(2) does not apply but the corporation shall comply with subsection 200(1) within 20 days after it sends an offeror's notice under subsection 198(1).

(2) If

- (a) the take-over bid is an offer by a corporation to repurchase its own shares, and
- (b) the corporation is prohibited by section 35
 - (i) from depositing or placing the consideration for the shares pursuant to subsection 200(1), or
 - (ii) paying the amount for the shares fixed by the Supreme Court pursuant to section 204

the corporation

- (c) shall re-issue to the dissenting offeree the shares for which the corporation is not allowed to pay, and
- (d) is entitled to use for its own benefit any money or consideration deposited or placed under subsection 200(1),

and the dissenting offeree is reinstated to his full rights, as a shareholder.

PART 17

LIQUIDATION AND DISSOLUTION

Staying proceedings

209. Any proceedings taken under this Part to dissolve or to liquidate and dissolve a corporation shall be stayed if the corporation is at any time found to be insolvent within the meaning of the Bankruptcy Act (Canada).

Revival by the registrar

210.(1) If a corporation is dissolved under section 212, 213 or 214 or under any similar provision of any Act for which this Act is substituted, any interested person may apply to the registrar to have the corporation revived.

(2) Articles of revival in the prescribed form and the prescribed documents relating to corporate names shall be sent to the registrar unless otherwise stipulated by the registrar.

(3) On receipt of articles of revival and the documents referred to in subsection (2), the registrar shall issue a certificate of revival in accordance with section 266.

(4) A corporation is revived on the date shown on the certificate of revival, and thereafter the corporation, subject to any reasonable terms that may be imposed by the registrar and to the rights acquired by any person after its dissolution, has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved.

Revival by court order

211.(1) Any interested person may apply to the Supreme Court for an order reviving a body corporate that was dissolved by court order.

(2) An applicant under subsection (1) shall give notice of the application to the registrar and the registrar is entitled to appear and be heard in person or by counsel.

(3) An order under subsection (1) may revive the body corporate for a limited period for the purpose of carrying out particular acts specified in the order.

(4) In an order under subsection (1) the Supreme Court may

- (a) give directions as to the holding of meetings of shareholders, the appointment of directors and meetings of directors,
- (b) change the name of the body corporate to a number designated or name approved by the registrar, and

(c) give any other directions the Supreme Court thinks fit.

(5) A body corporate revived by an order under this section to which subsection (3) applies is dissolved on the expiration of the time limited by the order.

(6) If an order is made under this section, the applicant shall forthwith send a certified copy of the order to the registrar who shall file it and issue a certificate of revival in accordance with section 266.

(7) On the making of an order under this section, the body corporate, subject to the order and to the rights acquired by any person after its dissolution, has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved.

Dissolution by directors or shareholders in special cases

212.(1) A corporation that has not issued any shares and that has no property and no liabilities may be dissolved at any time by resolution of all the directors.

(2) A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

(3) A corporation that has property or liabilities or both may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote, if

- (a) by the special resolution or resolutions the shareholders authorize the directors to cause the corporation to distribute all property and discharge all liabilities, and
- (b) the corporation has distributed all property and discharged all liabilities before it sends articles of dissolution to the registrar pursuant to subsection (4).

(4) Articles of dissolution in the prescribed form shall be sent to the registrar.

(5) On receipt of articles of dissolution, the registrar shall issue a certificate of dissolution in accordance with section 266.

(6) The corporation ceases to exist on the date shown in the certificate of dissolution.

Voluntary liquidation and dissolution

213.(1) The directors may propose, or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 138, make a proposal for the voluntary liquidation and dissolution of a corporation.

(2) Notice of any meeting of shareholders at which voluntary liquidation and dissolution is to be proposed shall set out the terms of the liquidation and dissolution.

(3) A corporation may liquidate and dissolve by special resolution of the shareholders or, if the corporation has issued more than one class of shares, by special resolution of the holders of each class whether or not they are otherwise entitled to vote.

(4) A statement of intent to dissolve in the prescribed form shall be sent to the registrar.

(5) On receipt of a statement of intent to dissolve, the registrar shall issue a certificate of intent to dissolve in accordance with section 266.

(6) On issue of a certificate of intent to dissolve, the corporation shall cease to carry on business except to the extent necessary for the liquidation, but its corporate existence continues until the registrar issues a certificate of dissolution.

(7) After issue of a certificate of intent to dissolve, the corporation shall

- (a) immediately cause notice of the issue of the certificate to be sent or delivered to each known creditor of the corporation,
- (b) forthwith publish notice of the issue of the certificate
 - (i) in the Yukon Gazette, and
 - (ii) once in a newspaper published or distributed in the place where the corporation has its registered office,

and take reasonable steps to give notice of the issue of the certificate in every jurisdiction where the corporation was carrying on business at the time it sent the statement of intent to dissolve to the registrar,

- (c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations and to do all other acts required to liquidate its business, and
- (d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind among its shareholders according to their respective rights.

(8) The registrar or any interested person may, at any time during the liquidation of a corporation, apply to the Supreme Court for an order that the liquidation be continued under the supervision of the Supreme Court as provided in this Part, and on the application the Court may so order and make any further order it thinks fit.

(9) An applicant under this section shall give the registrar notice of the application, and the registrar is entitled to appear and be heard in person or by counsel.

(10) At any time after the issue of a certificate of intent to dissolve and before the issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked

- (a) by sending to the registrar a statement of revocation of intent to dissolve in the prescribed form and approved in the same manner as the resolution under subsection (3), and
- (b) by publishing the statement in the Yukon Gazette.

(11) On receipt of a statement of revocation of intent to dissolve, the registrar shall issue a certificate of revocation of intent to dissolve in accordance with section 266.

(12) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the corporation may continue to carry on its business or businesses.

(13) If a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection (7), the corporation shall prepare articles of dissolution.

(14) Articles of dissolution in the prescribed form shall be sent to the registrar.

(15) On receipt of articles of dissolution, the registrar shall issue a certificate of dissolution in accordance with section 266.

(16) The corporation ceases to exist on the date shown in the certificate of dissolution.

Dissolution by registrar

214.(1) Subject to subsections (2) and (3), if a corporation

- (a) has not commenced business within three years after the date shown in its certificate of incorporation,
- (b) has not carried on its business for three consecutive years, or
- (c) is in default for a period of one year in sending to the registrar any notice or document required by this Act,

the registrar may dissolve the corporation by issuing a certificate of dissolution under this section or he may apply to the Supreme Court for an order dissolving the corporation, in which case section 219 applies.

(2) The registrar shall not dissolve a corporation under this section until he has

- (a) given 120 days notice of his decision to dissolve the corporation to the corporation and to two directors of the corporation and, if there is only one director of the corporation, to such director, and
- (b) published notice of his decision to dissolve the corporation in the Yukon Gazette.

(3) Unless cause to the contrary has been shown or an order has been made by the Supreme Court under section 248, the registrar may, after expiry of the period referred to in subsection (2), issue a certificate of dissolution in the prescribed form.

(4) The corporation ceases to exist on the date shown in the certificate of dissolution.

Dissolution by court order

215.(1) The registrar or any interested person may apply to the Supreme Court for an order dissolving a corporation if the corporation has

- (a) failed for two or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders,
- (b) contravened subsection 19(2), or sections 24, 159 or 161, or

(c) procured any certificate under this Act by misrepresentation.

(2) An applicant under this section, other than the registrar, shall give the registrar notice of the application, and the registrar is entitled to appear and be heard in person or by counsel.

(3) On an application under this section or section 214, the Supreme Court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the Supreme Court, and the Court may make any other order it thinks fit.

(4) On receipt of an order under this section, section 214 or section 216, the registrar shall

- (a) if the order is to dissolve the corporation, issue a certificate of dissolution in the prescribed form, or
- (b) if the order is to liquidate and dissolve the corporation under the supervision of the Supreme Court, issue a certificate of intent to dissolve in the prescribed form and publish notice of the order in the Yukon Gazette.

(5) The corporation ceases to exist on the date shown in the certificate of dissolution.

Other grounds for liquidation and dissolution pursuant to court order

216.(1) The Supreme Court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder,

- (a) if the Supreme Court is satisfied that in respect of a corporation or any of its affiliates
 - (i) any act or omission of the corporation or any of its affiliates effects a result,
 - (ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
 - (iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, or

- (b) if the Supreme Court is satisfied that
 - (i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or
 - (ii) it is just and equitable that the corporation should be liquidated and dissolved.

(2) On an application under this section, the Supreme Court may make any order under this section or section 243 it thinks fit.

(3) Section 244 applies to an application under this section.

Application for court supervision

217.(1) An application to the Supreme Court to supervise a voluntary liquidation and dissolution under subsection 213(8) shall state the reasons, verified by an affidavit of the applicant, why the Supreme Court should supervise the liquidation and dissolution.

(2) If the Supreme Court makes an order applied for under subsection 213(8), the liquidation and dissolution of the corporation shall continue under the supervision of the Supreme Court in accordance with this Act.

Show cause order

218.(1) An application to the Supreme Court under subsection 216(1) shall state the reasons, verified by an affidavit of the applicant, why the corporation should be liquidated and dissolved.

(2) On an application under subsection 216(1), the Supreme Court may make an order requiring the corporation and any person having an interest in the corporation or a claim against it to show cause, at a time and place specified in the order but not less than 30 days after the date of the order, why the corporation should not be liquidated and dissolved.

(3) On an application under subsection 216(1), the Supreme Court may order the directors and officers of the corporation to furnish to the Supreme Court all material information known to or reasonably ascertainable by them, including

- (a) financial statements of the corporation,
- (b) the name and address of each shareholder of the corporation, and
- (c) the name and address of each creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the corporation has a contract.

(4) A copy of an order made under subsection (2) shall be

- (a) published as directed in the order, at least once in each week before the time appointed for the hearing, in a newspaper published or distributed in the place where the corporation has its registered office, and
- (b) served on the registrar and each person named in the order.

(5) Publication and service of an order under this section shall be effected by the corporation or by any other person and in any manner the Supreme Court may order.

Powers of the court

219. In connection with the dissolution or the liquidation and dissolution of a corporation, the Supreme Court may make any order it thinks fit including, without limiting the generality of the foregoing, any one or more of the following:

- (a) an order to liquidate;
- (b) an order appointing a liquidator, with or without security, fixing his remuneration or replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration or replacing inspectors or referees;

- (d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (e) an order determining the validity of any claims made against the corporation;
- (f) an order at any stage of the proceedings, restraining the directors and officers from
 - (i) exercising any of their powers, or
 - (ii) collecting or receiving any debt or other property of the corporation, or from paying out or transferring any property of the corporation, except as permitted by the Supreme Court;
- (g) an order determining and enforcing the duty or liability of any director, officer or shareholder
 - (i) to the corporation, or
 - (ii) for an obligation of the corporation;
- (h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of assets for that purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;
- (i) an order disposing of or destroying the documents and records of the corporation;
- (j) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;
- (k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on any terms the Supreme Court thinks fit or confirming any act of the liquidator;
- (l) subject to section 225, an order approving any proposed interim or final distribution to shareholders in money or in property;
- (m) an order disposing of any property belonging to creditors or shareholders who cannot be found;
- (n) on the application of any director, officer, security holder, creditor or the liquidator,
 - (i) an order staying the liquidation on any terms and conditions the Supreme Court thinks fit,
 - (ii) an order continuing or discontinuing the liquidation proceedings, or
 - (iii) an order to the liquidator to restore to the corporation all its remaining property;
- (o) after the liquidator has rendered his final account to the Supreme Court, an order dissolving the corporation.

Commencement of liquidation

220. If the Supreme Court makes an order for the liquidation of a corporation, the liquidation commences when the order is made.

Effect of liquidation order

221.(1) If the Supreme Court makes an order for liquidation of a corporation,

- (a) the corporation continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation, and

- (b) the powers of the directors and shareholders cease and vest in the liquidator, except as specifically authorized by the Supreme Court.

(2) The liquidator may delegate any of the powers vested in him by paragraph (1)(b) to the directors or shareholders.

Appointment of liquidator

222.(1) When making an order for the liquidation of a corporation or at any later time, the Supreme Court may appoint any person, including a director, an officer or a shareholder of the corporation or any other body corporate, as liquidator of the corporation.

(2) If an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the Supreme Court until the office of liquidator is filled.

Duties of liquidator

223. A liquidator shall

- (a) forthwith after his appointment give notice of his appointment to the registrar and to each claimant and creditor known to the liquidator,
- (b) forthwith publish notice in the Yukon Gazette and once a week for two consecutive weeks in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice in each province where the corporation carries on business, stating the fact of his appointment and requiring any person
 - (i) indebted to the corporation, to provide a statement of account respecting the indebtedness and to pay to the liquidator at the time and place specified any amount owing,
 - (ii) possessing property of the corporation, to deliver it to the liquidator at the time and place specified, and
 - (iii) having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not less than two months after the first publication of the notice,
- (c) take into his custody and control the property of the corporation,
- (d) open and maintain a trust account for the money of the corporation,
- (e) keep accounts of the money of the corporation received and paid out by him,
- (f) maintain separate lists of the shareholders, creditors and other persons having claims against the corporation,
- (g) if at any time the liquidator determines that the corporation is unable to pay or adequately provide for the discharge of its obligations, apply to the Supreme Court for directions,
- (h) deliver to the Supreme Court and to the registrar, at least once in every 12 month period after his appointment or more often as the Supreme Court may require, financial statements of the corporation in the form required by section 157 or in any other form the liquidator thinks proper or as the Supreme Court may require, and

- (i) after his final accounts are approved by the Supreme Court, distribute any remaining property of the corporation among the shareholders according to their respective rights.

Powers of liquidator

224.(1) A liquidator may

- (a) retain lawyers, accountants, professional engineers, appraisers and other professional advisers,
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the corporation,
- (c) carry on the business of the corporation as required for an orderly liquidation,
- (d) sell property of the corporation publicly or privately,
- (e) do all acts and execute any documents in the name and on behalf of the corporation,
- (f) borrow money on the security of the property of the corporation,
- (g) settle or compromise any claims by or against the corporation, and
- (h) do all other things for the liquidation of the corporation and distribution of its property.

(2) A liquidator is not liable if he relies in good faith on

- (a) financial statements of the corporation represented to him by an officer of the corporation or in a written report of the auditor of the corporation to reflect fairly the financial condition of the corporation, or
- (b) an opinion, a report or a statement of a lawyer, accountant, professional engineer, appraiser or other professional adviser retained by the liquidator.

(3) If a liquidator has reason to believe that any person has in his possession or under his control, or has concealed, withheld or misappropriated any property of the corporation, he may apply to the Supreme Court for an order requiring that person to appear before the Supreme Court at the time and place designated in the order and to be examined.

(4) If the examination referred to in subsection (3) discloses that a person has in his possession or under his control or has concealed, withheld or misappropriated property of the corporation, the Supreme Court may order that person to restore it or pay compensation to the liquidator.

Final accounts and discharge of liquidator

225.(1) A liquidator shall pay the costs of liquidation out of the property of the corporation and shall pay or make adequate provision for all claims against the corporation.

(2) Within one year after his appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator shall apply to the Supreme Court

- (a) for approval of his final accounts and for an order permitting him to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights, or

(b) for an extension of time, setting out the reasons for the extension.

(3) If a liquidator fails to make the application required by subsection (2), a shareholder or creditor of the corporation may apply to the Supreme Court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(4) A liquidator shall give notice of his intention to make an application under subsection (2) to the registrar, each inspector appointed under section 219, each shareholder, each creditor known to him and any person who provided a security or fidelity bond for the liquidator.

(5) If the Supreme Court approves the final accounts rendered by a liquidator the Supreme Court shall make an order

- (a) directing the registrar to issue a certificate of dissolution,
- (b) directing the custody or disposal of the documents and records of the corporation, and
- (c) subject to subsection (6), discharging the liquidator.

(6) The liquidator shall forthwith send or deliver a certified copy of the order referred to in subsection (5) to the registrar.

(7) On receipt of the order referred to in subsection (5), the registrar shall issue a certificate of dissolution in accordance with section 266.

(8) The corporation ceases to exist on the date shown in the certificate of dissolution.

Shareholder's right to distribution in money

226.(1) If in the course of liquidation of a corporation the shareholders resolve or the liquidator proposes to

- (a) exchange all or substantially all the property of the corporation for securities of another body corporate that are to be distributed to the shareholders, or
- (b) distribute all or part of the property of the corporation to the shareholders in kind,

a shareholder may apply to the Supreme Court for an order requiring the distribution of the property of the corporation to be in money.

(2) On an application under subsection (1), the Supreme Court may order that

- (a) all the property of the corporation be converted into and distributed in money, or
- (b) the applicant be paid the fair value of his shares, in which case the Supreme Court
 - (i) may determine whether any other shareholder is opposed to the proposal and if so, join that shareholder as a party,
 - (ii) may appoint one or more appraisers to assist the Supreme Court to fix the fair value of the shares,
 - (iii) shall fix the fair value of the shares of the applicant and the other shareholders joined as parties as of a date determined by the Supreme Court,

- (iv) shall give judgment in the amount of the fair value against the corporation and in favour of each of the shareholders who are parties to the application, and
- (v) shall fix the time within which the liquidator must pay that amount to a shareholder after delivery of his shares to the liquidator, if his share certificate has not been delivered to the Supreme Court or to the liquidator at the time the order is pronounced.

Custody of records after dissolution

227.(1) A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce those documents and records for six years following the date of its dissolution or until the expiry of any shorter period that may be ordered under subsection 225(5).

(2) A person who, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both.

Actions after dissolution

228.(1) In this section, "shareholder" includes the legal representatives of a shareholder.

(2) Notwithstanding the dissolution of a body corporate under this Act,

- (a) a civil, criminal or administrative action or proceeding commenced by or against the body corporate before its dissolution may be continued as if the body corporate had not been dissolved,
- (b) a civil, criminal or administrative action or proceeding may be brought against the body corporate within two years after its dissolution as if the body corporate had not been dissolved, and
- (c) any property that would have been available to satisfy any judgment or order if the body corporate had not been dissolved remains available for that purpose.

(3) Service of a document on a corporation after its dissolution may be effected by serving the document on a person shown in the last notice filed under section 107 or 114.

(4) Notwithstanding the dissolution of a body corporate under this Act, a shareholder to whom any of its property has been distributed in the liquidation is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder on the distribution, and an action to enforce that liability may be brought within two years after the date of the dissolution of the body corporate.

(5) The Supreme Court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to any conditions the Supreme Court thinks fit and, if the plaintiff establishes his claim, the Supreme Court may refer the proceedings to a referee or other officer of the Supreme Court who may

- (a) add as a party to the proceedings before him each person who was a shareholder found by the plaintiff,
- (b) determine, subject to subsection (4), the amount that each person who was a shareholder shall contribute towards satisfaction of the plaintiff's claim, and
- (c) direct payment of the amounts so determined.

Unknown claimants

229.(1) On the dissolution of a body corporate under this Act, the portion of the property distributable to a creditor or shareholder who cannot be found shall be converted into money and paid to the Executive Council Member.

(2) A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of the creditor or shareholder.

(3) If at any time a person establishes that he is entitled to any money paid to the Executive Council Member under this Act, the Executive Council Member shall pay an equivalent amount to him out of the Yukon Consolidated Revenue Fund.

Property not disposed of

230.(1) Subject to subsection 228(2) and section 229, property of a body corporate that has not been disposed of at the date of its dissolution under this Act shall be converted into money and paid to the Executive Council Member.

(2) If a body corporate is revived as a corporation under section 210 or 211, any property that has not been disposed of shall be returned to the corporation and there shall be paid to the corporation out of the Yukon Consolidated Revenue Fund

- (a) an amount equal to any money received pursuant to subsection (1), and
- (b) if property has been disposed of, an amount equal to the amount realized by the Executive Council Member from the disposition of that property.

(3) Money received by the Executive Council Member under section 229 or this section is trust money within the meaning of the Financial Administration Act.

PART 18

INVESTIGATION

Definitions

231. In this Part, "affiliated corporation" with reference to a corporation includes a Yukon company affiliated with that corporation.

Supreme Court order for investigation

232.(1) A security holder or the registrar may apply to the Supreme Court, *ex parte* or on any notice that the Supreme Court may require, for an order directing an investigation to be made of the corporation and any of its affiliated corporations.

(2) If, on an application under subsection (1), it appears to the Supreme Court that there are sufficient grounds to conduct an investigation to determine whether

- (a) the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person,
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a security holder,
- (c) the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose, or
- (d) persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

the Supreme Court may order an investigation to be made of the corporation and any of its affiliated corporations.

(3) An applicant under this section or section 233 is not required to give security for costs.

(4) An application under this section or section 233 shall be heard *in camera* unless the Supreme Court otherwise orders.

(5) No person may publish anything relating to proceedings under this section or section 233 except with the authorization of the Supreme Court or the written consent of the corporation being investigated.

(6) Documents in the possession of the Supreme Court relating to an application under this section or section 233 are confidential unless the Supreme Court otherwise orders.

(7) Subsections (5) and (6) do not apply to an order of the Supreme Court under this section or section 233.

Powers of the court

233.(1) On an application under section 232 or on a subsequent application, the Supreme Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order appointing an inspector, fixing the remuneration of an inspector, or replacing an inspector;
- (b) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (c) an order authorizing an inspector to enter any premises in which the Supreme Court is satisfied there might be relevant information, and to examine any thing and make copies of any document or record found on the premises;
- (d) an order requiring any person to produce documents or records to the inspector;

- (e) an order authorizing an inspector to conduct a hearing, administer oaths and examine any person on oath, and prescribing rules for the conduct of the hearing;
- (f) an order requiring any person to attend a hearing conducted by an inspector and to give evidence on oath;
- (g) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
- (h) an order requiring an inspector to make an interim or final report to the Supreme Court;
- (i) an order determining whether a report of an inspector should be published and, if so, designating the persons to whom all or part of the report should be sent;
- (j) an order requiring an inspector to discontinue an investigation;
- (k) an order requiring any person other than the corporation to pay all or part of the costs of the investigation.

(2) Unless the Supreme Court otherwise orders, an inspector shall send a copy of his report to the corporation.

(3) Unless the Supreme Court otherwise orders, the corporation shall pay the costs of the investigation.

(4) Any interested person may apply to the Supreme Court for directions on any matter arising in the investigation.

Powers of inspector

234.(1) An inspector under this Part has the powers set out in the order appointing him.

(2) In addition to the powers set out in the order appointing him, an inspector appointed to investigate a corporation may furnish to, or exchange information and otherwise cooperate with, any public official in Canada or elsewhere who is authorized to exercise investigatory powers and who is investigating, in respect of the corporation, any allegation of improper conduct that is the same as or similar to the conduct described in subsection 232(2).

(3) An inspector shall on request produce to an interested person a copy of any order made under section 232 or subsection 233(1).

Hearings by inspector

235.(1) A hearing conducted by an inspector shall be heard in camera unless the Supreme Court otherwise orders.

(2) An individual who is being examined at a hearing conducted by an inspector under this Part has a right to be represented by counsel during the examination.

Compelling evidence

236. A person shall not be excused from attending and giving evidence and producing books, papers, documents or records to an inspector under this Part on the grounds that the oral evidence or documents required of him may tend to criminate him or subject him to any proceeding or penalty, but no such oral evidence so required shall be used or is receivable against him in any proceedings thereafter instituted against him under any enactment.

Absolute privilege

237. Any oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

Lawyer-client privilege

238. Nothing in this Part affects the privilege that exists in respect of a lawyer and his client.

Inspector's report as evidence

239. A copy of the report of an inspector under section 233, certified as a true copy by the inspector, is admissible as evidence of the facts stated in it without proof of the inspector's appointment or of his signature.

PART 19
REMEDIES, OFFENCES AND PENALTIES

Definitions

240. In this Part,

“action” means an action under this Act or any other law;

“complainant” means

- (a) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,
- (b) a director or an officer or a former director or officer of a corporation or of any of its affiliates, or
- (c) any other person who, in the discretion of the Supreme Court is a proper person to make an application under this Part.

Commencing derivative action

241.(1) Subject to subsection (2), a complainant may apply to the Supreme Court for leave to

- (a) bring an action in the name and on behalf of a corporation or any of its subsidiaries, or
- (b) intervene in an action to which a corporation or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the corporation or subsidiary.

(2) No leave may be granted under subsection (1) unless the Supreme Court is satisfied that

- (a) the complainant has given reasonable notice to the directors of the corporation or its subsidiary of his intention to apply to the Supreme Court under subsection (1) if the directors of the corporation or its subsidiary do not bring, diligently prosecute, defend or discontinue the action,
- (b) the complainant is acting in good faith, and
- (c) it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

Powers of the court

242. In connection with an action brought or intervened in under section 241 or paragraph 243(3)(q), the Supreme Court may at any time make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order authorizing the complainant or any other person to control the conduct of the action;
- (b) an order giving directions for the conduct of the action;
- (c) an order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary;
- (d) an order requiring the corporation or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Relief by court on the ground of oppression or unfairness

243.(1) A complainant may apply to the Supreme Court for an order under this section.

(2) If, on an application under subsection (1), the Supreme Court is satisfied that in respect of a corporation or any of its affiliates

- (a) any act or omission of the corporation or any of its affiliates effects a result,
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
- (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the Supreme Court may make an order to rectify the matters complained of.

(3) In connection with an application under this section, the Supreme Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order restraining the conduct complained of;
- (b) an order appointing a receiver or receiver-manager;
- (c) an order to regulate a corporation's affairs by amending the articles or bylaws;

- (d) an order declaring that any amendment made to the articles or bylaws pursuant to paragraph (c) operates notwithstanding any unanimous shareholder agreement made before or after the date of the order, until the Supreme Court otherwise orders;
- (e) an order directing an issue or exchange of securities;
- (f) an order appointing directors in place of or in addition to all or any of the directors then in office;
- (g) an order directing a corporation, subject to subsection 35(2), or any other person, to purchase securities of a security holder;
- (h) an order directing a corporation or any other person to pay to a security holder any part of the money paid by him for securities;
- (i) an order directing a corporation, subject to section 44, to pay a dividend to its shareholders or a class of its shareholders;
- (j) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
- (k) an order requiring a corporation, within a time specified by the Supreme Court, to produce to the Court or an interested person financial statements in the form required by section 157 or an accounting in any other form the Supreme Court may determine;
- (l) an order compensating an aggrieved person;
- (m) an order directing rectification of the registers or other records of a corporation under section 245;
- (n) an order for the liquidation and dissolution of the corporation;
- (o) an order directing an investigation under Part 18 to be made;
- (p) an order requiring the trial of any issue;
- (q) an order granting leave to the applicant to
 - (i) bring an action in the name and on behalf of the corporation or any of its subsidiaries, or
 - (ii) intervene in an action to which the corporation or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing an action on behalf of the corporation or any of its subsidiaries.

(4) This section does not confer on the Supreme Court power to revoke a certificate of amalgamation.

(5) If an order made under this section directs an amendment of the articles or bylaws of a corporation, no other amendment to the articles or bylaws shall be made without the consent of the Supreme Court, until the Court otherwise orders.

(6) If an order made under this section directs an amendment of the articles of a corporation, the directors shall send articles of reorganization in the prescribed form to the registrar together with the documents required by sections 22 and 114, if applicable.

(7) A shareholder is not entitled to dissent under section 193 if an amendment to the articles is effected under this section.

(8) An applicant under this section may apply in the alternative under paragraph 216(1)(a) for an order for the liquidation and dissolution of the corporation.

Court approval of stay, dismissal, discontinuance or settlement

244.(1) An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the corporation or its subsidiary has been or may be approved by the shareholders of the corporation or the subsidiary, but evidence of approval by the shareholders may be taken into account by the Supreme Court in making an order under section 216, 242 or 243.

(2) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Supreme Court given on any terms the Supreme Court thinks fit and, if the Court determines that the interests of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the Supreme Court may order any party to the application or action to give notice to the complainant.

(3) A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part, unless the Supreme Court otherwise orders upon being satisfied that it is just and equitable to do so.

(4) In an application made or an action brought or intervened in under this Part, the Supreme Court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for the interim costs on final disposition of the application or action.

Court order to rectify records

245.(1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a corporation, the corporation, a security holder of the corporation or any aggrieved person may apply to the Supreme Court for an order that the registers or records be rectified.

(2) If the corporation is a distributing corporation, an applicant under this section shall file notice of the application with the registrar of securities.

(3) In connection with an application under this section, the Supreme Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order requiring the registers or other records of the corporation to be rectified;
- (b) an order restraining the corporation from calling or holding a meeting of shareholders or paying a dividend before the rectification;
- (c) an order determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from, the registers or records of the corporation, whether the issue arises between two or more security holders or alleged security holders, or between the corporation and any security holders or alleged security holders;

- (d) an order compensating a party who has incurred a loss.

Court order for directions

246. The registrar or the registrar of securities may apply to the Supreme Court for directions in respect of any matter concerning his duties under this Act, and on the application the Supreme Court may give any directions and make any further order as it thinks fit.

Refusal by registrar to file

247.(1) If the registrar refuses to file any articles or other document required by this Act to be filed by him before the articles or other document become effective, he shall, within 20 days after its receipt by him or 20 days after he receives any approval that may be required under any other Act, whichever is the later, give written notice of his refusal to the person who sent the articles or document, giving reasons for his refusal.

(2) If the registrar does not file or give written notice of his refusal to file any articles or document within the time limited in subsection (1), he is deemed for the purposes of section 248 to have refused to file the articles or document.

Appeal from decision of registrar

248.(1) A person who feels aggrieved by a decision of the registrar

- (a) to refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him,
- (b) to approve, change or revoke a name or to refuse to approve, change or revoke a name under this Act,
- (c) to refuse under subsection 190(11) to permit a continued reference to shares having a nominal or par value,
- (d) to refuse to issue a certificate of discontinuance under section 191,
- (e) to refuse to revive a corporation under section 210,
- (f) to dissolve a corporation under section 214, or
- (g) to cancel the registration of an extra-territorial corporation under section 283,

may apply to the Supreme Court for an order requiring the registrar to change his decision, and on the application the Supreme Court may so order and make any further order it thinks fit.

(2) A person who feels aggrieved by a decision of the registrar of securities to refuse to grant an exemption under section 153 or 158, or subsection 3(3) or 173(3), may appeal the decision to the Supreme Court.

Compliance or restraining order

249. If a corporation or any shareholder, director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a corporation contravenes this Act, the regulations, the articles or bylaws or a unanimous shareholder agreement, a complainant or a creditor of the corporation may, in addition to any other right he has, apply to the Supreme Court for an order directing that person to comply with, or restraining that person from contravening any of those things, and on the application the Supreme Court may so order and make any further order it thinks fit.

Summary application to court

250. When this Act states that a person may apply to the Supreme Court, the application may be made in a summary manner in accordance with the rules of the Supreme Court by originating notice, petition or otherwise as the rules provide, and subject to any order respecting notice to interested parties, or any other order the Supreme Court thinks fit.

Offences relating to reports, returns, notices and documents

251.(1) A person who makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the registrar, the registrar of securities or any other person that

- (a) contains an untrue statement of a material fact, or
- (b) omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made,

is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

(2) If a body corporate contravenes subsection (1), then, whether or not the body corporate has been prosecuted or convicted in respect of the contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the contravention of subsection (1) is guilty of an offence and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

(3) No person is guilty of an offence under subsection (1) or (2) if the untrue statement or omission was unknown to him and in the exercise of reasonable diligence could not have been known to him.

General offence

252. Every person who, without reasonable cause, contravenes a provision of this Act or the regulations for which no penalty is provided is guilty of an offence and liable to

- (a) in the case of a body corporate, a fine of not more than \$1,000, and
- (b) in the case of an individual, to a fine of not more than \$1,000 or to imprisonment for a term of not more than one month, or to both.

Order to comply, limitation period and civil remedies

253.(1) If a person is found guilty of an offence under this Act or the regulations, the court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or the regulations for the contravention of which he has been found guilty.

(2) A prosecution for an offence under this Act may be instituted at any time within two years from the time when the subject matter of the complaint arose, but not thereafter.

(3) No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act.

Security for costs

254. In any action or other legal proceeding in which the plaintiff is a body corporate, if it appears to the court on the application of a defendant that the body corporate will be unable to pay the costs of a successful defendant, the court may order the body corporate to furnish security for costs on any terms it thinks fit.

**PART 20
GENERAL**

Sending of notices and documents to shareholders and directors

255.(1) A notice or document required by this Act, the regulations, the articles or the bylaws to be sent to a shareholder or director of a corporation may be sent by mail addressed to, or may be delivered personally to,

- (a) the shareholder at his latest address as shown in the records of the corporation or its transfer agent, and
- (b) the director at his latest address as shown in the records of the corporation or in the last notice filed under section 107 or 114.

(2) For the purpose of the service of a notice or document, a director named in a notice sent by a corporation to the registrar under section 107 or 114 and filed by the registrar is presumed to be a director of the corporation referred to in the notice.

(3) A notice or document sent by mail in accordance with subsection (1) to a shareholder or director of a corporation is deemed to be received by him at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the shareholder or director did not receive the notice or document at the time or at all.

(4) If a corporation sends a notice or document to a shareholder in accordance with subsection (1) and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the corporation is not required to send any further notices or documents to the shareholder until he informs the corporation in writing of his new address.

Notice to and service on a corporation

256.(1) A notice or document required or permitted to be sent to or served on a corporation may be

- (a) delivered to its registered office, or
- (b) sent by registered or certified mail to
 - (i) its registered office, or
 - (ii) the post office box designated as its address for service by mail,

as shown in the last notice filed under section 22.

(2) A notice or document sent by registered or certified mail to the corporation in accordance with paragraph (1)(b) is deemed to be received or served at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the corporation did not receive the notice or document at that time or at all.

Notice to and service on registrar of securities

257. A notice or document required or permitted to be sent to the registrar of securities may be sent or filed by leaving it in the office of the registrar of securities during business hours or by mailing it by registered or certified mail addressed to the office of the registrar of securities, and if sent or filed by registered or certified mail, is deemed to be received at the time it would have been delivered in the ordinary course of mail unless there are reasonable grounds for believing that the registrar of securities did not receive the notice or document at that time or at all.

Waiver of notice

258. If a notice or document is required by this Act or the regulations to be sent, the sending of the notice or document may be waived or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to receive it.

Certificate of registrar as evidence

259.(1) When this Act requires or authorizes the registrar to issue a certificate or to certify any fact, the certificate shall be signed by the registrar or by an individual authorized by the registrar.

(2) Except in a proceeding under section 215 to dissolve a corporation, a certificate referred to in subsection (1) or a certified copy of it, when introduced as evidence in any civil, criminal or administrative action or proceeding, is conclusive proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Certificate of corporation as evidence

260.(1) A certificate issued on behalf of a corporation stating any fact that is set out in the articles, the bylaws, a unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust indenture or other contract to which the corporation is a party, may be signed by a director, an officer or a transfer agent of the corporation.

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,

- (a) a fact stated in a certificate referred to in subsection (1),
- (b) a certified extract from a securities register of a corporation, or
- (c) a certified copy of minutes or extract from minutes of a meeting of shareholders, directors or a committee of directors of a corporation,

is, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

(3) An entry in a securities register of, or a security certificate issued by, a corporation is, in the absence of evidence to the contrary, proof that the person in whose name the security is registered is owner of the securities described in the register or in the certificate.

Copies

261. If a notice or document is required to be sent to the registrar or registrar of securities under this Act, the registrar or registrar of securities may accept a photostatted or photographic copy of the notice or document.

Proof required by registrar

262. The registrar may require that a document or a fact stated in a document required by this Act or the regulations to be sent to him shall be verified under oath or by statutory declaration.

Appointment of registrar

263.(1) There shall be appointed from among the members of the public service a registrar of corporations who may designate one or more persons on the staff of his office to act on his behalf.

(2) A seal may be prescribed for use by the registrar in the performance of his duties.

Notice to and service on registrar of corporations

264. A notice or document may be sent or served on the registrar by leaving it at the office of the registrar or by mailing it by registered or certified mail addressed to the registrar at the office of the registrar, and if sent by registered or certified mail is deemed to be received or served at the time it would have been delivered in the ordinary course of mail unless there are reasonable grounds for believing that the registrar did not receive the notice or document at that time or at all.

Regulations

265. The Commissioner in Executive Council may make regulations

- (a) prescribing any matter required or authorized by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copying of any document, or in respect of any action that the registrar is required or authorized to take under this Act, and prescribing the amount of the fee;
- (c) prescribing the format and contents of annual returns, notices and other documents required to be sent to the registrar or to be issued by him;
- (d) prescribing rules with respect to exemptions permitted by this Act;
- (e) declaring that, for the purpose of paragraph 157(a), the standards as they exist from time to time, of any accounting body named in the regulations shall be in force in the Yukon, in whole or in part or with any revisions, variations or modifications that are specified by the regulations;
- (f) respecting the names of corporations and extra-territorial corporations;
- (g) prohibiting the use of any names or any words or expressions in a name;
- (h) defining any word or expression used in paragraphs 14(1)(c) and 280(1)(c).
- (i) prescribing requirements for the purpose of paragraphs 14(1)(d) and 280(1)(d);
- (j) respecting the circumstances and conditions under which a name under subsections 14(1) and 280(1) may be used;
- (k) prescribing the documents referred to in subsections 14(3), 179(2), 187(1) and 290(1) and section 210;

- (l) prescribing the punctuation marks and other marks that may form part of a name.

Filing of documents and issuing of certificates by registrar

266.(1) In this section, “statement” means a statement of intent to dissolve and a statement of revocation of intent to dissolve referred to in section 213.

(2) When this Act requires that articles or a statement relating to a corporation shall be sent to the registrar then, unless otherwise specifically provided,

- (a) two copies, in this section called “duplicate originals”, of the articles or the statement shall be signed by a director or an officer of the corporation or, in the case of articles of incorporation, by an incorporator, and
- (b) on receiving duplicate originals of any articles or statement that conform to law, any other required documents and the prescribed fees, the registrar shall
 - (i) endorse on each of the duplicate originals the word “filed” and the date of the filing,
 - (ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles or statement,
 - (iii) file a copy of the certificate and attached articles or statement, and
 - (iv) send to the corporation or its representative the original certificate and attached articles or statement.

(3) A certificate referred to in subsection (2) issued by the registrar may be dated as of the day he receives the articles, statement or Supreme Court order pursuant to which the certificate is issued or as of any later day specified by the Supreme Court or person who signed the articles or statement.

(4) A signature required on a certificate referred to in subsection (2) of section 267 may be printed or otherwise mechanically reproduced on the certificate.

(5) Notwithstanding subsection (3), a certificate of discontinuance may be dated as of the day a corporation is continued under the laws of another jurisdiction

Annual return

267.(1) Every corporation shall, on the prescribed date, send to the registrar an annual return in the prescribed form and the registrar shall file it.

(2) The registrar may furnish any person with a certificate that a corporation has filed with the registrar a document required to be sent to him under this Act.

(3) On the payment of the prescribed fee, the registrar may issue a certificate stating that, according to his records, the body corporate named in the certificate

- (a) is or is not an existing corporation on the date of issue of the certificate, or
- (b) was or was not an existing corporation on the day or during the period specified in the certificate.

Alteration of documents

268. The registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorized in writing by the person who sent the document or by his representative.

Errors in certificates

269.(1) If a certificate containing an error is issued to a corporation by the registrar, the directors or shareholders of the corporation shall, on the request of the registrar, pass the resolutions and send to him the documents required to comply with this Act, and take any other steps the registrar may reasonably require, and the registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) shall bear the date of the certificate it replaces.

(3) The issue of a corrected certificate under this section does not affect the rights of a person who acts in good faith and for value in reliance on the certificate containing the error.

Inspection and copies

270. A person who has paid the prescribed fee is entitled during the business hours of the registry to examine a document required by this Act or the regulations to be sent to the registrar, and to make copies of or extracts from that document.

Provision of copies and certified copies

271. The registrar shall furnish any person who has paid the prescribed fee with a copy or a certified copy of a document required by this Act or the regulations to be sent to the registrar.

Records of registrar

272. Records required by this Act to be prepared and maintained by the registrar may be in bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

Records of registrar in unwritten form

273. If records maintained by the registrar are prepared and maintained other than in written form,

- (a) the registrar shall furnish any copy required to be furnished under section 271 in legible written form, and
- (b) a reproduction of the text of those records, if it is certified by the registrar, is admissible in evidence to the same extent as the original written records would have been.

PART 21

EXTRA-TERRITORIAL CORPORATIONS

Definitions

274. In this Part,

“anniversary month”, with reference to an extra-territorial corporation, means the month in each year that is the same as the month in which its certificate of registration was issued;

“attorney for service” or “attorney” means, with reference to an extra-territorial corporation, the individual who, according to the registrar’s records, is appointed under this Part as that extra-territorial corporation’s attorney for service;

“business” means such lawful objects and purposes for which an extra-territorial corporation is established as are within the legislative authority of the Legislature and includes the sale of its securities by or on behalf of the corporation, but does not include the business of banking, insurance, the construction and operation of a railway or the operation of air transport, canals, telegraphs, telephones or irrigation;

“charter” includes

- (a) a statute or other law incorporating an extra-territorial corporation, as amended from time to time,
- (b) letters patent of incorporation and any letters patent supplementary to them,
- (c) a memorandum of association, as amended from time to time,
- (d) any other instrument of incorporation, as amended from time to time, and
- (e) any certificate, licence or other instrument evidencing incorporation;

“internal regulations” includes bylaws, articles of association, rules or regulations relating to the management of the business and affairs of an extra-territorial corporation, by whatever name they are called, if they are made by the members or a class of members of, or the board of directors, board of management or other governing body of, the extra-territorial corporation;

“registered” means registered under this Part.

Carrying on business in the Yukon

275.(1) For the purposes of this Part, an extra-territorial corporation carries on business in the Yukon if it transacts any of the ordinary business of an extra-territorial corporation whether or not the corporation has a resident agent or representative or a warehouse, office or place of business in the Yukon.

(2) The taking of orders by travellers for goods, wares or merchandise to be subsequently imported into the Yukon to fill such orders, or the buying or the selling of such goods, wares or merchandise by correspondence, if the corporation has no resident agent or representative or a warehouse, office or place of business in the Yukon, shall be deemed not to be carrying on business in the Yukon within the meaning of this Part.

Application

276.(1) This Part does not apply to an extra-territorial corporation required to be licensed as an insurer under the Insurance Act.

(2) This Part does not apply to a Canada corporation so as to affect its right to carry on business in the Yukon.

(3) This part does not apply to an extra-territorial corporation required to be registered pursuant to the provisions of the Societies Act or the Cooperative Associations Act.

REGISTRATION

Requirement to register

277.(1) Every extra-territorial corporation shall send a written notice to the registrar setting out the address of the registered office of the corporation in the jurisdiction of incorporation immediately upon commencing carrying on business in the Yukon.

(2) Subject to subsection (3), every extra-territorial corporation shall be registered under this Part before or within 30 days after it commences carrying on business in the Yukon.

(3) If a corporation becomes an extra-territorial corporation by reason of the operation of subsection 191(8) and is then carrying on business in the Yukon, the extra-territorial corporation shall be registered under this Part on or within 30 days after the date shown in the certificate of discontinuance issued under section 191.

(4) Notwithstanding that an extra-territorial corporation has complied with subsection (1) and notwithstanding that the extra-territorial corporation may have ceased carrying on business in the Yukon within 30 days of commencing carrying on business, the extra-territorial corporation shall comply with the provisions of subsection (2).

Application for registration

278.(1) An extra-territorial corporation shall apply for registration by sending to the registrar a statement in the prescribed form and such further information and documents as the registrar may require.

(2) The statement shall be accompanied by the appointment of its attorney for service, in the prescribed form.

(3) If all or any part of a document is not in the English language, the registrar may require the submission to him of a translation of the document or that part of the document, verified in a manner satisfactory to him, before he registers the extra-territorial corporation.

Reservation of name

279. The registrar may, on request, reserve for 90 days a name for an extra-territorial corporation that

- (a) intends to become registered,
- (b) is about to change its name, or
- (c) is intended to result from an amalgamation of two or more bodies corporate.

Names of extra-provincial corporations

280.(1) Subject to the circumstances and conditions prescribed by the regulations, an extra-territorial corporation shall not be registered with a name or carry on business within the Yukon under an assumed name

- (a) that is prohibited by the regulations or contains a word or expression prohibited by the regulations,
- (b) that is identical to the name of
 - (i) an extra-territorial corporation or an intended extra-territorial corporation reserved under section 279,
 - (ii) a body corporate incorporated under the laws of the Yukon, whether in existence or not,
 - (iii) an extra-territorial corporation registered in the Yukon, or
 - (iv) a Canada corporation,
- (c) that is, in the opinion of the registrar, similar to the name of
 - (i) an extra-territorial corporation or an intended extra-territorial corporation reserved under section 279,
 - (ii) a body corporate incorporated under the laws of the Yukon,
 - (iii) an extra-territorial corporation registered in the Yukon, or
 - (iv) a Canada corporation,
 if the use of that name is confusing or misleading, or
- (d) that does not meet the requirements prescribed by the regulations.

(2) If

- (a) through inadvertence or otherwise, an extra-territorial corporation is registered with or later acquires a name that contravenes subsection (1), or
- (b) the registrar disapproves an extra-territorial corporation's name after it is registered under this Part,

the registrar may, by notice in writing, giving his reasons, direct the extra-territorial corporation to change its name to one that he approves within 90 days after the date of the notice.

(3) The registrar may give a notice under subsection (2) on his own initiative or at the request of a person who feels aggrieved by the name that contravenes subsection (1).

(4) This section does not apply to a Canada corporation.

Registration by pseudonym

281.(1) Notwithstanding section 280, an extra-territorial corporation the name of which contravenes section 280 may, with approval of the registrar

- (a) be registered with its own name, and
- (b) carry on business in the Yukon under an assumed name the use of which is approved by the registrar, which does not contravene section 280 and which has been registered pursuant to section 87 of the Partnership Act.

(2) The extra-territorial corporation

- (a) shall acquire all property and rights in the Yukon under its assumed name, and

- (b) is entitled to all property and rights acquired and subject to all obligations and liabilities incurred under its assumed name as if the same had been acquired and incurred under its own name.

(3) The extra-territorial corporation may sue or be sued in its own name, its assumed name, or both.

(4) An extra-provincial corporation that assumes a name pursuant to subsection (1) may, with the approval of the registrar and on application in the prescribed form and payment of the prescribed fee, cancel its assumed name and carry on business in the Yukon under the name in which it was registered.

Certificate of registration

282.(1) Subject to section 280, on receipt of the statement and other documents required by section 278 and of the prescribed fees, the registrar shall

- (a) file the statement and documents,
- (b) register the extra-territorial corporation, and
- (c) issue a certificate of registration in the prescribed form in accordance with section 266.

(2) A certificate of registration issued under this section to an extra-territorial corporation is conclusive proof for the purposes of this Act and for all other purposes that the provisions of this Act in respect of registration of the extra-territorial corporation and all requirements precedent and incidental to registration have been complied with, and that the extra-territorial corporation has been registered under this Part as of the date shown in the certificate of registration.

Cancellation of registration

283.(1) Subject to subsection (2), the registrar may cancel the registration of an extra-territorial corporation if

- (a) the extra-territorial corporation is in default for a period of one year in sending to the registrar any fee, notice or document required by this Part,
- (b) the extra-territorial corporation has sent a notice to the registrar under subsection (4) or the registrar has reasonable grounds to believe that the extra-territorial corporation has ceased to carry on business in the Yukon,
- (c) the extra-territorial corporation is dissolved,
- (d) the extra-territorial corporation does not comply with a direction of the registrar under subsection 280(2), or
- (e) the extra-territorial corporation has otherwise contravened this Part.

(2) Except where the cancellation is in consequence of a notice to the registrar under subsection (4) or a notice of the extra-territorial corporation being dissolved, the registrar shall not cancel the registration of an extra-territorial corporation under subsection (1) until

- (a) he has given at least 120 days notice of the proposed cancellation with his reasons for it to its attorney for service in accordance with section 286, and

- (b) either no appeal is commenced under section 248 or, if an appeal has been commenced, it has been discontinued or the registrar's decision is confirmed on the appeal.

(3) The registrar may reinstate the registration of an extra-territorial corporation that was cancelled under paragraph (1)(a) on the receipt by the registrar of the fees, notices and documents required to be sent to him and of the prescribed reinstatement fee.

(4) An extra-territorial corporation that ceases to carry on business in the Yukon shall send a notice to that effect to the registrar.

New certificate of registration

284.(1) Subject to section 280, on the reinstatement of the registration of an extra-territorial corporation pursuant to subsection 283(3), the registrar shall issue a new certificate of registration in the prescribed form.

(2) The cancellation of the registration of an extra-territorial corporation does not affect its liability for its obligations.

INFORMATION

Use of corporate name

285. An extra-territorial corporation shall set out its name in legible characters in or on all contracts, invoices, negotiable instruments, orders for goods or services issued or made by or on behalf of the extra-territorial corporation in the course of carrying on business in the Yukon.

Attorney for service of an extra-provincial corporation

286.(1) If an attorney of an extra-territorial corporation dies or resigns or his appointment is revoked, the extra-territorial corporation shall forthwith send to the registrar an appointment in the prescribed form of an individual as its attorney for service and the registrar shall file the appointment.

(2) An extra-territorial corporation may in the prescribed form appoint an individual as its alternative attorney if that individual is

- (a) a member of a partnership of which the attorney is also a member, or
- (b) an assistant manager of the extra-territorial corporation and the attorney is the manager for the Yukon of the extra-territorial corporation.

(3) An extra-territorial corporation shall send to the registrar

- (a) each appointment by it of an alternative attorney, and
- (b) if the alternative attorney dies or resigns or his appointment is revoked, a notice to that effect,

and the registrar shall file the appointment or notice, as the case may be.

(4) An attorney for an extra-territorial corporation who intends to resign shall

- (a) give not less than 60 days notice to the extra-territorial corporation at its head office, and

- (b) send a copy of the notice to the registrar who shall file it.

(5) An attorney shall forthwith send the registrar a notice in the prescribed form of any change of the attorney's address and the registrar shall file the notice.

(6) An extra-territorial corporation shall ensure that the address of its attorney is an office which is

- (a) accessible to the public during normal business hours, and
- (b) readily identifiable from the address or other description given in the notice referred to in subsection (5) or the appointment referred to in subsection 278(2).

(7) A notice or document required or permitted by law to be sent or served in the Yukon on an extra-territorial corporation may be

- (a) delivered to its attorney or to an individual who is its alternative attorney according to the registrar's records,
- (b) delivered to the address, according to the registrar's records, of its attorney, or
- (c) sent by registered or certified mail to that address.

(8) A notice or document sent by registered or certified mail to the attorney's address in accordance with paragraph (7)(c) shall be deemed to be received or served at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the attorney did not receive the notice or document at that time or at all.

Failure to register or appoint attorney

287.(1) Where an extra-territorial corporation has not registered in accordance with subsection 277(2) or the attorney for the extra-territorial corporation has resigned and has not been replaced, all notices or documents including, but not limiting the generality of the foregoing, writs and summonses, may be served on such extra-territorial corporation by delivering them to the registrar.

(2) The registrar shall cause to be inserted in the Yukon Gazette, following the delivery of such notices or documents, a notice of process with a memorandum of the date of delivery, stating generally the nature of the notice or document and if applicable, a summary of the relief sought and the time limited and the place mentioned for entering an appearance.

(3) After the notice has appeared in the Yukon Gazette, the delivery to the registrar shall be deemed, as against such extra-territorial corporation, to be good and valid service of such notices or documents from the date of delivery to the registrar.

Proof of incorporation

288. In any action, suit or proceeding against an extra-territorial corporation served pursuant to section 287, it shall not be necessary to aver in any pleading, or to adduce any evidence, that the company was organized, incorporated or is in existence, under the laws of any foreign state or jurisdiction, or that the extra-territorial corporation had the power under its

articles or equivalent document, to make the contract or incur the liability which gave rise to the action, suit or proceeding.

Other rights, duties and liabilities

289. Nothing in section 287 or 288 shall be deemed to limit, abridge or take away any legal right, recourse or remedy against an extra-territorial corporation nor to absolve or lessen any obligation, rule or duty imposed by law on an extra-territorial corporation.

Changes in charter, head office, directors

290.(1) A registered extra-territorial corporation shall send to the registrar

- (a) a notice in the prescribed form of any change in the information required by the regulations to be set out on the form which was filed under section 278, within one month after the effective date of the change,
- (b) if the amendment to the charter effects a change in the name under which the extra-territorial corporation is registered, the prescribed documents relating to corporate names, and
- (c) a copy of each amendment to any documents required by the registrar which were filed pursuant to section 278, within one month after the effective date of the amendment, verified in a manner satisfactory to the registrar,

and the registrar shall file the copy or the notice, as the case may be.

(2) A notice of change of directors sent to the registrar shall contain the address and occupation of each new member of the board of directors or governing body.

(3) An extra-territorial corporation is not required to send a notice under paragraph (1)(a) if

- (a) the effective date of the change occurs in its anniversary month or the month following, and
- (b) the change is reflected in the annual return required to be filed under subsection 293(1).

(4) If an extra-territorial corporation effects a change in the name under which it is registered, the registrar on filing the copy of the amendment under paragraph (1)(a), shall issue a new certificate of amendment of registration in the prescribed form and change his records accordingly.

Filing of instrument of amalgamation

291.(1) A registered extra-territorial corporation shall send to the registrar

- (a) a copy of any instrument effecting an amalgamation of the extra-territorial corporation with one or more other extra-territorial corporations,
- (b) a copy of the amalgamation agreement, if any, and
- (c) a statement in the prescribed form relating to the amalgamated extra-territorial corporation and the documents referred to in section 278,

within one month after the effective date of the amalgamation.

(2) On receiving the documents referred to in subsection (1), the registrar shall file them and issue a new certificate of registration of the amalgamated extra-territorial corporation.

Notices and returns respecting liquidation

292.(1) If liquidation proceedings are commenced in respect of a registered extra-territorial corporation, the extra-territorial corporation, or, if a liquidator is appointed, the liquidator,

- (a) shall send to the registrar forthwith after the commencement of those proceedings a notice showing that the proceedings have commenced and the address of the liquidator if one is appointed, and
- (b) shall send to the registrar forthwith after the completion of those proceedings a return relating to the liquidation.

(2) The registrar shall

- (a) on receiving a notice under paragraph (1)(a), file it, and
- (b) on receiving a return under paragraph (1)(b), file it and cancel the registration of the extra-territorial corporation forthwith after the expiration of 90 days following the date of filing of the return.

(3) The liquidator of a registered extra-territorial corporation shall send to the registrar a notice of any change in his address within 30 days after the effective date of the change, and the registrar shall file the notice.

Annual and other returns

293.(1) A registered extra-territorial corporation shall, in each year on or before the last day of the month immediately following its anniversary month, send to the registrar a return in the prescribed form and the registrar shall file it.

(2) A registered extra-territorial corporation shall, at the request of the registrar, send to the registrar a return containing any further or other information that the registrar may reasonably require.

Certificate of compliance

294.(1) The registrar may furnish any person with a certificate that an extra-territorial corporation has sent to the registrar a document required to be sent to him under this Act.

(2) A certificate purporting to be signed by the registrar and stating that a named extra-territorial corporation was or was not registered on a specified day or during a specified period, is admissible in evidence as prima facie proof of the facts stated in it without proof of the registrar's appointment or signature.

CAPACITY, DISABILITIES AND PENALTIES**Validity of acts**

295. No act of an extra-territorial corporation, including any transfer of property to or by an extra-territorial corporation, is invalid by reason only

- (a) that the act or transfer is contrary to or not authorized by its charter or internal regulations or any law of the jurisdiction in which it is incorporated, or
- (b) that the extra-territorial corporation was not then registered.

Capacity to commence and maintain legal proceedings

296.(1) An extra-territorial corporation while unregistered is not capable of commencing or maintaining any action or other proceeding in any court in the Yukon in respect of any contract made in the course of carrying on business in the Yukon while it was unregistered.

(2) If an extra-territorial corporation was not registered at the time it commenced an action or proceeding referred to in subsection (1) but becomes registered afterward, the action or proceeding may be maintained as if it had been registered before the commencement of the action or proceeding.

General penalty

297.(1) A person who contravenes this Part commits an offence and is liable to a fine of not more than \$5,000.

(2) A corporation, firm, broker or other person who acts as the agent or representative of, or in any other capacity, for an extra-territorial corporation which carries on business contrary to the requirements of this Part, commits an offence.

References to the Companies Act

298. Any reference in an enactment, memorandum of association or amendments thereto, articles of association, bylaws, resolutions or special resolutions to the Companies Act as it existed before the coming into force of this Act, or to any procedure or document under the Companies Act, shall be deemed to be a reference to this Act or the equivalent procedure or document in accordance with this Act.

CHAPTER 16

BUSINESS DEVELOPMENT ASSISTANCE ACT

Interpretation

1.(1) In this Act,

“application” means an application under section 2 for financial assistance;

“approval” means an approval of an application made under section 3;

“board” means the Business Development Advisory Board established under section 12;

“financial assistance” means financial assistance applied for under section 2;

“local improvement” has the same meaning as in the Municipal Act and includes services of the nature ordinarily supplied by public utilities;

“project” means a project in respect of which an application for financial assistance may be made or approved under this Act;

“purpose” means a purpose in respect of which an application for financial assistance may be made or approved under this Act.

(2) For all purposes subsequent to the approval of an application, “applicant”, “purpose”, and “project” mean, respectively, the applicant, purpose and project specified on the approval under subsection 3(2).

Application for assistance

2. Any person may apply to the Executive Council Member for financial assistance under this Act.

Approval of applications

3.(1) Where an application has been made for financial assistance the Executive Council Member may, in accordance with this Act, approve the application in whole or in part, with or without terms or conditions.

(2) The approval of an application shall specify

- (a) the name of the applicant,
- (b) the amount of the financial assistance that is to be paid to the applicant,
- (c) the purpose for which the financial assistance is to be paid,
- (d) the project in respect of which the financial assistance is to be paid, and
- (e) the terms and conditions, if any, subject to which the financial assistance is to be paid.

(3) It shall be deemed to be a condition of every approval that the applicant shall, before the payment of the financial assistance, furnish to the Executive Council Member on demand such information as the Executive Council Member reasonably may require for the purpose of ascertaining

- (a) the actual or anticipated effect of the payment of the financial assistance on the carrying-out or success of the project, or

- (b) the compliance of the applicant with this Act or with a term or condition of the approval.

(4) It may be a condition of the approval of an application that the applicant agree to repay all or part of the financial assistance under such circumstances and upon such terms as may be specified in the approval.

Pre-requisites for approval

4. The Executive Council Member shall not approve an application unless

- (a) the Executive Council Member has received the recommendation of the board in relation to the application, and
- (b) the Executive Council Member is of the opinion that a direct result of the carrying out of the project will be a net increase in the number of opportunities for long-term employment in the Yukon or the prevention of a decrease in the number of such opportunities.

Projects and purposes of projects

5.(1) No application for financial assistance shall be approved for a purpose in relation to a project that is not of an industrial or commercial nature.

(2) No application for financial assistance shall be approved for a purpose that is not authorized by this Act.

(3) No application for financial assistance shall be approved for the purpose of the operation of a project.

Notice and acceptance of approval

6.(1) Where an application is not approved, the Executive Council Member shall deliver to the applicant forthwith a notice that his application has not been approved.

(2) Where an application is approved in whole or in part, the Executive Council Member shall deliver the approval to the applicant forthwith.

(3) Upon receipt of an approval, the applicant may accept the approval by signing a copy of the approval and delivering it to the Executive Council Member.

(4) An applicant and the Executive Council Member may deliver documents to each other under this section by mail.

Payment of assistance

7.(1) Where an application has been approved by the Executive Council Member with or without terms and conditions and the approval has been accepted under subsection 6(3), financial assistance in the amount specified in the approval shall be paid by the Executive Council Member to the applicant on demand, unless

- (a) any of the terms or conditions specified in the approval have not been met,

- (b) the Executive Council Member has become aware, since the making of the approval, that the applicant made any misrepresentations in, or in support of, the application, and the misrepresentation actually misled the board or the Executive Council Member, or was calculated to do so,
- (c) the Executive Council Member is not satisfied that the applicant has paid, for the carrying-out of the purpose in relation to the project, an amount greater than or equal to the amount of the financial assistance,
- (d) the purpose, in relation to the project has not been fully carried out to the satisfaction of the Executive Council Member, or
- (e) there is reason to believe that the applicant has, since accepting the approval, discontinued or changed substantially his intentions as represented by him in, or in support of, his application.

(2) Where, in any proceeding by a person against the Executive Council Member for the payment of financial assistance under subsection (1), it is alleged that the requirements of this Act for the payment of the financial assistance have been satisfied, the burden of proving the allegation is on the person making the allegation.

(3) Notwithstanding paragraphs (1)(a) and (d), the Executive Council Member may authorize the payment of financial assistance in an amount less than the amount specified in the approval, where

- (a) the applicant has, in the opinion of the Executive Council Member, complied substantially with the terms and conditions specified in the approval, or
- (b) the applicant has paid an amount for carrying out the purpose in relation to the project, and the failure of the applicant to comply with any term or condition was not, in the opinion of the Executive Council Member, due to circumstances within the control of the applicant.

(4) Notwithstanding subsection (1), the Executive Council Member may authorize the partial payment of financial assistance before the purpose is fully carried out where the Executive Council Member is satisfied that

- (a) there is no reason to believe that the purpose will not be fully carried out, or that the payment of the balance of the financial assistance may not be authorized under subsection (1), and
- (b) the partial payment of the financial assistance is important to the carrying-out of the purpose or the success of the project.

(5) More than one partial payment may be made under subsection (4) in relation to one approval, but the aggregate of all such payments shall not exceed the lesser of

- (a) three-quarters of the amount specified on the approval under paragraph 3(2)(a), and
- (b) the amount expended by the applicant for the carrying-out of the purpose in relation to the project.

Assignment by applicant

8. Notwithstanding any other provision of this Act, no financial assistance shall be paid to a person who is the assignee of the applicant unless the requirements of subsection 7(1) have been satisfied, and

- (a) the assignment was made with the written consent of the Executive Council Member, or
- (b) the Executive Council Member is of the opinion that it would be unjust in the circumstances not to make the payment.

Restrictions

9.(1) No financial assistance shall be paid under this Act in respect of a project that is not being, or has not been, carried out within the Yukon.

(2) No financial assistance shall be paid under this Act in respect of a project that consists only of the acquisition or development by the applicant of real property solely for sale or lease.

(3) No financial assistance shall be paid under this Act in respect of any amount paid before the application for the financial assistance is approved, or in respect of any obligation to pay an amount arising before the application for the financial assistance is approved.

Improper approval

10. Where a conflict occurs between an approval and the provisions of this Act, the approval is unenforceable to the extent of the conflict.

Information to be given

11.(1) Where financial assistance is paid to an applicant under section 7 or 8, the applicant shall furnish to the Executive Council Member on demand made within five years after the payment is made, such information as the Executive Council Member reasonably may require for the purpose of assessing the effect of the payment of the financial assistance on the carrying-out or success of the project, or on the number of opportunities for long-term employment in the Yukon.

(2) Every person who fails to comply with a demand under subsection (1) commits an offence.

Business Development Advisory Board

12.(1) There is hereby established a Business Development Advisory Board, consisting of not less than five persons appointed by the Commissioner in Executive Council, one of whom shall be appointed as the chairperson, and another as the vice-chairperson.

(2) Every member of the board shall, before entering upon the execution of his duties, take and subscribe the prescribed oath or affirmation of office.

(3) Each member of the board shall be appointed for a term of not more than two years.

(4) A member of the board who is not a member of the public service of the Yukon may be paid such remuneration as may be prescribed by the Commissioner in Executive Council and may be paid transportation, accommodation, and living expenses incurred in connection with

the performance of his duties away from his ordinary place of residence but, except as otherwise provided by the regulations, the payment of such expenses shall conform as nearly as possible in all respects to the payment of such expenses for members of the public service of the Yukon.

Chairperson and vice-chairperson

13.(1) The chairperson of the board is the chief executive officer of the board, and he shall

- (a) supervise and direct the work of the board, and
- (b) preside at sittings of the board.

(2) If the chairperson is unable at any time for any reason to perform the duties of his office, or if his office is vacant, the vice-chairperson has and may exercise all of the powers of the chairperson.

Quorum and vacancy

14. A majority of the members of the board constitutes a quorum, but a vacancy in the membership of the board does not impair the right of the remainder to act.

Conflict of interest

15.(1) No person interested directly or indirectly in any project to which a matter before the board relates shall act as a member of the board in relation to that matter.

(2) Where any member of the board is prevented from acting under subsection (1), the Commissioner in Executive Council may appoint a member to act in his place for the purpose of dealing with that matter.

Secretary and experts

16.(1) The Executive Council Member may, from among the persons employed in the public service,

- (a) designate a person to be the secretary of the board, and
- (b) provide the board with such other employees or assistants as may be necessary for the proper conduct of the business of the board.

(2) The secretary of the board shall

- (a) receive applications,
- (b) at the direction of the chairperson or the Executive Council Member, investigate and make reports respecting applications and the carrying-out of purposes and projects in relation to applications,
- (c) keep a record of the business conducted by the board,
- (d) have the custody and care of the records, documents and recommendations of the board, and
- (e) obey the instructions given to him by the chairperson relating to his office as secretary of the board.

(3) The Executive Council Member may, upon the recommendation of the board, engage the services of experts or persons having special technical or other knowledge to advise the board on matters under this Act.

Annual report

17.(1) The secretary of the board shall, no later than May 31 in each year, prepare a report showing the activities of the board in the preceding fiscal year.

(2) The report prepared under subsection (1) shall be signed by the chairperson, and it shall be tabled in the next ensuing session of the Legislative Assembly.

Meetings of the board

18.(1) The board shall meet at the call of the chairperson as often as the conduct of its business may require.

(2) The board shall hold meetings in addition to those required under subsection (1) at such times and places as the Executive Council Member may require.

Procedure at meetings

19. The board may make rules governing the procedure to be followed at meetings of the board.

Duties and powers of the board

20.(1) The board shall

- (a) review applications and make recommendations to the Executive Council Member respecting the approval of applications for financial assistance under this Act, and
- (b) at the request of the Executive Council Member, make recommendations concerning the payment of financial assistance in respect of applications that have been approved.

(2) In making a recommendation to the Executive Council Member to approve or not to approve an application, the board shall take into consideration

- (a) the provisions of this Act and the regulations,
- (b) the extent to which the project may contribute to the development of the economy of the Yukon,
- (c) the extent to which the project may be carried out if the application is not approved,
- (d) the costs that may be incurred by the Executive Council Member, by the Government of Canada, or by a municipality, if the project is carried out,
- (e) the viability of the project,
- (f) the ability of the applicant to carry out the project,
- (g) the effect of the project on a community,
- (h) the applicant's receipt, or eligibility for receipt, of financial assistance for the purpose in relation to the project, from the Executive Council Member under any other Act, from the Government of Canada, or from a municipality, and
- (i) such other factors as the board considers relevant to the accomplishment of the purposes of this Act.

(3) For the purpose of performing its obligations under subsection (1), the board may require the applicant to furnish such information as it considers relevant to the application, and the board may defer consideration of the application until the required information is supplied.

(4) The board may require that representations made by or on behalf of the applicant in, or in support of, an application be verified by oath or affirmation.

Board recommendations

21.(1) Every recommendation of the board to the Executive Council Member under paragraph 20(1)(a) shall be in writing, and shall set forth

- (a) the opinion of the board on every matter in respect of which the opinion of the Executive Council Member is a prerequisite to the approval of an application or the payment of financial assistance under this Act,
- (b) the recommendation of the board that the Executive Council Member should or should not approve the application,
- (c) where it is recommended that the application be approved,
 - (i) the name of the applicant to whom the financial assistance should be paid,
 - (ii) the maximum amount of the financial assistance that should be paid,
 - (iii) the purpose for which the financial assistance should be paid,
 - (iv) the project in respect of which the financial assistance should be paid, and
 - (v) the terms and conditions, if any, subject to which the financial assistance should be paid, and
- (d) any other matter that the board considers the Executive Council Member ought to take into consideration in deciding whether or not to approve an application.

(2) Every recommendation of the board to the Executive Council Member under paragraph 20(1)(b) shall be in writing and shall set forth the opinions of the board on every matter that is a prerequisite to the payment of financial assistance under this Act.

Regulations

22. The Commissioner in Executive Council may make regulations

- (a) respecting the manner in which an applicant may be required to satisfy the Executive Council Member that he has paid any amount for the carrying-out of a purpose in relation to a project;
- (b) requiring proof of the carrying-out of a purpose in relation to a project before financial assistance is paid, and providing for the manner in which the proof may be given;
- (c) respecting the making of applications;
- (d) respecting the making of demands for the payment of financial assistance under section 7;
- (e) prescribing terms or conditions that may be specified in approvals under subsections 3(2) and (4);
- (f) prescribing terms or conditions that shall be deemed to be specified in every approval made after the regulation comes into force;
- (g) describing the kinds of projects that are eligible for financial assistance;
- (h) prescribing the purposes for which financial assistance may be used;
- (i) generally carrying the provisions and purposes of this Act into effect.

CHAPTER 17

BUSINESS LICENCE ACT

Interpretation

1. In this Act, “resident” means a person who resides in the Yukon for not less than eight months in each year.

Application of the Act

2. This Act does not apply to those portions of the Yukon that are situated within the boundaries of any municipality.

Issue of licence

3.(1) The Executive Council Member or a person authorized by him may issue licences under this Act.

(2) Where a person is required by the Workers Compensation Act to insure and maintain insurance for the protection of his employees, the Executive Council Member shall refuse to issue a licence to that person under this Act if he fails to produce satisfactory evidence showing that he has complied with the Workers Compensation Act.

(3) Where a person who is required by the Workers Compensation Act to insure and maintain insurance for the protection of his employees has failed to comply with that Act, the Executive Council Member shall suspend or cancel the licence issued to such person.

Prohibition and exception

4.(1) No person shall carry on within the Yukon any business, calling, trade or occupation without having first obtained a licence for the purpose and paid the prescribed fee.

(2) Notwithstanding anything in this Act, no licence is required by this Act to be obtained by any person for the purpose of carrying on within the Yukon

- (a) the business of publishing a newspaper, and
- (b) the occupation of prospecting, mining exploration and development or oil and gas exploration and development.

Partnerships

5. In the case of persons engaged in, following, practising, carrying on or exercising any trade, occupation, profession, business or calling as members of a partnership, it shall be sufficient compliance with this Act if one licence is taken out by the partnership in the partnership name in respect of that trade, occupation, profession, business or calling, and the licence fee is paid thereon.

Prescribed fee payable by person carrying on business

6. The prescribed fee shall be payable by the person engaging in, following, practising, carrying on or exercising the trades, occupations, businesses, professions, or callings for each store, office, house or place of business, calling or trade occupied or carried on by him, either in his own name or in the name of an agent or representative in any part of the Yukon.

Offence and penalty

7. Subject to subsection 4(2) and section 8 any person engaging in, following, practising, carrying on or exercising any trade, occupation, profession, business or calling without having taken out and had granted to him and holding a licence in that behalf is guilty of an offence under this Act and liable upon summary conviction to a penalty not exceeding \$100, together with the amount that he should have paid for such licence.

Other Acts

8. Where a person is required, pursuant to any other Act, to obtain a licence from the Government of the Yukon for the purpose of carrying on within the Yukon any business, calling, trade or occupation, no licence is required to be obtained by him for that purpose pursuant to this Act.

Application to be in writing

9. Every application for a Yukon trade licence shall be in writing, and shall set forth the following particulars:

- (a) the name, occupation and address of the applicant;
- (b) the nature of the licence applied for;
- (c) the place where the trade, occupation, business, profession, employment or calling, if licensed, will be carried on;
- (d) such further and other particulars as the Executive Council Member may require.

Expiry date

10.(1) Unless it is expressly issued for a lesser period and so endorsed, a licence shall be for the fiscal year current at the time of issue, and shall expire on March 31 next thereafter.

(2) The fee payable in respect of any licence shall be an annual fee whether the licence is issued on April 1 in any year or any later day, unless it is expressly paid for a licence for a shorter period, or a particular occasion or event and the licence is so endorsed.

Transfer of licence

11. With the consent of the Executive Council Member, a licence may be transferred if the applicant for such transfer of licence files with the Executive Council Member an application in writing setting forth

- (a) the name, occupation and address of the applicant,
- (b) the nature and number of the licence to be transferred,
- (c) the name and address of the licensee from whom the licence will be transferred,
- (d) the place where the applicant will carry on business under the licence,
- (e) the real consideration or reason for the transfer of the licence, and

- (f) such further and other particulars as the Executive Council Member may require.

Power to suspend or revoke licence

12.(1) Wherever by this Act power is given to the Executive Council Member to grant or issue licences for any trade, business, profession, occupation, calling, employment or purpose, he shall have power to revoke or to suspend any licence so granted in the event of the holder of such licence being convicted of a breach of any law or Act relating to the trade, business, profession, occupation, calling, employment or purpose in respect of which such licence was granted or issued.

(2) In such case there shall be no refund made of any part of the fee paid by the licensee in respect of such licence.

Display and production of licences

13. Every person to whom a licence is issued under this Act shall

- (a) display and keep displayed in some conspicuous public position in the place of business, if any, where he carries on the business, calling, trade or occupation in respect of which he is licenced, his licence for the current year, and
- (b) produce his licence when required to do so by the Executive Council Member or by a person authorized by the Executive Council Member to require production of the licence.

Regulations

14. The Commissioner in Executive Council may prescribe the fees to be charged under this Act.

CHAPTER 18

CEMETERIES AND BURIAL SITES ACT

Interpretation

1. In this Act,

“burial site” means the location of any human grave or graves, tomb, burial mound or other burial place not situated within a cemetery;

“cemetery” means a defined area of land that is set aside for the burial of human bodies.

Prohibitions respecting cemeteries

2. No person shall

- (a) wilfully destroy, mutilate, deface, injure or remove
 - (i) any tomb, monument, marker, gravestone or other structure placed in a cemetery, or
 - (ii) any fence, railing or other work erected for the protection or ornament of a cemetery,
- (b) wilfully destroy, cut, break or injure any tree, shrub or plant in a cemetery,
- (c) play any game or sport in a cemetery,
- (d) except at a military funeral, discharge firearms in a cemetery,
- (e) wilfully disturb persons assembled for the burial of a body in a cemetery, or
- (f) commit a nuisance in a cemetery.

No disturbance of burial sites

3. No person, without the written permission of the Executive Council Member, shall

- (a) excavate or investigate a burial site, or
- (b) remove or disturb a marker, monument or fence in connection with such site.

Disinterment and reburial

4.(1) In this section “registrar” means the registrar of vital statistics.

(2) Subject to the Coroners Act, no person shall disinter or assist in the disinterment of the body of a deceased person that has been buried unless an order authorizing the disinterment has been secured pursuant to this section.

(3) Subject to the Coroners Act, no person shall rebury or assist in the reburial of a body that has been disinterred unless a reburial certificate has been issued under subsection 21(10) of the Vital Statistics Act.

(4) Any person desiring to disinter a body buried in the Yukon may apply in the prescribed form to the registrar for an order authorizing the disinterment, but the application shall be accompanied by

- (a) an affidavit setting out the place where the body is buried, the purpose of the proposed disinterment and the place where it is intended to rebury the body,

- (b) the prescribed fee, and
- (c) the written consent of a medical health officer.

(5) Where the application under subsection (4) is for the disinterment of a body that is buried in a cemetery, the application shall be accompanied by the consent of the owner of the cemetery where the body is buried or proof that reasonable notice of the application was given to the owner of the cemetery where the body is buried.

(6) Where the registrar is satisfied that the disinterment should be allowed, the registrar may issue an order authorizing the disinterment and the place and manner in which the disinterred body may be disposed of or reburied.

(7) An order under subsection (6) is sufficient authority for the owner of the cemetery in which the body is buried to allow the disinterment.

(8) No person who disinters a body or causes a body to be disinterred pursuant to an order obtained under subsection (6) shall dispose of the body in any manner other than that authorized by the order.

No deposit of waste at burial sites

5. No person shall deposit garbage, rubble, brush, ashes or refuse within a distance of 100 metres of a burial site.

No markers to be erected on burial sites

6. No person shall, without the written permission of the Executive Council Member, erect any marker, monument, sign or notice on any burial site unless he is

- (a) a relative of a person whose body is buried therein, or
- (b) a member of the Royal Canadian Mounted Police engaged in marking or protecting such site in the course of his duties.

Permit to care for burial site

7.(1) The Executive Council Member may grant a permit to any person authorizing him to care for, ornament and protect a burial site, but such a permit does not entitle that person to demand from the Government of the Yukon or any person remuneration for services performed.

(2) The Executive Council Member may revoke any permit granted under subsection (1).

(3) During the month of January in each year, every person who holds a permit under subsection (1) shall make a report in duplicate to the Executive Council Member stating in detail the work done under his permit during the preceding year.

Offence and penalty

8. Any person who violates any provision of this Act or any regulation made thereunder is guilty of an offence and is liable upon summary conviction to a fine not exceeding \$100 or to imprisonment for a period not exceeding six months, or to both fine and imprisonment.

Regulations

9. The Commissioner in Executive Council may make regulations

- (a) respecting the establishment, maintenance and operation of cemeteries and burial sites;
 - (b) respecting the content and form of records to be made with respect to burials and the custody thereof;
 - (c) generally for carrying out the purposes and provisions of this Act.
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CHAPTER 19

CERTIFIED GENERAL ACCOUNTANTS ACT

Association established

1.(1) There is hereby established a corporation to be known as the Certified General Accountants Association of Yukon, in this Act referred to as the “association”.

(2) The head office of the association shall be in the City of Whitehorse or such other place as may be determined by the board.

Objects of the association

2. The general objects of the association are

- (a) to furnish means and facilities by which its members may increase their knowledge, skill, and proficiency in all things relating to the business or profession of an accountant or an auditor,
- (b) to hold examinations and establish tests of competency for admission to membership in the association, and
- (c) to discipline a member guilty of misconduct in the practice of his business or profession.

Board of governors

3.(1) The affairs and business of the association shall be managed by a board of governors, in this Act referred to as the “board”, comprising three or, if the bylaws so provide, more than three members elected by and from among the members of the association.

(2) The board shall elect from its members a president and at least one vice-president.

(3) The board shall appoint a secretary-treasurer or a secretary and a treasurer, who need not be a member of the board.

(4) When there is a vacancy in the membership of the board, the board shall appoint some other member of the association to fill the vacancy.

(5) A vacancy in the membership of the board does not impair the right of the remaining members of the board to act.

Membership in the association

4. The following persons are entitled to be admitted to membership in the association:

- (a) a member of any incorporated association of certified general accountants in Canada that has objects and purposes similar to those of the association;
- (b) a member of any association of accountants or auditors within or outside of Canada that has objects and purposes similar to those of the association and who has training and experience similar to that of persons eligible to be

- admitted to membership in the association under paragraph (a) and who passes such examinations as may be prescribed by a bylaw;
- (c) any candidate or any registered student who has passed the examinations and met any other requirements for enrollment as members that have been prescribed by bylaw.

Powers of the association

5. In addition to the powers vested in it by the Interpretation Act, the association has, for the attainment of its objects, power to

- (a) acquire and dispose of real property,
- (b) borrow money and mortgage or otherwise charge or encumber its property,
- (c) employ persons, including members, in pursuit of its objects,
- (d) establish branches or chapters in various parts of the Yukon,
- (e) establish educational programs for members and students and, for that purpose, make agreements with the Government of the Yukon, or with any university, college, or school in the Yukon or a province, or with any incorporated association of accountants,
- (f) establish and administer a benevolent fund for the benefit of members or the dependents of deceased members, and for that purpose may make and receive contributions and donations,
- (g) contract or arrange for insurance for the benefit of members and the dependents of deceased members, and
- (h) affiliate with any incorporated association of accountants for the mutual benefit of members, for the establishment of uniform qualifications or examinations, and for the recognition of qualifications and examinations.

Carrying out of objects and exercise of powers

6. The objects and powers of the association may be carried out and exercised by bylaws or by resolutions passed by the board, but the board shall not exercise any power or do any act that is directed or required by this Act or by a bylaw to be exercised or done by the association in a general meeting.

Bylaws

7.(1) The board may pass bylaws to carry out the objects of the association and without limiting the generality of the foregoing the board may pass bylaws respecting

- (a) membership fees and the termination of membership,
- (b) nomination, election or appointment, terms of office and remuneration of members of the board or employees of the association,
- (c) the election or appointment, and the replacement of officers of the association and the duties and powers of those officers,
- (d) the time, place, calling and conduct of general meetings of the members of the association,
- (e) the management of the property and financial affairs of the association,
- (f) rules of professional conduct and the reprimanding of members, and the suspension or termination of membership for breach of the rules of professional conduct,

- (g) a student class of membership and the rights and privileges thereof and the conditions upon which persons wishing to become members of the association may be registered as students,
- (h) a non-practising class of membership and the rights and privileges thereof and the conditions upon which persons may maintain non-practising membership and change to practising membership,
- (i) the enrollment of members and registration of students,
- (j) the curriculum of studies and examinations to test the competence of registered students or of candidates for enrollment as members,
- (k) the granting, suspension, revocation and renewal of certificates of registration, and
- (l) other matters that are necessary for the management of the association and the attainment of its objects.

(2) No such bylaw or any repeal thereof or amendment thereto shall take effect until it has been approved by the members of the association in a general meeting.

(3) Any bylaw passed by the board may be amended or rejected by the members of the association in a general meeting, and the members may propose and pass a bylaw in a general meeting whether or not it has already been passed by the board.

(4) The board shall file with the Executive Council Member a copy of each bylaw within two weeks after the bylaw has been approved by the members of the association.

(5) The Commissioner in Executive Council may annul any bylaw of the association.

General meetings

8.(1) At least one general meeting of the members of the association shall be held in each year for the transaction of such business as may be brought before the meeting.

(2) The board may convene other general meetings of the members of the association at its discretion and shall convene such other general meetings as are required pursuant to a bylaw.

Use of “certified general accountant” and “C.G.A.”

9.(1) Every member of the association, other than a student member, may use the designation “certified general accountant” and the initials “C.G.A.” to indicate that he is a certified general accountant.

(2) No person shall use the designation “certified general accountant” or the initials “C.G.A.” alone or in combination with any other words or initials as his occupational, business or professional designation, where he is not a member of the association, and no person shall in any other way represent or imply that he is a certified general accountant, unless he is a member of the association.

(3) Any firm of certified general accountants whose members are entitled to practice as certified general accountants outside the Yukon and whose head office is outside the Yukon, but which maintains a practice within the Yukon, may describe themselves in the Yukon as

certified general accountants, or C.G.A.'s, if at least one member of the firm is a member, other than a student or non-practising member, of the association.

(4) Each day's continuance of any contravention of this section constitutes and is deemed to be a new and distinct offence.

Other accountants and auditors

10. Nothing in the Act affects or interferes with the right of a person who is not a member of the association to practice as an accountant or auditor in the Yukon.

Persons who may take the examination

11. Any person of the age of majority, upon making application for membership and paying examination fees as required by a bylaw, has the right to try the examination set by the board as the test of competency for membership in the association.

Register of members

12.(1) The board shall keep a register in which shall be entered in alphabetical order the names of all members and their class of membership.

(2) The register of members shall be open to any person for inspection free of charge during reasonable business hours.

(3) The register, or a copy of it or of an extract from it certified true by an officer of the association, shall be received in evidence as prima facie proof of the facts stated in the register or extract produced.

(4) The certificate of an officer of the association certifying that he has examined the register and that a person is not shown on the register as a member of the association shall be received in evidence as prima facie proof that the person is not a member.

Revenues of the association

13.(1) Any surplus derived from carrying on the affairs and business of the association shall be applied solely in promoting and carrying out the objects and purposes of the association, and shall not be divided among the members of the association.

(2) No person who ceases to be a member of the association, and no representative of any member who dies, shall, by reason of the membership, have any interest in or claim against the funds and property of the association.

(3) The association may be wound up in the same way as if it were incorporated under the Business Corporations Act but dissolution of the association in consequence of the winding up may occur only by repeal of this Act.

Appeal from disciplinary action

14.(1) A member who has been reprimanded or whose membership in the association has been suspended or expelled may, after exhausting all other rights of appeal provided by a bylaw, appeal to the Supreme Court against the decision imposing the reprimand, suspension or termination.

(2) The appeal shall be taken within 30 days of the decision appealed against or such longer time as a judge of the court may allow.

(3) The procedure for the conduct of an appeal to the court under this section shall be, with such reasonable modifications directed by the court as may be necessary, the same as for an appeal in the Court of Appeal.

(4) Upon hearing the appeal, the court may affirm, reverse or modify the decision appealed against, and make such other order as seems proper to the court.

CHAPTER 20

CHANGE OF NAME ACT

Interpretation

1. In this Act,

“change” means any change by way of alteration, substitution, addition or abandonment;

“child” means an unmarried child under the age of 19, including an adopted child who has been adopted in accordance with the law of the place at which the adoption was effected;

“given name” includes Christian name and baptismal name;

“name” includes given name and surname;

“surname” includes family name and patronymic.

Changes to be under Act

2.(1) Subject to subsections (2) and (3), no person shall change his name except under this Act.

(2) This Act does not apply to a change of surname by a person to that of his or her spouse upon marriage, to resumption upon dissolution of marriage of the surname that was given up upon marriage, or to a change of any name effected under the Children’s Act in consequence of adoption.

(3) Nothing in this Act shall be deemed to affect any change of name lawfully effected prior to March 29, 1954.

Who may apply

3. A person who has attained the age of majority, is a Canadian citizen or has the status of a permanent resident of Canada, and is a resident of the Yukon may apply to the Supreme Court for a change of name.

Consents

4. The provisions of this Act requiring consent to a change of name do not apply to a person who is under the age of 14 years or to a person who by reason of mental or physical infirmity is unable to give consent and the Supreme Court may, in any case in which a person whose consent is required cannot be found or where for any other reason it is satisfied that a consent may be dispensed with, dispense with the requirement of a consent.

Mentally incompetent adults

5. Notwithstanding the definition of “child”, where, under this Act, a change of name affecting unmarried children under the age of 19 years may be obtained, the Supreme Court may, in its discretion, direct that the application and resulting order shall extend to unmarried children who are over that age and who, by reason of mental incapacity, are unable to apply for a change of name.

Married person

6.(1) Subject to subsection 8(3), a married person who applies for a change of name may apply for a surname different from that of his or her spouse, but shall also apply for a change in the surname of all his or her or their children, if such a change is necessary, so that the surname of those children shall be one of the following:

- (a) the surname of the applicant married person;
- (b) the surname of the spouse of the applicant married person;
- (c) a surname comprising the surname of the applicant married person combined or hyphenated with the surname of his or her spouse.

(2) A married person who applies for a change of name may, with the consent of his or her spouse and any child concerned, apply for a change in any given name of the spouse or of any of his or her or their children.

(3) A married person who applies for a change of name may apply for a change in the surname of a married child who is under 19 years of age if

- (a) that child and his or her spouse consent to the change, and
- (b) the application is accompanied by an application for a like change in the surname of the spouse and of any issue of the married child and the spouse.

Widower or widow

7. A widower or a widow who applies for a change of name

- (a) shall, respecting any change of his or her surname, also apply for a like change in the surname of all his or her children,
- (b) may, with the consent of any child concerned, apply for a change in the given name of any or all of his or her children,
- (c) may, with the appropriate consent of any child concerned, apply for a change in the name of any children that are in his or her lawful custody and that are the children of a deceased spouse, and
- (d) may apply for a change in the surname of a married child who is under 19 years of age if
 - (i) that child and his or her spouse consent to the change, and
 - (ii) the application is accompanied by an application for a like change in the surname of the spouse and of any issue of the married child and the spouse.

Divorced person

8.(1) Subject to subsection (3), a person whose marriage has been dissolved may apply for a change of name and may, with the consent of the other parent, if living, and with the consent of the children affected, apply for a like change in the surname or a change in the given names of any or all of his or her children that are in his or her lawful custody.

(2) An application under this section shall indicate whether or not the other parent is living and shall be accompanied by such proof respecting the dissolution of the marriage and custody of the children as the Supreme Court may require.

(3) A person whose marriage has been dissolved and who marries again may, with the consent of the person he or she marries, apply for a change in the surname of his or her children to the surname of the new spouse.

Marriage by widow, widower or unmarried mother

9.(1) A widow or widower who marries again or an unmarried mother who marries may, with the consent of the children and of the person he or she marries, apply for a change in the surname of his or her children to that of the new spouse.

(2) An unmarried mother may apply for a change of name and may, with their consent, apply for a change of the names of any or all of her children living with her.

Application for change of name

10.(1) Every application for a change of name shall be filed with the clerk of the Supreme Court, together with such other documents as may be required under this Act accompanied by the prescribed fee.

(2) Every application for a change of name shall set forth

- (a) the surname and given names of the applicant,
- (b) the address of the applicant and the date and place of his birth,
- (c) the full name of the applicant's father and the maiden name in full of his mother,
- (d) where the applicant is married, the name in full of the spouse, the date and place of marriage, the full name of the spouse's father and the maiden name in full of the spouse's mother,
- (e) a statement that the applicant is a Canadian citizen,
- (f) the occupation or calling of the applicant,
- (g) full particulars of any civil or criminal action pending against the applicant, any chattel mortgage, lien or other encumbrance registered against the property of the applicant and, if none, a statement to that effect,
- (h) the change of name desired and full particulars of any previous change of name or statement that there was none,
- (i) the names, ages and particulars of all persons whose consents are required and if a consent has not been obtained the reason for it,
- (j) the names, ages and particulars of all persons whose names may be changed as a result of the application, and
- (k) a statement of the reasons for desiring a change of name.

(3) Every application for a change of name shall be accompanied by

- (a) an affidavit by the applicant deposing that the application is made in good faith and for no improper purpose, that the statements set out in the application are true and that, unless a Supreme Court order under subsection 3(2) has been obtained, the applicant has resided in the Yukon for at least one year immediately prior to the application,
- (b) a certificate of the sheriff of the Yukon as to the existence of any unsatisfied executions against the property of each person whose name may be changed as a result of the application, and

- (c) such consents, in writing, or other documents that are required by this Act respecting the particular application in question, including such proof as the Supreme Court may require that the applicant is a Canadian citizen.

Objection to application

11. Any person who objects to a change of name shall file his objection in writing with the clerk of the Supreme Court and pay the prescribed fee.

Hearing

12.(1) Where an application for a change of name has been filed, the Supreme Court shall, where no objection to the application has been filed and it is satisfied that the application and all supporting documents are in order and may be granted, grant the application without a hearing and shall, in any other case, appoint a time and place for the hearing of the application.

(2) At a hearing the Supreme Court may require the applicant, any person whose name will be affected by the application and any other person who, in the opinion of the Supreme Court, has information respecting the application or any circumstances connected therewith to give evidence under oath and examine any such person or permit him to be examined by any interested person.

Rejection after hearing

13.(1) Where the Supreme Court is of opinion on a hearing that any change of name that would result from the granting of an application might reasonably cause mistake or confusion or be a cause of embarrassment or inconvenience, or has been sought for any improper purpose or would on any other ground be objectionable, the Supreme Court shall refuse the application and make an order to that effect.

(2) Where the Supreme Court is of opinion on a hearing that the application should in whole or in part be granted, it shall make an order to that effect.

Order

14.(1) An order made under this Act shall provide for such changes of names as the Supreme Court deems proper having regard to the nature of the application, objections thereto or any other evidence adduced, the relationship and status of persons affected thereby and all other relevant circumstances and the order shall have effect according to the tenor thereof.

(2) Every such order shall be entered by the clerk of the Supreme Court who shall send two certified copies thereof and a certified copy of the application and supporting documents to the registrar of vital statistics and shall also send to the sheriff a certified copy of the order and any particulars shown on the application respecting any judgment, pending action, chattel mortgage, lien or other registered encumbrance relating to any person affected by the order.

(3) Where the sheriff of the Yukon has received a copy of the order, and any particulars pursuant to subsection (2), he shall enter and re-index any such judgment pending action, chattel mortgage, lien or other registered encumbrance under the name as changed.

Certified copy of order

15.(1) Any person may obtain from the clerk of the Supreme Court a certified copy of an order effecting a change of name and such certified copy is conclusive evidence of its contents.

(2) Subject to the Vital Statistics Act, and without restricting the effect that a change of name may have at law, a person whose name has been changed under this Act is, upon production of the certified copy of the order and satisfactory proof of identity, entitled to have a memorandum of the change of name endorsed on any record, certificate, instrument, document, contract or writing, whether public or private.

Application to annul

16.(1) Every person who has reason to believe that an order effecting a change of name has been obtained by fraud, misrepresentation or for an improper purpose may apply to the Supreme Court for an annulment of the order.

(2) An application for annulment shall be accompanied by an affidavit of the applicant setting out the reason therefor and by the prescribed fee.

(3) The Supreme Court may refuse such application or may set a time and place for the hearing of the application and shall, upon the hearing, have power to call witnesses and hear evidence as it deems proper and shall make an order as it deems proper refusing the application or annulling the order of change of name in whole or in part.

(4) The clerk of the Supreme Court shall enter an annulling order and suitably endorse the previous order that is wholly or partially annulled, shall send two certified copies of the annulling order to the registrar of vital statistics and one certified copy to the sheriff of the Yukon who shall amend their records accordingly, and one certified copy to any other sheriff to whom a copy of the order and particulars were sent pursuant to subsection 14(2).

(5) Where an order annulling a previous change of name order has been made, any certified copy of the previous order may be demanded from the person to whom it was issued and such person shall forthwith comply with such demand.

Offences

17.(1) Every person who, by fraud, misrepresentation or for an improper purpose, obtains or attempts to obtain a change of name under this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$500.

(2) Every person who refuses to return a certified copy of an order that has been annulled or otherwise refuses to comply with a lawful order or demand under this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$100.

Regulations

18. The Commissioner in Executive Council may make regulations for carrying out the provisions and purposes of this Act.

CHAPTER 21

CHARTERED ACCOUNTANTS ACT

Interpretation

1. In this Act,

“bylaws” means bylaws of the institute made pursuant to section 7;

“council” means the governing body of the institute established pursuant to section 5;

“institute” means the Institute of Chartered Accountants of the Yukon;

“member” means a person who is registered as a member of the institute;

“provincial institute” means any institute or order of chartered accountants of any province or of Bermuda;

“register” means the register maintained pursuant to section 13;

“registered student” means a student registered under provisions of this Act.

Establishment of institute and head office

2.(1) There is hereby constituted a corporation to be known as the Institute of Chartered Accountants of the Yukon.

(2) The head office of the institute shall be at the City of Whitehorse, or at such other place within the Yukon as may be determined by the council.

Powers

3. The institute, in addition to the powers vested in it by the Interpretation Act, has for its purpose and no other, power to

- (a) purchase, receive, or otherwise acquire, hold, manage and otherwise deal with, and sell, mortgage, lease, or otherwise dispose of, any rights or real or personal property,
- (b) apply its funds for the carrying out of its objects and for the benefit of needy members or their families and the families of deceased members,
- (c) invest its funds in such investments in which trustees are authorized to invest under the provisions of the Trustee Act, and
- (d) enter into association or affiliation with any other provincial institute with similar objects and to enter into agreements with any such provincial institute respecting matters affecting the administration of the institute and the training, education and discipline of members and students.

General objects of institute

4. The objects of the institute are

- (a) to promote and increase the knowledge, skill and proficiency of its members and students in all things relating to the business or profession of an accountant,
- (b) to regulate the discipline and professional conduct of its members and students, and

- (c) to promote and protect the welfare and interests of the institute and its members and students.

Council of institute

5.(1) There shall be a council of the institute which shall consist of not less than three members or such greater number as may be provided by the bylaws of the institute.

(2) A majority of the council shall be members resident within the Yukon.

(3) Members of the council shall be elected in accordance with the provisions of this Act and the bylaws of the institute.

(4) The council shall, from its members, elect a president.

(5) The council shall appoint a secretary and a treasurer, the same person being eligible for both offices, and may appoint such other officers as may be provided for by the bylaws of the institute.

(6) All vacancies which occur on the council by reason of death or otherwise in the interval between two annual meetings, may be filled by the council.

Administration by council

6. The council may exercise all such powers and do such acts and things as the institute is by this Act or otherwise authorized to exercise and do, and are not by this Act, by the institute or by the bylaws of the institute directed or required to be exercised or done by the institute in annual or special meeting, but subject nevertheless to the provisions of this Act and to the bylaws of the institute and to regulations not inconsistent with the provisions of this Act or the bylaws of the institute made by the institute in annual or special meeting, but no regulation shall invalidate any prior act of the council that would have been valid if such regulations had not been made.

Bylaws

7.(1) The council may from time to time pass bylaws to carry out the objects of the institute and, without limiting the generality of the foregoing, the council may from time to time pass bylaws respecting

- (a) membership fees and the termination of membership,
- (b) nomination, election, appointment, terms of office and remuneration of members of the council or any committee or administrative group with the institute,
- (c) the time, place and conduct of general meetings of the institute,
- (d) the election or appointment and replacement of officers of the institute and the powers and duties of those officers,
- (e) the financing of the institute and the administration of its funds,
- (f) the management of the property and affairs of the institute,
- (g) rules of professional conduct,
- (h) terms and conditions upon which persons desiring to become members of the institute may become registered as students of the institute,

- (i) the curriculum of studies and examinations to be taken by such registered students,
- (j) enrolment of members and registration of students,
- (k) the granting or revocation of certificates of registration and annual renewals thereof, and
- (l) all other matters that are considered necessary or convenient for the management of the institute and the promotion of its welfare or the conduct of its business.

(2) No such bylaw or any amendment thereto shall take effect until it has been approved at an annual meeting of the members of the institute or at a special meeting of members of the institute called to consider such bylaw or amendment.

(3) The institute shall file with the Executive Council Member a copy of each bylaw made pursuant to subsection (1) within one week after approval thereof by the members.

(4) A bylaw may be annulled by the Commissioner in Executive Council.

Annual general meeting

8.(1) An annual meeting of the members of the institute shall be held in every year for the transaction of such business as may be brought before the meeting, at such time and place and in such manner as the bylaws of the institute provide.

(2) Other special meetings of the members of the institute may be convened and held as the bylaws of the institute from time to time provide.

Members in good standing

9.(1) Any person who

- (a) is a member in good standing of any provincial institute being resident in or carrying on practice in whole or in part in the Yukon at the coming into force of this Act, or
- (b) after the coming into force of this Act, meets such terms and conditions as may be prescribed by bylaws of the institute

is entitled to be registered as a member of the institute and to receive a certificate of registration.

(2) The council may elect as a fellow any member, but such election shall be based solely on conspicuous service to the profession.

Use of “chartered accountant” or initials

10.(1) No person is entitled to take or use the designation “chartered accountant”, or the initials “F.C.A.”, “A.C.A.”, or “C.A.”, either alone or in combination with any other words, or any name, title or description implying that he is a chartered accountant, or any name, title, initials, or description implying that he is a certified accountant or an incorporated accountant, unless he is a member of the institute in good standing and registered as such; except that any firm of chartered accountants whose head office is outside the Yukon, but who maintains an office and practice within the Yukon, is entitled to take and use the designation “chartered accountants” and the initials “C.A.”, and to practice as such, but only if at least

one member of the firm and the manager thereof for the Yukon are members of the institute and at least one of such members or the manager permanently resides in the Yukon; and if the member or manager of such firm who is a member of the institute dies or resigns from the firm, the firm is entitled to continue the use of such designations, but only for a period of six months from the death or resignation of the member or manager unless another member or manager of the firm becomes a member of the institute within that period.

(2) No person shall take, display, or use in the Yukon either of the designations "certified public accountant" or "certified public auditor" alone or in combination with any other word, name, title, initial, letter or description, nor shall any person by the use of the initials "C.P.A." or in any other manner imply, suggest or hold out that he is a certified public accountant or certified public auditor.

(3) A person who contravenes any of the provisions of this section commits an offence and is liable upon summary conviction to a fine of \$100 for the first offence and to a fine of \$200 for each subsequent offence.

(4) Each day's continuance of any contravention of the provisions of this section constitutes and is deemed to be a new and distinct offence.

Practice as accountant

11. Nothing in this Act affects or interferes with the right of a person not a member of the institute to practice as an accountant in the Yukon.

Time limit on complaint

12. In the case of an offence under this Act punishable upon summary conviction the complaint shall be made or the information laid within one year from the time when the matter of the complaint or information arose.

Institution register

13.(1) The council shall cause to be kept a register, in which shall be entered in alphabetical order the names of all members, which register shall be subject to inspection by any person free of charge.

(2) The register, or a copy of it duly certified by the secretary, is prima facie evidence in all courts and before all persons that the persons whose names are entered therein are members of the institute, and the absence or certificate of the secretary of the absence of the name of any person from such register is prima facie evidence that such person is not a member of the institute.

Disciplinary action

14.(1) The Commissioner in Executive Council shall after consultation with the Institute of Chartered Accountants of British Columbia, by regulation provide for the reprimand, suspension or expulsion of a member of the Institute of Chartered Accountants of the Yukon by the council of the Institute of Chartered Accountants of British Columbia or by a committee appointed by the council of the Institute of Chartered Accountants of British Columbia with or without the imposition of a fine or costs, after due inquiry, by the council of the Institute of Chartered Accountants of British Columbia or by a committee appointed by the council of the

Institute of Chartered Accountants of British Columbia for professional misconduct or contravention of the bylaws, rules and regulations of the Institute of Chartered Accountants of the Yukon and for an appeal therefrom.

(2) A member who has been reprimanded, suspended, expelled or fined may, after exhausting all rights of appeal provided by any regulations made pursuant to subsection (1), appeal to a judge from a decision of the council of the Institute of Chartered Accountants of British Columbia and the judge may reverse, confirm or vary the decision, or refer the matter back for further inquiry.

(3) An appeal to a judge shall be brought within 30 days of the date of the decision appealed from.

CHAPTER 22

CHILDREN'S ACT

Best interests of child

1. This Act shall be construed and applied so that in matters arising under it the interests of the child affected by the proceeding shall be the paramount consideration, and where the rights or wishes of a parent or other person and the child conflict the best interests of the child shall prevail.

Rules of equity

2.(1) Subject to subsection (2), in all questions relating to the custody and education of minors, the rules of equity shall prevail.

(2) The rules of equity shall not prevail over the provisions of this or any other Act.

References to guardians in Acts and instruments

3.(1) For the purposes of construing any instrument or any Act, regulation or other legislative instrument, a reference to a guardian with respect to the person of a child shall be construed to refer to custody of the child and a reference to a guardian with respect to property of a child shall be construed to refer to guardianship for the child.

(2) Subsection (1) applies to any instrument or any Act, regulation or other legislative instrument enacted or made before, on or after the day this section comes into force.

“Parent”

4. In this Act, “parent” means the father or mother of a child by birth, or by virtue of an adoption order made or recognized under this Act.

PART 1

CHILD STATUS AND ESTABLISHMENT OF PARENTAGE

EQUAL STATUS OF CHILDREN

Status of child and parents

5.(1) Subject to section 13, for all purposes of the laws of the Yukon a person is the child of his or her natural parents, and his or her status as their child is independent of whether the child is born within or outside marriage.

(2) Where an adoption order has been made or is recognized pursuant to this Act, the child is the child of the adopting parents as if they were the natural parents.

(3) Kindred relationships shall flow from and be determined according to the relationships described in subsections (1) and (2), and in section 13.

(4) Any distinction between the status of a child born inside marriage and a child born outside marriage is abolished and the relationship of parent and child and kindred relationships flowing from that relationship shall be determined for the purposes of the common law and equity in accordance with this section and section 13.

Construction of enactments and instruments

6.(1) For the purpose of construing any instrument, Act or regulation, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be construed to refer to and include a person who comes within the description by reason of the relationship of parent and child as determined under sections 5 and 13.

(2) Subsection (1) applies to any Act and to any regulation or other legislative instrument enacted or made before, on or after May 17, 1984, and it also applies to any other instrument made on or after May 17, 1984, but it does not affect

- (a) such other instrument made before May 17, 1984, or
- (b) a disposition of property made before May 17, 1984.

ESTABLISHMENT OF PARENTAGE

Jurisdiction of court

7. The court having jurisdiction for the purposes of sections 8 to 11 shall be the Supreme Court.

Declaration as to mother

8.(1) Any person having an interest may apply to the court for a declaratory order that a person is or is not in law the mother of a child.

(2) Where the court finds on the balance of probabilities that a person is or is not in law the mother of a child, the court may make a declaratory order to that effect.

Declaration as to father

9.(1) Any person having an interest may apply to the court for a declaratory order that a person is or is not in law the father of a child.

(2) Where the court finds on the balance of probabilities that a person is or is not in law the father of a child, the court may make a declaratory order to that effect.

(3) Where the court finds that a presumption of paternity exists under section 12, the court shall make a declaratory order confirming that the presumed paternity is recognized in law, unless the court finds on the balance of probabilities that the presumed father is not the father of the child.

(4) A declaratory order that a person is in law the father of a child shall not be made under this section unless both the father and the child whose relationship is sought to be established are living.

(5) Notwithstanding subsection (4), where only the father or the child is living and the court finds that a presumption of paternity exists under section 12, the court may make a declaratory order that a person is in law the father of the child.

Persons having an interest

10.(1) In sections 8 and 9 the concept of interest shall not be restricted to a proprietary interest and may include any other interest that the court thinks justifies allowing the applicant the standing to proceed with his application.

(2) For the purposes of section 8 and 9, a person who seeks a declaratory order to establish that there exists or that there does not exist a relationship between him and another person shall be deemed to have an interest.

Effect and variation of declaratory order

11.(1) Subject to this section, a declaratory order made under section 8 or 9 shall be recognized for all purposes.

(2) Where a declaratory order has been made under section 8 or 9 and evidence that was not available at the previous hearing becomes available, the court may discharge or vary that order and make such other orders or directions as are ancillary thereto.

Presumption of paternity

12.(1) Unless the contrary is proven on the balance of the probabilities, a person shall be presumed to be the father of a child in any one of the following circumstances:

- (a) he was married to the mother of the child at the time of the birth of the child;
- (b) he was married to the mother of the child by a marriage that was terminated by death or judgment of nullity within 300 days before the birth of the child or by divorce where the decree nisi was granted within 300 days before the birth of the child;
- (c) he married the mother of the child after the birth of the child and acknowledges that he is the natural father;
- (d) he was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child or the child is born within 300 days after they ceased to cohabit;
- (e) he and the mother of the child have acknowledged in writing that he is the father of the child;
- (f) he has been found or recognized in his lifetime by a court to be the father of the child.

(2) Where circumstances exist that give rise to a presumption or presumptions of paternity by more than one father under subsection (1), no presumption shall be made as to paternity.

Artificial insemination

13.(1) In this section, "artificial insemination" includes the fertilization by a man's semen of a woman's own ovum outside of her uterus and subsequent implantation of the fertilized ovum in her.

(2) A man whose semen was used to artificially inseminate a woman is deemed in law to be the father of the resulting child if he was married to or cohabiting with the woman at the time she is inseminated even if his semen were mixed with the semen of another man.

(3) A man who is married to a woman at the time she is artificially inseminated solely with the semen of another man shall be deemed in law to be the father of the resulting child if he consents in advance to the insemination.

(4) A man who is not married to a woman with whom he is cohabiting at the time she is artificially inseminated solely with the semen of another man shall be deemed in law to be the father of the resulting child if he consents in advance to the insemination, unless it is proved that he refused to consent to assume the responsibilities of parenthood.

(5) Notwithstanding a married or cohabiting man's failure to consent to the insemination or consent to assume the responsibilities of parenthood under subsection (3) or (4) he shall be deemed in law to be the father of the resulting child if he has demonstrated a settled intention to treat the child as his child unless it is proved that he did not know that the child resulted from artificial insemination.

(6) A man whose semen is used to artificially inseminate a woman to whom he is not married or with whom he is not cohabiting at the time of the insemination is not in law the father of the resulting child.

Void and voidable marriages

14. For the purposes of sections 12 and 13,

- (a) where a man and woman go through a form of marriage with each other and at least one of them does so in good faith and they then cohabit and the marriage is void, they shall be deemed to be married during the time they cohabit, and
- (b) where a voidable marriage is decreed a nullity, the man and woman shall be deemed to be married until the date of the decree of nullity.

Blood tests

15.(1) Upon the application of a party in a civil proceeding in which a court is called upon to determine the parentage of a child, the court may give the party leave to obtain blood tests on such persons as are named in the order granting leave and to submit the results in evidence.

(2) Leave under subsection (1) may be given subject to such terms and conditions as the court thinks proper.

(3) No order under subsection (1) authorizes the taking of a blood test without a sufficient consent given by the person on whom the blood test is taken.

(4) Where leave is given under subsection (1) and a person named therein refuses to submit to the blood test, the court may draw such inferences as it considers appropriate.

(5) Where a person named in an order granting leave under subsection (1) is not capable of consenting to having a blood test taken, the consent shall be deemed to be sufficient,

- (a) where the person is a minor of the age of 16 years or more, if the minor consents,
- (b) where the person is a minor under the age of 16 years, if the person having the right to authorize medical treatment for the minor consents, and
- (c) where the person is without capacity for any reason other than minority, if the person having his charge consents and a medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment.

Regulations respecting blood tests

16. The Commissioner in Executive Council may make regulations governing blood tests for which leave is given by a court under section 15 including, without limiting the generality of the foregoing,

- (a) the method of taking blood samples and the handling, transportation and storage thereof,
- (b) the conditions under which a blood sample may be tested,
- (c) designating persons or facilities or classes thereof who are authorized to conduct blood tests for the purposes of section 15, and
- (d) prescribing procedures respecting the admission of reports of blood tests in evidence.

Vital statistics records

17.(1) A written acknowledgment of paternity referred to in subsection 12(1) may be filed in the office of the registrar of vital statistics.

(2) Any person having an interest, upon applying, furnishing information satisfactory to the registrar of vital statistics and paying the prescribed fee, may, if the registrar is satisfied that the information or documents the person seeks will not be used for an improper purpose, inspect and obtain certified copies of

- (a) any written acknowledgment of paternity filed under subsection (1), and
- (b) any documents made pursuant to subsection 4(1), (3) or (5) of the Vital Statistics Act.

(3) The clerk of the court shall deliver to the registrar of vital statistics a statement in the prescribed form respecting each order of the court under sections 8 or 9 that makes a declaration of parentage.

(4) Any person may inspect an order filed under subsection (3) and obtain a certified copy of it from the registrar of vital statistics upon payment of the prescribed fee.

(5) Subject to subsections 4(1) to (3) and (5) of the Vital Statistics Act, the registrar of vital statistics shall not make any amendment in the register of births in consequence of the filing of a written acknowledgment of paternity under subsection (1).

(6) In consequence of receiving from the clerk of the court a statement under subsection (3) about an order that makes a declaration about parentage, the registrar of vital statistics shall amend the register of births accordingly.

(7) A certificate certifying a copy of a document to be a true copy, obtained under this section, purporting to be signed by the registrar or deputy registrar or on which the signature of either is lithographed, printed or stamped is, without proof of the office or signature of the registrar or deputy registrar, receivable in evidence as prima facie proof of the filing and contents of the document for all purposes in any action or proceeding.

RECOGNITION OF EXTRA-PROVINCIAL DETERMINATIONS OF PATERNITY

Interpretation

18. In sections 19 to 27,

“extra-provincial declaratory order” means an order in the nature of a declaratory order provided for in section 8 or 9 but made by a court outside the Yukon;

“extra-provincial finding of paternity” means a judicial finding of paternity that is made incidentally in the determination of another issue by a court outside of the Yukon and that is not an extra-provincial declaratory order.

Extra-provincial order made in Canada

19. An extra-provincial declaratory order that is made in Canada shall be recognized and have the same effect as if made in the Yukon.

Extra-provincial order made outside Canada

20. An extra-provincial declaratory order that was made outside Canada shall be recognized and have the same effect as if made in the Yukon if,

- (a) at the time the proceeding was commenced or the order was made, either parent was habitually resident,
 - (i) in the jurisdiction of the court making the order, or
 - (ii) in a jurisdiction in which the order is recognized,
- (b) the court that made the order would have had jurisdiction to do so under the rules that are applicable in the Yukon,
- (c) the child was habitually resident in the jurisdiction of the court making the order at the time the proceeding was commenced or the order was made, or
- (d) the child or either parent had a real and substantial connection with the jurisdiction in which the order was made at the time the proceeding was commenced or the order was made.

Refusal to recognize extra-provincial order

21. A court may decline to recognize an extra-provincial declaratory order and may make a declaratory order under this Act where,

- (a) new evidence that was not available at the hearing becomes available, or
- (b) the court is satisfied that the extra-provincial declaratory order was obtained by fraud or duress.

Filing of extra-provincial order

22.(1) A copy of an extra-provincial declaratory order, certified under the seal of the court that made it, may be filed in the office of the registrar of vital statistics, but where the extra-provincial declaratory order is made outside of Canada, the copy shall be accompanied by

- (a) the opinion of a lawyer entitled to practise law in the Yukon that the declaratory order is entitled to recognition under the law of the Yukon,
- (b) a sworn statement by a lawyer or public official in the extra-provincial jurisdiction as to the effect of the declaratory order, and
- (c) such translation, verified by affidavit, as the registrar of vital statistics requires.

(2) Upon the filing of an extra-provincial declaratory order under this section, the registrar of vital statistics shall amend the register of births accordingly, but where the extra-provincial declaratory order contradicts paternity declared by an order already filed, the registrar shall restore the amended record as if unaffected by it or previous orders.

(3) The registrar of vital statistics is not liable for any consequences resulting from filing under this section material that is apparently regular on its face.

Evidentiary effect of extra-provincial order

23. A copy of an extra-provincial declaratory order, certified under the seal of the court that made it, is admissible in evidence without proof of the signatures or office of any person executing the certificate.

Extra-provincial finding of paternity made in Canada

24. An extra-provincial finding of paternity that is made in Canada shall be recognized and have the same effect as if made in the Yukon under the same circumstances.

Extra-provincial finding of paternity made outside Canada

25. An extra-provincial finding of paternity that is made outside Canada by a court that has jurisdiction to determine the matter in which the finding was made as determined by the conflict of laws rules of the Yukon shall be recognized and have the same effect as if made in the Yukon under the same circumstances.

Evidentiary effect of extra-provincial finding

26. A copy of an order or judgment in which an extra-provincial finding of paternity is made, certified under the seal of the court that made it, is admissible in evidence without proof of the signature or office of any person executing the certificate.

Application of previous sections

27. Sections 18 to 27 apply to extra-provincial declaratory orders and extra-provincial findings of paternity whether made before or after May 17, 1984.

PART 2

CUSTODY, ACCESS AND GUARDIANSHIP

DIVISION 1 - GENERAL PURPOSE

Interpretation

28.(1) In this Part,

“care”, in relation to a child, means the physical care and control of a child;

“court” means the Supreme Court;

“extra-provincial order” means an order, or that part of an order, of an extra-provincial tribunal that grants to a person custody of or access to a child;

“extra-provincial tribunal” means a court or tribunal outside the Yukon that has jurisdiction to grant to a person custody of or access to a child;

“custody”, in relation to a child, includes the right to care and nurturance of the child, the right to consent to medical treatment for the child, the right to consent to the adoption or the marriage of the child, and the responsibilities concomitant with those rights, including the duty of supporting the child and of ensuring that the child is appropriately clothed, fed, educated and disciplined, and supplied with the other necessities of life and a good upbringing.

(2) In this Part, a reference to a child is a reference to the child while a minor.

Purposes of Part 2

29. The purposes of this Part are,

- (a) to ensure that applications to the courts in respect of custody of, incidents of custody of, access to children will be determined in accord with the best interests of the children,
- (b) to recognize that the concurrent exercise of jurisdiction by judicial tribunals of more than one province, territory or state in respect of the custody of the same child ought to be avoided, and to make provision so that the court will, unless there are exceptional circumstances, decline or refrain from exercising jurisdiction in cases where it is more appropriate for the matter to be determined by a tribunal having jurisdiction in another place with which the child has a closer connection,
- (c) to discourage the abduction of children as an alternative to the determination of custody rights by due process, and
- (d) to provide for the more effective enforcement of custody and access orders and for the recognition and enforcement of custody and access orders made outside the Yukon.

Best interests of child

30.(1) In determining the best interests of a child for the purposes of an application under this Part in respect of custody of or access to a child, the court shall consider all the needs and circumstances of the child including

- (a) the bonding, love, affection and emotional ties between the child and,
 - (i) each person entitled to or claiming custody of or access to the child,

- (ii) other members of the child's family who reside with the child, and
- (iii) persons involved in the care and upbringing of the child,
- (b) the views and preferences of the child, where such views and preferences can be reasonably ascertained,
- (c) the length of time, having regard to the child's sense of time, that the child has lived in a stable home environment,
- (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance, education, the necessities of life and any special needs of the child,
- (e) any plans proposed for the care and upbringing of the child,
- (f) the permanence and stability of the family unit with which it is proposed that the child will live, and
- (g) the effect that awarding custody or care of the child to one party would have on the ability of the other party to have reasonable access to the child.

(2) The past conduct of a person is not relevant to a determination of an application under this Part in respect of custody of or access to a child unless the conduct is relevant to the ability of the person to have the care or custody of a child.

(3) There is no presumption of law or fact that the best interests of a child are, solely by virtue of the age or the sex of the child, best served by placing the child in the care or custody of a female person rather than a male person or of a male person rather than a female person.

(4) In any proceedings in respect of custody of a child between the mother and the father of that child, there shall be a rebuttable presumption that the court ought to award the care of the child to one parent or the other and that all other parental rights associated with custody of that child ought to be shared by the mother and the father jointly.

DIVISION 2 - CUSTODY AND ACCESS

Rights and responsibilities

31.(1) Except as otherwise provided in this Part, the father and the mother of a child are equally entitled to custody of the child.

(2) A person entitled to custody of a child has the rights and responsibilities of a parent in respect of the person of the child and must exercise those rights and responsibilities in the best interests of the child.

(3) Where more than one person is entitled to custody of a child, any one of them may exercise the rights and responsibilities of a parent on behalf of them in respect of the child.

(4) Where the parents of a child live separate and apart and the child lives in the care of one of them with the consent, implied consent or acquiescence of the other of them, the right of the other to exercise the entitlement to custody and the incidents of custody, but not the entitlement to access, is vested in the parent with care of the child until an agreement between the parents or an order otherwise provides.

(5) The entitlement to access to a child includes the rights to visit with and be visited by the child and the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child.

(6) In addition to rights referred to in subsection (5), the parent not having care of a child shall have

- (a) the right to consent to the adoption or marriage of his minor child, and
- (b) the right to give consent to urgent medical treatment for his or her child where the consent of the parent entitled to the care and custody of the child cannot expeditiously be obtained.

(7) The entitlement to custody of or access to a child is terminated on the marriage of the child.

(8) Any entitlement to custody or incidents of custody or to access under this section is subject to alteration by an order of the court or by an agreement between the parents or other persons entitled to the custody or access.

Appointment of others to exercise rights of custody

32.(1) A person entitled to custody of a child may appoint one or more persons to have any of the appointor's rights of custody in relation to the child.

(2) An appointment of a custodian under subsection (1) may be effective during the lifetime of the appointor for such time as the appointor may specify.

(3) An appointment of a custodian under subsection (1) shall not be effective after the death of the appointor unless the appointment is made by a valid will.

Application to the court

33.(1) A parent of the child, or any other person, may apply to the court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of the child.

(2) In an application under subsection (1) the court

- (a) may grant the custody of or access to the child to one or more persons,
- (b) may determine and make an appropriate order about any aspect of the incidents of the right to custody or access, and
- (c) may make such additional order as the court considers necessary and proper in the circumstances.

Variation of court orders

34. The court shall not make an order under this Part that varies an order in respect of custody or access unless there has been a material change in circumstances that affects or is likely to affect the best interests of the child.

Court direction for supervision

35. Where an order is made for custody of or access to a child, the court may give such directions as it considers appropriate for the supervision of the custody or access by a person who has consented so to act.

Restraining orders

36. The court may make an order restraining any person from molesting, annoying or harassing the applicant, or a child in the lawful care or custody of the applicant.

Prerequisites for custody or access order

37.(1) The court shall only exercise its jurisdiction to make an order for custody of or access to a child where

- (a) the child is habitually resident in the Yukon at the commencement of the application for the order, or
- (b) although the child is not habitually resident in the Yukon the court is satisfied that
 - (i) the child is physically present in the Yukon at the commencement of the application for the order,
 - (ii) substantial evidence concerning the best interests of the child is available in the Yukon,
 - (iii) no application for custody of or access to the child is pending before an extra-provincial tribunal in another place where the child is habitually resident,
 - (iv) no extra-provincial order in respect of custody of or access to the child has been recognized by a court in the Yukon,
 - (v) the child has a real and substantial connection with the Yukon, and
 - (vi) on the balance of convenience, it is appropriate for jurisdiction to be exercised in the Yukon.

(2) A child is habitually resident in the place where he resided,

- (a) with both parents,
- (b) where the parents are living separate and apart, with one parent under an agreement or with the consent, the implied consent or the acquiescence of the other, or under a court order, or
- (c) with a person other than a parent on a permanent basis for a significant period of time,

whichever last occurred.

(3) The removal or withholding of a child without the consent of the person having care and custody of the child does not alter the habitual residence of the child unless there has been acquiescence or undue delay in commencing due process for the return of the child by the person from whom the child is removed or withheld.

Exception for danger to child

38. Notwithstanding sections 37 and 50, the court may exercise its jurisdiction to make or to vary an order in respect of the custody of or access to a child where

- (a) the child is physically present in the Yukon, and

- (b) the court is satisfied that the child would, on the balance of probabilities, suffer serious harm if,
 - (i) the child remains in the custody of the person legally entitled to custody of the child, or
 - (ii) the child is returned to the custody of the person legally entitled to custody of the child.

Refusal of the court to exercise jurisdiction

39. In an application under this Part in respect of custody or access to a child, the court may decline to exercise its jurisdiction where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside the Yukon.

Time for making of decision by the court

40.(1) Where any party to any proceeding in respect of custody of or access to a child wants to continue his application and obtain the decision of the court, the court shall complete the hearing of the application within three months after the commencement of the proceeding, unless a party seeks a delay or stay and the court is satisfied that there is justification for the delay or stay and that the delay or stay will not cause any prejudice to the best interests of the child.

(2) The court shall make its decision disposing of the application in respect of the custody of or access to the child so soon as practicable after the end of the hearing.

Stay of proceedings for divorce action

41. An application under this Part in respect of custody of or access to a child is stayed by the commencement of an action for divorce under the Divorce Act (Canada) in which an application is also made in respect of custody of or access to that child, unless the court grants leave for the application under this Part to be continued separately from that action for divorce.

Order for mediation

42.(1) In an application for custody of or access to a child, the court, at the request of the parties, may appoint a person selected by the parties to mediate any matter specified in the order.

(2) The court shall not appoint a person under subsection (1) unless the person

- (a) has consented to act as mediator, and
- (b) has agreed to file a report with the court within the period of time specified by the court.

(3) It is the duty of a mediator to confer with the parties and endeavour to obtain an agreement in respect of the matter he is appointed to mediate.

(4) Before entering into mediation on the matter, the parties shall decide whether

- (a) the mediator is to file with the court a full report on the mediation, including anything that the mediator considers relevant to the matter in mediation, or
- (b) the mediator is to file with the court a report that either sets out the agreement reached by the parties or states only that the parties did not reach agreement on the matter.

(5) The mediator shall file his report with the clerk of the court in the form decided upon by the parties.

(6) The clerk of the court shall give a copy of the report to each of the parties and to counsel, if any, representing the child.

(7) Where the parties have decided that the mediator's report is to be in the form described in paragraph (4)(b), evidence of anything said or of any admission or communication made in the course of the mediation is not admissible in any proceeding except with the consent of all parties to the proceeding in which the order was made under subsection (1).

(8) The court may order the parties to pay the fees and expenses of the mediator.

(9) The court may specify in the order the proportions or amounts of the fees and expenses that each party is to pay.

Request for investigation

43.(1) In an application under this Part in respect of a child, the court may request the director of family and children's services appointed under section 108 to cause an investigation to be made and to report to the court upon all matters relating to the custody, support and education of the child.

(2) The director shall have no obligation to prepare a report or to prepare a report within a stipulated period unless he consents to or has given a prior written report.

Request for evidence from outside the Yukon

44.(1) Where the court is of the opinion that it is necessary to receive further evidence from a place outside the Yukon before making a decision, the court may send to the Attorney General, Minister of Justice or similar officer of the place outside the Yukon such supporting material as may be necessary together with a request

- (a) that the Attorney General, Minister of Justice or similar officer take such action as may be necessary in order to require a named person to attend before the proper tribunal in that place and produce or give evidence in respect of the subject-matter of the application, and
- (b) that the Attorney General, Minister of Justice or similar officer, or the tribunal, send to the court a certified copy of the evidence produced or given before the tribunal.

(2) The court that acts under subsection (1) may assess the cost of so acting against one or more of the parties to the application or may deal with such cost as costs in the cause.

Request from outside the Yukon for evidence

45.(1) Where the deputy head of the Department of Justice receives from an extra-provincial tribunal a request similar to that referred to in section 36 and such supporting material as may be necessary, the deputy head shall refer the request and the material to the court.

(2) A court to which a request is referred by the deputy head of the Department of Justice under subsection (1) shall require the person named in the request to attend before the court and produce or give evidence in accordance with the request.

Order for apprehension of child

46.(1) Where the court is satisfied by a person in whose favour an order has been made in relation to custody of or access to a child that there are reasonable and probable grounds for believing that any person is unlawfully withholding the child from the applicant, the court may authorize the applicant or someone on his behalf to apprehend the child for the purpose of giving effect to the rights of the applicant in relation to custody or access, as the case may be.

(2) Where the court is satisfied that there are reasonable and probable grounds for believing

- (a) that any person is unlawfully withholding a child from a person entitled to custody of or access to the child,
- (b) that a person who is prohibited by court order or separation agreement from removing a child from the Yukon proposes to remove the child or have the child removed from the Yukon, or
- (c) that a person who is entitled to access to a child proposes to remove the child or to have the child removed from the Yukon and is not likely to return the child to the Yukon,

the court may direct the sheriff or a police officer, or both, having jurisdiction in any area where it appears to the court that the child may be, to locate, apprehend and deliver the child to the person named in the order.

(3) An order may be made under subsection (2) upon an application made without notice where the court is satisfied that it is necessary that an order should be made without delay.

(4) The sheriff or police officer directed to act by an order under subsection (2) shall do all things reasonably able to be done to locate, apprehend and deliver the child in accordance with the order.

(5) For the purpose of locating and apprehending a child in accordance with an order under subsection (2), a sheriff or a member of a police force may, with such assistance and such force as is reasonable, enter and search any place where he has reasonable and probable grounds for believing and does believe that the child may be.

(6) An entry or a search referred to in subsection (5) shall be made only between six o'clock in the forenoon and nine o'clock in the afternoon unless the court, in the order, authorizes entry and search at another time.

(7) An order made under subsection (2) shall name a date on which it expires, and that date shall be not later than one month after the order is made unless the court, before the order expires, is satisfied that a longer period of time is necessary and grants an extension.

(8) An application under subsection (1) or (2) may be made with or separately from an application for custody or access.

Orders preventing removal of children from the Yukon

47.(1) Where the court is satisfied upon reasonable and probable grounds that a person prohibited by court order or an agreement from removing a child from the Yukon proposes to remove the child from the Yukon, the court, in order to prevent the removal of the child from the Yukon, may make an order under subsection (3).

(2) Where the court is satisfied upon reasonable and probable grounds that a person entitled to access to a child proposes to remove the child from the Yukon and is not likely to return the child to the Yukon, the court, in order to secure the prompt, safe return of the child to the Yukon may make an order under subsection (3).

(3) An order mentioned in subsection (1) or (2) may require a person to do any one or more of the following:

- (a) pay into court or transfer property to a trustee to be held subject to the terms and conditions specified in the order;
- (b) where payments have been ordered for the support of the child, make the payments into court or to a trustee subject to the terms and conditions specified in the order;
- (c) post a bond or other similar instrument satisfactory to the court, with or without sureties, payable to the applicant in such amount as the court considers appropriate;
- (d) deliver the person's passport, the child's passport and any other travel documents of either of them to the court or to a person or public body specified by the court.

(4) In an order under paragraph (3)(a), the court may specify terms and conditions for the return or the disposition of the property as the court considers appropriate.

(5) A person or public body specified by the court in an order under paragraph (3)(d) shall hold a passport or travel document delivered pursuant to the order in safekeeping in accordance with any directions set out in the order.

(6) In an order under subsection (3), the court may give such directions in respect of the safekeeping of the property, payments, passports or travel documents as the court considers appropriate.

Order to provide information about whereabouts of respondent

48.(1) Where it appears to the court that,

- (a) for the purpose of bringing an application in respect of custody or access under this Part, or
- (b) for the purpose of the enforcement of an order for custody or access,

the proposed applicant or person in whose favour the order is made needs to learn or confirm the whereabouts of the proposed respondent or person against whom the order referred to in paragraph (b) is made, the court may order any person or public body to provide the court with such particulars of the address of the proposed respondent or person against whom the order referred to in paragraph (b) is made as are contained in the records in the custody of the person

or body, and the person or body shall give the court such particulars as are contained in the records and the court may then give the particulars to such person or persons as the court considers appropriate.

(2) The court shall not make an order on an application under subsection (1) where it appears to the court that the purpose of the application is to enable the applicant to identify or to obtain particulars as to the identity of a person who has custody of a child, rather than to learn or confirm the whereabouts of the proposed respondent or the enforcement of an order for custody or access.

(3) The giving of information in accordance with an order under subsection (1) shall be deemed for all purposes not to be a contravention of any Act or regulation, or any common law rule of confidentiality.

(4) This section binds the Government of the Yukon.

Orders where court does not exercise full jurisdiction

49. Where the court may not exercise jurisdiction under section 37, or has declined jurisdiction under section 39 or 51, or is satisfied that a child has been wrongfully removed to or is being wrongfully detained in the Yukon, the court may do any one or more of the following:

- (a) make such interim order in respect of the custody or access as the court considers is in the best interests of the child;
- (b) stay the application subject to,
 - (i) the condition that a party to the application promptly commence a similar proceeding before an extra-provincial tribunal, or
 - (ii) such other conditions as the court considers appropriate;
- (c) order a party to return the child to such place as the court considers appropriate and, in the discretion of the court, order payment of the cost of the reasonable travel and other expenses of the child and any parties to or witnesses at the hearing of the application.

Recognition of extra-provincial orders

50.(1) Upon application by any person in whose favour an order for the custody of or access to a child has been made by an extra-provincial tribunal, the court shall recognize the order unless the court is satisfied

- (a) that the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made,
- (b) that the respondent was not given an opportunity to be heard by the extra-provincial tribunal before the order was made,
- (c) that the law of the place in which the order was made did not require the extra-provincial tribunal to have regard for the best interests of the child, or
- (d) that, in accordance with section 37, the extra-provincial tribunal would not have jurisdiction if it were a court in the Yukon.

(2) An order made by an extra-provincial tribunal that is recognized by the court shall be deemed to be an order of the court and enforceable as such.

(3) Where the court is presented with conflicting orders made by extra-provincial tribunals for the custody of or access to a child that, but for the conflict, would be recognized and enforced by the court under subsection (1), the court shall recognize and enforce the order that appears to the court to be most in accord with the best interests of the child.

(4) Where the court has recognized an extra-provincial order, the court may make such further orders under this Part as the court considers necessary to give effect to the order.

Orders superceding extra-provincial orders

51.(1) The court may make an order that supersedes an extra-provincial order in respect of custody of or access to a child where the court is satisfied that there has been a material change in circumstances and that the change affects or is likely to affect the best interests of the child, and

- (a) the child is habitually resident in the Yukon at the commencement of the application for the order, or
- (b) although the child is not habitually resident in the Yukon the court is satisfied that
 - (i) the child is physically present in the Yukon at the commencement of the application for the order,
 - (ii) the child no longer has a real and substantial connection with the place where the extra-provincial order was made,
 - (iii) substantial evidence concerning the best interests of the child is available in the Yukon,
 - (iv) the child has a real and substantial connection with the Yukon, and
 - (v) on the balance of convenience, it is appropriate for jurisdiction to be exercised in the Yukon.

(2) The court may decline to exercise its jurisdiction under this section where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside the Yukon.

Danger to child

52. The court may make an order that supersedes an extra-provincial order in respect of custody of or access to a child where the court is satisfied that the child would, on the balance of probability, suffer serious harm if

- (a) the child remains in the custody of the person legally entitled to custody of the child, or
- (b) the child is returned to the custody of the person entitled to custody of the child.

Evidentiary effect of extra-provincial order

53. A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is prima facie evidence of the making of the order, the content of the order and the appointment and signature of the judge, presiding officer, registrar or other person.

Judicial notice

54. For the purposes of an application under this Part, the court may take notice, without requiring formal proof, of the law of a jurisdiction outside the Yukon and of a decision of an extra-provincial tribunal.

DIVISION 3 - INTERNATIONAL CHILD ABDUCTION (HAGUE CONVENTION)**Interpretation**

55. In this Division, "convention" means the Convention on the Civil Aspects of International Child Abduction set out in the Schedule to this Division.

Commencement

56.(1) On, from and after February 1, 1985, except for the reservation described in subsection (2), the convention is in force in the Yukon and the provisions thereof are law in the Yukon.

(2) The Government of the Yukon is not bound to assume any costs resulting under the convention from the participation of legal counsel or advisers or from court proceedings except in accordance with the Legal Services Society Act.

Central Authority

57.(1) The Department of Justice of the Government of the Yukon shall be the Central Authority for the Yukon for the purpose of the convention.

(2) An application may be made to the Supreme Court in pursuance of a right or an obligation under the convention.

Regulations

58. The Commissioner in Executive Council may make such regulations as he considers necessary to carry out the intent and purpose of this Division.

Paramountcy

59. Where there is a conflict between this Division and any other enactment, this Division prevails.

SCHEDULE**CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**

The States signatory to the present Convention, firmly convinced that the interests of children are of paramount importance in matters relating to their custody, desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access, have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

CHAPTER I - SCOPE OF THE CONVENTION**Article 1**

The objects of the present Convention are:

- (a) *to secure the prompt return of children wrongfully removed to or retained in any Contracting State, and*
- (b) *to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.*

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where:

- (a) *it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention, and*
- (b) *at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.*

The rights of custody mentioned in sub-paragraph (a) above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention:

- (a) *“rights of custody” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence;*
- (b) *“rights of access” shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence.*

CHAPTER II - CENTRAL AUTHORITIES**Article 6**

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities. Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a

State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall cooperate with each other and promote cooperation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention. In particular, either directly or through any intermediary, they shall take all appropriate measures:

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;*
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;*
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;*
- (d) to exchange, where desirable, information relating to the social background of the child;*
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;*
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;*
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;*
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;*
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacle to its application.*

CHAPTER III - RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain:

- (a) information concerning the identity of the applicant, of the child, and of the person alleged to have removed or retained the child;*
- (b) where available, the date of birth of the child;*
- (c) the grounds on which the applicant's claim for return of the child is based;*
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.*

The application may be accompanied or supplemented by:

- (e) an authenticated copy of any relevant decision or agreement;*

- (f) *a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;*
- (g) *any other relevant document.*

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of the Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children. If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment. Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

- (a) *the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention, or*

- (b) *there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.*

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. In considering the circumstances referred to in the Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV - RIGHTS OF ACCESS**Article 21**

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child. The Central Authorities are bound by the obligations of cooperation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V - GENERAL PROVISIONS**Article 22**

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English. However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention. Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child. However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice. Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units:

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;*

- (b) *any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.*

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of the State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in the Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI - FINAL CLAUSES**Article 37**

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession. The accession will have effect only as regards the

relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States. The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State. Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time. Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which Executive, judicial and legislative powers are distributed between central and other authorities with that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted. Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38. Thereafter the Convention shall enter into force:

1. for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it. If there has been no denunciation, it shall be renewed tacitly every five years. Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies. The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following:

1. the signatures and ratifications, acceptances and approvals referred to in Article 37;
2. the accessions referred to in Article 38;
3. the date on which the Convention enters into force in accordance with Article 43;
4. the extensions referred to in Article 39;
5. the declarations referred to in Articles 38 and 40;
6. the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
7. the denunciations referred to in Article 44.

Done at The Hague, on the 25th day of October, 1980 in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

DIVISION 4 - GUARDIANSHIP

Rights and responsibilities of guardians

60.(1) A guardian for a child has charge of and is responsible for the care and management of the property of the child and shall act in the best interests of the child.

(2) Where there is more than one guardian for a child, the guardians are jointly responsible for the care and management of the property of the child.

(3) Notwithstanding subsection (2), where there is more than one guardian for a child, and subject to any testamentary appointment or to any order of the court, any one of the guardians may exercise the rights and discharge the responsibilities of the guardianship without the consent of the other.

(4) Notwithstanding subsection (2), a guardian is not liable for things done by another guardian without his knowledge, acquiescence or consent.

Persons who are guardians

61.(1) Except as otherwise provided in this Part, the father and the mother of a child are, during their cohabitation, equally entitled to guardianship and are the guardians for the child.

(2) Where the father and mother of the child do not cohabit, then the parent who has the lawful care and custody of the child is also the sole guardian for the child unless

- (a) the parents agree that the other parent shall also be a guardian,
- (b) some other person is also a guardian in consequence of an appointment under section 62, or
- (c) the court appoints the other parent or some other person to be a guardian in addition to or instead of the parent who has the lawful care and custody.

(3) Where there is only one surviving parent who has the lawful care and custody of the child, that parent is also the sole guardian for the child unless

- (a) some other person is also a guardian in consequence of an appointment made under section 62, or
- (b) the court appoints some other person to be a guardian in addition to or instead of the surviving parent who has the lawful care and custody.

(4) Where there is no surviving parent who has the lawful care and custody of the child, then the person who has the lawful care and custody of the child is also the sole guardian for the child unless

- (a) some other person is also a guardian in consequence of an appointment under section 62, or
- (b) the court appoints some other person to be a guardian in addition to or instead of the person who has the lawful care and custody.

(5) Where there is no guardian with capacity to act in the Yukon, the official guardian shall be the guardian for the child until the court appoints some other person to act as the guardian.

Power of guardian to appoint a guardian in his place

62.(1) A guardian for a child may, by a written document, appoint one or more persons to have the appointor's rights of guardianship in relation to the child.

(2) An appointment of a guardian under subsection (1) may be effective during the lifetime of the appointor for such time as the appointor may specify.

(3) An appointment of a guardian under subsection (1) shall not be effective after the death of the appointor unless the appointment is made by a valid will.

Appointment requirements

63.(1) A person who is a minor may make an appointment under section 62.

(2) An appointment under section 62 is not effective while the person appointed is a minor.

(3) No appointment under section 62 is effective without the consent or ratification of the person appointed.

(4) An appointment under this section does not prevent an application for or the making of an order under this Part.

Exercise of joint guardianship

64. Subject to the terms of his appointment or an order of the court, a person appointed under section 62 to guardianship for a child shall be entitled to act jointly with any other person entitled to guardianship for the child, and in the event of dispute between them any one of them may apply to the court for any order or directions necessary to resolve the dispute.

Court orders respecting guardianship

65.(1) A parent of the child, or any other person entitled to custody of the child, may apply to the court for an order respecting guardianship for the child or determining any aspect of the incidents of the guardianship.

(2) Where there is no surviving parent or no other surviving person entitled to custody of the child, any person may apply to the court for an order respecting guardianship for the child or determining any aspect of the incidents of the guardianship.

(3) In an application under subsection (1) or (2), the court may

- (a) appoint one or more guardians in addition to or in the place of any existing guardian,
- (b) determine and make an appropriate order about any aspect of the incidents of the guardianship,
- (c) limit the scope of the guardianship by reference to the length of time during which it may be exercised or to the property in respect of which it may be exercised, and
- (d) make such additional order as the court considers necessary and proper in the circumstances in order to implement guardianship for the child.

(4) In deciding an application for the appointment of a guardian of the property of a child, the court shall consider all the relevant circumstances, including

- (a) the ability of the applicant to manage the property of the child,
- (b) the merits of any plans proposed by the applicant for the care and management of the property of the child, and
- (c) the views and preferences of the child, where such views and preferences can reasonably be ascertained.

Security

66.(1) The court may require the guardian for a child to post a bond or other similar instrument satisfactory to the court, with or without sureties, payable to the child in such amount as the court considers appropriate in respect of the care and management of the property of the child.

(2) Subsection (1) does not apply where the court is of the opinion that it is inappropriate to require the person to post a bond or other similar instrument.

Accounting

67. Any guardian for a child may be required to account or may voluntarily pass his accounts in respect of his care and management of the property of the child in the same manner as a trustee under a will may be required to account or may pass his accounts in respect of his trusteeship.

Duty to transfer property at age of majority

68. A guardian for a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of majority.

Remuneration of guardians

69. A guardian for a child, who is not a parent of the child and who does not have the care and custody of the child, is entitled to payment of a reasonable amount for his fees and expenses for management of the property of the child, and the court may make those fees and expenses a charge upon the property of the child.

Termination of guardianship

70. Guardianship for a child ends when the child reaches the age of majority or marries, whichever first occurs.

Removal and resignation

71.(1) Any guardian for a child may be removed from his guardianship by the court for the same reasons for which a trustee may be removed.

(2) Any guardian appointed by another guardian under section 62 may resign his office upon giving reasonable notice to the person who appointed him, if that person is still living, and to any other guardian for the child and any person with the care or custody of the child known to him.

(3) Any guardian appointed by the court may resign his office upon giving reasonable notice to any other guardian for the child and any person with the care or custody of the child known to him.

(4) Where a guardian who wants to resign his office is not able, after making a reasonable effort, to give the notice referred to in subsections (2) and (3), he may instead give reasonable notice of his resignation to the official guardian.

(5) A guardian who gives the official guardian notice of his resignation shall also give the official guardian the information he has about the identity and possible whereabouts of the person who appointed him, if any, and of any other guardian for the child or any person with the care or custody of the child.

Discharge of duty to pay or deliver

72.(1) A person who is under a duty to pay money or deliver personal property to a child shall discharge that duty by paying the money or delivering the property to a guardian for the child.

(2) Notwithstanding subsection (1) but subject to subsection (3), where a person is under a duty to pay money or to deliver personal property to a child, the payment of not more than \$2,000 in a year and an aggregate of \$5,000, or the delivery of the personal property to a value of not more than \$2,000 in a year and an aggregate of \$5,000, discharges the duty to the extent of the amount paid or the value of the personal property delivered where it is paid or delivered to

- (a) the child, where the child is married,
- (b) a parent with whom the child resides, or
- (c) a person who has or is entitled to the care and custody of the child.

(3) There is no discharge of the duty to pay money or to deliver personal property under subsection (1) where the person under the duty to pay or to deliver knew or, by taking reasonable care, would have known

- (a) that the person to whom he made the payment or the delivery was not a guardian for the child, or
- (b) where he made the payment or delivery to the child, that the child was not married.

(4) Subsection (1) does not apply in respect of money payable or personal property that is to be delivered under a judgment or order of the court.

(5) A person, other than the child, who receives money and personal property tendered to him by another person under subsection (1) has, for so long as he holds the money or the property, the responsibilities of a guardian for the care and management of the money or personal property.

Powers of the court

73.(1) The court may require or approve

- (a) the disposition or encumbrance of all or part of the interest of the child in land,
- (b) the disposition or encumbrance of all or part of the interest of the child in personal property, or
- (c) the payment of all or part of any money belonging to the child or of the income from any property belonging to the child, or both.

(2) An order shall be made under subsection (1) only where the court is of the opinion that the disposition, encumbrance, sale or payment is necessary or proper for the support or education of the child, or will substantially benefit the child.

(3) An order under subsection (1) may be made subject to such conditions as the court considers necessary and proper.

(4) The court shall not require or approve a disposition or encumbrance of the interest of a child in land contrary to a term of the instrument by which the child acquired the interest.

(5) The court, where it makes an order under subsection (1), may order that the child or another person named in the order execute any documents necessary to carry out the disposition, encumbrance, sale or payment referred to in the order.

(6) The court may give such directions as it considers necessary and proper, including vesting orders, for the carrying out of an order made under subsection (1).

(7) Every document executed in accordance with an order under this section is as effectual as if the child by whom it was executed was of the age of majority or, if executed by another person in accordance with the order, as if the child had executed it and had been of the age of majority at that time.

Life estates

74. Upon application by or with the consent of a person who has an estate for life in property with power to devise or appoint the property to one or more of his children, the court may order that such part of the proceeds of the property as the court considers proper be used for the support, education or benefit of one or more of the children.

DIVISION 5 - OFFENCES AND COSTS OF PROCEEDINGS

Relinquishment of rights for reward

75.(1) No person shall give or receive a payment or benefit in return for giving up a child or rights in relation to a child so that another person may have custody of, access to, or guardianship for the child.

(2) No person shall give or receive a payment or benefit in return for inducing a person to give up a child or rights in relation to a child so that another person may have custody of, access to, or guardianship for the child.

(3) No person shall attempt to do anything that is prohibited by subsection (1) or (2).

(4) A person who breaches subsection (1), (2) or (3) commits an offence and is liable on summary conviction, for a first offence, to a fine of up to \$5,000 or to imprisonment for as long as one year, or both; and, for a subsequent conviction, to a fine of up to \$10,000 or to imprisonment for as long as two years, or both.

Prejudice of best interests of child

76. In a prosecution under section 75, the court or justice shall take into account that the best interests of the child are deemed to be prejudiced by any of those offences.

Costs

77.(1) Subject to subsection (2), the court shall not award costs of any proceeding under this Part.

(2) The court may award to one or more parties costs that it may impose against one or more other parties in respect of a proceeding under this Part where the court is satisfied that the party or parties on whom the costs are imposed

- (a) propounded a claim or defence that was unreasonable or was without reasonable grounds,
- (b) took a proceeding or step in a proceeding that was unnecessary or frivolous,
- (c) acted in a way that tended to prejudice or delay the fair trial or hearing of the proceeding, or
- (d) abused in any other way the process of the court.

PART 3

ADOPTION

Interpretation

78. In this Part,

“applicant” means a person who applies for an order for adoption;

“court” means the Supreme Court;

“director” means the director of family and children’s services appointed under section 108.

Eligibility and consent of adoptive parents

79.(1) Any person who has reached the age of majority may, in the manner herein provided, adopt as his child another person younger than himself.

(2) Where the applicant has a spouse who is over the age of majority and that spouse is not a parent of the person who the applicant seeks to adopt, the court shall not hear the application or order the adoption unless that spouse applies for the adoption jointly with the applicant.

(3) Where the applicant has a spouse and that spouse is a parent of the person who the applicant seeks to adopt, that spouse may apply for the adoption jointly with the applicant, but regardless of whether that spouse joins in the application, the court shall hear the application and may make an order for adoption.

(4) Where one of the applicants or intended applicants dies after notice of the proposed adoption has been given to the director, the surviving applicant may proceed with the application and an order for adoption by him alone may be made.

(5) A person whose consent to an adoption is required by this Act is not prohibited from becoming a parent by adoption of the person in respect of whom he has given consent to adopt.

DIVISION 1 - CONSENT TO ADOPTION AND RELINQUISHMENT OF PARENTAL RIGHTS

Agreement with director

80.(1) A parent or, where there is no surviving parent, the person who is entitled to custody of the child may make a written agreement with the director whereby the parent or that other person voluntarily gives up all his rights in respect of the child to the director for the purpose of adoption of the child by some other person.

- (2) Without restricting the generality of subsection (1), an agreement under subsection (1)
- (a) operates in all respects as a consent to adoption of the child, except that the agreement and consent may be terminated under section 81 only, and the consent may not be revoked under section 84, and
 - (b) confers on the director the rights of custody in respect of the child so as to enable the director to have the care and custody of the child pending the adoption and to place the child in a home for the purpose of adoption.
- (3) An agreement under subsection (1) shall be
- (a) witnessed by a person over the age of majority who is not a public servant working under the supervision of the director, and
 - (b) accompanied by a written statement by which the witness certifies that he witnessed the signature of the agreement by the parent or other person entitled to custody of the child, that the witness explained to the parent or that other person the nature and effect of the agreement, and that the parent or that other person appeared to understand the nature and effect of the agreement and to sign it voluntarily.
- (4) A person under the age of majority may make an agreement under subsection (1).

Termination of agreement

81.(1) Where the child is not residing in a home for the purpose of adoption the parent or person entitled to custody who made the agreement under section 80 may terminate the agreement by giving to the director written notice of the termination.

(2) When an agreement is terminated under subsection (1), the director, subject to any proceedings or order under this Act, shall return the child so soon as the return may reasonably be done, having regard to the interests of the child.

(3) Where the child is in a home for the purpose of adoption as a result of an agreement under section 80, then the agreement shall continue in force and shall not be terminated.

Required consents

82.(1) Where the person proposed to be adopted is 12 years of age or older and is capable of giving an informed consent, no order for his adoption shall be made without his written consent.

(2) Where the person proposed to be adopted is married, no order for his adoption shall be made without the written consent of his spouse.

(3) Where the person proposed to be adopted is under the age of majority and is not in the permanent care and custody of the director and is not the subject of an agreement under section 80, no order for the child's adoption shall be made, except as herein provided, without the written consent to adoption of the child's parents.

(4) No order for the adoption of a child in the permanent care and custody of the director shall be made without the written consent of the director.

(5) Where the person proposed to be adopted is a child who is the subject of an agreement under section 80, no order for the adoption of that child shall be made without the written consent of the director.

(6) Subject to subsection (1) and pursuant to subsection (4), when a child proposed to be adopted is a child in the permanent care and custody of the director, the written consent of the director is the only consent required.

(7) Where the person proposed to be adopted is under the age of majority and does not reside in the Yukon or was brought to the Yukon for the purpose of adoption, the written consent referred to in subsection (6) may be given by the officer or person who under the law of the province, state or country in which the child resides or from which the child was brought may consent to his adoption.

(8) A parent under the age of majority may consent to the adoption of his child.

Form of consent

83. A consent, other than the consent of the director, shall be

- (a) in writing,
- (b) witnessed by a person over the age of majority who is not a public servant working under the supervision of the director, and
- (c) accompanied by a written statement by which the witness certifies that he witnessed the signature of the agreement by the person whose consent is required, that the witness explained to that person the nature and effect of the agreement, and that the person whose consent is required appeared to understand the nature and effect of the consent and to sign it voluntarily.

Revocation of consent

84.(1) A person whose consent to an adoption is required under section 82

- (a) may revoke his consent within 30 days of having given the consent, and to revoke it he does not have to give reasons or show any cause, or
- (b) may revoke his consent at any time within 30 days or more after having given the consent if he satisfies the court that it is in the best interests of the child that the consent be revoked.

(2) The person in whose lawful care or lawful care and custody the child is at the time of a revocation under paragraph (1)(b) may continue to have the care or the care and custody of the child pending the determination by the court about whether the revocation of the consent shall be effective.

Order dispensing with consent

85.(1) Where a consent required by this Act has not been given and dispensing with the consent would be in the best interests of the child proposed to be adopted, the court may make an order dispensing with the consent after having regard to all relevant factors including

- (a) whether continuing to require the consent would prejudice the best interests of the child,
- (b) whether the person whose consent has not been given is a concerned parent,

- (c) whether the person whose consent has not been given is probably dead, is of unsound mind, or has not been found, despite reasonable efforts to locate him, or
 - (d) has deserted the child or neglected to provide adequate care and nurture or financial support for the child.
- (2) In subsection (1), "concerned" in relation to parent means
- (a) a parent with the lawful care or lawful care and custody of the child,
 - (b) a parent regularly exercising rights of custody or of access in relation to the child, or attempting to exercise those rights,
 - (c) a parent regularly providing financial support for the child, or
 - (d) a parent whose application respecting care, custody or access in relation to the child is before a court and awaiting adjudication.

Application for order

86.(1) An application for an order dispensing with consent may be made by a notice of motion in the adoption proceeding.

(2) The notice of motion shall include a statement of the grounds and material facts on which the applicant relies and which he intends to prove in support of his application for the order dispensing with the consent.

(3) The notice of motion shall be served at least one month before the day on which the application is to be heard and it may be served in any manner, including substitutional service, that the Rules of Court provide for service of a writ of summons.

DIVISION 2 - ADOPTION PROCEEDINGS IN COURT

Requirement of residence in the Yukon

87. The court shall only exercise jurisdiction to hear an application or make an order for adoption of a child where

- (a) the applicant resides in the Yukon at the time he makes his application to the court, or
- (b) if the applicant no longer resides in the Yukon and the person proposed to be adopted is under the age of majority, the applicant has resided in the Yukon for a substantial part of the time during which the child has resided with him and the court is satisfied that it is appropriate for jurisdiction to be exercised in the Yukon.

Other prerequisites

88.(1) Except as herein provided, where the person to be adopted is under the age of majority, the court shall not make an order for his adoption unless

- (a) notice of the proposed adoption has been given to the director not less than six months before the application is made to the court,
- (b) notice of the hearing of application and a copy of the application and all material to be used in support of it have been delivered to the director not later than one month before the date of the hearing of the application, and

- (c) the child sought to be adopted has for a period of not less than six months immediately prior to the application is made to the court, resided with the applicant under conditions that, in the opinion of the court, justify the making of the order.

(2) The court may, with the written consent of the director, shorten the length of or dispense with any notice or the period of residence required by subsection (1).

Court procedure

89.(1) An application for an adoption order shall be made by a petition filed in the court.

(2) An application for adoption, and any proceedings incidental to it, may be held in chambers or in court, according to the direction of the judge, but in either case only the applicant, the person whose adoption is sought, a person whose consent to the adoption is required but who has not consented, the director, and counsel or other agent on behalf of any of those people, have a right to be present during the hearing.

(3) The court may permit witnesses and other persons to be present during any part or all of the hearing.

(4) Notwithstanding subsection (2), the court may prohibit a person whose consent to the adoption is required but has not been given, or his counsel or other agent, from being present during any part of the hearing when that person's interests are not affected.

(5) The applicant may identify the person to be adopted by the birth registration number assigned by the proper authority of his place of birth and not by his name, in the title of the application and in the adoption order, and, in any such case, the applicant shall provide the judge of the court with a certificate of registration of the birth.

Duties of the director

90.(1) The director has standing to appear before the court and take part in any adoption proceeding.

(2) The clerk of the court shall forthwith forward to the director a copy of the application, the notice of the hearing, any affidavits and any other document filed with the court in connection with an application for adoption.

(3) The director

- (a) shall investigate the circumstances of any applicant, application or person proposed to be adopted,
- (b) shall submit a written report to the court regarding the adoption before the application for adoption is heard, and
- (c) may give evidence at the hearing of an application for adoption, or any proceedings incidental to it, regarding the proposed adoption or any matter incidental to it, having regard especially to the best interests of the person proposed to be adopted.

Making and refusal of adoption orders

91.(1) The court may make an order granting an adoption where the court is satisfied

- (a) of the ages and identities of the parties,
- (b) that every person whose consent is necessary and has not been dispensed with, has given his consent voluntarily, understanding its nature and effect and, in the case of a parent, understanding that its effect is to deprive him permanently of all parental rights, and
- (c) that it is proper and in the best interests of the person to be adopted that the adoption should take place.

(2) Where the court is satisfied that an application for adoption could more appropriately be dealt with by granting an order for custody or custody and guardianship under Part 2 of this Act, whether jointly with another person or otherwise, the court may treat the adoption application as an application for custody or custody and guardianship.

(3) Where an application is made for an order dispensing with a consent to adoption, the court shall consider whether it would be more appropriate to deny that application and proceed under subsection (2).

Names of adopted persons

92.(1) Unless the court otherwise orders, the surname of an adopted person shall be the surname of the person who adopts him.

(2) Notwithstanding anything in the Change of Name Act, in an order for adoption, the court may change any name of the adopted person, in accord with the wish of the adopting person.

Appeals

93.(1) Any person aggrieved by the making or the refusal of an order for adoption, may appeal to the Court of Appeal in like manner as appeals may be taken from any other judgement or order of the court.

(2) Any person aggrieved by an order for adoption made hereunder may within one year after the date of the order apply to the court to set aside the order, and if upon such application the court is satisfied that the written consent for the adoption was obtained by fraud, duress or oppressive or unfair means of any kind, the order may be set aside and the child restored to the person who is entitled to the custody of the child, or to such other person as the judge orders.

Limitation period

94. No action or proceeding of any nature to set aside an adoption order on any ground shall be commenced after the expiration of one year from the date of the order.

Effect of setting aside adoption order

95. Where an adoption order is set aside, the adopted person ceases from the date of the setting aside of the order to be the child of the adopting person and the adopting person ceases from the same date to be a parent of the adopted person, and the relationship to one another of the child and all persons is re-established as it was immediately before the adoption order was made.

Adoption documents and registration

96.(1) Within ten days after an order for an adoption is made by the court the clerk of the court shall forward a copy of the order, certified to be a true copy, to the registrar of vital statistics of the Yukon and to the director; and where the original name of the person to be adopted does not appear in the adoption order, he shall attach to each copy so forwarded a copy of the birth registration certificate.

(2) Where an adopted child was born outside the Yukon two copies of the order for adoption shall be sent to the registrar of vital statistics of the Yukon together with such information as the registrar requires to enable him to carry out the requirements of the Vital Statistics Act.

(3) Upon the expiry of the time limit for any appeal that may be taken or at such time as an appeal is concluded, the sealed packet containing all written documentation relating to an adoption application in the possession of the court shall be retained by the clerk of the court in a confidential and secure manner.

(4) The sealed material relating to adoption in the possession of the court shall not be open to inspection without leave of the court.

(5) Following the making of an adoption order, the director shall seal and retain all papers and materials forwarded to him or in his possession relating to an adoption application, and that information shall not be disclosed except in accordance with subsection (6) or (7).

(6) Upon the application of any adult person who has been adopted or upon the application of either of his adoptive parents, the director shall disclose to the applicant the particulars of adoption which shall contain at least such of the following information as is in his possession:

- (a) the name after adoption of the person adopted, the date of birth and birth registration number;
- (b) the names of the adoptive parents;
- (c) the name of the court granting the order for adoption and the date of the order;
- (d) all information that does not tend to disclose the identity of the parents by birth or other kindred.

(7) Upon the application of any person and subject to any regulations that may be prescribed, the director may disclose to the applicant any particulars of the adoption that he has in his possession, including information identifying the parents by birth or other kindred.

(8) In respect of applications under subsections (4), (6) and (7), the Commissioner in Executive Council may make regulations in relation to

- (a) the procedure for making applications and the information to be supplied in support of the application;
- (b) the procedure for making the disclosure;
- (c) the protection of the anonymity of persons who are not the natural or adoptive parents, children, siblings or other kindred of the applicant;

- (d) the protection of the anonymity of any person who requests that his anonymity be preserved;
- (e) reasons why an application under subsection (4) or (7) may be refused.

(9) Any person who discloses any information except in the manner prescribed in this section commits an offence.

Child care subsidy

97. Where the best interests of a child may be served by granting a child care subsidy to the adopting parent of the child, the director may authorize payments, from time to time and upon such terms and conditions as may be prescribed, of such amounts as are necessary for such purposes.

DIVISION 3 - STATUS OF AN ADOPTED PERSON

Status of child, parents and kindred

98.(1) For all purposes, when the adoption order is made,

- (a) the adopted person becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted person as if the adopted person had been born to the adopting parent, and
- (b) except as provided in subsection (2), the person adopted ceases to be the child of the person who was his parent before the adoption order was made and that person ceases to be the parent of the adopted person and any care and custody or right of custody of the adopted person shall cease.

(2) Where the adopting parent has a spouse who is a parent of the person to be adopted and that parent chooses not to apply for the adoption jointly with the adopting parent, the relationship of that parent and of his or her kindred with the adopted person shall continue and shall not be altered in any way by the order for adoption.

(3) The relationship to one another of all persons, whether the adopted person, the adopting parent, the kindred of the adopting parent, the parent before the making of the adoption order, the kindred of that parent or any other person, shall be determined in accordance with subsections (1) and (2).

(4) The severance of relationship to the natural parents by subsection (1) and (2) does not apply for the purpose of the laws relating to incest and prohibited degrees of kindred for marriage to remove any person from a relationship in consanguinity which, but for this section, would have existed.

(5) Where a person is adopted a second or subsequent time, all the legal consequences of any previous order for his adoption terminate.

(6) This section applies and shall be deemed to have always applied with respect to any adoption made under any legislation previously in force in the Yukon, but it shall not apply so as to affect any right or any interest in property that has vested before this Part comes into force.

References in instruments and enactments

99. In any instrument or any Act, regulation or other legislative instrument, whether made before or after this Part comes into force, unless the contrary intention is expressed, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or to include, as the case may be, a person who comes within the description as a result of his own adoption or the adoption of another person.

Adoption effected outside the Yukon

100. An adoption effected according to the law of any province or of any other country, or part thereof, while the adopted person or the adopting person was habitually resident there, has the same effect in the Yukon as an adoption ordered under this Part.

DIVISION 4 - OFFENCES**Notice of child placed for adoption**

101.(1) Subject to subsection (3), any person who receives a child into his care for the purpose of adopting that child shall, within 30 days of receiving the child, notify the director of family and children's services that he has the child in his care.

(2) Subject to subsection (3), any person who helps to place a child into the care of another person for the purpose of adoption by that other person shall, within 30 days of the placement of the child with that other person, notify the director of family and children's services that the placement has occurred.

(3) Subsections (1) and (2) do not apply where the child is received from or placed by the director of family and children's services or by some person acting on his behalf.

(4) Failure to comply with subsection (1) or (2) is an offence.

Payments to promote adoption

102.(1) No person shall give or receive a payment or benefit in return for giving up a child or rights in relation to a child so that another person may adopt the child.

(2) No person shall give or receive a payment or benefit in return for inducing a person to give up a child or rights in relation to a child so that another person may adopt the child.

(3) No person shall attempt to do anything that is prohibited by subsection (1) or (2).

(4) A person who breaches subsection (1), (2) or (3) commits an offence and is liable on summary conviction, for a first offence, to a fine of up to \$5,000 or to imprisonment for as long as one year, or both and for a subsequent conviction, to a fine of up to \$10,000 or to imprisonment for as long as two years, or both.

Best interests of child

103. In a prosecution of an offence under section 101 or 102, the court or justice shall take into account that the best interests of the child are deemed to be prejudiced by the commission of any of those offences.

PART 4 CHILD PROTECTION

Interpretation

104. In this Part,

“agent” means a public servant designated by the director as having authority to act as an agent of the director in relation to the matter concerned under this Part;

“child” means a person under 18 years of age;

“child care service” includes the following in relation to children:

- (a) homemaker services for care, supervision and maintenance in a home,
- (b) day-care services for care, supervision and maintenance out of a home,
- (c) services for assessment, counselling and treatment, and
- (d) services for protection, referral and placement;

“child caring facility” means

- (a) a foster home for one or more children,
- (b) a group home for one or more children,
- (c) a residential centre for one or more children, or
- (d) a receiving home for one or more children;

“concerned” in relation to parent means

- (a) a parent with the lawful care or lawful care and custody of the child,
- (b) a parent exercising rights of custody or of access in relation to the child, or attempting to exercise those rights,
- (c) a parent providing financial support for the child, or
- (d) a parent whose application respecting care, custody or access in relation to the child is before a court and awaiting adjudication;

“director” means the director of family and children’s services designated under section 108;

“diversion committee” means a diversion committee established under section 111;

“diversion council” means a diversion council established under section 111;

“judge” means any judge of the Territorial Court, or any justice of the peace, designated by the Commissioner in Executive Council as having authority to deal with the class of case involved;

“official guardian” means the public administrator and official guardian appointed under the Judicature Act;

“peace officer” means a police officer, a probation officer, a youth worker under the Young Offenders Act (Canada), or a person designated by the Executive council Member as a peace officer for the purposes of this Part.

DIVISION 1 - RESPONSIBILITIES OF DIRECTOR AND COMMUNITY GROUPS

Policy

105. It is the policy of the Executive Council Member and the director to supply services as far as is reasonably practicable to promote family units and to diminish the need to take children into care or to keep them in care.

Implementation of policy

106. For the implementation of the policy described in section 105, the director shall take reasonable steps to ensure the safeguarding of children, to promote family conditions that lead to good parenting, and to provide care and custody or supervision for children in need of protection.

Placement of child

107. Where practicable a child shall be placed with a family of his own cultural background and lifestyle preferably in his home community, but if such placement is not possible within a reasonable time the child may be placed in the most suitable home available.

Director and staff

108.(1) The Commissioner in Executive Council may designate a public servant to be the director of family and children's services.

(2) The Commissioner in Executive Council may designate one or more public servants to be assistant directors of family and children's services.

(3) An assistant director of family and children's services has all the powers, duties and functions of a director.

(4) The Executive Council Member may designate such other public servants to assist the director in the performance of any of his duties under this Act as he deems necessary.

(5) The director shall

- (a) ensure that the provisions of this Act are carried out,
- (b) direct and supervise the visiting of any child and the inspection of any place where a child is placed pursuant to this Part,
- (c) administer or supervise any child caring facility established pursuant to this Act,
- (d) prepare and submit an annual report to the Executive Council Member,
- (e) be and perform the functions of provincial director under the Young Offenders Act (Canada), and
- (f) supervise, inspect and evaluate such community groups or persons to whom his powers have been delegated under subsection 109(1).

(6) The director shall, in accordance with this Act, have general superintendence over all matters pertaining to the care and custody of children who come into his care under this Act.

Delegation of director's powers

109.(1) Subject to subsection (2) the Commissioner in Executive Council may delegate any power of the director under this Part to any community group or persons.

(2) The right of the director to custody of and guardianship for children in his temporary or permanent care and custody shall not be delegated or assigned and shall remain with the director notwithstanding any delegation that may be made under subsection (1).

(3) A delegation of the powers of the director under subsection (1) may be revoked by the Commissioner in Executive Council at any time.

(4) A delegation of the powers of the director under subsection (1) shall be subject to regulations made by the Commissioner in Executive Council specifying

- (a) the periods of time during which the delegation is to have effect,
- (b) the area of the Yukon within which the community group or person may act, and
- (c) the children over whom the community group or person may exercise the delegated powers.

(5) The director shall have a power of supervision, inspection and evaluation of such approved community groups and persons and the programs for which they are responsible, which shall include all those powers in sections 147 to 153 inclusive in relation to child caring facilities.

(6) The powers and responsibilities that may be delegated to a community group or person may include some or all of the following:

- (a) providing services to families with children;
- (b) finding foster homes and the placement in such homes of children in need of protection;
- (c) care and supervision of children in the temporary or permanent care and custody of the director;
- (d) supervision of children in need of protection;
- (e) investigation of cases where children are alleged to be in need of protection;
- (f) taking into care or to a place of safety children alleged to be in need of protection;
- (g) operation of child caring facilities;
- (h) recruitment and approval of adoptive homes and the provision of adoption placement services.

(7) Where a child is entrusted to the temporary or permanent care of a community group or person to whom the director's powers have been delegated, that community group or person shall have the same responsibility for ensuring the protection and safety of the child, and for the provision of food, clothing, education, medical services and a good upbringing for the child as the director has for a child in his care and custody.

(8) The director has no liability for anything done or omitted by a community group or person to whom a delegation has been made under subsection (1).

DIVISION 2 - DIVERSION

Interpretation

110. In this Division, "diversion" refers to guidance, counselling, treatment, education, training, work projects or other activities or programs of similar nature that may be used as an alternative to proceedings for judicial adjudication, and includes proceedings under section 113 to determine whether a child is a child in need of guidance or to determine appropriate activities or programs in respect of a child who is in need of guidance.

Diversion council

111.(1) The Commissioner in Executive Council shall establish a diversion council for the Yukon.

(2) The diversion council shall consist of the director or his nominee, a chairperson, and not less than four other members appointed by the Commissioner in Executive Council to hold office for not more than three years at a time.

(3) The functions of the diversion council shall be

- (a) to conduct research into and to establish reasonable methods of diversion for children in any part or all of the Yukon,
- (b) for the implementation of diversion schemes, to establish diversion committees comprising such membership as the diversion council may require,
- (c) to assess the ability and suitability of any persons or community group to function as a diversion committee,
- (d) to designate the part of the Yukon in which any diversion scheme may be provided and to appoint the diversion committee that may provide the diversion scheme in that area,
- (e) to describe the groups of children for whom a diversion committee may provide diversion,
- (f) to describe the types of infraction or behaviour by children in respect of which a diversion committee may provide diversion, and
- (g) to oversee and evaluate the performance of diversion committees and the impact of diversion schemes.

(4) The Executive Council Member may, from among the persons employed in the public service,

- (a) designate a person to be the secretary of the diversion council, and
- (b) provide the diversion council with such other employees or assistants as he may deem necessary for the proper conduct of the work of the diversion council.

(5) A member of the diversion council or of a diversion committee who is not a member of the public service of the Yukon may be paid transportation, accommodation and living expenses incurred in connection with the performance of his duties away from his ordinary place of residence but, except as otherwise provided by the regulations, the payment of such expenses shall conform as nearly as possible in all respects to the payment of such expenses for members of the public service of the Yukon.

(6) A quorum is four members of the diversion council, but a vacancy in the membership of the council does not impair the right of the remainder to act.

Regulations

112. The Commissioner in Executive Council may make regulations respecting

- (a) the fees and expenses that may be paid to members of the diversion council or a diversion committee;
- (b) the functions of the diversion council or a diversion committee;

- (c) the coordination of the work of diversion committees in the implementation of any diversion scheme;
- (d) the establishment of diversion programs or services;
- (e) designation of diversion programs or services to be alternative measures within the scope of the Young Offenders Act (Canada).

Children in need of guidance

113.(1) In this section "a child in need of guidance" means a child who

- (a) has committed an act that, but for the fact that he is under 12 years of age, would have been an offence under the Criminal Code of Canada or any other Act of Parliament,
- (b) is under the age of 12 years and has committed an offence under any Act of the Legislature or any bylaw of a municipality, or
- (c) is 12 years of age or older but under the age of 18 years and who admits to having committed an offence under any Act of the Legislature or any bylaw of a municipality and who is not charged with such offence.

(2) Any peace officer or agent who has reasonable and probable grounds to believe and does believe that a child is a child in need of guidance shall report the relevant facts to the director.

(3) Where the director, after consultation with and upon the recommendation of an agent of the Attorney General of Canada, concludes that a child is likely a child in need of guidance and may benefit from diversion, the director, by notice in writing served on a concerned parent, or on any other person entitled to care and custody of the child, may request such parent or person to appear, or to bring the child named in the notice, before the diversion committee at the place and time named in the notice to determine whether a child is a child in need of guidance.

(4) The notice referred to in subsection (3) shall be served at least five days before the day on which the parent or other person is to appear or bring the child before the diversion committee.

(5) Where the diversion committee concludes that the child can benefit from a diversion program that is administered by the committee and the child admits the substance of any allegations made against him, and the child and a concerned parent or other person entitled to care and custody of the child agree to the child's participation in the diversion program proposed for him, the committee may

- (a) declare the child to be a child in need of guidance,
- (b) order a program of diversion for the child,
- (c) define the duration of the child's participation in the program, and
- (d) describe the conditions that the child must comply with in order to continue his participation in the program.

(6) No diversion shall be ordered under subsection (5) where

- (a) a concerned parent or other person entitled to care and custody of the child does not agree with the child being referred to a diversion committee or with the diversion program proposed by the committee,
- (b) no diversion committee has been established in the community,
- (c) the child has been held by the diversion committee to be unsuitable for diversion, or
- (d) the diversion committee concludes the child requires resources or facilities beyond those available to the committee.

(7) Where a diversion committee orders a diversion program for the child and the child complies with the requirements of that diversion program, he shall not be prosecuted for any offence that was a ground upon which the committee concluded he was a child in need of guidance.

(8) The director, any agent of the director, any agent of the Attorney General of Canada, any advocate for a concerned parent or other person entitled to care and custody of the child, and any advocate for the child have the right to be heard in proceedings before the diversion committee.

Prosecution of children for offences

114.(1) Where a child is alleged to have committed an offence against an Act of the Legislature or a municipal bylaw and a diversion program cannot be or is not ordered for him, he may be prosecuted for the offence.

(2) Where a child commits an offence against an Act of the Legislature or a municipal bylaw and a diversion program is ordered for him and he does not comply with the requirements of the ordered diversion program, he may be prosecuted for any offence that was a ground upon which the diversion program was ordered.

(3) No admission, confession or statement accepting responsibility for an act or omission made by a child in the course of diversion proceedings shall be admissible in evidence against him in any civil or criminal proceedings or in any proceedings for the prosecution of an offence against an Act of the Legislature or a municipal bylaw.

(4) A prosecution referred to in subsection (1) or (2) shall be conducted by judicial proceedings in youth court and all proceedings incidental to or consequential upon the prosecution shall be taken in the same manner as though the offence were an offence and the child were a young person within the scope of the Young Offenders Act (Canada).

(5) Where a diversion program could not be or was not ordered for the child and he is alleged to have committed an offence against an Act of the Legislature or a municipal bylaw, alternative measures as described in the Young Offenders Act (Canada) may be used to deal with him.

(6) Alternative measures as described in the Young Offenders Act (Canada) shall not be used to deal with a child who is alleged to have committed an offence against an Act of the Legislature or a municipal bylaw that was a ground upon which a diversion program was ordered for him.

DIVISION 3 - CHILD ABUSE OR NEGLECT**Reporting of child in need of protection**

115.(1) A person who has reasonable grounds to believe that a child may be a child in need of protection may report the information upon which he bases his belief to the director, an agent of the director, or a peace officer.

(2) No legal action of any kind, including professional disciplinary proceedings, may be taken against a person who reports information under subsection (1) by reason of his so reporting, unless the reporting was done maliciously and falsely.

(3) Any person who maliciously and falsely reports to a peace officer, the director, an agent of the director, or to any other person facts from which the inference that a child may be in need of protection may reasonably be drawn commits an offence and is liable on summary conviction to a fine of up to \$5,000 or imprisonment for as long as six months, or both.

Children in need of protection

116.(1) A child is in need of protection when

- (a) he is abandoned,
- (b) he is in the care of a parent or other person who is unable to provide proper or competent care, supervision or control over him,
- (c) he is in the care of a parent or other person who is unwilling to provide proper or competent care, supervision or control over him,
- (d) he is in probable danger of physical or psychological harm,
- (e) the parent or other person in whose care he is neglects or refuses to provide or obtain proper medical care or treatment necessary for his health or well-being or normal development,
- (f) he is staying away from his home in circumstances that endanger his safety or well-being,
- (g) the parent or other person in whose care he is fails to provide the child with reasonable protection from physical or psychological harm,
- (h) the parent or person in whose care he is involves the child in sexual activity,
- (i) subject to subsection (2), the parent or person in whose care he is beats, cuts, burns or physically abuses him in any other way,
- (j) the parent or person in whose care he is deprives the child of reasonable necessities of life or health,
- (k) the parent or person in whose custody he is harasses the child with threats to do or procures any other person to do any act referred to in paragraphs (a) to (j), or
- (l) the parent or person in whose care he is fails to take reasonable precautions to prevent any other person from doing any act referred to in paragraphs (a) to (j).

(2) The mere subjection of a child to physical discipline does not bring the child within the definition of child in need of protection, but the child may be in need of protection where the force is unreasonable or excessive, having regard to

- (a) the age of the child,
- (b) the type of instrument, if any, employed in corporal punishment,

- (c) the location of any injuries on the child's person,
- (d) the seriousness of the injuries which resulted, or which might reasonably have been expected to result, to the child, and
- (e) the reasons for which it was felt necessary to discipline the child and any element of disproportion between the need for discipline and the amount of force employed.

Investigation of report

117.(1) Where the director, an agent, or a peace officer receives a report or believes that a child may be in need of protection, the director, agent, or peace officer shall conduct such investigation as may be necessary with a view to determining what action, if any, should be taken under this Part and, for that purpose, may,

- (a) at any reasonable time, enter any place to which the public is customarily admitted,
- (b) with the consent of an occupant apparently in charge of the premises, enter any other place,
- (c) for his examination, request the production of documents or things that are or may be relevant to his investigation,
- (d) upon giving a receipt therefor, remove from any place documents produced in response to a request under paragraph (c) for the purpose of making copies of them or extracts from them, and
- (e) upon giving a receipt therefor, remove from any place any other thing produced in response to a request under paragraph (c) to retain possession of it pending conclusion of the investigation or proceedings under this Part.

(2) Where any person denies the person conducting the investigation under subsection (1) entry to any place, instructs him to leave any place, or impedes or prevents an investigation by that investigator in any place, that investigator may apply to a judge for a warrant to enter under subsection (4).

(3) If a person refuses to comply with a request of the investigator under subsection (1) for the production of documents or things, the investigator may apply to a judge for an order for the production of the documents or things under subsection (5).

(4) Where a judge is satisfied by evidence on oath or affirmation that there are reasonable grounds to believe it is necessary that a place being used as a dwelling, or to which entry has been denied, be entered to investigate any matter under this Part, he may issue a warrant to enter in the prescribed form authorizing entry by the director, or any agent or peace officer referred to in the warrant, into the place referred to in the warrant.

(5) Where a judge is satisfied by evidence on oath or affirmation that a request under subsection (1) for production of a document or other thing has been refused and that there are reasonable grounds to believe that production of the document or thing is necessary to investigate any matter under this Part, he may make an order for the production of documents in the prescribed form authorizing the director, or any agent or peace officer referred to in the order, to seize the documents or things described in the order.

(6) An order under subsection (5) for the production of documents or other things may be included in a warrant to enter issued under subsection (4) or may be made separately from such a warrant.

(7) A warrant issued under subsection (4) and any order made under subsection (5) shall be executed at such time as may be specified in the warrant or order.

(8) Every warrant issued under subsection (4) and every order made under subsection (5) shall name a date on which it expires, which shall be a date not later than 14 days after it is issued or made.

(9) Notwithstanding subsection (1), the director shall

- (a) refuse to investigate or to continue investigating a report or complaint where he is satisfied that the report or complaint is frivolous, vexatious or malicious, and
- (b) cease investigating a report or complaint where he is satisfied that there is insufficient evidence to warrant further action under this Part.

Notice to appear or bring child before a judge

118.(1) Where the director or an agent has reasonable and probable grounds to believe and does believe that a child might be in need of protection he may, instead of taking the child into care or to a place of safety, by notice of application in writing served upon a concerned parent, or other person entitled to the care or custody of the child, require such parent or person to appear, or bring the child named in the notice, before a judge at a place named in the notice and at a time not earlier than five days after nor later than one month after the date of the service of the notice for a judge to determine

- (a) whether the child is in need of protection, or
- (b) whether the parents or other person entitled to the care or custody of the child should make the child available to the director for such investigations or tests as are recommended by the director in writing and approved by the court to assess whether there should at a later date be a hearing to determine whether the child is in need of protection.

(2) Before the conclusion of the hearing of an application under subsection (1) the judge may

- (a) adjourn the hearing from time to time, or
- (b) make an order for the temporary care and custody of the child, pending the conclusion of the hearing.

(3) Where in the opinion of the director a child is of sufficient age and understanding to comprehend the purpose of a notice and the other proceedings under this section, the director shall make all reasonable efforts to inform the child and his family with whom he resides when the notice is given of the facts and the reasons for such action by the director.

(4) Upon a notice being issued pursuant to subsection (1) the director may notify the school which the child attends and any community groups or other persons who the director thinks should be advised of the action.

TAKING OF CHILDREN INTO CARE

Powers of director, agent or peace officer

119.(1) Where the director, an agent or a peace officer has reasonable and probable grounds to believe and does believe that child is in immediate danger to his life, safety or health, the director, agent or peace officer may, without a warrant,

- (a) take the child into care and begin proceedings before a judge under this Part,
- (b) take the child to a place of safety and then, without taking proceedings before a judge under this Part, return the child to a concerned parent, or other person entitled to the child's care and custody, upon the request of that concerned parent or other person, or
- (c) in the case of a child already in the care of the director and who absconded or was being detained without lawful authority and without the director's consent, return the child to such place as the director may designate.

(2) For the purpose of taking a child into care or to a place of safety under subsection (1), the director, an agent or a peace officer may, without a warrant,

- (a) enter at any time any place where on reasonable and probable grounds he believes the child to be, and
- (b) use such reasonable force as may be necessary.

(3) Where the director, an agent or a peace officer has reasonable and probable grounds to believe and does believe that a child is in need of protection or that a child in the care of the director has absconded or is being detained without lawful authority and without the director's consent, the director, agent or peace officer may apply to a judge for a warrant to take the child into care under subsection (4).

(4) Where a judge is satisfied by evidence on oath or affirmation that the person applying for a warrant to take the child into care has reasonable and probable grounds to believe and does believe that the child in respect of whom the application is made is in need of protection, the judge may issue his warrant in the prescribed form authorizing the director, or the agent or peace officer referred to in the order, to take the child referred to in the order into the director's care and, for that purpose, to enter any place referred to in the warrant.

(5) A warrant issued under subsection (4) shall be executed at such time as may be specified in the warrant.

(6) Every warrant issued under subsection (4) shall name a date on which it expires, which shall be a date not later than 14 days after it is issued.

(7) Where a child is taken into care pursuant to a warrant issued under subsection (4), the person who takes the child into care shall

- (a) begin proceedings before a judge under this Part,
- (b) take the child to a place of safety and then, without taking proceedings before a judge under this Part, return the child to a concerned parent, or other person entitled to the child's care and custody, upon the request of that concerned parent or other person, or

- (c) in the case of a child already in the care of the director and who absconded or was being detained without lawful authority and without the director's consent, return the child to such place as the director may designate.

(8) For the purpose of executing a warrant to take a child into care issued under subsection (4), a warrant to enter issued under subsection 117(4) or an order to produce documents or things made under subsection 117(5), the person executing the warrant may use such reasonable force as may be necessary.

(9) An application for a warrant to take a child into care under subsection (4) for a warrant to enter under subsection 117(4) or for an order for the production of documents or things under subsection 117(5) may be made without notice to any party.

(10) Where, pursuant to subsection (1), a place has been entered without a warrant, the owner or any occupant of the place may, in addition to any rights he may have under common law or another Act, apply to a judge for an order to require the person who entered without a warrant to justify the entry.

Notice of action to director and official guardian

120.(1) Where a child is taken into care or to a place of safety under section 119 the person who takes the child into care or to a place of safety, shall forthwith notify the director.

(2) When a child is taken into care under section 119 or a notice is issued pursuant to section 118 requiring a person to bring a child before a judge, the director shall inform the official guardian as soon as reasonably practicable so that the official guardian may determine whether a child representative should be appointed for the child.

Procedure after child is taken into care

121.(1) Subject to paragraphs 119(1)(b) and (c) and 119(7)(b) and (c), where a child is taken into care under section 119 the director shall,

- (a) as soon as practicable, give reasonable notice in writing to the concerned parent, or other person entitled to the care or custody of the child, of the place and time of a hearing to be held under subsection (5) and of the grounds then known to the director for the alleged need for protection of the child, which grounds may be stated in any of the words set out in subsection 116(1), and
- (b) so that a hearing may be held under subsection (5), appear before a judge and make such application as the director thinks there are grounds to make.

(2) Where in the opinion of the director the child is of sufficient age and understanding to comprehend that he has been taken into care, he shall be told of this fact and the reasons for the intervention by the director.

(3) On taking a child into care, the director may notify the school which the child attends and any community groups or other persons who the director thinks should be advised of the action.

(4) The hearing under subsection (5) shall be at a time not later than seven days after the child is taken into care.

(5) The judge shall hold a hearing as soon as reasonably practicable after he is asked to do so for the purpose of

- (a) determining the identity of the child and his concerned parents or other persons entitled to his care or custody, and
- (b) determining whether reasonable and probable grounds exist for taking the child into care.

(6) Where, at the conclusion of the hearing under subsection (5), the judge finds that reasonable and probable grounds do exist for taking the child into care, the judge shall

- (a) subject to subsection (9), set a date and place for a hearing before a judge to determine, within two months, whether the child is in need of protection and what order ought to be made in consequence of that determination,
- (b) order that the child remain in the temporary care and custody of the director pending the outcome of the hearing referred to in paragraph (a), and
- (c) if a concerned parent, or other person entitled to the care or custody of the child, is not present, give direction as to the manner of service of the notice of the hearing referred to in paragraph (a) on the absent concerned parent or other person entitled to the care or custody of the child.

(7) Where, at the conclusion of the hearing under subsection (5), the judge finds that there are no reasonable and probable grounds for taking the child into care, the director shall return the child to the concerned parent, or other person entitled to the child's care, in whose care and custody the child was when he was taken into care.

(8) The director shall return the child pursuant to subsection (7) so soon as the return may reasonably be done, having regard to the best interests of the child, but the return of the child shall not be delayed more than 48 hours unless a judge authorizes a longer delay.

(9) The hearing before a judge to determine whether a child is in need of protection and what order should be made in consequence of that determination shall be held and the determination shall be made within two months of the day the hearing under subsection (5) is begun, unless the director or a concerned party seeks a delay, and a judge is satisfied that the delay will not cause any prejudice to the best interests of the child and is necessary for the proper conduct of the hearing.

(10) There shall be a rebuttable presumption that failure to comply with the time limits specified in this section is prejudicial to the interests of the child, and it is therefore the duty of the director, the concerned parents and the judge to comply with those time limits.

(11) Lack of compliance with the time limits specified in this section shall not deprive any judge of jurisdiction to act at the request of the director or a concerned parent after expiration of the time, and a judge may act under this Part at the request of either.

Change of judges

122. A proceeding under this Part that has been commenced before one judge may be continued before any other judge, but that other judge may refuse to let the hearing be continued before him if he is satisfied that the continuation before him would prejudice any party to the proceeding and that continuation before the judge who heard the earlier part of the proceeding would not be impractical or prejudicial to any party.

Powers of director in conduct of applications

123. Where the director or an agent makes any application to a judge under this Part, the director has exclusive conduct of the application and may, in his discretion, continue it or discontinue it.

Role of director and absence of interested persons

124.(1) In proceedings under this Part,

- (a) the director is a representative of the child and the interest of the director is to seek the best interest of the child, and
- (b) the judge has jurisdiction to hear and determine and shall, in accordance with this Act, hear and determine on its merits any application made by the director, regardless of whether some person who has a right to be present is present and regardless of whether a person who is, under this Part, entitled to be served has been served with notice of the hearing or application.

(2) Where a person who is, under this Part, entitled to be served with notice of a hearing or an application is not served with the notice and is not present at the hearing and the judge makes an order in that hearing or in respect of the application, that person may apply to a judge under and subject to subsection 144(3) for an order setting aside in relation to him the order so made.

(3) Where an order is set aside in relation to a person who applied under subsection (2), the order continues to have the same effect in relation to all other persons as if no order had been made in relation to the person who applied under subsection (2).

Purpose of hearing and interim orders

125. The purpose of the hearing set under subsection 121(6) and conducted under subsection 121(9) is for the judge to determine whether the child is in need of protection and what order ought to be made in consequence of that determination, and pending the conclusion of the hearing the judge may

- (a) adjourn the hearing from time to time for a period up to but not exceeding three months from the date the child was taken into care, and
- (b) make an order for the temporary care and custody of the child, pending the conclusion of the hearing.

Orders on conclusion of hearing

126.(1) Where, at the conclusion of the hearing of an application under this Part, the judge finds on the balance of probabilities that the child is a child in need of protection, the judge shall

- (a) allow the child to be returned into the care of the concerned parent, or other person entitled to his care or custody, in whose care and custody the child was when he was taken into care or when proceedings were instituted pursuant to section 118,
- (b) commit the child into the temporary care and custody of the director, or
- (c) commit the child to the permanent care and custody of the director.

(2) Where the child is in the care of the Director and, at the conclusion of the hearing of an application under this Part the judge finds on the balance of probabilities that the child is not a child in need of protection, the director shall return the child to the concerned parent, or other person entitled to the child's care, in whose care and custody the child was when he was taken into care.

(3) The director shall return the child pursuant to subsection (2) so soon as the return may reasonably be done, having regard to the best interests of the child, but the return of the child shall not be delayed more than 48 hours unless a judge authorizes a longer delay.

Order to return child to parent or other person

127. Where the judge makes an order under paragraph 126(1)(a),

- (a) the director shall have a power of supervision in respect of the care of the child during the time that the order is in effect,
- (b) the order shall be in effect for such time as the judge may specify, but that time shall not exceed 12 months for a child under two years of age at the date of taking into care or of issuance of the notice to bring, and shall not exceed 15 months for a child under four years of age at the date of taking into care or of issuance of the notice to bring, and shall not exceed 24 months in any other case, and
- (c) the order may contain such reasonable conditions binding upon and in respect of the conduct of the person to whose care the child is allowed to be returned as the judge thinks are necessary.

Further orders for temporary care

128.(1) Where a judge has made an order under subsection 126(1), that judge or any other judge may later, after a hearing, from time to time, and upon the application of the Director make an order

- (a) extending the duration of an order of the kind described in paragraph 126(1)(a) or (b),
- (b) converting an order of the kind described in paragraph 126(1)(a) into one of the kind described in paragraph 126(1)(b) or (c), or
- (c) converting an order of the kind described in paragraph 126(1)(b) into one of the kind described in paragraph 126(1)(a) or (c).

(2) The director may make an application under subsection (1) on not less than ten days notice in writing served upon the concerned parent or other person who but for the proceedings under this Part would be entitled to the care and custody of the child.

(3) Before the conclusion of the hearing of an application under subsection (1) the judge may

- (a) adjourn the hearing from time to time, and
- (b) make an order for the temporary care and custody of the child, pending the conclusion of the hearing.

Order for temporary care by director

129.(1) No order for temporary care and custody of a child shall be, whether in consequence of adjournment, or of an initial order or any extension of an initial order, for a time exceeding

- (a) a period of 12 months, for a child under two years of age at the date of taking into care or of issuance of the notice to bring before a judge,
- (b) a period of 15 months, for a child under four years of age at the date of taking into care or of issuance of notice to bring before a judge, or
- (c) 24 months in any other case.

(2) In calculating the continuity of periods referred to in paragraphs (1)(a), (b) or (c), the judge shall disregard any period or periods the aggregate of which does not exceed six weeks in which the child was temporarily returned to the care of his parents or other person entitled to his care and custody.

(3) Any order for temporary care and custody of a child that purports to be for a time exceeding the time allowed by this section shall be deemed to subsist for only the time that is allowed under this section.

(4) Notwithstanding the provisions of this section a judge may on the application of a child who has attained the age of 14 years and with the written consent of the director, extend a period of temporary care and custody to the director beyond two years for a further period not exceeding two years.

Committal of children to care of director

130. Where the child has been taken into care by a peace officer, a judge shall not commit a child to the care and custody of the director except upon an application by the director.

Factors affecting orders for care and custody

131. In deciding whether to make an order for temporary or permanent care and custody the judge shall have regard to the following considerations relating to the best interests of the child:

- (a) the bonding existing between the child, and its concerned parent, or other care giver, but not necessarily the bonding existing between the concerned parent or other care-giver and the child;
- (b) evidence about who the child identifies and relates to as his parent or care-giver;
- (c) the length of time, according to the child's sense of time, that a child has been in care and the effect upon the child of any delay in the final disposition in the proceedings;

- (d) the effect upon the child of any disruption of the child's sense of continuity;
- (e) the child's right to be a wanted and needed member within a stable and secure family structure;
- (f) the child's mental, emotional and physical stages of development;
- (g) the risks and merits of the child returning to or remaining in the care of his concerned parent or other person entitled to his care;
- (h) the views and preferences of the child, where such views and preferences can reasonably be ascertained;
- (i) any physical or psychological risk to the child of returning the child to, or allowing the child to remain in, the care of his or her parent;
- (j) the mental, emotional and physical needs of the child and the appropriate care or treatment to meet those needs;
- (k) the cultural heritage of the child.

Consent of director to medical treatment for child

132.(1) Where he is satisfied that medical, surgical or other remedial care is urgently required in order to preserve the life or health of a child and the parent, or other person with the care or care and custody of a child, will not consent to the treatment or care or cannot be found in time, a judge may, on the application of the director, which may if necessary be made without notice to the parent or any other person, make an order authorizing the director to consent to the medical, surgical or other remedial care and any consequent orders relating to the care and custody of the child pending the giving of the care and pending any further proceedings under this Part.

(2) Where the judge makes an order under subsection (1) authorizing the director to consent to the medical, surgical or other remedial care, the director may exercise his powers under subsection 119(2) for the purpose of giving effect to the order.

(3) Where a person has acted in accordance with a consent given by the director in consequence of an order under subsection (1), no action shall be taken against that person on the ground that he ought to have obtained the consent of some other person.

(4) The director shall pay the cost of the medical, surgical or other remedial care that he consents to under this section and the parent, or other person with the care or care and custody of the child, shall not have any liability for that cost.

(5) A judge may from time to time adjourn the hearing of an application under subsection (1).

Foetal alcohol syndrome

133. Where the director has reasonable and probable grounds to believe and does believe that a foetus is being subjected to a serious risk of suffering from foetal alcohol syndrome or other congenital injury attributable to the pregnant woman subjecting herself during pregnancy to addictive or intoxicating substances, the director may apply to a judge for an order requiring the woman to participate in such reasonable supervision or counselling as the order specifies in respect of her use of addictive or intoxicating substances.

Order for payment of maintenance for child in care of director

134. Where a judge commits a child to the temporary care and custody of the director, the judge may at the same time, or subsequently upon application by the director, make an order for payment by the parent of the child of any costs or portion thereof incurred by the director in maintaining and supervising the child in any child caring facility.

Variation of maintenance orders

135.(1) At any time after an order for payment is made pursuant to section 134, the director may apply to a judge for an order varying the order already made.

(2) Any parent may make application to a judge for an order varying the amount payable by him under any order, or revoking the order, or suspending in whole or in part the operation of the order insofar as it applies to him.

(3) A judge may make an order under subsection (1) or (2) only where there has been a material change in the circumstances of the parent bound by the order already made and the change affects his ability to pay.

Enforcement of maintenance order

136. An order made against a parent under section 134 or 135 may be enforced in the same manner as an order for support made under the Family Property and Support Act.

DIVISION 4 - CHILDREN IN CARE AND CUSTODY OF THE DIRECTOR**Effect and duration of director's care**

137.(1) When the care and custody of a child is committed to the director under this Part, the director shall have the custody of and the guardianship for the child and as such shall have all the rights and powers of a parent and those that might be conferred upon a guardian under any Act until

- (a) the child reaches 19 years of age, where the child is dependent because he is pursuing an education program or because of mental or physical incapacity,
- (b) the child reaches 18 years,
- (c) the child is adopted pursuant to this Act,
- (d) the child marries, or
- (e) the date of expiry of the order for temporary care and custody.

(2) Notwithstanding subsection (1) where the child has been committed to the temporary care and custody of the director,

- (a) the consent of the concerned parent shall be required in any application for adoption of the child, and
- (b) a parent or other person who but for the proceedings under this Part would be entitled to access to the child or, to custody, or to care and custody of the child shall have reasonable access to the child with the consent of the director, such consent not to be unreasonably withheld.

(3) During the subsistence of an order for temporary care and custody the director shall, so far as is practicable, keep the concerned parents informed of the progress and situation of the child and discuss with them the future plans for the child.

(4) During the time between when a child is taken into care under this Part and when an order for permanent or temporary care and custody is made by a judge under this Part the director shall have

- (a) subject to subsection (5), power to determine who can have access to the child and upon what conditions, but the parent or other person who, but for the proceedings under this Part, would be entitled to access to the child, or to custody, or to care and custody of the child shall have reasonable access to the child with the consent of the director, such consent not to be unreasonably withheld,
- (b) power to give consent to any necessary medical care or attention for the child, unless a parent, or other person entitled to the care and custody of the child, has notified the director that he objects to the director giving the consent,
- (c) the duty to provide for the child's physical and emotional needs, and
- (d) notwithstanding paragraph (b), power to arrange and give consent to any medical or psychiatric examination or assessment for the purpose of ascertaining the physical or mental condition of the child.

(5) A person who, under paragraph (2)(b) or (4)(a) is entitled to have reasonable access to the child and who alleges that the director has unreasonably withheld his consent to access may apply to the judge for an order and the judge may make an order settling the terms and conditions of reasonable access by that person to the child.

Review of care of child in director's care

138.(1) Where a child has been in the care or care and custody of the director for a period of one year, the director shall conduct a review of the child's care.

(2) The director shall conduct a further review annually for so long as the child is in the care or care and custody of the director.

Agreement with other places respecting care of children

139.(1) Where a child is in the temporary or permanent care and custody of an officer or authority in another province whose functions duties and powers are similar to the director's, the director may assume the care and supervision of the child and the right to give consent to medical or surgical care and treatment, but custody of and guardianship for the child remain vested in the officer or authority to whom the child was committed.

(2) Where a child who has been committed to the temporary or permanent care and custody of the director pursuant to this Act is, by agreement with the appropriate officer or authority, transferred to any province or to any other country or part thereof, the director may place the child in the care and supervision of that officer or authority and grant to him the right to give consent for medical or surgical care and treatment, but custody of and guardianship for the child remains vested in the director.

Agreement between parent and director for care of child

140.(1) Any parent, or other person entitled to care and custody of a child may enter into an agreement with the director to have the child placed under the temporary supervision or care of the director or his agent for the purpose of providing the services required to meet the needs of the child where the parent or that other person is,

- (a) through special circumstances of a temporary nature, unable to make adequate provision for his child, or
- (b) unable to provide the service required for his child because of the needs of the child.

(2) The effect of an agreement made under subsection (1) shall be during its subsistence, to confer on the director the same rights, duties and powers as he would have under an order for temporary care and custody of the child.

Duration of agreement between parent and director

141.(1) The duration of an agreement under section 140 shall not exceed one year.

(2) With the approval of the director any such agreement may be renewed for one further period not exceeding one year.

(3) The parent or other person who makes an agreement under section 140 may cancel the agreement at any time.

(4) When the agreement is cancelled pursuant to subsection (3), the director shall, within 48 hours, return the child to the care of the parent or other person entitled to the child's care and custody who cancelled the agreement.

(5) The provisions of this section supersede and subsume any existing agreement of similar nature.

Offences relating to children absconding from director's care

142.(1) No person shall

- (a) induce or attempt to induce a child to abscond from a child care service or child caring facility or other similar place in which the child was placed by the director, or
- (b) detain or knowingly harbour an absconding child admitted to the care or care and custody of the director.

(2) Breach of subsection (1) is an offence.

DIVISION 5 - VARIATION, TERMINATION AND APPEAL OF ORDERS

Application to terminate or vary temporary order

143.(1) Where a child has been committed to the temporary care and custody of the director, then the director, any parent or any other person who but for the proceedings under this Part would be entitled to the care and custody of the child may apply to a judge for

- (a) an order terminating the order for temporary care and custody, or
- (b) an order that, without terminating the temporary care and custody of the director, allows the applicant to have the care of the child subject to supervision by the director.

(2) A child over the age of 14 years who is in the temporary care and custody of the director may apply to a judge for

- (a) an order terminating the order for temporary care and custody, or
- (b) an order that, without terminating the care and custody of the director, allows him to reside in the care of some other person subject to supervision by the director.

(3) A judge shall not make an order under subsection (1) or (2) unless

- (a) there has been a material change in the circumstances since the order for temporary care and custody was made and that change affects or is likely to affect the best interests of the child, and
- (b) implementing the order will not be prejudicial to the best interests of the child.

(4) An application under subsection (1) or (2) shall be made on not less than 10 days notice to the director and to any concerned parent, or other person entitled to care and custody, who is not already a party to the application.

(5) Where the judge makes an order under paragraph (1)(b) or (2)(b), that order may

- (a) remain in effect for the unexpired time in the period of temporary committal of care and custody of the child to the director, and
- (b) contain such reasonable conditions binding upon and in respect of the conduct of the person to whose care the child is allowed to be placed as the judge considers necessary.

Application to terminate or vary permanent order

144.(1) A parent or other person entitled to the care and custody of a child who has been committed to the permanent care and custody of the director may apply to a judge for an order to terminate the order for the permanent care and custody of the child.

(2) A child who is over the age of 14 years and who has been committed to the permanent care and custody of the director and who can return to the care and custody of the person in whose care and custody he was when the proceedings under this Part resulting in his committal were instituted may apply to a judge for an order to terminate the order for his permanent care and custody.

(3) The judge shall hear the application and may set aside the order for the permanent care and custody of the child where

- (a) the child is not residing in a home for the purpose of adoption,
- (b) there has, since the order for the permanent care and custody of the child was given, been a material change in the circumstances and that change affects or is likely to affect the best interests of the child, and
- (c) setting aside the order will not be prejudicial to the best interests of the child.

(4) An application under subsection (1) or (2)

- (a) shall be made on not less than ten days notice to the director and to any concerned parent or other person entitled to care and custody who is not already a party to the application,

- (b) shall not be made until the expiration of 30 days after the day on which the order for permanent care and custody was given, and
- (c) shall not be made more frequently than once in any six month period, unless the director consents in writing to a shorter period.

(5) At any hearing to terminate an order for permanent care and custody the judge may

- (a) adjourn the hearing for a period not to exceed six months and order a medical, psychiatric, or other examination of the child, or a medical, psychiatric or other examination of a parent, or other person entitled to care and custody of the child, with the written consent of the parent or other person,
- (b) adjourn the hearing for a period not to exceed six months from the date of the application for a trial placement with the applicant under the supervision of the director,
- (c) terminate the care and custody by the director, or
- (d) dismiss the application.

(6) Where the director's care and custody is terminated under subsection (5), the director shall return the child to the parent, or other person entitled to the care and custody of the child, who obtained the order terminating the director's care and custody.

(7) The director shall return the child pursuant to subsection (6) so soon as the return may reasonably be done, having regard to the best interests of the child, but the return of the child shall not be delayed more than 48 hours unless a judge authorizes a longer delay.

Appeals to the Supreme Court

145.(1) The director or any person aggrieved may appeal to the Supreme Court against any order made by a judge under this Part or any refusal of a judge to make an order under this Part.

(2) An appeal under subsection (1) shall be taken by notice of appeal given within 30 days from the date on which the decision or order or refusal against which the appeal is taken was given.

(3) The Supreme Court may grant an extension of time to appeal but no extension of the appeal may be granted and no appeal shall be taken after the expiration of 30 days from the date on which the decision or order or refusal against which the appeal is taken was given where

- (a) the child is residing in a home for the purpose of adoption, or
- (b) the extension of time to appeal would be prejudicial to the best interests of the child.

(4) The procedure for the conduct of an appeal taken under subsection (1) shall be, with such reasonable modifications directed by the Supreme Court as may be necessary, the same as for an appeal in the Court of Appeal.

(5) Upon hearing an appeal, the Supreme Court may affirm, reverse, or modify the order appealed against, and make such other order as seems proper to the Supreme Court.

Limitation of appeal proceedings

146. No proceedings of any kind, other than an application under section 143 or 144, or an appeal under section 145 or under the Court of Appeal Act or the Supreme Court of Canada Act (Canada), shall be taken on any grounds to set aside or vary an order committing a child to the temporary care and custody or to the permanent care and custody of the director.

DIVISION 6 - CHILD CARING FACILITIES**Government facilities**

147.(1) The Executive Council Member may from time to time as he deems advisable establish, operate and provide child caring facilities or child care services for children who are in the care or the care and custody of the director.

(2) The Executive Council Member may make agreements with persons to operate child caring facilities or child care services on behalf of the Executive Council Member.

(3) The director shall have the supervision of any child caring facility or child care service established, operated or maintained by or on behalf of the Executive Council Member under subsections (1) and (2).

(4) The Executive Council Member shall comply with the regulations under paragraph 148(1)(b) prescribing standards of care and accommodation for the establishment and operation of child caring facilities.

Regulations respecting child care facilities

148.(1) The Commissioner in Executive Council may make regulations

- (a) classifying child caring facilities;
- (b) prescribing standards of accommodation and care in relation to the establishment and operation of any or all classes of child caring facilities;
- (c) prescribing conditions about standards of care and accommodation that may be made part of a licence issued in respect of any child caring facility;
- (d) prescribing the period of time during which a licence may subsist;
- (e) prescribing the information that any person applying for a licence must, or may be required to, disclose in support of his application.

(2) Without restricting the generality of subsection (1), standards of care and accommodation for the establishment and operation of child caring facilities may include requirements about the location of the facility, space allocation within the facility, sanitary conveniences, practices to help preserve health, fire and electrical safety, eating and sleeping accommodation, activity programs and areas, number and qualifications of staff, and records that must be kept.

Licences for child caring facilities

149.(1) Where the applicant demonstrates that he can and will comply with section 152 and with the regulations made under section 148, the director shall issue a licence authorizing the operation of a child caring facility, and the authorization may be subject to such conditions as the director may, pursuant to the regulations, describe in the licence.

(2) A licence may subsist for such time as may, pursuant to the regulations, be stated by the director on the licence, and where no time is so stated the licence may subsist for one year.

(3) Continued compliance by the operator and his staff with the regulations made under section 148 shall be deemed to be a condition of every licence issued under this section.

Facilities for which a licence is not required

150.(1) The following child caring facilities may be operated without a licence issued under section 149:

- (a) a facility that has been approved by the director and is a facility where the only children being cared for, other than children who are related by consanguinity, marriage or adoption to the operator of the facility, are children who are in the care and custody of the director and who have been placed in the facility by the director;
- (b) a facility that is approved by the superintendent of education appointed under the School Act and that is operated solely as a residence for students attending a course of studies given under the supervision of or approved by the superintendent of education;
- (c) a facility that is licensed as a day care service or a family day-home under the Day Care Act and is operated in compliance with that licence and that Act.

(2) The director shall exempt the operator of a child caring facility from the requirement of obtaining a licence

- (a) where the only children being cared for in the facility are children who are related by consanguinity or by marriage to the operator of the facility, or
- (b) where the only children being cared for in the facility are children who are cared for during a period not exceeding six weeks.

(3) A child caring facility established by or operated under a contract with the Executive Council Member or the director may be operated without a licence.

Offences and penalties

151.(1) No person shall operate a child caring facility unless he is authorized to do so by a subsisting licence validly issued under section 149 or he is, under section 150, exempt from licensing.

(2) A person who breaches subsection (1), or any regulation made under section 148, or who violates any condition in a licence issued to him under section 149 commits an offence and is liable on summary conviction to a fine of up to \$250, or to imprisonment for as long as two months, or both.

(3) Each day that a breach of subsection (1), or of any regulation made under section 148, or a violation of a condition in a licence continues after written notification by the director about the alleged offence constitutes a separate offence.

Inspection of facilities

152.(1) The director may inspect a child caring facility to determine whether the facility is being operated in compliance with sections 148 to 151, inclusive, the regulations, or the conditions stated on a licence issued under section 149.

(2) For the purposes of an inspection under subsection (1),

- (a) the director or his agent may enter the child caring facility at reasonable times without notice, or at any time after giving reasonable notice, and
- (b) the operator of the facility shall allow the director or his agent to enter and inspect the premises in which the facility is being operated, and the operator shall also disclose to the director or his agent such relevant information or records about the operation of the facility or any child cared for in it as the director or his agent may request and the operator possesses.

(3) Where the operator of a child caring facility does not comply with subsection 152(2), the director may forthwith suspend or cancel any licence that has been issued under section 149.

Injunction

153. The director may apply to the Supreme Court for, and the Supreme Court may grant, an injunction ordering any person to stop operating a child caring facility where the person operating the facility

- (a) is breaching subsection 151(1),
- (b) is violating a condition of a licence issued to him under section 149,
- (c) is not complying with the standards of accommodation and care prescribed for the establishment and operation of the child caring facility, or
- (d) does not comply with paragraph 152(2)(b).

DIVISION 7 - MISCELLANEOUS**Evidence**

154.(1) Notwithstanding any other provision in this Part, no child shall be deemed to be in need of protection merely because services could with advantage be extended to him.

(2) At any hearing under this Act including a hearing or an application for termination of the care and custody of the director, the judge may admit as evidence

- (a) the record of any other proceedings under this Part or under the Child Welfare Act that is repealed by this Act, and
- (b) evidence taken by a commissioner appointed by a judge pursuant under this or any other Act to take the evidence of a witness.

Reasons for decisions

155.(1) In proceedings under this Part a judge shall determine on the evidence admitted in the proceeding whether a child is in need of protection and, where the child is in need of protection, what order ought to be made in consequence thereof and the judge shall not limit the hearing to grounds for taking the child into care that are stated in any notice or other document.

(2) A judge making an order or rendering a decision under this Act shall on request give written reasons which shall be available to any party to the proceeding.

Service of documents

156.(1) In this Part, where personal service of any document is impractical, substituted service without any prior permission from a judge may be effected by any means, including certified mail to the last known address of the person to be served or if such person has no known address, by delivering the document to a person, or by mailing it by certified mail to a person who can reasonably be expected to know where the person to be served is or to be contacted by the person to serve.

(2) Where service of a document has been effected by substituted service under subsection (1), the judge may

- (a) confirm the sufficiency of the service,
- (b) require more efforts to achieve service by personal delivery, or
- (c) pursuant to section 174, order substituted service to be effected again or in some other manner.

(3) The powers of the judge in relation to service of documents exist only in relation to the manner of service.

Costs

157. No order for costs of the proceedings can be made in respect of proceedings under this Part.

Information to be provided to parents

158. Where a child has been placed in the care and custody of the director, the director

- (a) shall, if the parent or other person who but for the proceedings under this Part would be entitled to the care and custody of the child requests, provide the parent or that other person such information about the circumstances of the child as is not prejudicial to the best interests of the child or of the person with whom the director has placed the child, and
- (b) may, where the child is in the permanent care and custody of the director, advise the parent whether the child has been placed in a home for the purpose of adoption, but he shall not disclose the location of the home or the identity of the adopting parents.

Witnesses

159. In proceedings under this Part a judge has the same powers in relation to compelling the attendance of a witness as a judge of the Territorial Court has in summary conviction proceedings.

Enforcement in Supreme Court

160. An order made by a judge under this Part may be filed in the Supreme Court and from the time it is filed the order shall have, for the purpose of its enforcement, the same effect as an order of the Supreme Court and proceedings for its enforcement may be taken in the Supreme Court.

Powers of agent

161. An agent may serve and execute any process issued under this Act and for the purpose of enforcing this Act shall have all the powers and authority of a peace officer.

Director's right to participate in court proceedings

162. The director, his agent or any lawyer representing the director or his agent or any organization to whom powers of the director have been delegated pursuant to section 109 may appear and be heard in any court in respect to any matter concerning them arising under this Part.

Previous orders

163. Where a court has committed a child to the charge or care of the director by an order made under the provisions of paragraph 20(1)(h) of the Juvenile Delinquents Act (Canada), or an order under the Child Welfare Act, the child shall be deemed to have been committed to the care and custody of the director in accordance with this Part.

Family allowance

164. Any family allowance paid to the director on behalf of any child in the care and custody of the director shall not be public money within the meaning of the Financial Administration Act.

Use of lock-up or police cell for children

165. No child who is held or brought before a judge in proceedings under this Act shall be placed or allowed to remain with any adult prisoner in any lock-up or police cell used for ordinary criminals or persons charged with crimes.

Telephone applications for warrants and orders

166.(1) Where a person who is conducting an investigation under subsection 117(1) wants to apply under subsection 117(4) for a warrant to enter or under subsection 117(5) for an order to produce documents or things, or where the director, agent or peace officer wants to apply for a warrant to take a child into care under subsection 119(4), and it is impractical for a judge to be available so that the person may appear personally to make the application, that person may apply by telephone or any other means of telecommunication to a judge for the warrant or order.

(2) The person who makes the application under subsection (1) shall submit the following evidence in support of his application:

- (a)** a statement of his information and belief about the circumstances that make it impractical for a judge to be available so that he may appear personally to make the application;
- (b)** a statement of his information and belief about the circumstances on which he relies that would justify the issuing of the warrant under subsection 117(4) or 119(4) or the making of the order under subsection 117(5);
- (c)** a statement of his information and belief about any other warrant under subsection 117(4) or 119(4), order under subsection 117(5), or application for such a warrant or order in respect of the same persons or matter that he knows about.

(3) The evidence referred to in subsection (2) shall be given on oath or affirmation which may be administered by telephone or any other means of telecommunication.

(4) The judge who receives an application under subsection (1) shall record the evidence and representations of the applicant verbatim, if practicable, or in as complete and accurate a fashion as practical, and shall as soon as reasonable file his record or a transcript of it, certified by him as to time, date and contents, with a clerk of the Territorial Court.

(5) Where the judge issues a warrant or makes an order in response to an application under subsection (1),

- (a) the judge shall complete and sign the warrant or order in the prescribed form, noting on its face the time, date and place of issuance or making, and
- (b) the person who made the application under subsection (1) shall complete, in duplicate, a facsimile of the warrant or order in the prescribed form, noting on its face the name of the judge who issues the warrant or makes the order and the time, date and place of issuance or making.

(6) A warrant or order issued or made in response to an application under subsection (1) is not subject to challenge and shall not be set aside by reason only that the circumstances were not such as to make it reasonable to deal with the application under this section rather than by means of the personal attendance of the applicant before a judge.

PART 5

PROCEDURAL AND GENERAL MATTERS

Separate representation of children

167.(1) In this section a reference to a child is a reference to a child while still a minor.

(2) In proceedings under this Act, the official guardian shall have the exclusive right to determine whether any child requires separate representation by a lawyer or any other person that will be paid for at public expense chargeable to the Yukon Consolidated Revenue Fund.

(3) In proceedings under this Act a child requiring separate representation may include

- (a) a child for whom there is no guardian other than the official guardian,
- (b) a child in the care of the director of family and children's services, or
- (c) a child alleged to be in need of protection.

(4) The official guardian may act as guardian for the proceeding or appoint a guardian for the proceeding for a child needing separate representation.

(5) When determining whether separate representation or the appointment of a guardian for the proceeding for the child at public expense is required, the official guardian

- (a) shall consider advice or recommendations from the Legal Aid committee, the judge before whom or court in which the proceedings are taking place, and any party to the proceeding, and
- (b) shall consider
 - (i) the ability of the child to comprehend the proceeding,

- (ii) whether there exists and if so the nature of any conflict between the interests of the child and the interest of any party to the proceeding, and
- (iii) whether the parties to the proceeding will put or are putting before the judge or court the relevant evidence in respect of the interests of the child that can reasonably be adduced.

(6) Where the official guardian is of the opinion that separate representation of a child is required and is best achieved by the appointment of a person other than a lawyer he may appoint such other person.

(7) Where the official guardian acts as or appoints a guardian for the proceeding pursuant to this section, he shall as soon as practicable inform the concerned parents or other person entitled to care and custody and cause the child to be informed where the child is of sufficient age and understanding to comprehend the appointment.

EVIDENCE AND PROCEDURE

Standards of proof and admissibility of evidence

168.(1) In proceedings under this Act, other than for the prosecution of an offence punishable on summary conviction, the standard of proof shall be proof on the balance of probabilities, and that standard is discharged if the trier of fact is satisfied of the existence of the fact to be proven on evidence sufficient to establish that the existence of the fact is more probable than its non-existence.

(2) In proceedings under this Act, other than for the prosecution of an offence punishable on summary conviction, the following evidence is admissible if relevant:

- (a) the views of the child, whether given directly to the judge or court in the proceeding or to some person who is a witness in the proceeding;
- (b) opinion evidence, even where this is relevant to the very question before the judge or court, but the weight to be given to the opinion evidence shall be judged according to
 - (i) whether the opinion is in respect of a matter within an expertise possessed by the witness,
 - (ii) the extent to which the opinion is based on facts perceived by the witness, and
 - (iii) the nature of the testimony of the witness or of other evidence with respect to the facts upon which the opinion is based;
- (c) hearsay evidence, but the weight to be given to hearsay evidence shall be judged according to its apparent reliability and the availability of other evidence that would be admissible without relying on this paragraph.

(3) Either parent of a child shall be a competent and compellable witness in all proceedings under this Act, even where the evidence may tend to disclose that either of the parents has been guilty of a criminal offence.

(4) Where previous proceedings, whether criminal or civil, have taken place in respect to the same child or his siblings, the court or a judge may accept at his discretion any evidence taken at a previous hearing in the Yukon or before a court of competent jurisdiction in any other part of Canada.

(5) The weight to be attached to evidence referred to in subsection (4) shall be a matter for the court or the judge to determine.

Proof of court documents

169. Unless the contrary is proved, a document purporting to be signed by a judge or court officer shall be deemed to have been so signed without proof of the judicial or official character of the person appearing to have signed it and, unless the contrary is proved, the court officer by whom a document is signed shall be deemed to be the proper officer of the court to sign the document.

Evidence of the age of a child

170.(1) In any proceedings under this Act, a birth or baptismal certificate or a copy thereof purporting to be certified under the hand of the person in whose custody such records are held is evidence of the age of the person named in the certificate or copy.

(2) In the absence of any certificate or copy mentioned in subsection (1), or in corroboration of any such certificate or copy, the court or the judge may receive and act upon any other documents or information relating to age that it considers reliable.

(3) In any proceedings under this Act, the court or the judge may draw inferences as to the age of a person from the person's demeanor or from statements made by the person in direct examination or cross-examination.

Considerations for granting adjournments

171. Without limiting the generality of section 1, the paramount consideration in granting adjournments shall be the best interest of the child and the child's right to an early disposition of the case, compatible with his sense of time.

Privacy of court proceedings

172.(1) Subject to section 89, admittance to the place in which the hearing or proceeding under this Act takes place shall be restricted at the discretion of the court or judge and no person shall be permitted to be present other than the officials of the court, the parties, their counsel and such other persons as the court or judge may require or permit to be present and whose presence will not be prejudicial to the best interests of the child or the proper conduct of the proceeding.

(2) No report of a proceeding under this Act in which the name of the child or his parent or in which the identity of the child is otherwise indicated shall be published, broadcast or in any other way made public by any person without the leave of the judge.

Attendance of child in court

173. Nothing in this Act shall prevent the court or a judge from requiring the presence of the child in court in any case where the attendance of the child would not be prejudicial to his best interest and the interests of justice require his attendance.

Substituted service and service outside the Yukon

174.(1) Unless otherwise specified in this Act, where for any reason it is impractical to serve a notice or other document by personal delivery to the person to be served, the court or the judge may order substituted service, whether or not there is evidence that the document will probably reach the person to be served or will probably come to his attention, or that the person is evading service.

(2) Substituted service of any notice or other document under this Act may be effected by taking such steps as the court or judge has ordered to bring the notice or document to the attention of the person to be served.

(3) In proceedings under this Act, service of any notice or other document may be effected outside the Yukon without prior leave of the court or of a judge.

Disclosure of director's records

175.(1) Subject to section 96 and any regulation that may be made under this Act, no information or document that is kept by the director of family and children's services and that deals with the personal history of a child or an adult and has come into existence through any proceedings under Part 3 or 4 shall be disclosed to any person other than an agent of or lawyer acting for the director, unless it is disclosed with the consent of the director or pursuant to subsection (2).

(2) No person shall be compelled to disclose any information or document obtained by him in the course of the performance of his duties under Part 3 or 4 except

- (a) in the course of proceedings before the court or a judge under Part 3 or 4, or
- (b) in any other case, with the consent of the director or upon the order of the court.

Disclosure and variation of personal information

176.(1) Notwithstanding section 175, but subject to section 96, the director of family and children's services shall, upon the request of and after the presentation of reasonable identification by any person, disclose to that person the nature and substance of all information in the director's possession about that person, other than information

- (a) that would disclose the identity of another person, or
- (b) the disclosure of which would breach a duty of confidentiality owed to another person.

(2) Where the person who obtains a disclosure of information under subsection (1) disputes the completeness or accuracy of any of the information disclosed to him he may give the director a written statement of the nature and substance of his dispute, and the director shall, within 30 days, investigate and notify the person in writing

- (a) that the director has corrected the record of the information in his possession so that it is consistent with what the person has said in his written statement of dispute that it should be, or
 - (b) that the director will not change the record of the information in his possession.
- (3) Where the director decides not to change the record of the information in his possession, he shall
- (a) include in his record the person's written statement of the nature and substance of the dispute that was delivered to him under subsection (2), and
 - (b) include a copy or disclosure of that written statement of dispute with any subsequent disclosure or use of the disputed information.
- (4) This section is not intended as a rule of evidence and does not affect disclosure in any proceeding in any court.

Regulations and payment from the Y.C.R.F.

177.(1) For the purpose of carrying out the provisions of this Act according to their intent, the Commissioner in Executive Council may make regulations

- (a) respecting any time limits referred to in this Act where, because of the remoteness or climatic conditions in any part of the Yukon, the regulation is necessary for the proper conduct of proceedings under this Act;
- (b) respecting procedure and forms to be followed in the conduct of proceedings under Parts 3 and 4;
- (c) respecting safe-keeping and copying of and access to records of the director of family and children's services and of the court and any judge in respect of proceedings under this Act and the administration of this Act;
- (d) that are consistent with this Act and that he deems necessary and ancillary to this Act.

(2) No expenditure from the Yukon Consolidated Revenue Fund can be compelled under this Act except to the extent that there is an unexpended balance of an appropriation for the purpose of such an expenditure.

MISCELLANEOUS RULES OF LAW

Civil actions relating to children

178. No civil action for damages shall be brought by a parent for the enticement, harbouring, seduction or loss of service of his or her child or for any damages resulting therefrom.

Civil actions between parents and their children

179.(1) Subject to subsection (2), no person shall be disentitled from bringing an action or other proceeding against another for the reason only that they stand in the relationship of parent and child.

(2) An action that is based on negligence and that could not be taken in the absence of subsection (1) may be taken only in relation to circumstances in respect of which the person against whom the action is taken is or is by law required to be insured and the amount of any judgment of a court that is based on those circumstances shall not exceed the amount for which that person is or is by law required to be insured.

(3) Any provision in a contract of insurance that purports to deny coverage for the reason that the insured and another person stand in the relationship of parent and child shall be void and unenforceable.

Action for injuries sustained before birth

180. Subject to subsection 179(2), no person shall be disentitled from recovering damages in respect of injuries for the reason that the injuries were incurred before his birth.

Criminal Code

181. Section 180 shall not be construed to affect the operation of any provision of the Criminal Code (Canada).

Inherent jurisdiction

182. The inherent jurisdiction of superior courts in relation to children does not vest in the Territorial Court or any judge thereof, or in any justice of the peace.

Agreements with Canada

183. The Executive Council Member may, on behalf of the Government of the Yukon, enter into agreements with the Government of Canada respecting the payment by Canada to the Government of the Yukon such part of the expenditures required for the purposes of this Act as are agreed upon.

CHAPTER 23

CHIROPRACTORS ACT

Interpretation

1. In this Act,

“chiropractic” means the method of treating human beings for disease and the causes of disease by means of adjustment by hand and the articulations of the spinal column and other adjustments by hand incidental thereto;

“chiropractor” means a person who is entitled to practise chiropractic in the Yukon under this Act;

“licence” means a valid and subsisting licence issued under this Act to practise chiropractic in the Yukon;

“register” means the chiropractic register referred to in section 2.

Chiropractic register

2. The Executive Council Member shall keep a register called the chiropractic register and shall enter therein the names, addresses and qualifications of all persons who are, pursuant to this Act, entitled to be registered in the register and he may issue licences to such persons.

Qualifications for registration

3.(1) A person who has not practised as a chiropractor in a province within the period of two years immediately preceding the person’s application for registration under this Act is entitled to be registered in the register if the person has, during that period, graduated from a recognized school of chiropractic in Canada or obtained a certificate of qualification from the Canadian Chiropractic Examining Board.

(2) A person who has practised as a chiropractor in a province within the period of two years immediately preceding the person’s application for registration under this Act is entitled to be registered in the register if

- (a) the person has, at any time, graduated from a recognized school of chiropractic in Canada or obtained a certificate of qualification from the Canadian Chiropractic Examining Board, and
- (b) the person produces a certificate or other proof satisfactory to the Executive Council Member that the person is in good standing as a chiropractor in the province in which the person practised most recently.

(3) A person who is not entitled to be registered in the register under subsection (1) or (2) may be registered in the register upon production of proof satisfactory to the Executive Council Member that he or she has qualifications and competence to practise chiropractic that, in the opinion of the Executive Council Member, are similar to those required under subsection (1) or (2).

(4) Notwithstanding subsections (1), (2) and (3), a person is not entitled to be registered in the register until he or she has paid the prescribed registration fee.

(5) Subject to the other provisions of this Act, a person who is registered in the register on September 30, 1985 shall be deemed to be qualified to be registered in the register.

Licence fee

4. Every person who is registered in the register shall send to the Executive Council Member at the time his name is registered in the register and subsequently on or before March 31 in each year, the prescribed annual licence fee.

Validity of licence

5. No licence is valid unless

- (a) the licence fee in respect of the year for which the licence is issued has been paid, and
- (b) the holder of the licence has been registered pursuant to section 2.

Expiration of licence

6. A licence expires on March 31 next following the day upon which it came into force.

Practice limited to holders of licences

7. No person shall practise chiropractic or recover a fee, reward or remuneration for professional services rendered or material or appliances provided by him in practising chiropractic unless he holds a licence under this Act at the time the services are rendered or material or appliances are provided.

Licensee's right to practise and to recover fees

8. A person who holds a licence is entitled to practise chiropractic and to bring an action before a judge for the recovery of reasonable charges for professional aid, advice and visits and the costs of any materials or appliances supplied by him to his patients.

Limitation of actions for malpractice

9. No chiropractor is liable to an action for negligence or malpractice by reason of professional services requested or rendered unless the action is commenced within one year from the day when, in the matter complained of, the professional services terminated.

Use of X-ray photographs

10. A person registered as a chiropractor under this Act may in connection with his practice use X-ray shadow photographs and if he files with the Executive Council Member a certificate of competency pursuant to the regulations, he may in connection with his practise use X-ray equipment for the purposes only of producing shadow photographs.

Offences and penalties

11.(1) A person who is not the holder of a licence under this Act and who, in the Yukon,

- (a) practises chiropractic,
- (b) appends to his name the title of chiropractor or any word indicative of any such title or used in substitution or abbreviation thereof,
- (c) holds himself out in any way to be a duly qualified chiropractor, or
- (d) assumes any title or description implying or designed to lead the public to believe that he is duly qualified to practise as a chiropractor,

is guilty of an offence.

(2) A chiropractor who

- (a) prescribes or administers drugs or medicinal preparations,
- (b) treats venereal disease or any other communicable disease,
- (c) performs any surgical operation,
- (d) practises obstetrics or any branch of medicine or osteopathy,
- (e) uses or directs or prescribes the use of anaesthetics for any purpose,
- (f) uses any method other than chiropractic in the treatment of disease, or
- (g) except as provided by section 10, takes X-ray photographs without supervision by a medical practitioner,

is guilty of an offence.

(3) A person who commits an offence against this Act is liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

Time for prosecution

12. In the case of an offence under this Act, a complaint shall be made, or an information laid, within one year from the time when the matter of the complaint or information arose.

Onus of proof

13. In a prosecution for an offence under this Act, the onus of proof that the person against whom the charge is laid is the holder of a licence is upon the person against whom the charge is laid.

Removal for non-payment of fees and reinstatement

14.(1) Subject to subsection (2), the Executive Council Member shall remove from the register the name of a person registered therein who fails to comply with the provisions of this Act with respect to licence fees and the licence issued to that person is invalid until such time as he is again registered in the register.

(2) Where reasons satisfactory to the Executive Council Member are advanced to him as to why the licence fee has not been paid at the required time or within the required period, the Executive Council Member may grant an extension for payment of fees before having the name of the person on whose behalf they are paid struck off the register, but shall in no case grant an extension of time exceeding 60 days.

(3) A person whose name is removed from the register pursuant to subsection (1) is entitled to have his name restored to the register upon payment of the prescribed fee in addition to the fee in respect of which his name was removed from the register.

Board of inquiry

15.(1) The Commissioner in Executive Council may appoint two or more persons to act as a board of inquiry for the purpose of investigating any complaint made against a chiropractor with respect to an alleged contravention of this Act or any complaint of malpractice or infamous, disgraceful or improper conduct on the part of a chiropractor.

(2) The board of inquiry appointed pursuant to subsection (1) may make rules and regulations under which the inquiry is to be held and has power

- (a) to summon and bring before it any person whose attendance it considers necessary to enable the board properly to inquire into the matter complained of,
- (b) to swear and examine all such persons under oath,
- (c) to compel the production of documents, and
- (d) to do all things necessary to provide a full and proper inquiry.

(3) A board of inquiry may direct that the person who made the complaint it is appointed to investigate shall deposit with the board, as security for the costs of the inquiry and to the person complained against, a sum not exceeding \$500.

(4) Where the board of inquiry finds that a complaint is frivolous or vexatious, it may cause to be paid to the Executive Council Member out of the deposit for security mentioned in subsection (3) such portion of the costs of the inquiry and to the person complained against as it deems advisable, and where the board does not so find or where there is any balance of the deposit remaining the deposit or balance thereof shall be returned to the person who deposited it.

(5) A majority of the members of the board of inquiry is a quorum.

(6) A board of inquiry shall, after investigation of a complaint pursuant to this section, make a finding and shall immediately report its finding to the Executive Council Member, and where it finds that the person complained against is guilty of contravention of this Act or of malpractice or of infamous, disgraceful or improper conduct, may, in its report to the Executive Council Member, recommend that such person be

- (a) reprimanded,
- (b) fined in an amount named by the board, not to exceed \$500,
- (c) struck off the register and his licence cancelled, or
- (d) struck off the register and his licence suspended for a definite period named by the board.

(7) The board of inquiry shall, at the time it sends its report to the Executive Council Member pursuant to subsection (6), notify the person complained against of its finding and of the recommendations for punishment, if any, made by it in such report.

(8) Every person who

- (a) fails, without valid excuse, to attend an inquiry as required under this section,
- (b) fails to produce any document, book or paper in his possession or under his control, as required under this section, or
- (c) at an inquiry under this section,
 - (i) refuses to be sworn or to affirm, or to declare, as the case may be, or
 - (ii) refuses to answer any proper question put to him by the board of inquiry,

is guilty of an offence.

Appeal to judge

16.(1) A person against whom a finding has been made by a board of inquiry may, within 30 days after the finding has been made, appeal from such finding to a judge of the Supreme Court.

(2) The judge before whom an appeal is made under subsection (1) may hear the appeal at such time and in such manner as he deems just and he may, by order, quash, alter or confirm the finding of the board of inquiry.

Imposition of penalty

17.(1) Where a chiropractor has been found guilty by a board of inquiry of a contravention of this Act or of malpractice or of infamous, disgraceful or improper conduct, and no appeal has been taken from the finding or the time for appeal has expired, the Executive Council Member shall, after receiving the report from the board, impose the penalty recommended by it, and

- (a) in the case of a reprimand, reprimand the chiropractor in writing and note the reprimand in the register,
- (b) in the case of a fine, make an order fining the chiropractor, which order shall be filed in the Territorial Court and have the same effect as an order of that court,
- (c) in the case of a recommendation to strike off the register and cancel his licence, have the name of the practitioner struck off the register and cancel his licence, and
- (d) in the case of a recommendation to strike off the register and suspend his licence, have the name of the chiropractor struck off the register and suspend his licence for such time as the board has recommended.

(2) Where a judge on appeal confirms or alters the finding of a board of inquiry, his order in the case of a fine shall be carried out in the usual way and in the case of any other punishment referred to in subsection (1) shall be directed to the Executive Council Member and carried out by him in the same manner as provided by subsection (1).

Application for reinstatement

18.(1) A chiropractor whose name has been struck off the register and whose licence has been cancelled or suspended pursuant to section 17 may,

- (a) where he had not taken any appeal from the finding within one year from the date of the finding of the board of inquiry, apply to the Executive Council Member to have his name restored to the register, or
- (b) where he had appealed from the finding within one year from the date of an order under subsection 16(2) apply to a judge of the Supreme Court for an order directing the Executive Council Member to have his name restored to the register.

(2) The Executive Council Member may, upon application under subsection (1), reinstate a chiropractor on the register and renew his licence and restore his rights and privileges in such manner and upon such conditions as the Executive Council Member may decide.

(3) The judge may, upon application under subsection (1), order the Executive Council Member to reinstate a chiropractor on the register and renew his licence and restore his rights and privileges in such manner and upon such conditions as the judge may decide.

(4) The Executive Council Member shall, upon receiving an order under subsection (3), reinstate a chiropractor on the register and renew his licence and restore his rights and privileges in such manner and upon such conditions as the order directs.

Regulations

19. The Commissioner in Executive Council may make such regulations and prescribe such fees as he deems necessary for carrying out the purposes and provisions of this Act.

CHAPTER 24

CHOSSES IN ACTION ACT

Assignment

1.(1) Every debt and every chose in action arising out of contract is assignable at law by any form of writing containing apt words in that behalf, but subject to such conditions and restrictions with respect to the right of transfer as may appertain to the original debt or as may be connected with or be contained in the original contract and subject to the Personal Property Security Act; and the assignee thereof may bring an action thereon in his own name as the party might to whom the debt was originally owing or to whom the right of action originally accrued, or he may proceed in respect of the same as though this Act had not been passed.

(2) The word "assignee" in this section includes a person who is entitled, by any first or subsequent assignment or transfer or any derivative title, to a debt or chose in action and possessing at the time when the action is instituted the right to receive the subject or proceeds thereof and to give effectual discharge therefor.

Action for debt on assignment

2. The plaintiff in an action for the recovery of the subject of an assignment made in conformity with section 1 shall in his statement of claim set forth briefly the chain of assignments showing how he claims title, but in all other respects the proceedings may be the same as if the action were brought in the name of the original creditor or of the person to whom the cause of action accrued.

Assignee's rights after notice to debtor

3. Where an assignment is made in conformity with this Act and notice thereof is given to the debtor or person liable in respect of the subject of the assignment, the assignee is entitled to have, hold and enjoy the same free of any claims, defences or equities that may arise subsequent to the notice by any act of the assignor or otherwise.

Securities transferable by delivery

4. The bonds or debentures of corporations made payable to bearer or any person named therein or bearer may be transferred by delivery alone and such transfer vests the property in such bonds or debentures in the transferee or in the holder thereof and any such holder may bring any action on or in respect of any such bonds or debentures in his own name.

Negotiable instruments

5. The provisions of this Act shall not be construed to apply to bills of exchange or promissory notes or instruments that are negotiable or in respect of which the property therein passes by mere delivery.

CHAPTER 25

CIVIL EMERGENCY MEASURES ACT

Interpretation

1. In this Act,

“civil emergency plan” means a plan approved by the Commissioner in Executive Council pursuant to section 2 for dealing with any emergency;

“emergency” means a peacetime disaster or a war emergency;

“municipality” means a municipality to which the Municipal Act applies;

“peacetime disaster” means a disaster, real or apprehended, resulting from fire, explosion, flood, earthquake, landslide, weather, epidemic, shipping accident, mine accident, transportation accident, electrical power failure, nuclear accident or any other disaster not attributable to enemy attack, sabotage or other hostile action whereby injury or loss is or may be caused to persons or property in the Yukon;

“war emergency” means the state existing as a result of a proclamation issued by Her Majesty or under authority of the Governor in Council that war, invasion or insurrection, real or apprehended, exists.

Civil emergency planning officer

2.(1) The Commissioner in Executive Council shall appoint a civil emergency planning officer.

(2) It shall be the duty of the civil emergency planning officer

- (a) to formulate and recommend to the Executive Council Member plans for dealing with any peacetime disaster or war emergency, and
- (b) to undertake such other duties as the Executive Council Member may assign to him.

Staff

3. The Executive Council Member may appoint or designate officers, technicians and employees necessary to assist the civil emergency planning officer in carrying out his duties.

Government of the Yukon emergency plans

4. For the purposes of carrying out any civil emergency plan, the Commissioner in Executive Council may

- (a) enter into agreements with the Government of Canada, the government of any province, a municipality or any person,
- (b) in conjunction with the Government of Canada, the government of any province, a municipality or any person, prepare plans for the meeting of any emergency,
- (c) make surveys of the resources and facilities within the Yukon,
- (d) institute training and public information programs, and

- (e) take such other preparatory steps as he considers necessary or advisable to ensure the existence of adequately trained and equipped personnel to meet any emergency including the complete or partial mobilization of civil emergency organizations, the testing of the sufficiency of any civil emergency plan and the efficiency of the organization relating to any such plan.

Municipal bylaws

5.(1) The council of every municipality shall by bylaw establish a municipal civil emergency plan.

(2) A municipal civil emergency plan shall

- (a) specify the powers and duties of the Civil Emergency Measures Commission established under subsection 367(1) of the Municipal Act, and
- (b) assign to municipal officers and employees such responsibilities as may be necessary for the effective implementation of the plan in the case of a declaration of a state of emergency within or including the municipality under this Act.

(3) A municipal civil emergency measures plan may be co-ordinated with a civil emergency plan under paragraph 2(2)(a) or a civil emergency plan of another municipality.

Declaration and term of state of emergency

6.(1) Where the Commissioner in Executive Council is informed that a war emergency exists or is of the opinion that a peacetime disaster exists, he may declare that a state of emergency exists in the Yukon or in any part thereof.

(2) A declaration under subsection (1) shall be made by such means as reasonably will bring the declaration promptly to the attention of the inhabitants of the area to which the state of emergency applies.

(3) A state of emergency commences upon the making of a declaration pursuant to subsection (2).

(4) Unless extended by declaration of the Commissioner in Executive Council, a state of emergency declared under subsection (1) shall cease to exist 90 days from the date of such declaration.

(5) The termination of a state of emergency shall be published in a manner similar to that required by subsection (2) for the commencement of the state of emergency.

Municipal state of emergency

7.(1) The mayor of a municipality may declare that a state of emergency exists in the municipality where

- (a) the mayor has reasonable grounds to believe and does believe that a substantial danger to public safety or to property in the municipality exists or is imminent as the result of fire, explosion, flood, earthquake, landslide, weather, epidemic, transportation accident, electrical power failure, nuclear accident or any similar disaster, and

- (b) the mayor is authorized to declare the state of emergency by resolution of the council passed after its consideration of the occurrence of events that reasonably may be expected to lead to the need to declare the state of emergency.

(2) A state of emergency declared under subsection (1) shall be published by such means as reasonably will bring the declaration promptly to the attention of the inhabitants of the municipality.

(3) A state of emergency declared under subsection (1) commences upon the publication of the mayor's declaration in accordance with subsection (2), and continues for 48 hours, but the state of emergency may be replaced by a declaration of a state of emergency pursuant to section 6.

(4) A state of emergency declared under subsection (1) may be cancelled by order of the Executive Council Member.

(5) The cancellation of a state of emergency under subsection (4) shall be published in a manner similar to that required by subsection (2) for the commencement of the state of emergency.

Putting emergency plan into operation

8.(1) Where the Commissioner in Executive Council declares that a state of emergency exists, the Executive Council Member may put into operation in the area in which the state of emergency is declared to exist any civil emergency plan.

(2) A municipality is authorized to put its civil emergency plan into operation where a state of emergency is in effect in the municipality under section 6 or 7.

Government may act in state of emergency

9.(1) Notwithstanding any other Act, where a state of emergency has been declared to exist under section 6 or 7, the Executive Council Member may do all things he considers advisable for the purpose of dealing with the emergency and, without restricting the generality of the foregoing, he may

- (a) do such acts as he deems necessary for
 - (i) the protection of persons and property,
 - (ii) maintaining, clearing and controlling the use of roads and streets,
 - (iii) requisitioning or otherwise obtaining and distributing accommodation, food and clothing and providing other welfare services,
 - (iv) providing and maintaining water supplies, electrical power and sewage disposal,
 - (v) assisting in the enforcement of the law,
 - (vi) fighting or preventing fire, and
 - (vii) protecting the health, safety and welfare of the inhabitants of the area,
- (b) make regulations he considers proper to put into effect any civil emergency plan, and

- (c) require any municipality to provide assistance as he deems necessary during the emergency and authorize the payment of the cost of such assistance out of the revenues of the Government of the Yukon.
- (2) Where a civil emergency plan referred to in section 8 is in effect in a municipality,
- (a) the council may hold its meetings at any convenient location within or outside the municipality,
 - (b) the council is empowered to do all things it considers necessary for the purpose of dealing with the emergency including, without limiting the generality of the foregoing, such acts as it considers necessary for
 - (i) protecting property within the municipality,
 - (ii) maintaining, clearing and controlling the use of roads and streets within the municipality,
 - (iii) requisitioning within the municipality or otherwise obtaining and distributing accommodation, food and clothing,
 - (iv) providing other welfare services in addition to those referred to in clause (iii),
 - (v) providing and maintaining water supplies, electrical power, sewage disposal and other utility services,
 - (vi) assisting in the enforcement of the law, and
 - (vii) generally, protecting the health and safety of persons within the municipality, and
 - (c) the council may make such bylaws as it considers necessary to put into effect the civil emergency plan of the municipality.

(3) Notwithstanding any other Act, where a state of emergency has been declared to exist under section 6 or 7, every public servant and every member of the public service of the Yukon shall comply with the instructions and orders of the Executive Council Member in the exercise of any discretion or authority the public servant or public officer may have for and on behalf of the Government of the Yukon, whether statutory, delegated or otherwise, for responding to and dealing with the emergency.

Limitation of liability

10. Where a state of emergency has been declared to exist under section 6 or 7 the following persons are not liable for any damage caused by interference with the rights of others, and are not subject to proceedings by way of injunction or mandamus in respect of acts done or not done in respect of the emergency:

- (a) a municipality or any person acting under the authority or direction of the Commissioner in Executive Council, the Executive Council Member or the civil emergency planning officer;
- (b) a municipality or any person who does any act in carrying out a civil emergency plan under this Act;
- (c) any person acting under the authority or direction of the municipality, its council, its civil emergency planning committee or its civil emergency co-ordinator;
- (d) notwithstanding any other Act, the Crown;
- (d) any person acting under a regulation made under paragraph 9(1)(b) or a bylaw made under paragraph 9(2)(c).

Offence

11. Where the Commissioner in Executive Council has declared that a state of emergency exists, any person who fails to obey any order given by any person described in section 10 in the performance of any action taken pursuant to this Act, the regulations or a civil emergency plan in the area in which the emergency exists, is guilty of an offence and is liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

Employee deemed to have been in his accustomed employment

12. Every person who is absent from his accustomed employment on duty authorized by the Commissioner in Executive Council or by a council of a municipality during a state of emergency shall, while so absent, for all purposes relative to retention of employment, seniority rights and superannuation benefits, be deemed to have been in his accustomed employment during the period of his absence.

Provisions of this Act prevail

13. In the event of any inconsistency between the provisions of this Act or any civil emergency plan approved by the Commissioner in Executive Council and the operation of any other Act, the provisions of this Act shall prevail to the extent of the inconsistency.

Regulations

14.(1) The Commissioner in Executive Council may make regulations as he deems necessary for carrying out the purposes and provisions of this Act.

(2) The Commissioner in Executive Council may make regulations providing for the establishment and operation of a Yukon Disaster Committee, which shall have authority to make plans for the co-ordination of the responses to emergencies by the governments of the Yukon and Canada.

CHAPTER 26

COLLECTION ACT

Interpretation

1. In this Act,

“clerk” means the clerk of the Supreme Court;

“examination” means an examination under this Act;

“judgment” means any adjudication or order directing the payment of money, whether debt, damages or costs in any court in the Yukon;

“judgment creditor” means the person entitled to the amount due on a judgment;

“judgment debtor” means the person liable to pay the amount due on the judgment.

No arrest on execution except under Act

2. Notwithstanding any Act or law in the Yukon, no person shall be arrested or committed to prison on execution or final process in a civil action except as provided in this Act.

Judgment summons

3.(1) Subject to subsection (2), a judgment creditor may, either before or after execution, apply to the clerk to have a judgment debtor examined upon oath and upon such application the clerk shall issue a judgment summons in the prescribed form requiring the judgment debtor to appear at the time and place mentioned in the summons to be examined under oath touching his estate and effects, and as to

- (a) any and what property he has which by law is liable to be taken in execution on the judgment,
- (b) the property and means he had when the debt or liability was incurred which was the subject of the action in which judgment has been obtained,
- (c) the property and means he still has of discharging the judgment,
- (d) the disposal he has made of any property since contracting the debt or incurring the liability, and
- (e) any and what debts are owing to him.

(2) Where a judgment for a sum exceeding \$100 is obtained in the Supreme Court, no judgment summons shall be issued before an execution against the goods and chattels of the judgment debtor has been returned *nulla bona*.

Service of summons

4. A judgment summons shall be served in the same manner as a writ of summons.

Application for subsequent judgment summons

5. Upon application by a judgment creditor to the clerk for a second or subsequent judgment summons, the clerk shall issue such judgment summons upon the judgment creditor's filing an affidavit that the judgment is unsatisfied in whole or in part, and

- (a) that the judgment debtor was not examined on the judgment summons that issued immediately previously to the one applied for, or

- (b) that 90 days have elapsed since the judgment debtor was examined in the case in which the judgment summons is being applied for.

Dismissal of judgment summons

6. The judgment debtor may, before being examined, show cause why the judgment summons should be dismissed and upon sufficient cause being shown the judge may dismiss such judgment summons.

Examination to be in chambers

7. Unless the judge otherwise directs the examination shall be held in the judge's chambers.

Judge may examine debtor on oath

8. The judge may, at an examination, examine upon oath the judgment debtor and any other witness he thinks requisite touching the matter.

Adjournment of examination

9. The judge may, from time to time, adjourn the examination and he may also, unless the judgment debtor enters into a bond in favour of the judgment creditor with securities to the satisfaction of the judge to attend at the time and place to which such examination is adjourned, commit the judgment debtor to gaol until the time fixed for the adjourned hearing.

Penalty for failure to attend and give evidence

10.(1) Where a person summoned to appear at an examination

- (a) does not appear as required by the summons and fails to show sufficient reason for not appearing, or
- (b) appears but refuses to be sworn or to declare any of the things concerning which he is examined under this Act,

the judge may, if he thinks fit, order such person to be committed to a common gaol for a period not exceeding 60 days.

(2) Where it appears to the judge, either on examination or by other evidence, that

- (a) the debt which forms the subject of the judgment was fraudulently contracted,
- (b) the credit was obtained under false pretences,
- (c) the judgment debtor contracted such debt without having at the time any reasonable expectation of being able to pay it,
- (d) any other fraudulent circumstances have occurred in connection with the contracting of the debt,
- (e) the judgment debtor has made any fraudulent disposition of any property, or
- (f) the debt arose out of any tort,

the judge may, if he thinks fit, order the judgment debtor to be committed to a common gaol for a period not exceeding 60 days.

Judge may order debtor to pay debt

11.(1) Upon the conclusion of an examination, or at any stage thereof with the consent of the parties, the judge may, in his discretion, order the judgment debtor to pay the debt, together with any costs of examination which may be awarded against him forthwith or at a fixed future time, or to pay the same by instalments of such amounts and at such times as the judge may determine.

(2) Where upon examination it appears to the satisfaction of the judge that the debt was incurred outside the Yukon, no order shall be made against the judgment debtor.

(3) The costs of and incidental to a judgment summons shall be costs in the cause, unless the judge otherwise directs.

Order without examination

12. A judge may, at any time after judgment with the consent of the judgment creditor and judgment debtor, make an order under section 11 without examination of the judgment debtor.

Debtor may be committed for failure to comply with order

13. Where the judgment debtor fails to comply with an order made under section 11 or 12, the judgment creditor may upon affidavit or the affidavit of another person on his behalf who has full knowledge of the facts, obtain ex parte from the judge an order committing the judgment debtor to a common gaol for a period not exceeding 60 days.

Execution of order of commitment

14.(1) Where an order of commitment has been made under section 13, it shall be delivered to the sheriff and the sheriff or anyone authorized by him shall arrest the judgment debtor and convey him to the common gaol and the gaoler or keeper of such common gaol shall receive and keep the judgment debtor until such debtor is discharged pursuant to this Act or otherwise by due course of law.

(2) Except where the absence of the debtor from the Yukon makes it impossible to execute, no order of commitment shall have any force or effect after the expiration of three months from the date it was made unless it has been duly executed during that period.

(3) The cost of maintenance of any judgment debtor who is committed to a common gaol under this Act shall be borne by the judgment creditor who shall deposit the amount, not to exceed \$4.50 per day, with the sheriff before the order of commitment is executed and such cost of maintenance shall be added to the judgment debt.

Release of committed debtor

15.(1) Where a judgment debtor imprisoned under this Act has satisfied the judgment debt and a certificate of satisfaction signed by the clerk is presented to the gaoler or keeper who has him in custody, the gaoler or keeper shall discharge him.

(2) A judge may, on any ground arising subsequent to an order of commitment that appears to him sufficient, direct that the judgment debtor be discharged from custody.

Imprisonment not to affect other remedies

16. No imprisonment under this Act shall impair the judgment or extinguish the debts or deprive the judgment creditor of any right to take out execution against the judgment debtor.

No counsel fee allowed on judgment summons

17. No counsel fee shall be allowed on any judgment summons or a proceeding thereon.

Action becomes action in Supreme Court

18. Upon the issuing of a judgment summons the action or proceeding in which the judgment was obtained becomes for the purposes of this Act an action in the Supreme Court, and except as otherwise provided in this Act the practice and procedure and the costs and fees payable in connection therewith shall be those in force in the Supreme Court under the lowest scale of costs and fees.

CHAPTER 27

COMPENSATION FOR VICTIMS OF CRIME ACT

Interpretation

1. In this Act,

“board” means the Workers Compensation Board established under the Workers Compensation Act;

“child” includes a child to whom a victim stands in loco parentis;

“crime” means an offence contrary to the provisions of the Criminal Code (Canada) that is enumerated in the regulations;

“dependent” means any of the following persons who, at the time of an occurrence, were wholly or partially dependent on the victim for support:

- (a) the spouse or other relative of the victim,
- (b) a child who is under the age of 19 years at the time of the occurrence,
- (c) a child who is 19 years of age or over at the time of the occurrence and who is unable by reason of mental or physical disability to earn a livelihood,
- (d) a person who cohabited with the victim for one year or more immediately preceding the occurrence,
- (e) a person who at the time of the occurrence was cohabiting with the victim and by whom the victim had one or more children,
- (f) a person who at the time of the occurrence was acting as a foster parent of the children of a victim in the victim’s household for one year or more immediately preceding the occurrence, and
- (g) a person formerly married to the victim;

“hearing” means a hearing by the board under this Act;

“injury” means actual bodily harm and includes pregnancy as a result of a crime and mental or nervous shock;

“occurrence” means an act or omission of a person in the Yukon in the circumstances set out in subsection 3(1) as a result of which a victim is injured or killed;

“peace officer” means a peace officer as defined in the Criminal Code (Canada);

“victim” means a person injured or killed in any of the circumstances set out in subsection 3(1).

Board meetings

2.(1) The board shall sit at such times as the performance of its duties and the exercise of its powers under this Act may require.

(2) Sections 8 and 9 of the Workers Compensation Act apply, mutatis mutandis, to and in respect of the board in relation to the performance of its duties and the exercise of its powers under this Act, except to the extent of any inconsistency between those sections and the provisions of this Act.

Claim for compensation

3.(1) Where a person is injured or killed by any act or omission in the Yukon of another person occurring in or resulting from

- (a) the commission of a crime,
- (b) lawfully arresting or attempting to arrest or assisting a peace officer in making or attempting to make an arrest of a person offending or suspected of offending against an Act of Parliament or a regulation made thereunder, or
- (c) lawfully preventing or attempting to prevent or assisting a peace officer in preventing or attempting to prevent the commission of an offence or suspected offence against an Act of Parliament or regulation made thereunder,

the board, on the filing of a claim for compensation therefor by or on behalf of a person having an interest in the claim, may make any order that it in its discretion exercised in accordance with this Act considers proper for the payment of compensation to or for the benefit of

- (d) the victim,
- (e) a person who is responsible for the maintenance of the victim, or
- (f) where the death of the victim has resulted
 - (i) the victim's dependents or any of them,
 - (ii) the person who was responsible for the maintenance of the victim immediately before his death, or
 - (iii) any person who has on behalf of the victim or his estate, incurred an expense for which compensation may be awarded pursuant to paragraph 4(a)

arising from the occurrence.

(2) Subsection (1) does not apply in respect of the injury or death of a peace officer occurring under circumstances entitling him or his dependents to compensation payable out of public money under any other Act or an Act of the Parliament of Canada or payable by an organization that is supported in whole or in part by public funds.

(3) Where a claim for compensation is for less than \$100, no claim for compensation shall be entertained by the board and where an award determined is less than \$100, no award shall be made.

(4) The board shall not make an order for the payment of compensation for loss of or damage to property, except clothing, eyeglasses or other like property on the person of the victim.

(5) A claim for compensation under this Act may be made by filing a claim in the prescribed form with the Executive Council Member.

(6) A claim for compensation shall be made within one year after the occurrence, but the board, before or after the expiry of the one year period, may extend the time for such further period as it considers warranted.

(7) Upon the filing of the claim for compensation referred to in subsection (5), the Executive Council Member shall refer it to the board and the board shall deal with the claim in accordance with this Act.

(8) Except as otherwise provided in this Act, the board may fix its own procedure.

Compensation awards

4. Compensation may be awarded for

- (a) expenses reasonably incurred or to be incurred as a result of a victim's injury or death,
- (b) pecuniary loss or damages incurred by the victim as a result of total or partial disability affecting the victim's capacity for work,
- (c) pecuniary loss or damages incurred by dependents as a result of the victim's death,
- (d) maintenance of a child conceived and born as a result of rape,
- (e) other pecuniary loss or damages including pain and suffering resulting from the victim's injury and any expense that, in the opinion of the board, it is reasonable to incur, and
- (f) in claims arising under the circumstances mentioned in paragraphs 3(1)(b) or (c), such other damage to the injured person resulting from the injury for which compensation may be recovered at common law other than punitive or exemplary damages.

Considerations for compensation

5.(1) The board shall take into consideration in determining any amount of compensation to be awarded to an applicant

- (a) any amount recovered from the person whose act or omission resulted in the injury or death whether it is damages or compensation pursuant to an action at law or otherwise,
- (b) any benefits received or to be received
 - (i) by the victim in respect of his injury,
 - (ii) by the person who is responsible for the maintenance of a victim, or
 - (iii) by the applicant in respect of the death of the victim,
 under any statute of the Parliament of Canada or the legislature of a province, other than benefits under a pension plan or program under such statute, and
- (c) such other benefits received or to be received by an applicant as the board considers reasonable.

(2) In determining whether to make an order for the payment of compensation, the board shall have regard to all relevant circumstances, including any behaviour of the victim that may have directly or indirectly contributed to his injury or death.

Considerations for order for payment

6.(1) The board, in making an order for the payment of compensation, shall consider and take into account all such circumstances as it considers relevant to the making of the order and, without limiting the generality of the foregoing, the board shall consider and take into account any behaviour that directly or indirectly contributed to the injury or death of the victim.

(2) The board may decline to make an order for compensation if the injured person does not cooperate fully during the hearing and, in particular, if he

- (a) refuses to submit to a medical examination as required by the board, or

- (b) refuses to testify at the hearing.

(3) The board shall decline to make an order for compensation where the victim is himself culpable in relation to the crime or where, at the time of the commission of the crime resulting in his injury, the victim was himself engaged in unlawful activity, unless the board considers that, having regard to exceptional circumstances, compensation should be awarded.

Hearing and notice

7. Where a claim for compensation under this Act is made, the board shall fix a time and place for the hearing of the claim and shall, at least ten days before the date fixed, cause notice of the hearing to be given

- (a) to the applicant,
- (b) if the victim has died, to the public administrator,
- (c) to the person whose act or omission was, or is alleged to be, responsible for the occurrence, and
- (d) to any other person who appears to the board to have an interest in the matter.

Infants and mentally disordered persons

8. Where a person entitled to apply for the payment of compensation

- (a) is an infant, the application may be made on his behalf by his parent or guardian, by the public administrator or by such other person as the board may direct, or
- (b) is a mentally disordered person, the application shall be made on his behalf by his committee or, if the person has no committee, by the public administrator or such person as the board may direct.

Parties to proceedings

9. Every person upon whom notice of a hearing referred to in section 7 is served and any other person specified by the board is a party to the proceedings.

Non-attendance at hearing

10. If any party to the proceedings referred to in section 7 does not attend the hearing, the board may proceed in his absence.

Hearing

11. A person who, in any hearing, inquiry or other proceeding under this Act, knowingly

- (a) makes a false statement to the board, or
- (b) misleads or attempts to mislead the board

commits an offence.

Evidence

12. The board may receive in evidence at a hearing under this Act any oral or written statement, document, information or matter that, in its opinion, may assist it to deal with the matter before it, whether or not such statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court.

Proof and procedure

13.(1) If a person is convicted of a criminal offence in respect of an occurrence on which a claim under this Act is based, proof of the conviction shall, after the time for an appeal has expired, or if an appeal was taken, after it was dismissed and no further appeal is available, be taken as conclusive evidence that the offence has been committed.

(2) The board shall advise every person at a hearing as a witness of his right to object to answer any question under section 7 of the Evidence Act and section 5 of the Canada Evidence Act (Canada).

(3) Where a hearing is held in camera, counsel for a witness is not entitled to be present except when the witness is giving evidence.

In camera hearings

14. The board may hold a hearing in camera where it is of the opinion that a public hearing

- (a) would be prejudicial to the trial of the person whose act or omission caused injury or death,
- (b) would not be in the interest of a victim of an alleged sexual offence or his dependents, or
- (c) would not be in the interest of public morality.

Publication of evidence

15.(1) The board may make an order prohibiting the publication of any report or account of the whole or any part of the evidence at a hearing where the board considers it necessary for one of the reasons mentioned in section 14, but in making an order under this subsection, the board shall have regard to the desirability of permitting the public to be informed of the principles, nature and result of each case.

(2) Any person who publishes a report or account of any evidence at a hearing contrary to an order of the board under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

(3) Where a corporation is convicted of an offence under subsection (2), the maximum penalty that may be imposed is \$10,000.

Board decisions

16.(1) The final decision of a board, including reasons therefor, shall be in writing.

(2) The reasons for the final decision of the board shall include

- (a) any findings of fact,
- (b) the findings of fact on the evidence, and
- (c) the conclusions of law based on the findings mentioned in paragraphs (a) and (b).

(3) The board shall cause a copy of the decision including the reasons to be served on the Executive Council Member and the parties to proceedings under this Act.

Order for compensation

17.(1) An order for compensation may be made whether or not any person is prosecuted for or convicted of an offence as a result of an occurrence, but the board may, on its own initiative or upon the application of the Executive Council Member, adjourn proceedings pending the final determination of a prosecution or intended prosecution.

(2) Notwithstanding that a person for any reason is legally incapable of forming criminal intent, the board may, for the purposes of this Act, deem him to have intended an act or omission that caused injury or death for which compensation is payable under this Act.

Release of evidence

18. The board shall, upon request, release anything put in evidence at a hearing under this Act to the lawful owner or the person entitled to possession thereof within a reasonable time after the matter in issue has been finally determined.

Variation of payment

19.(1) The board may on its own initiative or on the application of a victim, a dependent, the Executive Council Member, a person who committed or is alleged to have committed an offence or other interested party, vary an order for payment of compensation in such manner as the board thinks fit, whether as to the terms of the order or by increasing or decreasing the compensation, or otherwise.

(2) In proceedings under subsection (1), the board shall consider

- (a) any new evidence that has become available,
- (b) any change of circumstances that, since the making of the order or any variation of the order, has occurred or is likely to occur, and
- (c) any other matter the board considers relevant.

(3) This Act, except section 8, applies to a variation of an order under subsection (1) in the same manner as to an application for compensation.

Costs

20. The board may, with respect to any hearing or other proceeding under this Act, make such order as to costs as it thinks fit, but the fees to be allowed to counsel shall not exceed 75 percent of the fees that would be taxed or that are taxed by the court on a lawyer and client basis.

Finality of decision

21. Subject to section 19, a decision of the board is final except that an appeal lies to the Supreme Court from any decision of the board on a question of law.

Payment of compensation

22. The board may order compensation to be paid in a lump sum or in periodic payments or both.

Amount of award

23.(1) The amount of an award of compensation made by the board in respect of one victim shall not exceed

- (a) \$15,000, where the award consists entirely of a lump sum payment, or
- (b) \$25,000, where the award consists entirely of periodic payments or consists of both periodic payments and a lump sum payment.

(2) Subject to subsection (1), where awards of compensation are made by the board in respect of more than one victim in relation to a single occurrence, the aggregate of all the amounts awarded shall not exceed \$125,000 and shall not consist of more than \$75,000 in lump sum payments.

(3) An award of periodic payments shall not provide for the payment of more than \$500 per month in respect of a victim.

(4) Where the total compensation that would have been awarded in respect of any single occurrence exceeds the maximum in paragraph (1)(b), the maximum award shall be distributed in proportion to the total compensation that would have been made.

(5) For the purposes of this section, the board may deem more than one act to be one occurrence where the acts have a common relationship in time and place.

Compensation not assignable

24. Any compensation or amount awarded as costs paid or payable under this Act is not subject to garnishment, attachment, seizure or any other legal process and the right thereto is not assignable.

Terms and conditions

25.(1) The board may, in its discretion, order that the payment of compensation be made subject to any terms and conditions

- (a) with respect to the payment, disposition, allotment or apportionment of the compensation, or
- (b) as to the holding of the compensation or any part thereof in trust for the victim or the dependents, or any of them, whether as a fund for a class or otherwise.

(2) The board may, in its discretion, order that any compensation payable for expenses under section 4 shall be paid directly to the person entitled thereto.

Civil proceedings

26.(1) Subject to subsections (2), (3), (4) and (5), nothing in this Act affects the rights of any person to recover from any other person, by civil proceedings, damages as a result of an occurrence.

(2) The Executive Council Member has the right to recover from the person whose act or omission caused the injury or death the amount of compensation awarded in respect of the occurrence and that amount shall be deemed to be a debt owing to the Government of the Yukon.

(3) In an action taken by the Executive Council Member under subsection (2), the defendant may have the benefit of any defence he would have in an action by the victim, or his heirs, successors or assigns, for damages resulting from the occurrence.

(4) Notwithstanding subsection (3), in an action taken by the Executive Council Member under subsection (2), evidence that the board has found the defendant responsible for the occurrence or that he has been convicted of a crime arising out of the occurrence shall be prima facie proof that it was his act or omission which caused the injury or death.

(5) In an action against any other person for damages arising out of the occurrence, a person who has received an award under this Act has no right to recover the amount of the award from the other person and the amount of the award shall be deducted from the damages that would otherwise be granted.

Regulations

27. The Commissioner in Executive Council may make regulations

- (a) prescribing forms for the purposes of this Act and providing for their use;
- (b) prescribing the description of the criminal offences to which this Act pertains;
- (c) respecting any matter that he deems necessary to carry out the intent and purpose of this Act.

Claims to which the Act applies

28. This Act applies in respect of claims for compensation arising from an occurrence that happens after this Act comes into force.

Agreements

29.(1) The Executive Council Member may, on behalf of the Government of the Yukon, enter into agreements with the Government of Canada respecting the payment by Canada to the Government of the Yukon of such part of the expenditures required for the purposes of this Act as is agreed upon.

(2) The Executive Council Member is empowered to do every act and exercise every power for the purpose of implementing every obligation assumed by the Government of the Yukon under such agreement.

CHAPTER 28

CONDOMINIUM ACT

Interpretation

1. In this Act,

- “architect” means a person who is authorized to practise as an architect in any province;
- “board” means the board of directors of a corporation;
- “buildings” means the buildings included in a property;
- “bylaw” means a bylaw of a corporation;
- “claim” includes a right, title, interest, encumbrance or demand of any kind affecting land, but does not include the interest of an owner in his unit and common interest;
- “common elements” means all the property except the units;
- “common expenses” means the expenses of a performance of the objects and duties of a corporation and any expenses specified as common expenses in a declaration or in section 6;
- “common interest” means the interest in the common elements appurtenant to a unit;
- “corporation” means a corporation incorporated under this Act;
- “declaration” means a declaration to which reference is made in section 5 and includes any amendments thereto;
- “encumbrance” means a claim that secures the payment of money or the performance of any other obligation and includes a charge, a mortgage and a lien;
- “land” means land, whether leasehold or in fee simple under the provisions of the Land Titles Act (Canada);
- “owner” means the owner of the freehold estate or leasehold estate in a unit and common interest, but does not include a mortgagee unless the mortgagee is in possession;
- “plan” means the plan to which reference is made in section 6 and includes any amendments thereto;
- “property” means the land and interests appurtenant to the land described in the plan or subsequently added to the common elements;
- “registered” means registered under the Land Titles Act (Canada);
- “registrar” means a registrar or deputy registrar appointed under the Land Titles Act (Canada);
- “surveyor” means a Canada land surveyor;
- “unit” means a part of the land included in the plan and designated as a unit by the plan, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and plan are registered.

Meaning of other expressions

2.(1) Words and expressions used in this Act and not defined in section 1 have the meanings assigned to them under the Land Titles Act (Canada).

(2) For the purposes of this Act, the ownership of, or leasehold interest in, land includes the ownership of, or leasehold interest in, space.

Objects of the Act

3. The objects of this Act are to facilitate the division of property into parts that are to be owned or leased individually, and parts that are to be owned or leased in common, to provide for the use and management of such properties, and to expedite dealings therewith; and this Act shall be construed in a manner to give the greatest effect to these objects.

Registration

4.(1) A declaration and plan may be registered by or on behalf of the owner in fee simple, or the lessee, of the land described in the plan.

(2) Upon registration of a declaration and plan, the property described in the plan is governed by this Act and the registrar shall

- (a) issue a certificate of title in the name of the corporation as hereinafter provided, which shall set forth that the certificate of title is issued pursuant to the Condominium Act,
- (b) issue a separate certificate of title in the name of each owner for each unit described in the plan, which shall set forth the proportion of the common interest appurtenant to the unit and that the certificate of title is issued pursuant to the Condominium Act,
- (c) keep an index to be known as the “Condominium Corporations Index”,
- (d) keep a register to be known as the “Condominium Register” in which declarations, plans, bylaws, notices of termination and other instruments respecting land governed by this Act shall be registered, and the registration recorded.

Contents of declarations

5.(1) A declaration shall not be registered unless

- (a) title to the land described therein is registered under the Land Titles Act (Canada),
- (b) it is executed by the owner or lessee of the property,
- (c) it has been approved as to form by the registrar,
- (d) it contains the legal description of the land that is the subject of the declaration,
- (e) it contains the statement of intention that the land or the leasehold interest therein and interests appurtenant to the land described in the plan be governed by this Act,
- (f) it contains the consent of all persons having registered encumbrances against the land or interests appurtenant to the land described in the plan,
- (g) it contains a statement expressed in percentages allocated to the units of the proportions in which the owners are to contribute to the common expenses and to share in the common interest, and
- (h) it contains an address for service.

(2) In addition to the matters mentioned in subsection (1), a declaration may contain

- (a) a specification of common expenses,
- (b) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners,

- (c) provisions respecting the occupation and use of the units and common elements, but no such provision shall discriminate because of the race, creed, colour, nationality, ancestry or the place of origin of any person,
- (d) provisions restricting gifts, leases and sales of the units and common interest, but no such provision shall discriminate because of the race, creed, colour, nationality, ancestry or the place of origin of any person,
- (e) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board,
- (f) a specification of the duties of the corporation consistent with its objects,
- (g) a specification of the majority required to make bylaws of the corporation,
- (h) provisions regulating the assessment and collection of contributions towards the common expenses,
- (i) provisions respecting the priority of a lien for unpaid assessments,
- (j) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation,
- (k) a specification of any provision requiring the corporation to purchase the units and common interests of any owners who dissented after a substantial addition, alteration or improvement to, or renovation of, the common elements has been made or after the assets of the corporation have been substantially changed,
- (l) a specification of any allocation of the obligations to repair and to maintain the units and common elements,
- (m) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs under section 19,
- (n) a specification of the majority required for a sale of the property or a part of the common elements,
- (o) a specification of the majority required for the termination of the government of the property under this Act,
- (p) any other matters concerning the property, or
- (q) any or all of such matters.

(3) All matters contained in a declaration, except the address for service, may be amended only with the written consent of all owners, and all persons having registered encumbrances against the units and common interests.

(4) Where a declaration is amended, the corporation shall register a copy of the amendment either

- (a) executed by all the owners and all persons having registered encumbrances against the units and common interests, or
- (b) accompanied by a certificate under the seal of the corporation certifying that all the owners and all persons having registered encumbrances against the units and common interests have consented in writing to the amendment,

and until the copy is registered, the amendment is ineffective.

Contents of plans

6.(1) A plan shall delineate the perimeter of the horizontal surface of the land and the perimeter of the buildings in relation thereto, and shall contain

- (a) structural plans of the buildings,
- (b) a specification of the boundaries of each unit by reference to the buildings,
- (c) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings,
- (d) a certificate of a surveyor certifying that he was present at and personally superintended the survey represented by the plan, and that the survey and plan are correct,
- (e) a certificate of an architect certifying that the buildings have been constructed, and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans, and
- (f) a description of any interest appurtenant to the land that is included in the property.

(2) A plan and any amending plan shall not be registered unless it has been approved by the Surveyor General of Canada.

(3) The plan may be amended only with the written consent of all owners and all persons having registered encumbrances against the units and common interests.

(4) Where a plan is amended, the corporation shall register a copy of the amended plan either

- (a) executed by all the owners and all persons having registered encumbrances against the units and common interests, or
- (b) accompanied by a certificate under the seal of the corporation certifying that all the owners and all persons having registered encumbrances against the units and common interests have consented in writing to the amendments,

and until the copy is registered, the amendment is ineffective.

Nature of units and common interests

7.(1) Units and common interests are real property for all purposes, and the unit and common interest appurtenant thereto provided therein may devolve or be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as any land the title to which is registered under the Land Titles Act (Canada).

(2) Subject to this Act, the declaration and the bylaws, each owner is entitled to exclusive ownership and use of his unit.

(3) No condition shall be permitted to exist, and no activity shall be carried on, in any unit or the common elements that are likely to damage the property.

(4) The corporation, or any person authorized by the corporation, may enter any unit at any reasonable time to perform the objects and duties of the corporation.

Ownership, encumbrances and taxation

8.(1) The owners are tenants in common of the common elements.

(2) An undivided interest in the common elements is appurtenant to each unit.

(3) Subject to this Act, the declaration and the bylaws, each owner may make reasonable use of the common elements.

(4) Except as provided by this Act, no share in the common elements shall be dealt with except with the unit of the owner, and any instrument dealing with a unit shall operate to deal with the share of the owner in the common elements without express reference thereto.

(5) Except as provided in this Act, the common elements shall not be partitioned or divided.

(6) No encumbrance is enforceable against the common elements after the declaration and plan are registered.

(7) An encumbrance which except for subsection (6) would be enforceable against the common elements, is enforceable against all the units and common interests.

(8) Any unit and common interest may be discharged from an encumbrance by payments to the claimant of a portion of the sum claimed determined by the proportions specified in the declaration for sharing the common expenses.

(9) Upon payment of a portion of the encumbrance sufficient to discharge the encumbrance insofar as it affects a unit and common interest, and upon demand, the claimant shall give to the owner of that unit a discharge of the encumbrance insofar as it affects that unit and common interests.

(10) For the purposes of municipal assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel.

(11) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation shall be deemed to be occupiers of the common elements and the owners shall be deemed not to be occupiers of the common elements.

Easements appurtenant to units

9.(1) The following easements are created and are appurtenant to each unit:

- (a) where a building or any part of a building
 - (i) moves after registration of the declaration and plan, or
 - (ii) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and plan,

an easement for exclusive use and occupation in accordance with this Act, the declaration and the bylaws over the space of the other units and common elements that would be space included in the unit, if the boundaries of the

unit were determined by the position of the buildings from time to time after registration of the plan and not at the time of registration;

- (b) an easement for the provision of any service through any installation in the common elements or any other unit;
- (c) an easement for support and shelter by the common elements and any other unit capable of providing support or shelter.

(2) The following easements are created and are appurtenant to the common elements:

- (a) an easement for the provision of any service through any installation in any unit;
- (b) an easement for support and shelter by any unit capable of providing support and shelter.

(3) All ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect of easements implied or created by this Act.

Condominium corporations

10.(1) Upon registration of a declaration and plan, there is created a corporation without share capital having a name comprised of the following components:

- (a) the place or district;
- (b) the words ‘‘Condominium Corporation’’;
- (c) the abbreviation ‘‘No.’’ together with a number which shall be the next available consecutive number in the Condominium Corporations Index.

(2) The members of the corporation are the owners and they shall share the assets of the corporation in the proportions as provided in the declaration.

(3) The Business Corporations Act does not apply to a corporation incorporated under this Act.

(4) The objects of the corporation are to manage the property of the owners and any assets of the corporation.

(5) The corporation is responsible for the control, management and administration of the common elements.

(6) The corporation shall be regulated in accordance with the declaration and the bylaws.

(7) The corporation shall keep adequate records, and any member of the corporation may inspect records at any reasonable time on reasonable notice.

(8) Upon there being a change of address for service from that set out in the declaration as required by subsection 5(1), the corporation shall immediately register a notice of change of address for service, and the registrar shall amend the declaration accordingly.

(9) The corporation may own, acquire, encumber and dispose of real and personal property for the use and enjoyment of the owners.

(10) The corporation may borrow money required by it in the performance of its duties or in the exercise of its powers, and may secure the repayment of the money and the payment of the interest thereon by means of

- (a) negotiable instrument,
- (b) mortgage of unpaid contributions, whether levied or not,
- (c) mortgage of any real or personal property vested in it, or
- (d) by any combination of those means.

(11) The corporation shall have a common seal, may sue and be sued, and in particular may bring an action with respect to the common elements and may be sued in respect of any matter connected with the property for which the owners are jointly liable.

(12) A judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses.

(13) Where the owners and the property cease to be governed by this Act,

- (a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation, and
- (b) the remainder of the assets of the corporation shall be distributed among the members of the corporation in the same proportions as the proportions of their common interest.

Board of directors

11.(1) The affairs of the corporation shall be managed by a board of directors whose number, qualification, nomination, election, term of office, compensation and removal from the board shall be as provided in the declaration or the bylaws.

(2) The board of directors shall hold meetings, perform functions, elect officers, and carry out duties as provided in the declaration or the bylaws.

(3) The acts of a member of the board or an officer of the board done in good faith are valid notwithstanding any defect that may thereafter be discovered in his election or qualifications.

Bylaws

12.(1) The corporation, by a vote of members who own $66 \frac{2}{3}$ percent, or such greater percentage as is specified in the declaration, of the common elements, may make or amend bylaws

- (a) governing the management of the property,
- (b) governing the use of units or any of them for purposes of preventing unreasonable interference with the use and enjoyment of the common elements and other units,
- (c) governing the use of the common elements,
- (d) regulating the maintenance of the units and common elements,
- (e) governing the use and management of the assets of the corporation,
- (f) respecting the board,

- (g) specifying duties of the corporation consistent with its objects,
- (h) regulating the assessment and collection of contributions towards the common expenses, and
- (i) respecting the conduct generally of the affairs of the corporation.

(2) The bylaws shall be reasonable and consistent with this Act and the declaration.

(3) When a bylaw is made, amended or repealed by the corporation, the corporation shall register a copy of the bylaw, amendment or repeal together with a certificate executed by the corporation certifying that the bylaw, amendment or repeal was made in accordance with this Act, the declaration and the bylaws, and until the copy and certificate are registered, the bylaw is ineffective.

(4) No bylaw or amendment or repeal thereof shall be capable of operating to prohibit or restrict the devolution of a unit or any transfer, lease, mortgage or other dealing therewith, or to destroy or modify any easement implied or created under this Act.

(5) The bylaws may provide for the owners making reasonable rules consistent with this Act, the declaration and the bylaws respecting the use of the common elements for the purposes of preventing unreasonable interference with the use and enjoyment of the units and the common elements, and the rules shall be complied with and enforced in the same manner as the bylaws.

Rights and duties

13.(1) Each owner is bound by, shall comply with and has a right to the compliance by the owners with this Act, the declaration and the bylaws, and the corporation has a duty to effect such compliance.

(2) The corporation and each person having an encumbrance against a unit and common interest has a right to the compliance by the owners with this Act, the declaration and the bylaws.

(3) Each member of the corporation and each person having an encumbrance against a unit and a common interest has the right to performance of any duty of the corporation specified by this Act, the declaration or the bylaws.

Common expenses

14.(1) The corporation shall

- (a) establish a fund for the payment of the common expenses, to which fund the owners shall contribute in proportions specified in the declaration,
- (b) assess and collect the owners' contributions towards the common expenses as regulated by the declaration and the bylaws,
- (c) pay the common expenses,
- (d) have the right to recover from any owner by an action for debt
 - (i) the unpaid amount of any assessment,
 - (ii) any sum of money expended by it for repairs to or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building comprising the unit of that owner, and

- (iii) any sum of money expended by it for repairs done by it under subsection 18(6) for the owner,
- (e) have a right of lien for the unpaid amount of any assessment or account that the corporation has the right to recover from the owner under paragraph (d), which right of lien shall, upon registration of a notice of lien, be a lien against the unit and common interest of the defaulting owner, having priority over all encumbrances unless otherwise provided in the declaration,
- (f) have the right to enforce the lien in the same manner as a mortgage is enforced under the Land Titles Act (Canada), and
- (g) on the application of an owner or a purchaser of a unit and common interest certify
 - (i) the amount of any assessment and accounts owing by the owner to the corporation and for which the corporation has a lien or right of lien against the unit and common interest of the owner,
 - (ii) the manner in which the assessment and the accounts are payable, and
 - (iii) the extent to which the assessment and accounts have been paid by the owner,

and in favour of any person dealing with that owner, the certificate is conclusive proof of the matters certified therein.

(2) The obligation of an owner to contribute towards the common expenses shall not be avoided by waiver of the right to use the common elements or by abandonment.

(3) Upon payment of the unpaid amount in respect of which a lien has been registered as provided in paragraph (1)(e) and upon demand, the corporation shall give a discharge of the lien.

Voting consents and execution of documents

15.(1) The owners shall have voting rights in the corporation in the proportions provided in the declaration.

(2) Where a registered mortgage of a unit and common interest contains a provision that authorizes the mortgagee to exercise the right of the owner to vote or to consent, the mortgagee may exercise the right if he has given written notice of his mortgage to the corporation and the address for service of notices on him; and where two or more mortgages contain such a provision, the right to vote or consent shall be exercisable by the mortgagee who has priority.

(3) Any powers of voting conferred by this Act, the declaration, or the bylaws may be exercised, or any consent required to be given under this Act, the declaration or the bylaws may be given, or any document required to be executed under this Act, the declaration or the bylaws may be executed,

- (a) in the case of an owner who is an infant, by the guardian of his estate or, if no guardian has been appointed, by the public administrator,
- (b) in case of an owner who is an insane person, by the public administrator, or
- (c) in the case of an owner who is incapacitated for any other reason, by the person who for the time being is authorized by law to control his property or, if no such person can be found or is willing to act, by the public administrator.

(4) Where the court, upon application of the corporation or of any owner, is satisfied that there is no person capable, willing or reasonably available to exercise the power of voting, giving consent or executing a document in respect of a unit, the court

- (a) in cases where unanimous vote or unanimous consent is required by this Act, the declaration or the bylaws, shall, and
- (b) in any other case, may in its discretion

authorize the public administrator or some other fit and proper person to exercise the power of voting, to give the consent or to execute the document in respect of the unit.

(5) On giving authority under subsection (4), the court may make such order as it considers necessary or expedient to give effect to the authorization.

Substantial alterations to common elements or assets

16.(1) The corporation may by a vote of members who own 66 2/3 percent, or such greater percentage as is specified in the declaration, of the common elements make any substantial addition, alteration or improvement to or renovation of the common elements, or may make any substantial change in the assets of the corporation; and the corporation may, by a vote of a majority of the members, make any other addition, alteration or improvement to or renovation of the common elements, or make any other change in the assets of the corporation.

(2) The cost of any addition, alteration or improvement to or renovation of the common elements, and the cost of any substantial change in the assets of the corporation, are common expenses.

(3) The declaration may provide that, if any substantial addition, alteration or improvement to or renovation of the common elements is made or if any substantial change in the assets of the corporation is made, the corporation shall, on demand of any owner who dissented, purchase his unit and common interest.

(4) Where the corporation and the owner who dissented do not agree as to the purchase price of the unit and common interest, the owner who dissented may elect to have the fair market value of his unit and common interest determined by arbitration by serving a notice to that effect on the corporation, the purchase price of his unit and common interest shall be the fair market value determined by arbitration, and the Arbitration Act shall apply.

Duty to insure

17.(1) The corporation shall obtain and maintain insurance in respect of the units and the common elements to the replacement value thereof against fire and against such other perils including liability as may be specified by the declaration or the bylaws to the amount required by the declaration or the bylaws, and for this purpose the corporation shall be deemed to have an insurable interest in the units, in the common elements, and in the subject matter of any other perils insurance.

(2) Any payment by an insurer under a policy of insurance entered into under subsection (1) shall, notwithstanding the terms of the policy, be paid to the order of the insurance trustees designated by the declaration or the bylaws of the corporation, if any, and otherwise shall be paid to or to the order of the corporation; and, subject to section 19, the corporation shall

forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may lawfully be effected.

(3) A policy of insurance issued to a corporation under subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property under subsection (1), and notwithstanding the provisions of the policy shall be deemed not to be other insurance in relation to such other policy.

(4) Notwithstanding subsection (1), the Insurance Act or any other law relating to insurance, a unit owner may obtain and maintain insurance

- (a) in respect of loss or damage to his unit against fire and other perils in excess of any amount for which it is insured by the corporation under subsection (1),
- (b) in respect of loss or damage to his unit in excess of any amount for which the improvements are insured by the corporation under subsection (1), (c) in respect of loss of rental value of his unit in excess of any amount for which it is insured by the corporation under subsection (1), and
- (c) for the purpose of paying to the mortgagee under a mortgage of the unit the amount owing under the mortgage on the date of any loss or damage to the unit.

(5) Notwithstanding the Insurance Act or the terms and conditions of the policy, any payment by an insurer under a policy of insurance entered into for the purpose of paragraph (4)(c) shall be made to the mortgagees, if the mortgagees or any of them so require, in the order of their priorities, and the insurer is then entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.

(6) A policy of insurance issued to a unit owner under this section is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property, and, notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy.

(7) Subsection (1) does not restrict the capacity of any person to insure otherwise than as provided in that subsection.

Maintenance and repairs

18.(1) Each owner shall maintain his unit.

(2) The corporation shall maintain the common elements.

(3) Subject to section 19, the corporation shall repair the units and common elements after damage.

(4) For the purposes of this Act, the obligation to repair and the obligation to maintain are mutually exclusive, and the obligation to repair does not include any obligation to repair improvements made to units after registration of the declaration and plan.

(5) Notwithstanding subsections (1), (2) and (3), the declaration may provide that

- (a) each owner shall, subject to section 19, repair his unit after damage,
- (b) the owners shall maintain the common elements or any part of the common elements, or
- (c) the corporation shall maintain the units or any part of the units.

(6) The corporation shall make any repairs that an owner is obliged to make and that he does not make within a reasonable time.

(7) An owner shall be deemed to have consented to have repairs done to his unit by the corporation under this section.

Substantial damage

19.(1) Where damage to the units and common elements occurs, the board shall determine within 30 days of the occurrence whether there has been substantial damage to the extent that the cost of repair would be 25 percent, or such greater percentage as is specified in the declaration, of the value of the units and common elements immediately prior to the occurrence.

(2) Where there has been a determination that there has been substantial damage as provided in subsection (1) and the owners who own 66 ⅔ percent of the units and common elements, or such greater percentage as is specified in the declaration, vote for repairs within 60 days of the determination, the corporation shall repair the damage.

Notice of termination due to substantial damage

20.(1) Where on a vote the owners do not vote for repair, the corporation shall within ten days of the vote register a notice of termination with the registrar.

(2) Where there has been no vote within 60 days of the determination that there has been substantial damage under subsection 19(1), the corporation shall within ten days after the expiry of the 60 day period, register a notice of termination.

(3) Upon the registration of a notice of termination under subsection (1) or (2),

- (a) the government of the property by this Act is terminated,
- (b) the owners are tenants in common or lessees, as the case may be, of the land and interests appurtenant to the land described in the plan in the same proportions as their common interests,
- (c) claims against the land and the interests appurtenant to the land described in the plan created before the registration of the declaration and plan are as effective as if the declaration and plan had not been registered,
- (d) encumbrances against each unit and common interest created after the registration of the declaration and plan are claims against the interest of the owner in the land and interests appurtenant to the land described in the plan, and have the same priority they had before the registration of the notice of termination, and
- (e) all claims against the property created after the registration of the declaration and plan, other than the encumbrances mentioned in paragraph (d), are extinguished.

Sale of the property or common elements

21.(1) Sale of the property or any part of the common elements may be authorized

- (a) by a vote of owners who own $66\frac{2}{3}$ percent, or such greater percentage as is specified in the declaration, of the common elements, and
- (b) by the consent of the persons having registered claims against the property or the parts of the common elements as the case may be, created after the registration of the declaration and plan.

(2) Where a sale of the property or any part of the common elements is authorized under subsection (1), the corporation shall

- (a) register a notice of termination which shall describe the property or the part of the common elements being sold and shall affect only such property, and
- (b) transfer the property or the part of the common elements being sold.

(3) The notice of termination and the transfer shall

- (a) be executed by all the owners and all the persons having registered claims against the property or the part of the common elements being sold, or
- (b) be executed by the corporation and be accompanied by a certificate under the seal of the corporation certifying that the required percentage of owners as stipulated in this Act or the declaration have voted in favour of the sale, and that all persons having registered claims against the property or the part of the common elements being sold have consented in writing to the sale.

(4) A certificate made under paragraph (3)(b) is conclusive proof of the facts stated therein

- (a) in favour of a purchaser of the parcel, and
- (b) in favour of the registrar.

(5) Upon registration of the transfer, the registrar shall

- (a) endorse upon the certificate of title in the name of the corporation a memorial that the property or a part of the common elements, as the case may be, is no longer governed by this Act,
- (b) in the case of a transfer of all of the property, cancel the certificates of title of each unit and where necessary dispense with the production of the duplicate certificate of title without complying with the provisions of section 165 of the Land Titles Act (Canada), and
- (c) in the case of a transfer of part of the common elements, cancel the certificate of title for that part of the common elements being transferred.

(6) Upon registration of the transfer,

- (a) registered claims against the land and interests appurtenant to the land created before the registration of the declaration and plan are as effective in respect of the property transferred, and the registrar shall issue the certificates of title in respect of the property transferred clear of such registered claims, and
- (b) registered claims against the property or the part of the common elements created after the registration of the declaration and plan are extinguished in respect of the property transferred clear of such registered claims.

(7) Subject to subsection (8), the owners share the proceeds of the sale in the same proportions as their common interest.

(8) Where a sale is made under this section, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined by arbitration by serving notice to that effect on the corporation within ten days after the vote, and the Arbitration Act shall apply; and the owner who served the notice is entitled to receive from the proceeds of the sale the amount he would have received if the sale price had been the fair market value as determined by arbitration.

(9) Where the proceeds of the sale are inadequate to pay the amount determined under subsection (8), each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests.

Termination by notice without sale

22.(1) Termination of the government of the property under this Act may be authorized

- (a) by a vote of the owners who own 66 $\frac{2}{3}$ percent, or such greater percentage as is specified in the declaration, of the common elements, and
- (b) by the consent of the persons having registered claims against the property created after the registration of the declaration and plan.

(2) Where termination of the government of the property under this Act is authorized under subsection (1), the corporation shall register a notice of termination which shall either

- (a) be executed by all the owners and all the persons having registered claims against the property created after the registration of the declaration and plan, or
- (b) be executed by the corporation and accompanied by a certificate under the seal of the corporation certifying that the required percentage of owners as stipulated in this Act or the declaration and all the persons having registered claims against the property created after the registration of the declaration and plan have voted in favour of the termination of the government of the property.

(3) Upon registration of a notice of termination under subsection (2), the provisions of subsection 20(3), shall apply.

Application to court for termination

23.(1) Where

- (a) damage to units and common elements occurs,
- (b) all or part of the property is expropriated, or
- (c) the corporation, any owner, or any person having an encumbrance against a unit and common interest deems it advisable,

any interested party may apply to the court for an order terminating the government of the property under this Act, or amending the declaration or the plan.

(2) In determining whether to terminate the government of the property under this Act, or to amend the declaration or the plan, the court shall consider

- (a) the scheme and intent of this Act,

- (b) the rights and interests of the owners individually and as a whole,
- (c) what course of action would be most just and equitable, and
- (d) the probability of confusion and uncertainty in the affairs of the corporation or the owners if the court does not make an order under subsection (1).

(3) Where an order is made under subsection (1), the court may include in the order any provisions that the court considers appropriate in the circumstances including, without limiting the generality of the foregoing,

- (a) directions for the payment of money by the corporation or by the owners, or by some one or more of them,
- (b) directions to adjust the effect of the order as between the corporation and the owners and as among the owners themselves,
- (c) the application of insurance money or proceeds of the expropriation of common elements, or
- (d) the transfer of the interests of owners of units which have been wholly or partially damaged or expropriated to the other owners.

(4) On any application to the court under this section, any insurer who has insured the units and the common elements under subsection 17(1) may appear in person or by agent or counsel.

(5) The court may vary any order made by it under this section.

Application to require performance of duties

24.(1) Where a duty imposed by this Act, the declaration or the bylaws is not performed, the corporation, any owner or any person having an encumbrance against a unit and common interest may apply to the court for an order directing the performance of the duty.

(2) The court may by order direct performance of the duty and may include in the order any provisions that the court considers appropriate in the circumstances including

- (a) the appointment of an administrator for such time, and on such terms and conditions, as it deems necessary, and
- (b) the payment of costs.

(3) An administrator appointed under subsection (2) shall

- (a) to the exclusion of the corporation, have such of the powers and duties of the corporation as the court shall order,
- (b) have the right to delegate any of the powers so vested in him, and
- (c) be paid for his services by the corporation, which payments are common expenses.

(4) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act.

Regulations

25. For the purpose of carrying out the provisions of this Act, the Commissioner in Executive Council may make regulations,

- (a) prescribing forms for use under this Act;

- (b) prescribing rules to cover cases for which no provision is made under this Act.
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CHAPTER 29

CONFLICT OF LAWS (TRAFFIC ACCIDENTS) ACT

Interpretation

1.(1) In this Act,

“accident” means an accident that involves one or more vehicles and is connected with traffic on a highway;

“highway” means any place or way, including any structure forming part thereof, which the public is ordinarily, or a number of persons are, entitled or permitted to use for the passage of vehicles, with or without fee or charge therefor and includes all the space between the boundary lines of any right-of-way or land taken, acquired or used therefor, and also includes

- (a) a privately owned area designed and intended and primarily used for the parking of vehicles and the necessary passage ways thereon, and
- (b) a publicly owned area designed and intended to be used exclusively for the parking of vehicles and the necessary passage ways thereon;

“pedestrian” includes any person who, at the place of the accident, was not carried in or on a vehicle;

“state” includes a province and a territorial entity of a state, if this entity has its own legal system in respect of tortious liability arising from an accident;

“vehicle” means a device, whether motorized or not, in, upon, or by which a person or thing is or may be transported or drawn upon a highway except a device used exclusively upon stationary rails or tracks.

(2) A reference to the laws of a state shall be read as a reference to its internal laws excluding the conflict rules.

(3) A reference to the registration of a vehicle shall be read as a reference to its registration at the time of the accident in question.

(4) The reference to chattels carried on a vehicle shall be read as a reference to chattels lying, standing or resting on any part of the vehicle.

Application

2.(1) Subject to subsection (2) and to section 10, this Act determines the law applicable to tortious liability arising from an accident.

(2) This Act does not apply

- (a) to the liability of manufacturers, sellers or repairers of vehicles,
- (b) to the liability arising out of a breach of duty to maintain a highway or attaching to the ownership, occupation, possession or control of land,

- (c) to an action by or against a person who caused or contributed to an accident for contribution, indemnity or any other relief over,
- (d) to an action for contribution or indemnity from, or any other relief over against, an insurer or a subrogation action by an insurer,
- (e) to an action by or against a person administering a workers' compensation fund, a social insurance or similar scheme, by or against an unsatisfied judgment fund or any person administering a similar fund, or to any exemption from liability provided by the law governing these persons, institutions, funds or bodies, or
- (f) to vicarious liability,

but, notwithstanding paragraph (f), this Act does apply to the liability of the owner of a vehicle, and to the liability of a principal and of a master.

Rules for determining applicable law

3.(1) Subject to sections 4 to 7, the law applicable under section 2 is the law of the state where the accident occurred.

(2) The law of the state where the accident occurred, and in force at that time, determines the rules relating to the control and safety of traffic.

Exceptions

4.(1) Where

- (a) one vehicle is involved in the accident and is registered in a state other than the state where the accident occurred, or, where more than one vehicle is involved, and each is registered in the same state being a state other than the state where the accident occurred, and
- (b) each pedestrian, if any, who caused or contributed to the accident has his habitual residence in the state mentioned in paragraph (a), whether or not he is also a victim of the accident,

the law of the state of registration, subject to section 7, determines

- (c) liability to the driver, owner or any other person having control of, or a proprietary interest in, the vehicle, if at least one of these persons has his habitual residence within the state of registration,
- (d) liability to a passenger whose habitual residence is in a state other than the state where the accident occurred, but not necessarily in the state mentioned in paragraph (a), and
- (e) liability to a pedestrian whose habitual residence is in the state mentioned in paragraph (a).

(2) Where there are two or more victims, the applicable law is determined separately for each of them.

Liability for damage to chattels

5.(1) The liability mentioned in paragraph 4(1)(c) includes liability for damage to chattels carried on the vehicle other than chattels mentioned in subsection (2).

(2) The liability mentioned in paragraph 4(1)(d) includes liability for damage to chattels that are carried on the vehicle and that are either owned by the passenger or have been entrusted to his care.

(3) The liability mentioned in paragraph 4(1)(e) includes liability for damage to chattels owned by the pedestrian, whether or not the chattels were carried on a vehicle.

Liability for damage to chattels

6. Liability for damage to chattels not carried on a vehicle at the time of the accident, except those mentioned in subsection 5(3), is governed by the law of the state where the accident occurred.

Exception

7. Where

- (a) a vehicle is registered in more than one state or is not registered at all, or
- (b) at the time of the accident, none of the persons mentioned in paragraph 4(1)(c) had his habitual residence in the state of registration,

the law of the state where the vehicle was habitually stationed at the time of the accident applies instead of the law mentioned in subsection 4(1).

Matters determined by applicable law

8. The law applicable under section 2 determines, in particular,

- (a) the existence of liability and its extent,
- (b) the grounds for exemption from liability, any limitation of liability and any division of liability,
- (c) the existence and kind of injury or damage for which damages may be claimed,
- (d) the amount of damages,
- (e) the question whether a right to damages may be assigned or inherited,
- (f) the persons who have suffered injury or damage and who may claim damages in their own right,
- (g) the liability of a principal or master for the acts of his agent or servant, and
- (h) rules of prescription and limitation, including rules relating to the commencement of a period of prescription or limitation, and the interruption and suspension of that period.

Rules relating to insurers

9.(1) In this section, “insurer” means an insurer of the person alleged to be liable.

(2) Where the law applicable under section 2 is the law of the state where the accident occurred, a direct action against an insurer lies if such action is authorized by that law or by the law governing the insurance policy.

(3) Where the law applicable under section 2 is the law of the state of registration, a direct action against an insurer lies if such action is authorized by that law, the law of the state where the accident occurred or by the law governing the insurance policy.

Laws not applicable if contrary to public policy

10. No law that would be applicable under this Act applies if its application is manifestly contrary to public policy.

Regulations

11. The Commissioner in Executive Council may make such regulations and prescribe such forms as he deems necessary for carrying out the purposes and provisions of this Act.

CHAPTER 30

CONSTITUTIONAL QUESTIONS ACT

Interpretation

1. In this Act,

“enactment” includes an Act, a regulation, and any other statutory instrument of a legislative nature, such as an order, order-in-council, or Ordinance, that is made by or under the authority of the Parliament of Canada, the Parliament of the United Kingdom, the Legislature, Her Majesty, the Governor General, the Governor in Council, a Minister of the Government of Canada, the Commissioner, the Commissioner in Executive Council or an Executive Council Member;

“enactment of Canada” includes all enactments other than those made by or under the authority of the Legislature, the Commissioner, the Commissioner in Executive Council or an Executive Council Member;

“Yukon enactment” means any enactment made by or under the authority of the Legislature, the Commissioner, the Commissioner in Executive Council or an Executive Council Member.

Notice to be given

2.(1) When, in any of the proceedings referred to in paragraphs (a) and (b) in any Yukon court or before any judge or justice in the Yukon, the constitutional validity of an enactment of Canada or of a Yukon enactment is brought in question, the enactment shall not be held to be invalid unless

- (a) in the case of an enactment of Canada and a proceeding to which the Government of Canada, however named in the style of cause, is not already a party, notice has been given to the Attorney General for Canada, and
- (b) in the case of a Yukon enactment and a proceeding to which the Government of the Yukon, however named in the style of cause, is not already a party, notice has been given to the Executive Council Member.

(2) When in a proceeding in any Yukon court or before any judge or justice in the Yukon a question arises as to whether an enactment is the appropriate legislation applying to or governing any matter or issue, no decision may be made on it unless notice has been given to both the Attorney General for Canada and the Executive Council Member.

(3) The notice referred to in subsections (1) and (2) shall specify the enactment, and what part thereof, that is in question, shall give such other particulars as are necessary to show the constitutional issue proposed to be argued, and shall be served at least 30 days before the day proposed for argument of the issue.

(4) The Attorney General for Canada and the Executive Council Member are entitled to be heard on the constitutional question notwithstanding that the Crown is not a party to the proceeding in which the question arises.

Action for declaration of constitutional validity

3.(1) The Supreme Court has jurisdiction to hear an action at the instance of either the Attorney General for Canada or the Executive Council Member for a declaration as to the constitutional validity of a Yukon enactment, even though no other remedy is sought.

(2) An action under this section is sufficiently constituted if both the Attorney General for Canada and the Executive Council Member are parties to it.

(3) A judgment in an action under this section may be appealed as other judgments of the Court in an action.

Reference to Court of Appeal

4.(1) The Commissioner in Executive Council may refer to the Court of Appeal for hearing or consideration any matter he thinks fit to refer, other than the constitutional validity of an enactment of Canada, and the Court of Appeal shall thereupon hear or consider the matter.

(2) Where the matter referred to the Court of Appeal relates to the constitutional validity of a Yukon enactment the Attorney General for Canada shall be notified of the hearing and is entitled to be heard in the hearing.

(3) Where any matter relating to an agreement between the Government of Canada and the Government of the Yukon is referred to the Court of Appeal under this section, the Attorney General for any province that has made an agreement of like nature and having like purposes may be heard in the Court of Appeal on the reference.

(4) The Court of Appeal or any judge thereof may direct that a person interested in the matter referred to it or that any one or more persons representative of a class of persons interested in the matter referred to it be notified of the hearing and be entitled to be heard in the hearing.

(5) The Court of Appeal or a judge thereof may grant to any person interested in the matter referred to it or to any person representative of a class of persons interested in the matter leave to appear and be heard in the hearing.

(6) When any interest affected in the matter referred to the Court of Appeal is not represented by counsel, the Court of Appeal may permit counsel to argue the case for that interest.

(7) The Court of Appeal shall certify the Court's opinion on the matter, with reasons, and the opinion shall be given in the same manner as a judgment in an ordinary action and a judge who differs from the opinion or reasons of the majority or of another judge may in like manner certify his opinion and reasons.

(8) The opinion of the Court of Appeal shall be deemed a judgment of the Court of Appeal and may be appealed against as other judgments of the Court of Appeal in an action.

CHAPTER 31

CONSUMERS PROTECTION ACT

Interpretation

1. In this Act,

“assignee” includes any person in whom the right or benefit concerned has become vested, as a result of any assignment or series of assignments;

“borrower” means a person borrowing money or obtaining credit and includes a buyer of goods or services on credit and a hirer of goods on hire-purchase;

“buyer” includes a hirer on a retail hire-purchase;

“cash price” of any goods or services means the price that would be charged by the seller for the goods or services to a buyer who paid cash for them at the time of purchase or hiring;

“collection agent” means any person who

- (a) collects or attempts to collect money owing to others,
- (b) is used by others to levy distress or seize goods,
- (c) collects money under any name which differs from that of the creditor to whom the money is owed,
- (d) offers or undertakes to act for a debtor in arrangements or negotiations with his creditors or receives money from a debtor for distribution to his creditors,
- (e) solicits accounts for collection or offers or undertakes to collect debts for others either immediately or at a future date, or
- (f) writes letters, or makes telephone or personal calls on behalf of others for the purpose of inducing a debtor to pay a debt,

but does not include

- (g) a person who accepts payment of accounts on behalf of creditors but who does not otherwise negotiate with or in any way attempt to obtain payment from debtors in respect of the amount owing,
- (h) a chartered bank,
- (i) a trustee licensed under the Bankruptcy Act (Canada) acting in that capacity,
- (j) a duly appointed officer of a court,
- (k) a lawyer acting in that capacity,
- (l) a trust company,
- (m) a real estate broker acting in that capacity, or a real estate salesperson acting in that capacity,
- (n) an insurance agent acting in that capacity,
- (o) a mortgage broker acting in that capacity,
- (p) a person appointed under the Business Corporations Act as a liquidator acting in that capacity, or
- (q) a person acting for a friend who receives no reward for his services;

“cost of borrowing” means,

- (a) where used in connection with a retail sale or hire-purchase of goods or services or both otherwise than on variable credit, the difference between
 - (i) the total amount which the buyer is required to pay in the transaction (including any down payment and the value ascribed in the contract to any trade-in or other allowance to him), if all payments are made as they fall due, and
 - (ii) the total cash price as described in subsections 4(2) or 5(2), as the case may be,
- (b) where used in relation to a loan agreement, the difference between
 - (i) the total amount that the borrower has to pay in the transaction, if all payments are made as they fall due, and
 - (ii) the aggregate of the amounts described in paragraphs 13(2)(a), (b), (c) or (d) (other than any amount which is declared by section 20 to be part of the cost of borrowing) subject to such adjustment thereof as may be required by subsection 14(1) or (2), if applicable,
- (c) where used in relation to a transaction to which subsection 14(3) applies, the difference between
 - (i) the total amount which the borrower is required to pay in the transaction (including any down payment and the value ascribed in the agreement for any trade-in or other allowance to him), if all payments are made as they fall due, and
 - (ii) the aggregate of the total cash price of the goods or services, or both, being purchased and the amounts described in paragraphs 14(3)(b) and (c), and
- (d) where used in relation to variable credit, the charges that the buyer or borrower is required to pay periodically on the unpaid balance from time to time for the privilege of purchasing or borrowing on variable credit;

“court” means the Supreme Court, and in a case where the amount of the loan made or credit extended is not greater than the limit of the jurisdiction of the Territorial Court, the Territorial Court and includes a judge of the Territorial Court sitting as a small debt official;

“credit grantor” means a person lending money or extending credit and includes a seller of goods or services on credit and a person letting goods on hire-purchase;

“debtor” includes a borrower and any person who is responsible for the payment of a debt by virtue of guaranteeing a borrower’s liability to pay the debt;

“direct seller” means the person who, on behalf of a vendor, makes any offer, solicitation, proposal or approach which is intended to result in a sale to which Part 7 applies;

“goods” means chattels personal other than things in action or money, and includes, emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale, and chattels which are to be affixed to land upon or after delivery thereof;

“instalments of approximately equal amount” means a series of instalments in which the amount of any one instalment is not different from the equal amounts of all other instalments by more than \$1 multiplied by the number of instalments required to be paid;

“legal rate” of interest means the rate from time to time payable under the Interest Act (Canada) on liabilities on which interest is payable but no other rate is fixed;

“loan agreement” means a document or memorandum in writing

- (a) evidencing a loan of money,
- (b) made or given as security for a loan of money, or
- (c) made or given as security for a past indebtedness;

“money lender” means a person who carries on the business of money lending or advertises himself, or holds himself out in any way, as carrying on that business, but does not include a registered pawn broker as such;

“mortgage”, “mortgagee”, “mortgage money” and “mortgagor” have the meanings assigned to them by common law;

“retail hire-purchase” of goods means any hiring of goods from a person in the course of his business in which

- (a) the hirer is given an option to purchase the goods, or
- (b) it is agreed that upon compliance with the terms of the contract, the hirer will either become the owner of the goods or will be entitled to keep them indefinitely without any further payment,

except

- (c) a hiring in which the hirer is given an option to purchase the goods exercisable at any time during the hiring and which may be determined by the hirer at any time prior to the exercise of the option on not more than two months notice without any penalty,
- (d) a hire-purchase of goods by a hirer who himself intends either to sell them or to relet them for hire by others,
- (e) a hire-purchase by a hirer who is a retailer of a vending machine or a bottle cooler to be installed in his retail establishment,
- (f) a hire-purchase in which the hirer is a corporation, and
- (g) a hire-purchase of goods the cash price of which exceeds \$8,500;

“retail sale” of goods or of services or of both means any contract of sale of goods or services or both made by a seller in the course of his business except

- (a) any contract of sale of goods which are intended for resale by the buyer in the course of his business,
- (b) any contract of sale to a retailer of a vending machine or a bottle cooler to be installed in his retail establishment,
- (c) any contract of sale to a corporation, and
- (d) a sale in which the cash price of the goods or services or both exceeds \$8,500;

“sale” includes any transaction whereby the whole or part of the price is paid or satisfied by the exchange of other property, real or personal;

“sale of goods” includes any transaction in which goods are sold, whether separately or together with services;

“sale of services” means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by others and any transaction in which services are sold, whether separately or together with goods;

“seller” includes a person who lets goods on hire by a retail hire-purchase;

“services” includes

- (a) work, labour and other personal services,
- (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, funerals, cemetery accommodations and the like, and
- (c) insurance provided by a person other than the insurer;

“time sale agreement” means an agreement evidencing a time sale;

“time sale” means

- (a) any retail sale of goods or of goods and services under which possession of the goods is to be delivered to the buyer, but the transfer of the property in the goods is to take place subsequently to such delivery upon payment by him of the whole or part of the price and cost of borrowing, if any, whether or not such transfer is also subject to the fulfillment of some other condition,
- (b) any retail hire-purchase of goods, and
- (c) for the purpose of sections 46 to 56, any retail sale of goods or of goods and services in which the seller takes back a chattel mortgage on those goods to secure payment of the whole or part of the price;

“variable credit” means credit made available under an agreement whereby the credit grantor agrees to make credit available to be used from time to time, at the option of the borrower, for the purpose of the purchase from time to time of goods or services, and, without limiting the generality of the foregoing, includes credit arrangements commonly known as revolving credit accounts, budget accounts, cyclical accounts and other arrangements of a similar nature, but does not include any agreement or arrangement in which there is neither a cost of borrowing payable by the borrower nor any additional charge, other than court costs, payable by the borrower in the event of default;

“vendor” means the person who makes on his own behalf or uses others to make on his behalf, any offer, solicitation, proposal or approach which is intended to result in a sale to which Part 7 applies.

Rules to determine price and cost of borrowing

2. For the purpose of determining whether

- (a) the cost of borrowing in a sale or hire-purchase exceeds \$10, or
- (b) the cash price of goods or services or both comprised in a sale or hire-purchase exceeds \$8,500,

the following rules apply:

- (c) the cost of borrowing in all sales and hire-purchases which are part of the same transaction shall be added together;
- (d) the cash price of goods and services comprised in all sales and hire-purchases which are part of the same transaction shall be added together;
- (e) unless the contrary is proved, all sales and hire-purchases made between the same seller and the same buyer on the same day shall be presumed to be part of the same transaction.

Application of Act

3. Nothing in this Act applies to any loan made by, or any security given to, the Industrial Development Bank, the Canadian Farm Credit Corporation, Central Mortgage and Housing Corporation, or the Government of the Yukon.

PART 1

DISCLOSURE OF COST OF BORROWING

Retail sales

4.(1) This section applies to every retail sale of goods or services or goods and services on credit in which there is any cost of borrowing payable by the buyer except

- (a) a sale made on variable credit, and
- (b) a sale in which the cost of borrowing does not exceed \$10.

(2) Every sale to which this section applies shall be evidenced by a writing signed by the buyer or his agent prior to, or at the time of delivery of the goods or performance of the services which contains a description of the goods or services and states

- (a) the cash price of the goods included in the sale,
- (b) the amount of any applicable delivery or installation charge, if not included in the cash price of the goods,
- (c) any insurance charges actually paid or to be paid by the seller to an insurer on behalf of the buyer on the buyer's request,
- (d) the registration fee, if any,
- (e) the total cash price, being the aggregate of the amounts mentioned in paragraphs (a), (b), (c) and (d),
- (f) the amount or value of any down payment, trade-in or other allowance made to the buyer,
- (g) the balance of the total cash price, being the difference between the total mentioned in paragraph (e) and the amount mentioned in paragraph (g),
- (h) the total cost of borrowing expressed as one sum in dollars and cents,
- (i) the balance owing, being the aggregate of the balance mentioned in paragraph (g) and the amount mentioned in paragraph (h),
- (j) the details of the manner in which the balance owing is to be paid, as required by section 7 or 9,
- (k) the aggregate of the cost to the buyer being the total mentioned in paragraph (e) and the amount mentioned in paragraph (h),
- (l) the true annual rate of the cost of borrowing calculated in accordance with section 10 and the regulations, expressed as a percentage, and
- (m) the total additional charge, if any, other than court costs, to be paid in the event of default expressed as a rate percentage per annum.

Retail hire-purchase

5.(1) This section applies to every retail hire-purchase of goods in which the cost of borrowing exceeds \$10.

(2) Every hire-purchase to which this section applies shall be evidenced by a writing signed by the hirer or his agent prior to, or at the time of delivery of the goods, which contains a description of the goods and states

- (a) the cash price of the goods included in the hire-purchase,
- (b) the amount of any applicable delivery or installation charge, if not included in the cash price of the goods,

- (c) any insurance charges actually paid or to be paid by the seller to an insurer on behalf of the hirer on the hirer's request,
- (d) the registration fee, if any,
- (e) the total cash price, being the aggregate of the amounts mentioned in paragraphs (a), (b), (c) and (d),
- (f) the amount or value of any down payment, rent paid or to be paid in advance of delivery or on delivery, trade-in or other allowance made to the hirer,
- (g) the balance of the total cash price, being the difference between the total mentioned in paragraph (e) and the amount mentioned in paragraph (f),
- (h) the total cost of borrowing being the difference between the balances mentioned in paragraphs (i) and (g) expressed as one sum in dollars and cents,
- (i) the balance owing, being the aggregate of the rent to be paid by the hirer subsequent to delivery of the goods, and of all further payments, if any, not included in the rent which the hirer will have to pay in order to purchase or become the owner of the goods,
- (j) the details of the manner in which the balance owing is to be paid, as required by section 7 or 9,
- (k) the aggregate of the cost to the hirer being the total of the amounts mentioned in paragraphs (e) and (h),
- (l) the true annual rate of the cost of borrowing calculated in accordance with section 10 and the regulations, expressed as a percentage, and
- (m) the total additional charge, if any, other than court costs, to be paid in the event of default expressed as a rate percentage per annum.

Buyer to have copy of agreement

6.(1) As soon as possible after the writing required by section 4 or 5 or by subsection 14(3) is received by the seller or his agent, and in any event not later than the time of delivery of the goods or performance of the services, as the case may be, the seller shall give a true copy of the writing to the buyer, but

- (a) if there is more than one buyer, it shall be sufficient to give a copy to one of them, and
- (b) if the writing was signed by an agent of the buyer, the copy may be given to that agent.

(2) The buyer or agent to whom the copy of the writing is given shall, if so requested by the seller, acknowledge receipt thereof and in any case the writing shall not be binding on the buyer unless a copy thereof has been given as provided herein.

Dates of payments

7. Subject to section 9, the details required by section 4 or 5 of the manner in which the balance owing is to be paid shall include the date and the amount of each payment to be made, except only that where such manner consists of, or includes, a succession of instalments of approximately equal amount payable monthly or at any other regular periods, it shall be a sufficient statement of such succession of instalments to state them in the following form: "ten equal consecutive payments of \$10 each on the first day of each month commencing on June 1, 1971, and ending on March 1, 1972, totalling \$100" with such changes as may be necessary to fit the circumstances of the case.

Delivery of goods or performance of services

8.(1) Subject to section 9, if the writing required by section 4 or 5 is signed prior to the delivery of the goods or performance of the services, the seller shall deliver the goods or perform the services not later than seven days after the delivery date, which is

- (a) the date for delivery or performance fixed by the writing, or
- (b) if none is so fixed, the date on which the writing is received by the seller or his agent.

(2) If the seller does not deliver the goods or perform the services within the time limited by subsection (1), the buyer is entitled to a rebate of part of the cost of borrowing calculated by applying the true annual rate of the cost of borrowing to the amount of the balance owing over the period of the seller's default.

(3) Nothing herein contained derogates from the buyer his right, if any, in the transaction to rescind or cancel for late delivery, failure to perform or otherwise.

Where above section not to apply

9. Where, in any case to which either section 4 or 5 applies, the date of delivery of the goods or performance of the services is uncertain, the date or dates on which the balance owing is to be paid may be described in the writing by reference to the date on which the goods are delivered or services performed, and if that is done section 8 does not apply.

Date for calculation of cost of borrowing

10. Except as otherwise prescribed by regulation, the true annual rate of the cost of borrowing stated in a writing required by section 4 or 5 must be calculated over the period commencing,

- (a) where section 8 applies, with the delivery date referred to therein, and
- (b) in any other case, with the date on which the delivery of the goods or performance of the services is completed.

Payments before delivery of service

11. For the purposes of paragraphs 4(2)(f) and 5(2)(f), any payment which is made or to be made by the buyer prior to the delivery of goods or performance of the services is a down payment, notwithstanding that it may be made after the writing is signed.

Variable credit and credit cards

12.(1) This section applies to every retail sale to or retail hire-purchase by a resident of the Yukon of goods or services or goods and services made on variable credit; and, for the purposes of this section a buyer who obtains credit by use of a credit card shall, in relation to that credit, be deemed to reside at the address shown on that card, or if there is no address at the address applicable to that card.

(2) Every extension of variable credit by a credit grantor shall be governed by a master agreement which shall be signed by the borrower before the first extension of variable credit to him, and which states

- (a) at what periods payments are to be made by the borrower,

- (b) the amount of the minimum payments that will be required from the borrower, but, if this may vary according to the amount of credit extended or outstanding, the method of calculating the minimum payments shall be set out in an intelligible manner,
- (c) the prevailing rate or rates of charges that the borrower will be required to pay periodically for the variable credit extended to him expressed as a percentage or percentages per annum of the balance of principal and accrued charges outstanding at the commencement of the period, and
- (d) if the charges payable on payments in arrears are to be calculated otherwise than in accordance with paragraph (c) hereof, the manner in which those charges are to be calculated and the rate thereof expressed as a percentage per annum on the amount in arrears.

(3) Subject to subsection (4), the master agreement shall also contain a table showing the amount in dollars and cents of the monthly charge produced by the applicable rate or rates on outstanding balances, using a sufficiently large number of representative amounts to give a fair representation of the dollars and cents charges applicable to various sizes of outstanding balance.

(4) At the option of the credit grantor, the table required by subsection (3) may, instead of being included in the master agreement, be embodied in a separate document, which shall be given to the borrower before he signs the master agreement.

(5) The credit grantor shall give a copy of the master agreement to the borrower before the first extension of credit thereunder.

(6) There may be more than one master agreement in force concurrently between a credit grantor and a borrower if

- (a) each agreement relates to a different category of goods or services, or
- (b) the borrower has the right to decide under which agreement any purchase shall be made.

(7) Subject to subsection (6), every extension of variable credit by a credit grantor to a borrower who has signed a master agreement shall be governed by the last master agreement signed by the borrower.

(8) A credit grantor shall, on demand, but not more often than once a year, furnish to a borrower a photostatic copy of any master agreement signed by that borrower which is then in force.

(9) A credit grantor may, by giving written notice thereof to the borrower,

- (a) increase the rate or rates of charges payable by the borrower in respect of subsequent purchases, or
- (b) increase the minimum periodic payments payable by the borrower in respect of subsequent purchases,

or both, but, except as otherwise provided in the regulations, no such increase shall affect the borrower's obligations in respect of his then outstanding balance which shall continue to be governed by the then prevailing terms.

(10) A credit grantor may decrease the rate or rates of charges or the minimum periodic payments payable by a borrower, or both, either in respect of subsequent purchases only or in respect of both his then outstanding balance and subsequent purchases.

(11) Subject to subsection (13) a borrower to whom variable credit has been extended shall be liable to pay periodic charges for such credit in accordance with paragraph (2)(c) and subsections (9) and (10), but unless he defaults in his payments, no other cost of borrowing whatsoever.

(12) A credit grantor may at any time require a borrower to sign a new master agreement as a condition of extending fresh credit, but a refusal by the borrower to sign a new master agreement shall not affect his liability in regard to credit already extended.

(13) If a master agreement indicates that the borrower is to pay periodic charges for variable credit extended to him but either does not state any rate for such charges or expressed it otherwise than as a percentage per annum of the balance outstanding at the commencement of the period, the charges under that agreement shall be calculated at the legal rate of interest on the said balance.

Money loans

13.(1) Subject to section 2, this section applies to every loan of money made by a money lender except

- (a) a loan secured exclusively on real property,
- (b) a loan of more than \$8,500,
- (c) a loan to a corporation,
- (d) a loan made by an insurance company to a policy holder pursuant to a provision of the policy, and
- (e) a loan in which the cost of borrowing does not exceed \$10.

(2) Every loan to which this section applies shall be evidenced by a document or memorandum in writing signed by the borrower at or before the time the loan is made which shall set out

- (a) the amount advanced or to be advanced to the borrower himself,
- (b) any insurance charges actually paid or to be paid by the money lender to an insurer on behalf of the borrower on his request,
- (c) any registration fee payable on any security taken for the loan,
- (d) any other amount, not being a part of the cost of borrowing, advanced or to be advanced to other persons for the borrower's account showing the name of each of those persons and the amount advanced or to be advanced to each,
- (e) the cost of borrowing expressed as one sum in dollars and cents,
- (f) the total amount to be repaid by the borrower, being the aggregate of the amounts mentioned in paragraphs (a), (b), (c), (d), and (e),
- (g) the details of the manner in which the total amount is to be repaid showing the number of payments, and the amount and date of each,
- (h) the true annual rate of the cost of borrowing calculated in accordance with the regulations expressed as a percentage, and
- (i) the total additional charge, if any, other than court costs, to be paid in the event of default expressed as a rate percentage per annum.

(3) The particulars required by paragraph (2)(d) need not be set out in the loan agreement if

- (a) they are contained in a separate document signed by the borrower not later than the time at which he signs the loan agreement,
- (b) the borrower is given a copy of that document at the time he signs it, and
- (c) the total of the amounts shown in that document is set out in the loan agreement.

(4) Where any loan to which this section applies is secured by a mortgage or charge on goods, the goods shall be clearly described in the document or memorandum required under subsection (2), and in the copy that is given by the credit grantor or his agent under section 19.

(5) In this section, "real property" includes leasehold interests therein and things attached to or forming part of the land on which the loan is secured.

Refinancing existing indebtedness

14.(1) Except as otherwise provided in the regulations, where a borrower rearranges with a credit grantor payment of any existing debt or debts owing to that credit grantor which arose out of a transaction or transactions to which section 4, 5 or 13, or any combination of them, applied, or to which those provisions or any of them would have applied if they, or any of them, had been in force at the time the transaction took place, by any arrangement whatever that has the effect of varying the amount the borrower has to pay or the period over which he has to pay it, the transaction shall be evidenced by a document or memorandum in writing signed by the borrower in accordance with section 13 as if the credit grantor were then advancing to the borrower the sum then required to prepay the existing debt or debts without any allowance to the credit grantor under subsection 28(3) and the credit grantor shall furnish to the borrower before he signs the agreement a written computation of that sum; and where more than one existing debt is included in the rearrangement, a separate computation shall be made in respect of each of them.

(2) Except as otherwise provided in the regulations where a rearrangement of an existing debt or debts under subsection (1) is combined with an additional loan of money by the credit grantor to the borrower, the transaction shall be evidenced by a document or memorandum in writing signed by the borrower at or before the time the additional loan is made in accordance with section 13 as if the credit grantor were then advancing both the amount of the additional loan and the sum then required to prepay the existing indebtedness in accordance with subsection (1); but the loan agreement must show how the total is divided between these two items and the borrower must be given the computation required by subsection (1).

(3) Except as otherwise provided in the regulations, where a borrower wishes to combine the payment of an existing debt or debts with payments for a new purchase from the same credit grantor of goods or services or both to which section 4 is applicable, the transaction shall be evidenced by a writing signed by the borrower prior to or at the time of delivery of the goods and services which combines the information required to be given by section 4 and by subsection (1) hereof by stating

- (a) the information required by paragraphs 4(2)(a) to (g) in respect of the sale of the goods and services,

- (b) the sum required to prepay the existing indebtedness in accordance with subsection (1),
- (c) any registration fee which is payable only in respect of the refinancing of the existing indebtedness,
- (d) the total present debt, being the aggregate of the balance of the total cash price of the goods and services and the amounts mentioned in paragraphs (b) and (c),
- (e) the total cost of borrowing expressed as one sum in dollars and cents,
- (f) the balance owing, being the aggregate of the amounts mentioned in paragraphs (d) and (e),
- (g) the details of the manner in which the balance owing is to be paid, as required by section 7,
- (h) the total amount the borrower will be paying to acquire the goods and services and retire the existing indebtedness, being the aggregate of any down payment, trade-in or other allowance to the borrower on the purchase of the goods and services and the balance owing mentioned in paragraph (f),
- (i) the true annual rate of the cost of borrowing calculated in accordance with section 10 and the regulations expressed as a percentage, and
- (j) the total additional charge, if any, other than court costs, to be paid in the event of default expressed as a percentage per annum; and the credit grantor shall also furnish the borrower with a written computation of the sum required to prepay the existing indebtedness as provided by subsection (1) hereof.

(4) In any transaction to which subsection (3) hereof applies, all payments made by the borrower on account of the balance owing shall be applied in payment of

- (a) first, the registration fee mentioned in paragraph (3)(c),
- (b) secondly, the sum required to prepay the existing indebtedness,
- (c) thirdly, the cost of borrowing, and
- (d) fourthly, the balance of the total cash price of the goods, and services,

and when the borrower's payments have satisfied the amounts mentioned in paragraphs (a) and (b), any security held by the credit grantor for the existing indebtedness is discharged; and, if the goods being purchased are the subject of a time sale, the whole cost of borrowing is secured on them, notwithstanding subsection 56(1).

(5) The combination as one obligation of rent on a retail hire-purchase to which section 5 applies with instalment payments on account of an existing indebtedness is prohibited.

(6) In any transaction to which this section applies, if

- (a) any insurance previously charged to the borrower in a transaction from which the existing indebtedness arose is to be continued in force, and
- (b) new insurance is charged to the borrower,

the agreement shall show whether the new insurance is in addition to the existing insurance or is wholly or partly in substitution for it, and in the latter event shall also show the amount of the unearned premium on the insurance being replaced, and the insurance charges charged to the borrower shall not exceed the net amount payable after credit for such unearned premium.

Dates for periodic payments

15. Where the manner in which the total amount is to be repaid consists of or includes a succession of instalments of approximately equal amounts payable monthly, or at any other regular periods, it shall be a sufficient statement of such succession of instalments for the purpose of paragraph 13(2)(g) and of paragraph 14(3)(g) to state them in the form provided by section 7.

Loans advanced over period

16. Where any loan to which section 13 applies is to be advanced by stages over a period of more than seven days, the loan agreement shall so state and shall

- (a) name a date (hereinafter referred to as “the interest adjustment date”) by which all advances are to be completed,
- (b) provide that to the interest adjustment date the only cost of borrowing payable by the borrower shall be interest at the rate specified calculated on the amount from time to time advanced, and state when such interest shall be paid,
- (c) exclude that interest from both the cost of borrowing and the total amount to be repaid by the borrower,
- (d) state clearly that that interest will be in addition to the cost of borrowing and total amount to be repaid shown in the agreement,
- (e) fix as the date of the first repayment to be made by the borrower a date subsequent to the interest adjustment date, and
- (f) state as the true annual rate of the cost of borrowing the rate calculated over the period commencing with the interest adjustment date.

Advancing loan

17. Except as provided by section 16, the full amount of any loan to which section 13 applies shall be advanced not later than seven days after

- (a) the date fixed by the loan agreement, where the date is so fixed, or
- (b) where the date is not fixed by the loan agreement, the date on which the agreement is signed by the borrower,

and the true annual rate of the cost of borrowing shall be calculated over the period commencing with the date so fixed, or, if none is so fixed, with the date on which the agreement is signed by the borrower.

Rebate where loan not advanced

18. If a credit grantor fails to advance the full amount of a loan before the interest adjustment date or within the time limited for that purpose by section 17, as the case may be, the borrower is entitled to a rebate of part of the cost of borrowing calculated by applying the true annual rate of the cost of borrowing to the amount not so advanced over the period of the credit grantor’s default.

Delivery of copy of agreement

19. As soon as possible after a loan agreement required by section 13 or 14 is received by the credit grantor or his agent and in any event not later than the time of the first advance made by the credit grantor thereunder, the credit grantor shall give a true copy of the loan agreement to the borrower, provided that, if there is more than one borrower, it shall be sufficient to give a copy to one of them.

Payments on borrower's account as cost of borrowing

20. For the purposes of paragraphs 13(2)(d) and (e), a payment made to another person for the borrower's account is part of the cost of borrowing if it is made to discharge a liability which the borrower would not have incurred if there had been no loan made to him or deemed to be made to him under section 14 as the case may be.

Compliance with requirements for agreements

21. Except as may otherwise be provided by regulation, if a writing or agreement required by section 4, 5, 12, 13 or 14 states in an intelligible manner the information required by the applicable section, or by any other provision of this Part, it is not necessary that it should set it out in any particular order, except that in a transaction to which subsection 14(3) applies, the information mentioned in paragraph 14(3)(a) shall be stated first.

Insurance

22.(1) A credit grantor shall forward promptly the application for any insurance which is charged to a borrower and does not form part of the cost of borrowing and shall furnish proof of the insurance to the borrower as soon as it is effected.

(2) A borrower is liable to pay to the credit grantor only the premium payable from the time the insurance becomes effective to the date of the expiry of the policy or any extension thereof or to the date on which the policy is cancelled and, where the policy of insurance is cancelled, the debtor shall receive the full amount of the unearned premium cancelled by the insurer.

Incorrect statements in agreements

23.(1) Except as otherwise provided in the Interest Act (Canada), and subject to subsections (2) and (3), if a writing required by section 4 or 5

- (a) does not contain a statement of the true annual rate of the cost of borrowing or understates it by more than the margin permitted by the regulations, or
- (b) omits or states incorrectly any of the information required by paragraphs 4(2)(a) to (k) or paragraphs 5(2)(a) to (k) as the case may be, or by section 9,

the seller may recover from the buyer no more than the total cash price with simple interest thereon, or on so much thereof as from time to time remains owing, at the legal rate, and if the buyer has paid the seller more than that amount, he may recover the excess from the seller.

(2) Where paragraph (1)(a) applies, the court may permit the seller to recover, or to keep, as the case may be, more than the total cash price and simple interest thereon at the legal rate if it is satisfied that the omission or mis-statement was due to inadvertence; but the seller may not, in any case, recover or keep a cost of borrowing which would exceed the rate stated in the writing to be true annual rate.

(3) Where paragraph (1)(b) applies, the court may permit the seller to recover, or keep, as the case may be, the full amount which the buyer has agreed to pay if it is satisfied that the omission or mis-statement was due to inadvertence and the buyer has not thereby been misled as to the amount he had to pay, but where the result of a mis-statement is to produce in the writing inconsistencies that make it uncertain how much the buyer has to pay, the seller may not, in any event, recover from the buyer more than the lowest amount which the writing can reasonably be construed to require.

(4) Where a seller claims that any omission or mis-statement was due to inadvertence, the court shall not adjudicate thereon until the Executive Council Member has been advised thereof, and if he considers it to be appropriate has made an investigation.

(5) Where subsection (4) applies, the Executive Council Member may attend by counsel at the hearing and adduce such evidence as he desires; and, if in the result the court is not satisfied that the omission or mis-statement was due to inadvertence, it may order the seller to pay the Executive Council Member's costs.

Cost of variable credit

24.(1) Except as otherwise provided in the Interest Act (Canada), if any master agreement required by section 12 understates the true annual rate of the cost of borrowing by more than the margin permitted, the borrower is not required to pay charges calculated at any greater rate than the legal rate of interest.

(2) Except as otherwise provided in the Interest Act (Canada), or in section 12, a credit grantor who extends variable credit in transaction to which section 12 applies otherwise than in pursuance of either

- (a) a master agreement which complies with section 12, or
- (b) a written agreement made prior to the commencement of this Act,

may not recover from the borrower any cost of borrowing whatsoever.

(3) A credit grantor who has extended variable credit in a transaction to which section 12 applies shall not exact or attempt to exact from the borrower payment of any cost of borrowing in excess of the amount permitted by this Act or by the Interest Act (Canada).

(4) If a credit grantor who has extended variable credit in a transaction to which section 12 applies receives from the borrower payment of any cost of borrowing in excess of the amount permitted by this Act or by the Interest Act (Canada), the borrower may recover from the credit grantor the amount of such excess.

Loans or refinancing not in writing or at wrong rate

25.(1) Except as otherwise provided in the Interest Act (Canada), where a loan to which section 13 applies

- (a) is not evidenced by a loan agreement containing the information required by paragraphs 13(2)(a) to (h), or
- (b) is evidenced by a loan agreement which understates the true annual rate of the cost of borrowing by more than the permitted margin,

the credit grantor may recover no more than the aggregate of the amount advanced to the borrower himself and any amount properly advanced to any other person for the borrower's benefit, with interest thereon at the legal rate.

(2) Except as otherwise provided in the Interest Act (Canada), where a transaction to which section 14 applies

- (a) is not evidenced by an agreement containing the required information, or
- (b) is evidenced by an agreement which understates the true annual rate of the cost of borrowing by more than the permitted margin,

the transaction is voidable at the option of the borrower; and if the borrower elects to avoid it, the credit grantor may recover no more than the aggregate of

- (c) the amount properly payable under the terms of the obligation being rear-ranged, and
- (d) the amount of any additional loan, if subsection 14(2) is applicable, or the total cash price of the goods and services sold to the borrower, if subsection (3) thereof is applicable, with interest thereon at the legal rate.

(3) If a credit grantor in a transaction to which section 13 or 14 applies receives from the borrower payment of any cost of borrowing in excess of the amount permitted by this Act or by the Interest Act (Canada), the borrower may recover from the credit grantor the amount of excess.

Contents of advertisements

26.(1) No advertisement of goods for retail sale on credit or for retail hire-purchase shall state the monthly or other periodic payments required unless it also states

- (a) the total cash price of the goods,
- (b) the total to be paid by the credit buyer or hirer, and
- (c) the true annual rate of the cost of borrowing expressed as a percentage and calculated in accordance with the regulations.

(2) In subsection (1), "advertisement" includes

- (a) any price tag, ticket or notice attached to or displayed near the goods,
- (b) any advertisement in a newspaper or magazine which circulates in the Yukon, and
- (c) any message broadcast by television or radio which can reasonably be expected to be received by members of the public in the Yukon.

Offence in advertising

27.(1) Subject to subsection (2), no person carrying on business in the Yukon shall advertise or cause others to advertise his goods in a manner prohibited by section 26.

(2) Where a person also carries on business outside the Yukon, subsection (1) does not apply to any advertisement of his goods which either

- (a) is contained in a newspaper or magazine circulating principally in a particular locality outside the Yukon, or
- (b) states expressly that the credit terms offered do not apply in the Yukon.

(3) Where any advertisement of the goods of a person carrying on business in the Yukon is contained in a newspaper or magazine published outside the Yukon, or is sent by mail from a point outside the Yukon, or is broadcast from outside the Yukon, the onus of proof shall lie on him to prove that he did not cause his goods to be so advertised.

PART 2

PREPAYMENT PRIVILEGES

Prepayment

28.(1) This section applies to every debt which arises out of a transaction to which section 4, 5 or 13 or subsection 14(1), (2) or (3) applies.

(2) The borrower may at any time prepay the whole of the balance then owing on any debt to which this section applies and in so doing is entitled to a rebate equal to the unearned portion of the cost of borrowing calculated in accordance with the regulations, less the allowance permitted to the credit grantor by subsection (3).

(3) The allowance to the credit grantor on prepayment referred to in subsection (2) shall be one-half of the unearned portion of the cost of borrowing, but in no case more than \$10.

(4) A borrower who is prepaying a debt under this section may deduct the rebate to which he is entitled from his payment and tender to the grantor the net amount required to effect the prepayment.

(5) A credit grantor shall furnish, on request, to any borrower who is entitled under this section to prepay a debt to him a statement showing the net amount required to effect such prepayment and how such amount is arrived at.

Prepayment of variable credit

29. A borrower to whom variable credit has been extended may, at the time when any periodic payment falls due, pay off the whole or any part of the balance owing.

Surrender of security

30. Where a borrower has prepaid or paid off the whole of a balance owing under section 28 or 29, the credit grantor shall surrender or discharge any security which he holds for such indebtedness without further charge to the borrower, except that the credit grantor need not register any document required to effect the surrender or discharge, but may deliver the same to the borrower who shall bear the registration fee thereon.

PART 3

RELIEF AGAINST ACCELERATION AND FORFEITURE

Application of Part

31.(1) This Part applies to any debt owing by a borrower to a credit grantor that is payable by instalments, other than

- (a) a debt secured on real property, and
- (b) a debt which arose out of a sale of real property.

(2) In this section "real property" includes leasehold interests in real property,

Default charges

32.(1) No agreement creating or relating to a debt to which this Part applies shall provide for any charge to be paid upon any default in payment of an instalment unless it is expressed as an annual rate on the amount in arrears.

(2) If the debt arises out of a transaction to which any provision of Part I of this Act applies, the annual rate of default charges shall not exceed the annual rate of the cost of borrowing.

(3) If the agreement states the default charge otherwise than as an annual rate on the amount in arrears, or, in a case to which subsection (2) applies, states an annual rate greater than is permitted by that subsection, the credit grantor may not recover any default charge in excess of an amount equal to interest at the legal rate on instalments in arrears.

Acceleration on default

33.(1) Subject to the restrictions hereinafter set forth, any provision in an agreement providing that in the event of default in payment of an instalment, the full balance will or may become immediately due and owing is valid and enforceable.

(2) The restrictions to which reference is made in subsection (1) are:

- (a) if the debt arises out of a sale of goods or of goods and services, or a hire-purchase of goods and the seller has not seized the goods or commenced an action to recover the balance of the debt, the buyer may pay the instalments in arrears with the default charges thereon as provided in section 32 and, in that event, payment of the balance shall not be accelerated by reason of any default so remedied;
- (b) if the debt arises out of a sale of goods or of goods and services or a hire-purchase of goods, and the seller is entitled to seize the goods and has so seized them, he shall proceed in accordance with section 46 or 47 and, if the buyer redeems the goods in accordance with those sections, payment of the balance shall not be accelerated by reason of any default so remedied;
- (c) in any other case, the borrower may, at any time before an action is commenced to recover the balance of the debt, pay the instalments then in arrears with the default charges thereon as provided by section 32, and in that event payment of the balance shall not be accelerated by reason of any default so remedied;
- (d) in any case in which an action has been commenced to recover the balance of the debt, the court may grant relief against acceleration on such terms as it sees fit;
- (e) in any case in which a credit grantor is claiming accelerated payment, and the borrower does not make the payments required to obtain relief under paragraphs (a), (b) or (c), or is not granted relief under paragraph (d), as the case may be, the credit grantor may not recover more than the aggregate of
 - (i) the amount which the borrower would have had to pay in order to prepay the whole balance of the debt at the time of the default on which the claim for acceleration is based,

- (ii) interest thereon from the time of default at the annual rate of the default charges on payments in arrears provided in the agreement or, at the legal rate, and
- (iii) any expense actually incurred by the credit grantor as a result of the default and his taxable costs of the action, if any.

(3) In any case in which a borrower has been granted an extension of time, the time of default referred to in clause (2)(f)(i) is the time when the borrower fails to comply with the terms of such extension.

(4) Except where expressly so stated, references in this Act to payments in default do not include any payments that have become due by virtue of any provision for the acceleration of payments.

(5) A provision for acceleration of payments on default operates from time to time as and when default occurs; and the circumstance that a borrower has been relieved from acceleration in accordance with this section shall not be taken to have exhausted the operation of the provision in respect of subsequent defaults.

Other penalties void

34. Any provision in an agreement creating or relating to a debt payable by instalments to which this Part applies that imposes on the borrower, as a consequence of default in payment of an instalment, any pecuniary penalty which is not permitted by sections 32 and 33 is void.

Damages and penalty for breach of obligation

35.(1) Where an agreement creating or relating to a debt imposes on the borrower any obligation in addition to the payment of the debt and the cost of borrowing, if any, and the borrower commits a breach of the obligation, the credit grantor may recover from the borrower as damages for the breach the amount of the loss he has suffered and the actual expenses he has incurred as a result of the breach, but not more.

(2) Every provision contained in an agreement creating or relating to a debt that imposes on the borrower a pecuniary penalty, howsoever described for committing a breach of an obligation in addition to the payment of the debt, imposed on the borrower by the agreement, is void in so far as it would entitle the credit grantor to recover more than the amount permitted by subsection (1), but is effective to prevent the credit grantor from recovering more than the amount of the penalty so specified.

Relief against acceleration, seizure and forfeiture

36. Where an agreement creating or relating to a debt imposes on the borrower an obligation in addition to the payment of the debt, and provides that in the event of a breach thereof

- (a) payment of the debt shall be accelerated,
- (b) the credit grantor may seize or take possession of any goods, or
- (c) that the interest of the borrower in any goods is or may be forfeited,

the court may relieve the borrower from the effect of the provision on such terms as it thinks just.

Absolute discretion of creditor

37.(1) Every provision in an agreement creating or relating to a debt that gives or has the effect of giving the credit grantor the right to decide whether any given fact or circumstance exists is void.

(2) Notwithstanding subsection (1), an agreement may contain a provision that, if the credit grantor has reasonable cause to believe that the security for the debt is in jeopardy,

- (a) payment of the debt shall be accelerated,
- (b) the credit grantor may seize or take possession of any goods, or
- (c) that the interest of the borrower in any goods is or may be forfeited,

or any or all of those provisions; and in that case it is a question of fact for the court whether the credit grantor has reasonable cause for such belief or not, but, if he has such cause at the relevant time, it is immaterial whether the security is actually in jeopardy or not.

(3) The court may relieve the borrower from the effect of a provision mentioned in subsection (2) on such terms as it thinks just.

Granting relief

38. The court may grant relief under sections 36 and 37 at any time, and may do so either in a proceeding commenced by the credit grantor to enforce his security or on an application by the borrower; but if the credit grantor gives the borrower written notice which

- (a) specifies the breach complained of, or the facts relied on as giving reasonable cause for the credit grantor's belief, as the case may be,
- (b) informs the borrower of his right to apply for relief, and
- (c) requires the borrower to apply for such relief within 20 days,

the borrower's right to apply for relief expires at the end of those 20 days.

Return of seized goods where default remedied

39. Where a creditor grantor seizes any goods and the borrower remedies the default or otherwise obtains relief under this Part, the credit grantor shall return the goods to the borrower on payment by the borrower, in addition to any other payment required by this Part, of the costs of seizure in an amount not exceeding that permitted by the Distress Act.

PART 4

TIME SALES

Time sale agreement

40.(1) Subject to sections 42 and 43, every time sale shall be evidenced by a time sale agreement in writing signed by the buyer or his agent prior to, or at the time of, delivery of the goods containing a description of the goods by which they may be readily and easily known and distinguished, and also containing, in type not less than ten point in size

- (a) a statement that the property in the goods is not to pass to the buyer on delivery,
- (b) the conditions upon which the property in the goods is to pass to the buyer, and
- (c) the events upon which the seller may, before the property therein has passed to the buyer, repossess the goods.

(2) The seller shall give a copy of the agreement to the buyer, or to the agent who signed it, not later than the time of delivery of the goods, but if there is more than one buyer, it is sufficient to give a copy to one of them.

Compliance with other requirements

41. Every time sale agreement to which section 4 or 5 or subsection 14(3) is applicable shall also contain the information required thereby.

Time sale under master agreement

42. Subject to section 43, if a seller extends variable credit under a master agreement which provides that all goods sold thereunder are sold on time sales, it shall not be necessary for the buyer to sign a time sale agreement for any purchase made under that master agreement if

- (a) the master agreement contains, in type not less than ten point in size, the statements and information required by paragraphs 40(1)(a), (b) and (c), and
- (b) there is delivered to the buyer, or his agent, or to one of the buyers, if there is more than one of them, prior to, or at the time of, delivery of the goods a writing which
 - (i) contains a description of the goods by which they may be readily and easily known and distinguished,
 - (ii) states the cash price of the goods, and
 - (iii) indicates that the goods were sold on the terms of the master agreement.

Serial numbers or distinguishing marks

43. Where an article bought on a time sale is one of a series of similar articles that are individually distinguished by a serial number or similar distinguishing mark and at the time of purchase it is not known which particular article will be the one delivered to the buyer,

- (a) if the article is sold otherwise than on variable credit, the seller may insert the serial number or distinguishing mark in the agreement after it is signed by or on behalf of the buyer, and if this is done after the copy of the agreement required by section 40 has been given to the buyer he shall give a second completed copy of the agreement to the buyer, but the serial number or distinguishing mark shall be inserted in the agreement and the second copy given to the buyer not later than 20 days after delivery of the article, and
- (b) if the article is sold on variable credit, the serial number or distinguishing mark may be omitted from the writing required by section 42 to be given to the buyer, but a copy of the writing containing the number or mark shall be given to the buyer not later than 20 days after delivery of the article.

Non-compliance with above sections

44.(1) Subject to subsections (2), (3) and (4), a time sale that does not comply with section 40, 42 or 43 takes effect as an immediate sale and the property in the goods passes to the buyer on delivery and the seller has no lien on the goods, but this does not affect the buyer's obligation to pay for the goods in accordance with the terms of the agreement.

(2) Where a time sale includes more than one separate article, and the only non-compliance with section 40, 42 or 43, as the case may be, is a failure to give a proper description of one or more of the articles, the reservation of the seller's lien is effective in regard to the articles that are properly described and subsection (1) applies only to the articles that are not properly described.

(3) The buyer may at any time consent in writing to the correction of an error or omission in the description of any goods in a time sale agreement; and on receipt of such consent the seller may correct the original agreement accordingly; and for the purposes of this section the agreement shall be deemed to have been originally written as so corrected, except that no such correction shall prejudice any rights in or to the goods which may have been acquired before the date of the correction by any other person claiming through the buyer who does not consent in writing to the correction.

(4) The court, on being satisfied that an error or omission in the description of any goods in a time sale agreement was due to inadvertence and that the buyer accepted the goods and was not misled by the error or omission, may order the description in the original agreement to be corrected; and for the purposes of this section the agreement shall be deemed to have been originally written as so corrected; but every such order shall contain whatever provisions the circumstances of the case may require to protect any person who may have acquired in good faith through the buyer a right in or to the goods adverse to the seller's title which would be prejudiced by the correction.

(5) Where

- (a) a variation in a time sale agreement, other than in the description of the goods, is made by agreement in writing between all persons affected thereby,
- (b) goods sold on a time sale which have been repossessed by the seller are returned to the buyer pursuant to any provision of this Act,
- (c) the court extends the time for payment of the balance owing on a time sale pursuant to this Act, or
- (d) a buyer on a time sale who has defaulted obtains any other relief under this Act,

the seller's title to the goods remains in full force and effect as reserved by the time sale agreement and his remedies in respect to future defaults by the buyer are not affected thereby.

Chattel mortgage for purchase price

45.(1) Where a seller on a retail sale of goods takes back a chattel mortgage on those goods to secure payment of the whole or part of the price, the chattel mortgage shall state clearly and explicitly that it is given for this purpose.

(2) No seller shall take a chattel mortgage that does not comply with subsection (1).

Waiting period after seizure, notice of seizure, and resale

46.(1) Where a seller on a time sale has repossessed the goods by reason of the buyer's default in payment, he shall retain them for 20 days after the giving of the notice required by subsection (2) during which time the buyer may redeem them on payment of

- (a) any payments then in default,

- (b) any default charges that have become payable thereon, and
- (c) the actual expenses of taking and keeping possessions not exceeding the amount allowed by the Distress Act.

(2) Within 48 hours after repossessing any goods, the seller shall give written notice to the buyer stating

- (a) that the goods have been repossessed,
- (b) the date on which they were repossessed,
- (c) the amount required to redeem them, showing how this amount is made up,
- (d) the date on or before which the goods may be redeemed, and
- (e) the place where the goods are, or are to be kept.

(3) Notwithstanding subsection (1), the seller may resell the goods during the 20 days with the written consent of the buyer given not less than 24 hours after the goods were repossessed.

Rights and remedies of buyer

47.(1) Where a seller on a time sale has repossessed the goods

- (a) by reason of a breach by the buyer of the time sale agreement other than default in payment, or
- (b) pursuant to a provision in the agreement entitling him to repossess the goods if he has reasonable cause to believe that his security thereon is in jeopardy,

the buyer may, subject to the provisions of this section,

- (c) redeem the goods by remedying the breach or taking the requisite action to ensure the safety of the seller's security thereon, or
- (d) apply to the court for relief under sections 36 and 37.

(2) Within 48 hours after repossessing the goods, the seller shall give to the buyer a written notice that

- (a) contains the statements and information required under paragraphs 38(a), (b) and (c), and
- (b) specifies the action that the seller requires the buyer to take to remedy the breach, if it is capable of remedy, or to ensure the safety of the seller's security on the goods, as the case may be.

(3) Within 20 days after the giving of the notice required by subsection (2), the buyer may

- (a) redeem the goods by taking the action required by the seller in his notice and paying the seller's actual expenses of taking and keeping possession, not exceeding the amount allowed by the Distress Act, or
- (b) apply to the court for relief.

(4) If the buyer applies to the court for relief pursuant to subsection (3), the court may, if it sees fit, relieve the buyer against the consequences of the repossession by ordering the seller to return the goods to the buyer either unconditionally or subject to the fulfillment by the buyer of such conditions as the court may see fit to impose.

(5) Where the court has ordered the seller to return the goods to the buyer unconditionally, and the court is of the opinion that the buyer's breach of the agreement did not prejudice the seller, or that the seller did not have reasonable cause to believe that his security on the goods was in jeopardy, as the case may be, the court may order the seller to pay the buyer's costs of the application.

Reckoning time for notice

48. In reckoning the periods of 48 hours prescribed by sections 46 and 47, Saturdays, Sundays and holidays shall be excluded.

Leave required for seizure

49.(1) Where a seller on a time sale would be, but for this section, entitled to repossess any goods, and the balance owing by the buyer on those goods at that time is less than 25 percent of the cash price of the goods at the time of the sale thereof, the seller may not repossess the goods without either the leave of the court or the written consent of the buyer given at the time of repossession.

(2) The seller shall give notice to the buyer of his application for leave required under subsection (1), unless

- (a) the buyer cannot be found or is evading service,
- (b) there is reasonable cause to believe that the buyer might hide the goods or otherwise attempt to evade repossession thereof if he had notice of the application, or
- (c) the court for any other reason sees fit to dispense with notice,

in which event the court may give leave to repossess on the ex parte application of the seller.

(3) Where leave to repossess is given ex parte, the order giving the leave may be set aside upon the application of the buyer initiated not later than

- (a) 20 days after the buyer has notice of the making of the order, or
- (b) 90 days after the goods are repossessed,

whichever is the earlier, and the seller shall at, or as soon as possible after, the time of repossession give to the buyer a copy of the order and a notice in a form approved by the judge who made the order of the buyer's rights under this subsection.

(4) In deciding whether to grant leave to repossess, or to set aside an order made ex parte, the court shall consider all relevant circumstances, including

- (a) the present value of the goods,
- (b) the amount already paid by the buyer,
- (c) the balance owing by the buyer,
- (d) the reasons for the buyer's default, and
- (e) the present and likely future financial circumstances of the buyer and of the seller,

and may permit the buyer to keep the goods, or if they have been repossessed pursuant to an order made ex parte, to redeem them, on such terms as it sees fit and may extend the time for payment by the buyer of the balance owing, but if it grants an extension, the court shall require the buyer to pay such additional amount as may be necessary to compensate the seller for the extension.

(5) Where any goods are repossessed pursuant to this section, sections 46 and 47 do not apply to such repossession.

Delivery of notice, etc.

50.(1) A notice required by section 46 or 47 and the copy of the order and notice required by section 49 may be given to the buyer

- (a) by delivering it personally to the buyer or to his spouse,
- (b) if the goods are in a dwelling at the time of repossession, by delivering it to any adult person who is present at the time of repossession and appears to reside in the dwelling, or
- (c) by mailing it by registered mail addressed to the buyer at this last known address, in which case it shall be deemed to be given on seven days after the date of mailing.

(2) If a seller fails to give the notice required by section 46 or 47 within the time required, the repossession of goods is not invalidated, but the time allowed to the buyer to redeem the goods or to apply to the court is extended until the expiration of 20 days from the date on which the requisite notice is given.

(3) The court may extend the time allowed by sections 46 and 47 to a buyer to redeem the goods or apply for relief, and the time allowed by section 49 to a buyer to apply to set aside an ex parte order, but the court shall not grant the extension unless it is satisfied that the seller will not be prejudiced thereby.

Protection removed

51.(1) If a buyer has persistently defaulted on his obligations under the time sale agreement or master agreement in question, or has deliberately evaded repossession of the goods, the court, on the application of the seller, may deprive the buyer in whole or part of the protection of sections 33, 46, 47 and 49.

(2) If the buyer does not appear on the hearing of an application under subsection (1), an order made on the application is not effective until a copy of the order has been served on the buyer in a manner approved by the court.

(3) Nothing in subsection (2) diminishes the court's power to order substitutional service.

Right of buyer to move or charge goods

52.(1) Subject to subsection (2), every provision in a time sale agreement or in a master agreement that prohibits, restricts or has the effect of prohibiting or restricting the buyer from

- (a) removing the goods to any place within the Yukon, or
- (b) charging his interest in the goods,

is void.

(2) A time sale agreement or a master agreement may provide that the buyer may not

- (a) remove the goods from any particular place or area, or
- (b) charge his interest in the goods,

unless he gives to the seller by registered mail addressed to the seller at the address specified in the agreement at least ten days before so doing, written notice of his intention to do so, specifying the place to which he intends to remove the goods, or the person to whom he intends to charge them, as the case may be.

(3) On receipt of any notice given pursuant to subsection (2), the seller, if he believes he will be prejudiced by the intended action specified therein, may apply to the court, and the court may make whatever order seems just to protect the interests of the seller and of the buyer.

No right to sue after seizure

53.(1) Subject to subsection (2), if a seller under a time sale repossesses the goods comprised in the time sale, or any portion thereof, his right to recover any balance, whether of the price or of the cost of borrowing or both, owing on the goods so comprised is thereafter limited to his lien on the goods and his right to repossession and sale thereof, and no action is thereafter maintainable by the seller to recover the balance or any part thereof.

(2) If the seller repossesses the goods and the buyer subsequently redeems them or they are returned to him pursuant to an order of the court or as the result of the setting aside of an ex parte order under section 49, the seller is, for the purposes of subsection (1), restored to his former position and in the event of any subsequent default by the buyer may proceed as if the goods had not been previously repossessed.

(3) Subject to subsection (4), if a seller on a time sale obtains judgment in any action for the whole or any part of the balance, whether of the price or of the cost of borrowing or both, owing on any goods comprised in the time sale, his lien on the goods comprised in that sale is extinguished on the date of the judgment and the property in the goods thereupon passes to the buyer.

(4) If an action brought by the seller was for the full amount then owing by virtue of an acceleration provision, and the court relieves the buyer or hirer from the acceleration, it may, as one of the conditions of granting the relief, exempt the seller either wholly or partially from the operation of subsection (3).

(5) Where a seller has obtained a judgment for the whole of the balance, and the goods comprised in the sale, or any of them, are seized under an execution issued pursuant to that judgment, the seller's right to recover under the judgment, in so far as it is based on that balance, is limited to the amount realised from the sale of goods so seized, and on the judgment, to the extent that it is based on that balance and taxed costs, shall be deemed to be fully paid and satisfied; but where the amount realised from the sale of the goods exceeds the amount of the judgment and the costs of execution, the excess shall be paid to the buyer, or to subsequent execution creditors, as the case may be.

(6) Where a seller has obtained judgment for only a part of the balance, and the goods comprised in the sale, or any of them, are seized under an execution issued pursuant to that judgment, the seizure operates not only to satisfy the judgment as provided by subsection (5), but also to extinguish the seller's right to maintain any action for the remainder of the balance; but in that case, if the amount realised from the sale of the goods exceeds the amount of the

judgment and the costs of execution, the excess shall be paid into court, and the court may order it to be paid out in such manner as may be just.

(7) Where only one of the goods comprised in a time sale agreement is repossessed by the seller or are seized under the execution, and the reason why the others are not repossessed or seized is that the seller or the sheriff or bailiff, as the case may be, is unable to find them, the court may exempt the seller either wholly or partially from the operation of subsection (1) or of subsections (5) and (6), as the case may be.

(8) Where any of the goods have been destroyed or damaged by the deliberate act or wilful neglect of the buyer, the seller may, notwithstanding subsections (1), (5) and (6) recover, from the buyer, the lesser of

- (a) the balance owing on the agreement or judgment, as the case may be, or
- (b) the value of the goods destroyed, or of the damage done.

Removal or replacement of collateral

54. Where a buyer has removed from any article sold on a time sale an accessory or component that was included in the sale, and has not replaced it by an other of a like kind and value, or has replaced it by one that is itself subject to a lien or charge held by another person, and the article has been repossessed by the seller or seized under an execution issued at the suit of the seller, the seller may, notwithstanding section 53, maintain an action to recover the least of

- (a) the value of the accessory or component removed, allowing for depreciation,
- (b) the amount owing on the lien or charge on the replacement held by another person, or
- (c) the amount by which the sum realised by the sale of the goods falls short of the balance owing thereon, or of the amount of the judgment and costs of execution, as the case may be.

Resale of seized collateral

55.(1) Where a seller has lawfully repossessed goods sold on a time sale, and the buyer has not redeemed them within the time allowed for that purpose, the seller may resell them.

(2) A seller who resells goods must act in good faith, but so long as he does so, he may sell them at whatever price and on whatever terms he sees fit.

(3) If the amount realised on the resale of the goods exceeds the balance owing on the goods and the expenses of taking and keeping possession and of resale, the excess shall be paid by the seller to the buyer.

(4) If the seller has the goods repaired before reselling them, the cost thereof is part of the expenses of sale.

(5) If the seller resells the goods by retail in the ordinary course of his business, he may charge, as an allowance for the overhead expenses of resale, 20 percent of the proceeds of sale.

(6) If the seller is unable to resell the goods at a price sufficient to satisfy the balance owing on them and the expenses of taking and keeping possession and of resale, the seller may keep the goods and use them as he sees fit.

Additional collateral

56.(1) No part of the price of any goods comprised in a time sale which is not made on variable credit, or of the cost of borrowing thereof, may be secured on any goods not comprised in that time sale; and any provision or arrangement which purports to do so is void.

(2) Every provision in a master agreement relating to variable credit under which the seller may

- (a) acquire title to, possession of, or any rights in, any goods of the buyer, other than goods bought or hired by him under that master agreement, or
- (b) retain any title to, a right to repossess, or any other rights in, any article bought or hired by the buyer under that master agreement after such article has been paid for in full,

is void.

(3) Except with the prior consent of the Executive Council Member or his authorized officer, no time sale agreement shall provide that the balance owing, or any part thereof, is payable on demand, and any time sale agreement that contravenes this subsection takes effect as an immediate sale and the property in the goods passes to the buyer on delivery and the seller has no lien on the goods; but this does not affect the buyer's obligation to pay for the goods in accordance with the terms of the agreement.

PART 5 CHATTEL MORTGAGES

Leave to repossess

57.(1) Where a mortgagee of goods would be, but for this section, entitled to seize the mortgaged goods and the balance owing by the mortgagor on the mortgage is less than 25 percent of the total monetary liability of the mortgagor originally secured thereby, the mortgagee may not repossess the goods without the leave of the court.

(2) A mortgagee of goods shall give notice to the mortgagor of his application for leave under subsection (1) unless

- (a) the mortgagor cannot be found, or is evading service,
- (b) there is reasonable cause to believe that the mortgagor might hide the goods or otherwise attempt to evade seizure thereof if he had notice of the application, or
- (c) the court for any other reason sees fit to dispense with the notice,

in which event the court may give leave to seize on the ex parte application of the mortgagee.

(3) Where leave to seize is given ex parte under subsection (2), the order giving the leave may be set aside upon the application of the mortgagor initiated not later than

- (a) 20 days after the mortgagor has notice of the making of the order, or
- (b) 90 days after the goods are seized,

whichever is the earlier, and the mortgagee shall at, or as soon as possible after, the time of seizure give to the mortgagor a copy of the order and a notice in a form approved by the judge who made the order of the mortgagor's rights under this subsection.

(4) In deciding whether to grant leave to seize, or to set aside an order made *ex parte*, the court shall consider all relevant circumstances, including

- (a) the present value of the goods,
- (b) the amount already paid by the mortgagor,
- (c) the balance owing by the mortgagor,
- (d) the reasons for the mortgagor's default, and
- (e) the present and likely future financial circumstances of the mortgagor and of the mortgagee.

(5) If the court grants leave to seize, it may order the mortgagee to offer the goods for sale in such manner and on such terms as it sees fit.

(6) If the court refuses leave to seize, or sets aside an order giving leave made *ex parte*, the court may extend the time for payment by the mortgagor of the balance owing, but in granting the extension, the court shall require the mortgagor to pay such additional amount as may be necessary to compensate the mortgagee for the extension.

(7) The copy of the order and notice required by subsection (3) may be given to the mortgagor in the same manner as is provided by section 50 for giving a notice to a buyer.

(8) The court may extend the time allowed by subsection (3) to a mortgagor to apply to set aside an *ex parte* order, but an extension shall not be granted unless the court is satisfied that the mortgage will not be prejudiced thereby.

(9) The rights of a mortgagor under this section are in addition to any he has under sections 36, 37 and 38.

(10) If a chattel mortgage is subject to the provisions of section 49, the provisions of that section prevail over any conflicting provisions of this section.

(11) Where

- (a) a variation in a chattel mortgage, other than in the description of the goods, is made by agreement in writing between all persons affected thereby,
- (b) goods subject to a chattel mortgage which have been seized by the mortgagee are returned to the mortgagor pursuant to any provision of this Act,
- (c) the court extends the time for payment of the balance owing on a chattel mortgage pursuant to this Act, or
- (d) a mortgagor of chattels who has defaulted obtains any other relief under this Act,

the mortgagee's security on the goods remains in full force and effect as created by the chattel mortgage and his remedies in respect of future defaults by the mortgagor are not affected thereby.

PART 6**STATUTORY WARRANTIES ON RETAIL SALES****Warranties on sale**

58.(1) Notwithstanding any agreement to the contrary, the following conditions or warranties on the part of the seller are implied in every retail sale of goods and in every retail hire-purchase of goods:

- (a) in the case of an immediate sale, a condition that he has the right to sell the goods, or, in the case of a time sale, a condition that he has the right to agree to sell or to let on hire the goods, and will have the right to sell them at the time when the property is to pass to the buyer;
- (b) in the case of an immediate sale, a warranty that the buyer shall have and enjoy quiet possession of the goods, or, in the case of a time sale, a warranty that the buyer, so long as he fulfils his obligations under the time sale agreement, shall have and enjoy possession of the goods;
- (c) a warranty that the goods are free from any charge or encumbrance in favour of any third party except only for any that the buyer has specifically agreed in writing to accept;
- (d) a condition that the goods are new and unused unless otherwise described, but in the case of a motor vehicle a description showing that it is more than one year old is sufficient to describe it as used;
- (e) a condition that the goods are of merchantable quality, except for such defects as are described;
- (f) a condition that the goods correspond with the description under which they are sold;
- (g) if the goods are sold by sample, a condition that the bulk shall correspond with the sample and that the goods are free from any defect that renders them unmerchantable, and that would not be apparent on reasonable examination of the sample, and a condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- (h) where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply, whether he is the manufacturer or not, a condition that the goods are reasonably fit for the purpose, but in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) For the purposes of paragraph (1)(e), it is not necessary to specify every defect separately, if the general condition or quality of the goods is stated with reasonable accuracy.

(3) Any statement

- (a) that the goods are not new and unused,
- (b) of the age of a motor vehicle,
- (c) of defects in the goods, or
- (d) of the general condition or quality of the goods,

shall be a part of the description of the goods for the purposes of sections 4, 5, 40 and 42, and of subsection 14(3), and where one or more of them applies, none of those statements has any effect unless it is included in the required description of the goods in the agreement or writing but the statement shall be deemed to be included in the agreement or writing if it is contained in a document that

- (e) is clearly identified as an appendix or schedule to the agreement or writing,
- (f) is signed by the buyer and the seller,
- (g) is attached to and forms part of the agreement, and
- (h) is delivered to the buyer with a copy of the agreement before delivery of the goods.

(4) Where section 4, 5, 40 or 42, or subsection 14(3) does not apply, a statement of a kind referred to in subsection (3) has no effect unless it is made in writing and

- (a) is contained in a notice that is readily visible to the buyer at or before the time of the sale and is so displayed as to make it clear that it refers to the goods, or
- (b) is contained in a document that is delivered to the buyer before he accepts the goods.

(5) If the goods are described as used in the manner required by this section, there shall be taken into account in deciding whether they are of merchantable quality

- (a) the fact that they are used, and
- (b) the age of the goods as specified in their description, or if no age is specified, the age of the goods as understood by the buyer at the time of sale.

(6) Unless otherwise expressly agreed in writing signed by the buyer, there shall be implied in every retail sale of services a condition on the part of the seller that the services sold shall be performed in a skillful manner.

(7) Nothing in this section excludes or affects any other condition or warranty relating to the goods or services, whether expressed or implied, as between the buyer and the seller or any person claiming through the seller who would, apart from this Act, be held to be bound thereby.

PART 7

DIRECT SELLERS

Application of Part

59. Subject to section 60, this Part applies to all retail sales or retail hire-purchase of goods or services or both entered into by the buyer elsewhere than in the vendor's usual place of business and which result from any offer, solicitation, proposal or approach made by or on behalf of the vendor

- (a) without any prior request by the buyer, or
- (b) in response to a request made by the buyer if the request was itself solicited by or on behalf of the vendor.

Where Part not to apply

60.(1) This Part does not apply to

- (a) sales at a price of less than \$10,
- (b) sales or hire-purchase of vehicles or trailers within the meaning of the Motor Vehicles Act,
- (c) sales of water, propane gas or petroleum products,
- (d) sales of lumber or coal where the vendor has a place of business in which the sale takes place,
- (e) sales of feed grain, feed supplement, fertilizer, or weed spray where the vendor has a place of business where the sale takes place,
- (f) sales of farm produce in the Yukon by a farmer from his own farm,
- (g) sales of services relating to
 - (i) the raising and care of livestock,
 - (ii) the planting, raising or harvesting of crops, or
 - (iii) any service of a domestic nature, including gardening,
- (h) any sale in which the price is expressly solicited as a contribution to a charitable, philanthropic or similar cause and not as being a fair price for the goods or services offered, and
- (i) sales of goods or services by a merchant having a recognized retail store in the Yukon and selling goods or services of a sort or class ordinarily sold at that store, or by a bona fide servant or employee of the merchant.

(2) For the purposes of paragraph (1)(i),

- (a) 'recognized retail store' does not include a dwelling, mail order office, display room, office, repair or service shop, warehouse, studio or any other place of a like nature notwithstanding that the owner or occupant thereof is or may be assessed for business tax purposes in respect of such place, and
- (b) 'merchant' does not include a person who has a recognized retail store if more than 50 percent of the goods or services sold by him in the Yukon are within section 59.

Cancellation within seven days

61. All retail sales or retail hire-purchase to which this Part applies which are not in writing may be cancelled by notice in writing within seven days after the buyer has entered into the contract by sending a notice by registered mail to the vendor or personal delivery thereof to the vendor at his place of business and the notice of cancellation is good and effective, if, however expressed, it indicates the intention of the buyer to withdraw from the transaction to which it relates.

Statement required in agreement

62.(1) Every agreement made in writing to which this Part applies or, if an agreement to which this Part applies is not in writing, every receipt for any payment on account of the purchase price other than an agreement to which this Part applies shall have printed or typed at the top of the first page in type not less than ten point in size the following words: "You can cancel this agreement by notice in writing within seven days after you signed it. If you do not cancel this agreement within the seven days you may not be able to cancel it afterwards. You can send your notice by registered mail to (name and address of vendor shall be inserted here)

or you may deliver it there yourself. You must mail it or deliver it before the end of the seven days. If you cancel it, any money you paid, and any goods you traded in, will be returned to you.”

(2) The words required by subsection (1) to be inserted in an agreement shall be a term of every agreement in which they are contained, but the words do not exclude any right of cancellation, repudiation or rescission which a buyer has apart from this Part.

(3) Subject to subsection (5), if any agreement made in writing to which this Part applies or any receipt for any payment on account of the purchase price under an agreement to which this Part applies does not contain the words required by this section, the buyer may cancel the agreement by written notice to the vendor at any time within 30 days after the first goods are delivered or services performed thereunder.

(4) Where an agreement made in writing to which this Part applies does not contain the words required under this section, the vendor may at any time thereafter deliver to the buyer personally, or to each of the buyers personally if there are more than one, a notice which clearly and explicitly

- (a) refers to the agreement concerned,
- (b) informs the buyer that he may within seven days thereafter cancel the agreement by notice in writing to the vendor delivered or sent by registered mail to the address stated in the notice, and
- (c) informs the buyer that upon cancellation any money he paid or goods he traded in will be refunded.

(5) If a vendor delivers in accordance with subsection (4), a notice containing the information required thereby, the notice thereupon becomes a term of the agreement and subsection (3) ceases to apply.

(6) If a buyer refuses to accept delivery of a notice under subsection (4), the refusal is in itself an effective cancellation of the agreement.

(7) A duplicate copy of every agreement made in writing to which this Part applies shall be delivered to the buyer at the time of the signing thereof.

Cancellation for other reasons

63.(1) Notwithstanding the provisions of sections 61 and 62, a retail sale or retail hire-purchase to which this Part applies may be cancelled where

- (a) the vendor or direct seller was not licensed pursuant to the Business Licence Act or the Municipal Act as the case may require, at the time that the buyer into the contract, or
- (b) the goods or services to be supplied under the contract are not supplied to the buyer within 120 days after the date on which the buyer entered into the contract,

by written notice served on the vendor by the buyer within six months after the day on which the purchase was made or the contract was signed.

(2) Where it is shown to the court that it is inequitable that paragraph (1)(b) should apply, the court may make such order as it deems just and expedient.

Effect of cancellation

64. Upon the cancellation of any agreement, whether oral or in writing, under this Part

- (a) subject to subsection 65(2), any and every liability or obligation of the buyer under the agreement is extinguished,
- (b) the vendor shall repay to the buyer any and every sum that has already been paid by the buyer or by anyone on his behalf for or on the account of the purchase price, rent, or cost of borrowing or otherwise pursuant to the agreement, whether payment has been made to the vendor or any other person, and
- (c) the vendor shall return to the buyer any goods taken as a trade-in in as good condition as they were in when taken, or if he is unable to do that, shall pay the buyer the greater of
 - (i) the market value of the goods when taken, or
 - (ii) the price or value set on the goods in the agreement.

Rights of cancellation

65.(1) The right of a buyer to cancel under this Part is not affected by

- (a) the delivery of the goods to him,
- (b) the use of the goods by him,
- (c) the partial consumption of the goods by him,
- (d) the accidental destruction of or damage to the goods, or
- (e) the partial performance by the vendor of any services,

but the right of a buyer or hirer to cancel under this Part is extinguished by

- (f) deliberate destruction of or damage to the goods by the buyer or any member of his household, or
- (g) the actual consumption by the buyer of all goods comprised in the agreement and the complete performance by the vendor of all services comprised therein.

(2) Where goods have been used, or partially consumed or accidentally destroyed or damaged by a buyer, or some services have been performed by the vendor,

- (a) the vendor may recover from the buyer reasonable compensation therefor,
- (b) the vendor's right to recover compensation does not arise until the vendor has repaid, set off in favour of the buyer or returned to the buyer all money and goods to which he is entitled, and
- (c) the vendor may not maintain any action for compensation until the right thereto has arisen;

and a vendor shall not, under this subsection, recover payment from the buyer more quickly than he would have been entitled to under the agreement, and any judgment in favour of the vendor under this subsection may, therefore, be made payable by instalments.

(3) The buyer has a lien on all goods delivered to him for all sums payable to him by the vendor, but shall return those goods to the vendor as soon as that lien has been satisfied.

PART 8

ASSIGNEES AND GUARANTORS

Rights of assignee and guarantor

66.(1) The rights conferred by this Act on a borrower pass to and may be exercised by any person claiming through or under him without any express assignment thereof; but no such person has any right to receive from a credit grantor any notice required by this Act unless the credit grantor has been made aware of the transfer to him of the borrower's rights before the time when that notice has to be given.

(2) Notwithstanding subsection (1), a buyer, when selling or transferring to another person any goods that he has acquired on a credit sale or hire-purchase, may reserve, either expressly or by necessary implication, any rights he has against the seller under section 58.

(3) Where the context so admits, in this Act, "borrower" and "buyer" include any person to whom their rights pass under this section.

(4) Every provision of this Act that restricts or reduces the amount payable by a borrower or gives him a right to set-off, likewise restricts or reduces the amount payable by and gives a similar right of set-off to any endorser, surety or guarantor for him; but this does not affect any liability to an assignee of a credit grantor on the part of

- (a) the credit grantor himself,
- (b) where the credit grantor is a seller, any manufacturer, wholesaler or distributor of the goods, or
- (c) any person who has guaranteed the performance by the credit grantor of his obligations generally.

(5) Where goods that were acquired on a time sale or are subject to a chattel mortgage are repossessed or seized, and an assignee of the buyer or mortgagor applies to the court for relief, the court, as a condition of granting relief, may require the assignee to undertake to be personally liable for payment of the balance owing to the vendor or mortgagee.

Assignee of credit grantor

67.(1) Except as otherwise provided in this Act, the assignee of any rights of a credit grantor in any transaction to which this Act applies has no greater rights than and is subject to the same obligations, liabilities and duties as the assignor, and the provisions of this Act apply equally to such assignee.

(2) Notwithstanding subsection (1), no borrower may recover from, or be entitled to set-off against, an assignee of the credit grantor an amount greater than the balance owing on the contract at the time of the assignment, and, if there have been two or more assignments, no borrower can recover from an assignee who no longer holds the benefit of the contract, an amount that exceeds the payments made by the borrower to that assignee.

- (3) Except as otherwise provided in this Act, all restrictions imposed by this Act on
- (a) the right of a credit grantor to claim immediate, payment of the debt, and
 - (b) the right of a seller or mortgagee to repossess or seize goods,

apply equally to any assignee of the credit grantor, seller or mortgagee and, in the restrictions, “credit grantor”, “seller” and “mortgagee” include an assignee of a credit grantor, seller and mortgagee respectively.

(4) The cancellation of an agreement by any buyer under Part 7 is effective against any assignee of the seller.

(5) If, where subsection 23(1) or subsection 25(1) or (2) applies, the payments to be made by the borrower are secured by a promissory note that is negotiated to an assignee of the credit grantor, and the assignee sues in the Yukon on that note, the borrower or other person sued on the note may recover back from the assignee as a simple contract debt the difference, if any, between

- (a) the amount recovered by the assignee on the note, and
- (b) the amount that the assignee could have recovered if the payments had not been secured by the note.

(6) Subject to section 68, a breach of any of the conditions or warranties implied by section 58 may be set-off by the buyer against any claim to the goods or to payment of the price and cost of borrowing or rent or any part thereof or of any promissory note given therefor made by any assignees of the seller, or by any holder of the promissory note, whether or not the note discloses the purpose for which it was given, or by any person claiming the goods by a title paramount to that of the seller with whose consent, express or implied, the seller has sold or let on hire the goods; but the amount that may be set-off against an assignee or holder of a note under this subsection shall not exceed the amount limited by subsection (2), and the amount that may be set-off against any person claiming the goods by paramount title shall not exceed the lesser of

- (a) the cash price of the goods, or
- (b) the balance owing as described under section 4 or 5 as the case may be.

(7) Where a creditor grantor assigns a promissory note taken in any transaction to which section 4, 5, 13, 14 or 40 applies, he shall deliver to the assignee with the promissory note a copy of the document required by that section and the assignee who re-assigns the note shall deliver to his assignee a copy of the document.

Assignee of chattel mortgage

68.(1) Where a chattel mortgage to which subsection 45(1) applies does not indicate that it was given to secure payment of the price of the goods or goods and services, any assignee for value of that mortgage who took an assignment without notice that the mortgage was given for that purpose is not affected by any liabilities or restrictions imposed on the seller by Part 4 or by section 58.

(2) The onus lies on the assignee to prove that he took the assignment for value and without notice of the purpose for which the chattel mortgage was given.

Where seller not mortgagee

69.(1) Where a buyer on a retail of goods finances his purchase by a chattel mortgage on the goods given to some person other than the seller, the transaction is nevertheless a time sale for the purposes of sections 46 to 56 and a retail sale for the purposes of section 58, and the

mortgagee is deemed to be an assignee of the seller, if the financing was arranged by the seller, but not otherwise.

(2) Any mortgagee who takes a mortgage to which subsection (1) applies shall, on any assignment of the mortgage, disclose that circumstance in writing to the assignee, and any assignee of the mortgage who is aware of the fact shall likewise disclose it to any person to whom he assigns the mortgage.

(3) No person shall assign a mortgage without making a disclosure required by subsection (2).

(4) Any assignee for value of a mortgage to which subsection (1) applies who took an assignment without notice of that circumstance is not affected by any liabilities or restrictions imposed on the seller by Part 4 or by section 58.

(5) The onus lies on the assignee to prove that he took the assignment for value and without notice that subsection (1) applied to it.

(6) Subsection (1) does not apply to a chattel mortgage on any cottage, barn, shed or other building if the money is advanced by the mortgagee to the seller on written instructions from the buyer, given not less than seven days after the signing of the mortgage, that states

- (a) that the building is completed to his satisfaction to the extent specified in the instructions and that the mortgagee may advance a stated sum to the seller, or
- (b) that the building is fully or substantially completed to his satisfaction and that the mortgagee may advance the balance of the loan to the seller.

Collection practices

70. No person, whether on his own behalf or on behalf of another directly, or through others, shall

- (a) collect from a debtor a greater amount than the sum of the amount actually owing by the debtor to the credit grantor and the amount of fees allowed by any statute or regulations made thereunder,
- (b) notwithstanding any agreement to the contrary between the credit grantor and a debtor, collect or attempt to collect from the debtor any fee or commission payable by the credit grantor to a collection agent under any agreement or understanding between the credit grantor and the collection agent,
- (c) send any telegram or make any telephone call to a debtor for the purpose of demanding payment or negotiating payment of a debt if the charges for the telegram or telephone call are payable by the addressee of the telegram or the person to whom the telephone call is made,
- (d) verbally or in writing, collect or attempt to collect money or effect or attempt to effect seizure of goods by stating an intention or threat to proceed with any action for which he does not have lawful authority,
- (e) use, without lawful authority, any summons, notice, demand or other document expressed in language of the general style of any form used in any court in the Yukon, or printed or written in such a manner so as to have the general appearance or format of any form used in any court in the Yukon,

- (f) make telephone calls or personal calls of such nature or with such frequency as to constitute harassment of the debtor, his spouse or his family,
- (g) refer or assign an account for collection or seizure of goods to a collection agent without first cancelling in writing any previous referral or assignment to any other collection agent; but one collection agent may act for or on behalf of another collection agent or a lawyer,
- (h) except with the leave of the court, remove any goods claimed under seizure or distress in the absence of the debtor, his spouse, his agent or an adult resident in the debtor's home,
- (i) seize or levy distress against any goods other than those specifically charged or mortgaged, or to which lawful claim may be made under any statute or judgment,
- (j) make a telephone or personal call or attempt to make a telephone or personal call to or on a debtor to demand payment, or negotiate for payment, or seize or levy distress against goods
 - (i) on a Sunday,
 - (ii) on a holiday, or
 - (iii) on any other day except between the hours of seven o'clock in the morning and nine o'clock in the evening,
- (k) make further demand for payment of an account or seize goods or levy distress if the debtor gives notice by registered mail to the credit grantor, his assignee or collection agent, of a claim for set-off or counterclaim under this Act or any other statute or regulations, or under any right of contract until
 - (i) the credit grantor, his assignee or collection agent has submitted the matter to a court of competent jurisdiction for adjudication, or
 - (ii) the debtor and the credit grantor, his assignees or collection agent, have agreed in writing to the amount still owing by the debtor in respect of the account after deducting an amount agreed upon for the claim for set-off or counterclaim,
- (l) give, by implication, inference or statement, directly or indirectly, any false information to any person or agency that may be detrimental to a debtor or his spouse, or
- (m) make any demand for payment, by telephone, by personal call, or by writing for payment of an account without indicating the name of the credit grantor with whom the account was incurred, the balance owing on the account, and the identity and authority of the person making the demand.

Leave to seize

71.(1) For the purposes of paragraph 70(h) a person may apply to the court for leave to remove goods claimed under seizure or distress in the absence of the debtor, his spouse, his agent or an adult resident in the debtor's home; and subsections 49(2), (3) and (4) apply to the application.

(2) Where any goods are repossessed pursuant to leave of the court granted under subsection (1), sections 46 and 47 do not apply to the repossession.

Penalty for wrongful collection

72.(1) Where a collection agent, or a creditor, or any other person, charges a debtor with any amount that is not rightfully collectible from the debtor by reason of any provision of section 70, the debtor may

- (a) if the amount has been paid by the debtor, recover from the creditor an amount equal to three times the amount of the charge as a debt due to the debtor, or
- (b) if the amount has not been paid or partly paid, set-off an amount equal to three times the amount of the charges against the amount rightfully owing to the creditor and, if the amount of the set-off is greater than the amount rightfully owing, recover the excess from the creditor as a debt due to the debtor.

(2) Where a collection agent or a creditor, or any other person, seizes or levies a distress against goods contrary to section 70, the debtor, or any person claiming an interest in the goods through the debtor, may take possession of the goods and recover the cost of taking possession from the collection agent, the creditor, or the other person, as the case may be.

Name of collection agent

73. No collection agent shall conduct the business of collection agent under a name that differs from that under which he is licensed.

Limitations on benefits from business

74. No collection agent shall obtain any benefit, either directly or indirectly, from the conduct of his business as a collection agent other than the agreed schedule of fees payable by the credit grantor using his services in amount not in excess of any fees prescribed under this or any other Act or regulations made thereunder, or any Act of Parliament or regulations made thereunder.

Use of forms

75. No collection agent shall use any form that is an avoidance or a breach of this Act.

Employees

76. Except with the consent of the Executive Council Member or his authorized officer, no person shall act as collection agent or shall employ or use any person

- (a) who has been convicted of an offence under the Criminal Code (Canada),
- (b) has been convicted of an offence under this Act, or under any statute in force in any part of Canada that is similar in nature to this Act,
- (c) who within the previous ten years has been bankrupt or has been an officer or director of a corporation or a member of a partnership that became bankrupt during the period of his involvement unless, in each case, the creditors in the bankruptcy have been paid in full, or
- (d) who is not registered in accordance with the regulations.

Proper records

77. Every collection agent shall keep proper records and books of account showing money received and money paid out, including a receipt book, a cash book, a ledger of client's accounts, a ledger of debtor's accounts, and a journal, or equivalent accounting records satisfactory to the Executive Council Member.

Trust account

78.(1) Every collection agent shall maintain in the Yukon a trust account in a bank or trust company or a branch thereof, and shall deposit all money received on behalf of a client in the trust account.

(2) A collection agent shall not withdraw any money from the trust account except

- (a) money paid to or on behalf of a client from funds that has been deposited in the trust account for the credit of the client,
- (b) money required for payment to the collection agent of his charges pursuant to an agreement to collect debts or disbursements made on behalf of a client from money in the trust account held for the credit of the client, and
- (c) money paid into, or credited to, the trust account by mistake.

Audit

79.(1) Every collection agent shall appoint an auditor satisfactory to the Executive Council Member to audit his books and accounts.

(2) Every collection agent shall cause to be prepared and shall submit to the Executive Council Member within three months of the close of his fiscal year, a statement, certified by the auditor of the collection agent, showing

- (a) the assets and liabilities of the collection agent, and
- (b) the gross amount of money collected during the preceding fiscal year of the collection agent.

Accounting for collections and disclosure

80.(1) Without notice or demand therefor, every collection agent shall account for all money collected by him within 30 days after the end of the calendar month in which the money is collected, and if the total of all amounts payable to any person after deduction of any agreed charges is \$10 or more, he shall at the same time pay the amount to the person entitled to it.

(2) On demand by a client, or by the Executive Council Member, a collection agent shall disclose the actions taken and the results obtained in respect of any account referred to him for collection, but neither a client nor the Executive Council Member shall demand disclosure in respect of any account more frequently than once in any month.

(3) Within 30 days after demand by a client therefor, a collection agent shall surrender any documents or records supplied to him by the client in respect of any account referred to him by the client, and shall cease immediately to pursue his efforts to obtain payment from the debtor.

Failure to locate creditor

81.(1) Where a collection agent has collected money on behalf of a creditor, and is unable to locate the person entitled to receive the money within six months after the money has been collected; he shall pay the money, less his agreed charges, to the Executive Council Member with a statement thereof showing the full name and address last known to him of the person entitled to the money.

(2) Where the Executive Council Member receives money under subsection (1), he shall deposit the money and, if no claim for the money arises within seven years of the date of deposit of the money with the Executive Council Member, the money shall be paid into the Consolidated Revenue Fund and is thereupon forfeited to the Government of the Yukon.

Verification of information

82. Where under this Act any information is required to be given to the Executive Council Member by a collection agent, the collection agent shall, upon request of the Executive Council Member give the information verified by affidavit.

**PART 9
GENERAL PROVISIONS**

Actions against employees in bureau

83. No action lies or shall be instituted against any officer or employee of the government to recover any loss or damages alleged to have been suffered as a consequence of any act or omission in connection with the administration or carrying out of this Act or the regulations.

Penalties

84. Any person who contravenes or fails or neglects to comply with any provision of this Act or the regulations commits an offence and is liable, on summary conviction, to a fine of not more than \$1,000 for a first offence and to a fine of not more than \$2,000 or to imprisonment for a term of not more than three months for any subsequent offence, or, if a corporation, is liable to a fine of not more than \$2,000 for a first offence and to a fine of not more than \$5,000 for any subsequent offence.

Limitation period for complaint

85. A complaint or information charging any person with an offence under this Act must be laid within two years from the time the offence was committed.

Agreement waiving benefits

86. Every agreement or bargain, oral or written, express or implied, that any of the provisions of this Act or the regulations does not apply or that a benefit or remedy under this Act or the regulations is not available or that in any way limits or abrogates, or in effect limits, modifies or abrogates a benefit or remedy under this Act or the regulations is void and money paid under or by reason of the agreement is recoverable in the court.

Regulations

87. For the purpose of carrying out the provisions of this Act according to their intent, the Commissioner in Executive Council may make regulations ancillary thereto and not inconsistent therewith; and every regulation made pursuant to, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Commissioner in Executive Council may make regulations

- (a) prescribing the fees payable under this Act;
 - (b) exempting any class of buyer, seller, vendor, direct seller, collection agent, credit grantor or borrower or any category of transaction from the application of this Act or any provision thereof;
 - (c) prescribing standard forms of contract;
 - (d) prescribing the manner in which the cost of borrowing stated as a percentage shall be calculated, expressed and applied and margins of error permissible;
 - (e) prescribing the manner in which the unearned portion of the cost of borrowing should be calculated;
 - (f) respecting any matter necessary and advisable to carry out effectively the intent and purpose of this Act.
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CHAPTER 32

CONTRIBUTORY NEGLIGENCE ACT

Apportionment of damage or loss

1.(1) Subject to subsections (2) and (3), where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree in which each person was at fault.

(2) Where, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(3) Nothing in this section renders a person liable for damage or loss to which his fault has not contributed.

Degree of fault

2. Where damage or loss has been caused by the fault of two or more persons, a judge or a jury, as the case may be, shall determine the degree in which each was at fault, and where two or more persons are found at fault, they are jointly and severally liable to the person suffering damage or loss, but as between themselves, in the absence of any contract express or implied, they are liable to make contribution to and to indemnify each other in the degree in which they are respectively found to have been at fault.

Apportionment of costs

3. Unless a judge otherwise directs, the liability for costs of the parties in an action under this Act is in the same proportion as their respective liability for the damage or loss.

Questions of fact

4. In an action, the amount of damage or loss, the fault, if any, and the degrees of fault are questions of fact.

Restriction of questions

5. At the trial of an action, a judge shall not take into consideration nor shall he submit to the jury, as the case may be, any question as to whether, notwithstanding the fault of one party, the other could have avoided the consequences thereof, unless in the opinion of the judge, there is evidence that the act or omission of the latter was clearly subsequent to and severable from the act or omission of the former so as not to be substantially contemporaneous with it.

Adding party defendant

6. Where a person who is not a party to an action is or may be wholly or partly responsible for the damages claimed, that person may be added as a defendant or made a third party to the action upon such terms as a judge deems just.

Contribution where plaintiff is spouse of negligent person

7. In an action founded upon negligence and brought for damage or loss resulting from bodily injury to or the death of a married person, where one of the persons found to be negligent is the spouse of the married person, no damages or contribution or indemnity are recoverable for the portion of damage or loss caused by the negligence of the spouse, and the portion of the loss or damage so caused shall be determined although the spouse is not a party to the action.

CHAPTER 33

CONTROVERTED ELECTIONS ACT

Interpretation

1. In this Act,

“clerk” means clerk of the Supreme Court;

“election” means the election in respect of which the respondent named in a petition was declared elected as a member of the Legislative Assembly;

“electoral district” means an electoral district within the meaning of the Electoral District Boundaries Act;

“petition” means a petition brought under this Act;

“petitioner” means a person who brings a petition;

“respondent” means a person against whom a petition is brought.

Practice and procedure

2.(1) A petition and all proceedings thereunder shall be deemed to be a civil proceeding to be dealt with as such by the Supreme Court, and all provisions of the Judicature Act and the Rules of Court under that Act shall, insofar as they are not inconsistent with this Act, apply mutatis mutandis to such petition and proceedings.

(2) Practice and procedure on appeals from the judgment of the Supreme Court under this Act shall be in accordance with the Court of Appeal Act.

Application to Supreme Court

3. Unless authorized to be made ex parte by a provision of this Act, all applications to the Supreme Court in connection with proceedings under a petition shall be made in chambers by notice of motion.

When and by whom petition may be brought

4. Any person who was a duly qualified elector at an election may at any time within 30 days after publication, in the manner provided in the Elections Act, of the name of a person declared elected as a member of the Legislative Assembly for an electoral district at such election, bring a petition against the election of such person.

Form and contents of petition

5. A petition shall be in the prescribed form and shall set forth

- (a) the right of the petitioner to petition,
- (b) a brief statement identifying the holding and results of the election,
- (c) a brief summary of the facts and grounds that the respondent was not eligible for election as a member of the Legislative Assembly relied upon by the petitioner, and
- (d) the prayer that the election of the respondent be declared void and set aside.

Filing of petition and security for costs

6.(1) The petition shall be filed within the time prescribed in section 4 with the clerk.

(2) The petitioner shall, at the time of filing the petition deposit with the clerk the sum of \$500 as security for the costs of the respondent in respect of proceedings under the petition.

Service of petition

7.(1) Subject to subsection (2), a copy of the petition shall be served, within 20 days after it has been filed, upon the respondent.

(2) The Supreme Court may, upon *ex parte* application by the petitioner and upon being satisfied from his affidavit that he has been unable to effect service of the petition upon the respondent after making all reasonable effort to do so, extend the time for effecting service, not exceeding ten days for each extension, or may order substitutional service in such manner as the Supreme Court deems expedient.

Addresses for service and service procedure

8.(1) The petition shall have endorsed thereon an address at which service may be made on the petitioner of any documents arising out of proceedings under the petition.

(2) The respondent shall, within ten days after service of the petition under section 7, file with the clerk an address at which service may be made on the respondent of any documents arising out of any proceedings under the petition.

(3) Where any documents are required to be served on the petitioner or the respondent, they shall be lawfully served by leaving them with a responsible adult person at the respective addresses referred to in this section and, where no address is given or where the address given is distant more than seven kilometres from the office of the clerk, they shall be lawfully served by filing them with the clerk.

Withdrawal of petition

9. A petitioner may withdraw his petition at any time by filing a written notice of such withdrawal with the clerk and by serving a copy thereof on the respondent and the Supreme Court shall, in such case, upon application by the respondent, order the petitioner to pay the respondent's costs.

Application to set aside petition

10. The respondent may, within 20 days after service of the petition upon him, apply to the Supreme Court to set the petition aside on any of the following grounds:

- (a) that the petitioner is not qualified to bring the petition;
- (b) that the petition was not filed or served within the time prescribed;
- (c) that the prescribed security for costs was not deposited;
- (d) that the petition does not disclose sufficient facts and grounds for declaring void and setting aside the election of the respondent.

Application for particulars

11.(1) The respondent may, within 20 days after service of the petition upon him or, if he has made application under section 10 to set it aside, within five days after the disposal of such application, apply to the Supreme Court for an order for particulars or for further particulars of the facts and grounds relied upon to support the petition.

(2) The Supreme Court may order such particulars or such further particulars as it deems necessary to ensure a fair trial and may, in the order, prescribe the time in which such particulars shall be delivered to the applicant and that, in default of delivery, the petitioner shall be precluded from adducing evidence at the trial of the petition with respect to the facts and grounds of which such particulars are ordered.

When petition ready for trial

12. Where a petition is not withdrawn or set aside and all applications that may be made with respect thereto have been disposed of or the time for making such applications has expired, the petition shall be at issue and may be set down for trial.

Setting down for trial by petitioner

13. The petitioner may, at any time after a petition is at issue, apply to the Supreme Court to appoint a time and place for trial of the petition and the Supreme Court shall, on being satisfied that the petition is at issue, appoint a time and place for trial.

Application to dismiss for want of prosecution

14.(1) Where a petitioner does not, within 30 days after the petition is at issue, make an application to set it down for trial, the respondent may apply to the Supreme Court to dismiss the petition.

(2) The Supreme Court may, upon application under this section, dismiss the petition or appoint a time and place for trial of the petition, as it deems advisable.

Open court

15. A petition shall be tried in open court.

Judgment and report

16.(1) The Supreme Court shall file with the clerk its directions as to the judgment to be entered and its reasons therefor and thereupon the petitioner or respondent may, subject to approval of its terms by the Supreme Court, enter a formal declaratory judgment pursuant to such directions.

(2) A judgment under this section shall include provisions as to recovery of costs as the Supreme Court has directed.

(3) The Supreme Court shall, within 14 days after filing its directions as to judgment, make and forward to the Commissioner a report of the judgment and directions and reasons therefor.

(4) The Supreme Court shall, as soon as possible, report to the Commissioner any stay of proceedings after judgment or any appeal taken from its judgment.

Results of petition

17.(1) Where the judgment dismisses the petition, the respondent shall continue to be a member of the Legislative Assembly as if the petition had never been brought.

(2) Where the judgment declares that the respondent's election is void and should be set aside, the Commissioner shall, after receiving the report of the Supreme Court under section 16, make an order declaring that the respondent's election is void and set aside, and thereupon the respondent's election is void and set aside.

(3) Where there is a stay of proceedings after judgment or an appeal taken from the judgment, this section shall not apply until the stay of proceedings is vacated or the appeal dismissed.

Written admission of wrongful election

18.(1) A respondent may file a written notice, supported by his affidavit containing his reasons therefor, admitting that the petition should be allowed and that his election should be declared void and set aside.

(2) A copy of the notice and affidavit shall be served upon the petitioner.

(3) Where the Supreme Court is satisfied with the bona fides of the notice under subsection (1), it may permit the petitioner to enter, subject to approval of its terms by the Supreme Court, a formal declaratory judgment that the respondent's election is void and should be set aside.

(4) The provisions of sections 16 and 17 as to entry, report and effect of judgments apply to judgments under this section.

Effect of judgment on appeal

19. Where an appeal, as provided in the Court of Appeal Act, is taken from the judgment of the Supreme Court given under this Act, the Court shall, as soon as possible, send the Commissioner a report of the judgment on appeal and the reasons, if any, given therefor and, upon receipt of the report by the Commissioner, the consequences of such judgment on appeal shall take effect in the same manner as in the case of the judgment of the Supreme Court under section 17.

Costs

20.(1) Unless otherwise provided in this Act, costs of a petition and any proceedings thereunder may be awarded as the Supreme Court may in its discretion decide.

(2) The Supreme Court may order that any costs to be paid by the petitioner be paid, after final determination of the petition, out of the security for costs deposited by the petitioner, but such an order shall not be construed as prohibiting the respondent from recovering costs or any portion thereof by any other lawful means.

No power to count ballots

21. Nothing in this Act shall be construed as authorizing the Supreme Court in proceedings under this Act to count or recount the ballots cast in an election.

Regulations

22. The Commissioner in Executive Council may make regulations prescribing forms to be used for the purposes of this Act.

CHAPTER 34

COOPERATIVE ASSOCIATIONS ACT

Interpretation

1. In this Act,

“association” means an association incorporated under this Act;

“bylaws” means the standard bylaws and the bylaws of the association;

“extraordinary resolution” means a resolution passed by a majority of at least three-fourths of the members present at a general meeting of the association duly called for that purpose for which not less than 30 days notice specifying the intention to propose the resolution as an extraordinary resolution has been given;

“member” means a person who is a member of an association pursuant to the bylaws of the association governing membership, and includes a person who has subscribed to the memorandum of the association and also in the case of an association having share capital a shareholder of the association;

“registrar” means the registrar of cooperative associations appointed by the Commissioner in Executive Council pursuant to section 2;

“standard bylaws” means the bylaws prescribed by the Commissioner in Executive Council pursuant to this Act.

Registrar

2. The Commissioner in Executive Council may appoint a registrar of cooperative associations to carry out the duties set forth in this Act.

Incorporation

3.(1) Any five or more people who for the purpose of conducting and carrying on a cooperative undertaking, business or industry desire to associate themselves together as a cooperative association with or without share capital shall sign in duplicate a memorandum of association and comply with the requirements of this Act respecting registration and incorporation of associations.

(2) The memorandum of association shall be signed by each applicant in the presence of a witness who shall attest the signature.

(3) The memorandum of association shall state

- (a) the name of the association with the word “Cooperative” as part of its name and with “Limited” or “Ltd.” as the last word in its name, the objects of the association and the place at which the registered office of the association is to be situated, and
- (b) if there is share capital, the amount of each share and whether the shares are unlimited in number or of a fixed number, or if there is no share capital, the terms of membership and the basis on which the interest of each member is to be determined.

(4) The memorandum of association and two copies of the bylaws signed by each subscriber to the memorandum of association shall be filed with the registrar together with the fee as determined by the Commissioner in Executive Council pursuant to section 35.

(5) Subject to section 7, the registrar may approve, amend or reject the memorandum of association and bylaws or any part thereof, but if the registrar does not approve the memorandum or bylaws, he shall return them together with the fee referred to in subsection (4) to the applicants.

(6) Upon receipt of the documents and fee referred to in subsection (5) and if the memorandum of association and bylaws appear to the registrar to comply with this Act, he shall register them and issue a certificate of incorporation.

Certificate of incorporation

4.(1) From the date of incorporation set out in the certificate of incorporation, the subscribers to the memorandum of association and all such persons as thereafter become members of the association, become a body corporate and politic under the registered name of the association having perpetual succession and a common seal.

(2) A certificate of the registrar is conclusive proof that all the requirements of the Act in respect of incorporation and registration and of matters precedent and incidental thereto have been complied with and that the association is duly registered under this Act.

Notice of incorporation

5. Upon the issue of a certificate of incorporation the registrar shall cause a notice of the incorporation to be published at the expense of the association in such manner and at such times and places as he deems advisable.

Effect of memorandum and bylaws

6. The memorandum of association and bylaws are, upon registration, binding upon the association and members to the same extent as if the memorandum and bylaws had been signed and sealed by each member and contained covenants binding each member, his heirs, executors, administrators and assigns to observe, subject to this Act, all the provisions of the memorandum and the bylaws.

Names

7.(1) The association shall not be incorporated by a name of which the registrar disapproves for any reason.

(2) The association shall not be incorporated by a name

- (a) that is identical with the name by which a company, society, partnership, sole proprietorship or association in existence is incorporated or registered in the Yukon, or
- (b) that so nearly resembles a name referred to in paragraph (a) as, in the opinion of the registrar, to be calculated to deceive

unless the company, society, partnership, sole proprietorship or association

- (c) consents in writing to the use of the name, and
- (d) is in the course of being dissolved or has ceased to carry on business.

Change of name and alteration of memorandum

8.(1) An association may by extraordinary resolution change its name, but the change of name does not affect any rights or obligations of the association or render defective any legal proceedings by or against the association, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

(2) An association may by extraordinary resolution amend or alter its memorandum of association, but no extraordinary resolution shall have any force or effect until a copy thereof has been filed with and has been approved by the registrar.

Objects and powers of associations

9.(1) An association has, as ancillary and incidental to the object or objects set forth in the memorandum of association and the powers set forth in the memorandum of association, the powers set out in the prescribed schedule, unless those powers or any of them are expressly excluded by the memorandum of association.

(2) An association accepting a deposit of money from a member shall keep such money in a trust account available to the member upon his demand.

Loans to members or directors

10. No loan shall be made by an association to a member or director unless the association is specifically empowered by extraordinary resolution to make such loans.

Bylaws

11.(1) The Commissioner in Executive Council may from time to time prescribe standard bylaws not inconsistent with this Act and any standard bylaws so prescribed shall be the bylaws of each association subject, however, to such modifications or changes with respect to a particular association as may be made by supplemental bylaws of the association.

(2) An association may at an annual meeting or general meeting called for the purpose pass such supplementary bylaws as are deemed advisable by the association.

(3) The association may, by supplementary bylaws, amend, alter or rescind any existing bylaws of the association.

(4) No supplementary bylaw shall have any force or effect until a copy thereof has been filed with and approved by the registrar.

Shares

12.(1) The capital of an association having share capital shall be divided into shares of such denomination as set out in the memorandum of association and may be changed from time to time by amendment of the memorandum.

(2) A share may be paid for by instalments at such time and in such manner as may be specified in the bylaws, but no person may purchase at any time more than one share by the payment of instalments and no member is entitled to draw interest on more than the paid-up portion of his share.

(3) The association has a lien on the shares of a member for a debt due to the association by him and may set off a sum credited to that member in or towards payment of the debt.

(4) Shares are not transferable unless the bylaws provide for their transfer.

(5) No application for a share shall be accepted and no allotment of a share is valid unless approved or authorized by the directors.

(6) No assignment or transfer of a share is valid unless approved by the directors.

Transfer upon death

13.(1) A member may nominate in writing any person not being an officer or servant of the association as the person to whom his shares shall be transferred upon his death, and he may revoke or vary the nomination from time to time.

(2) Each association shall keep a book where the names of persons nominated under subsection (1) shall be entered.

(3) Notwithstanding any provision in the bylaws of the association providing that the shares of the association are not transferable, the shares affected by entry in the book mentioned in subsection (2) are transferable subject to subsection (4) to the person nominated to receive them.

(4) Upon receiving satisfactory proof of the death of a nominator, the directors at their option shall

- (a) transfer the shares as directed by the nominator, or
- (b) pay to the person entitled to the shares the full value of his interest therein.

(5) If a member of an association entitled at his death to an interest in the association dies without having made a nomination that remains unrevoked at his death, the interest shall be transferred or the value thereof paid, at the option of the directors, to or among the persons who are entitled thereto.

Membership

14.(1) Subject to the provisions of this Act, membership in an association is governed by the bylaws of the association.

(2) Every subscriber to the memorandum of association shall be deemed to have agreed to become a member of the association and shall, upon its registration, be entered upon the register of members.

(3) No person shall become a member of an association until his application for membership has been approved by the directors and he has complied fully with the bylaws governing admission of members.

(4) Notwithstanding subsection (3), an application for shares in an association having a share capital constitutes an application for membership and the allotment of a share or shares to the applicant constitutes acceptance of the application.

(5) Membership in an association may be transferred but no transfer is valid unless authorized by the board of directors.

(6) Unless provision is made in the bylaws of the association to the contrary, a person of the age of 16 years

- (a) may be a member,
- (b) in the case of an association having share capital, may be a shareholder, and
- (c) may, subject to the bylaws of the association, enjoy all the rights of a member or shareholder, as the case may be, and execute all instruments and give all discharges necessary to be executed or given under the bylaws.

(7) A cooperative association may be a member of another association.

(8) A member may be expelled if he fails to comply with the provisions of this Act or the bylaws of the association, after a hearing, by a two-thirds vote of the members, present at a special general meeting called to consider the expulsion.

Liabilities of shareholders and members

15.(1) The liability of the shareholders of an association having share capital is limited so that

- (a) no shareholder in an association is in any manner liable for or chargeable with the payment of a debt or demand due by the association beyond the amount remaining unpaid of the face value of his share or shares, and
- (b) a shareholder having fully paid up the amount of his share or shares is absolved from all further liability.

(2) The liability of members of an association, other than shareholders of an association having share capital, is limited so that

- (a) no member is in any manner liable for or chargeable with the payment of a debt or demand due by the association beyond the amount due and unpaid with respect to the membership fees of such member, and
- (b) a member whose membership fees are paid in full is absolved from all further liability.

Registered office and register of members

16.(1) An association shall have a registered office as designated in the memorandum of association at which place services may be made and notices sent.

(2) The association shall keep a register or list of members which is prima facie proof in court of the particulars entered therein relating to

- (a) the names, addresses and occupations of the members, the numbers of such shares if they are distinguished by numbers, and the amount paid or considered as paid on any such shares,
- (b) the date upon which the name of a person was entered in such register or list as a member, and
- (c) the date upon which such person ceased to be a member.

(3) The association shall allow a member to inspect the share or membership register of the association at reasonable times during business hours at the head office of the association, or place where the same is kept, subject to such regulations as to the time and manner of inspection as may be made from time to time by the association in general meetings.

Fiscal year

17. Unless another period is prescribed by the bylaws of the association, the fiscal year of an association shall begin on January 1 in each year and end on December 31 next following.

Number of directors

18.(1) Where the number of members in an association is less than ten, there shall be three directors.

(2) Where the number of members in an association is ten or more there shall be a minimum of five directors.

Election and actions of directors

19.(1) The directors of an association shall be elected by ballot at an election held on the day and in the manner designated in the bylaws, and shall hold office for a period as provided in the bylaws.

(2) If the election of directors is not held on the day designated in the bylaws of the association, an election shall be held on another day and all acts of the directors before their successors are elected, unless otherwise invalid, are valid and binding.

(3) All acts of the directors are valid notwithstanding any defect in their appointment, election or qualifications.

(4) If a director is elected at the first general meeting who is not a member of the association at the time of his election and he fails to become a member within two months from the date of his election, he shall cease to be a director.

(5) No person who is not a member of the association shall, after the first general meeting, be elected or appointed director and the election or appointment as a director of a person not a member is void.

(6) When a vacancy appears on the board of directors, the remaining directors may appoint a member of the association as a director, who shall then hold office until the next general meeting of the association.

(7) The directors shall have the general direction and supervision of the affairs and business of the association.

(8) Meetings of the directors shall be held at least once every three months.

(9) No member or shareholder under the age of 18 years shall be a director, manager or treasurer of the association.

Meetings of associations

20.(1) The first general meeting of an association shall be held within three months from the date of incorporation and thereafter a general meeting shall be held annually at such time and place as is prescribed by the bylaws.

(2) Special general meetings of the association may be called at other times as prescribed by the bylaws.

(3) At meetings of the association,

- (a) a member shall have one vote only regardless of the number of shares held by him, and
- (b) no member may vote by proxy except where provision is made in the bylaws for representation by delegates.

Contracts

21.(1) Contracts on behalf of an association may be made as follows:

- (a) any contract which if made between private persons would by law be required to be in writing and under seal may be made on behalf of the association in writing under the common seal of the association and may in the same manner be varied or discharged;
- (b) any contract which if made between private persons would by law be required to be in writing signed by the parties thereto may be made on behalf of the association in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;
- (c) any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing may be made by parol on behalf of the association by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) The association may make marketing contracts with any of its members or any group or class of its members requiring them to sell for a period of time, not over five years, all or any part of their products specified in the contracts exclusively to or through the association or any agency created or indicated by the association.

(3) Where a member of an association having entered into a marketing contract with the association does not within 12 months of the date of a contract make delivery of the products or commodities which he is required by the contract to deliver, he may be excluded from membership in the association in accordance with subsection 14(8).

Borrowing

22.(1) An association may authorize by bylaw the borrowing of money from its members for definite periods of not less than 90 days, and such money shall be credited to an account to be known as the loan capital account, which may be used for any of the purposes of the association including payments for goods purchased or expenses incurred in connection therewith or the shipment thereof.

(2) An association may pledge its credit for the purchase of goods, wares or merchandise or in any other transaction coming within the scope of its corporate powers.

Sale on credit

23.(1) No association shall sell goods, wares or merchandise to its members or customers on credit or in any other manner than for cash except as may be authorized by bylaw, but in no event shall there be owing to the association at any time with respect to credit sales an amount in excess of one-half the amount of the working capital as shown by the previous year's auditor's annual report.

(2) For the purposes of this section and of section 26, "working capital" shall be construed to include share capital, debenture or bond indebtedness, general reserve fund, deferred dividends or participating reserves and undistributed surplus or deficit accounts.

Distribution of surplus

24. Subject to section 26, the amount available for distribution to members at the close of each fiscal year of an association shall, within six months from the close of each fiscal year, be allocated in the manner provided by the bylaws.

Reserve for contingencies

25.(1) Subject to subsections (2) and (3), an association shall designate not less than 20 percent of the amount available for distribution to members at the end of each fiscal year as a reserve for contingencies and the amount so designated shall not be distributed to the members.

(2) Subsection (1) does not apply to an association when its reserve for contingencies reaches an amount equivalent to

- (a) 30 percent of the value of its assets in the case of an association having assets of a value of \$25,000,
- (b) 20 percent of the value of its assets in the case of an association having assets of a value exceeding \$25,000 but not exceeding \$50,000, and
- (c) ten percent of the value of its assets in the case of an association having assets of a value exceeding \$50,000,

but if in the fiscal year that reserve is reduced below the minimum amount specified by this section, 20 percent of the amount available for distribution to members at the end of that fiscal year, or such lesser amount as will restore the reserve in the first year to the minimum amount specified by this section, shall be designated as part of the reserve for contingencies until the reserve is restored to the minimum amount.

(3) An association without share capital shall set aside its net surplus, if any, at the end of each fiscal year as a reserve for contingencies and shall not distribute this reserve to its members.

(4) Where the registrar does not agree with the value an association places on its assets for the purpose of subsection (2) he may place a value on the assets and this valuation shall, for the purpose of subsection (2), be the value of the assets.

Withdrawal of members

26.(1) Members may withdraw from membership in the association in the manner provided by the bylaws and subject to the following conditions:

- (a) the directors may require notice, not exceeding six months, of the proposed withdrawal of a member;

- (b) the association is not required to permit the withdrawal of a member in any fiscal year if the result would be to reduce the amount of working capital of the association at the beginning of that fiscal year by ten percent or more.

(2) When a member withdraws from membership in an association or is expelled, the board shall make available to the member

- (a) where the association has share capital, the paid-up value of all shares held by the member,
- (b) any amount held by the association to the credit of the member, and
- (c) the equity of the member other than shares in the assets of the association.

Dissolution

27.(1) Where an association has failed for any period of two years to send to or file with the registrar any document required to be sent to or filed with the registrar under this Act, or where the registrar has reasonable cause to believe that an association is not carrying on business or is not in operation, he shall send by registered or certified mail a letter addressed to the association at its registered office inquiring whether the association is carrying on business or is in operation, or notifying it of the default, as the case may be.

(2) If within two months of sending the letter referred to in subsection (1) the registrar has not received an answer or the default is not rectified, the registrar may, within 14 days after the expiration of the two month period, send by registered or certified mail a letter referring to the first letter and stating that

- (a) no answer has been received, or that the default has not been rectified, as the case may be, and
- (b) if no answer to the second letter is received within two months of the sending of the second letter or the default is not rectified in that time, a notice will be published in such a manner as he deems necessary with a view to striking the name of the association off the register.

(3) If the registrar receives an answer from the association to the effect that it is not carrying on business or in operation or if he does not within two months after sending the second letter receive an answer to it or the default is not rectified in that time, the registrar may publish in such a manner as he deems necessary and send by registered or certified mail to the association notice that at the expiration of two months from the date of that notice he will strike the name of the association off the register and dissolve the association.

(4) At the expiration of the time mentioned in the notice referred to in subsection (3), the registrar shall, unless cause to the contrary is previously shown by the association, strike the name of the association off the register, and in such cases he shall publish notice thereof in such manner as he deems necessary whereupon and whereby the association is dissolved.

(5) Where an association is dissolved under this section, the association shall nevertheless be considered as subsisting in all respects subject to the provisions of this section so long and so far as a matter relating to the association remains unsettled, and the association may do all things necessary to the winding up of the concerns thereof, and may sue and be sued in respect of all unsettled matters.

Application of the Business Corporations Act

28. Sections 209 to 230 of the Business Corporations Act shall, insofar as they are applicable, apply to an association.

Financial statements

29.(1) An association shall appoint, in the manner prescribed by the bylaws, a person to hold the office of auditor who shall, upon the approval of the registrar, be auditor for the association.

(2) Subject to subsections (3) and (8) and notwithstanding subsection (1), where an association by extraordinary resolution waives the appointment of an auditor, the association is not required to appoint an auditor.

(3) No resolution under subsection (2) is effective for more than one financial year.

(4) At the close of each fiscal year the association shall submit its accounts for audit by the auditor unless the appointment of an auditor has been waived under subsection (2) and an auditor has not been appointed.

(5) Every association shall within 90 days from the close of each fiscal year send to the registrar a general statement in such form and including such details as the registrar may require of the affairs of the association accompanied by a copy of the financial statement for the preceding fiscal year signed by at least two of the directors of the corporation.

(6) An association shall supply to each member upon his application without charge a summary of the latest financial statement of the association.

(7) Where the appointment of an auditor has not been waived under subsection (2), the financial statements referred to in subsections (5) and (6) shall be certified by the auditors.

(8) Where an appointment of an auditor is not made under subsection (1), the Executive Council Member may on the application of any member of the association appoint an auditor for the association for the current year and fix his remuneration.

(9) An association shall upon request furnish the registrar with any information he may require for purposes of this Act.

Documents submitted for registration

30.(1) The registrar may, where he is of the opinion that any document submitted to him

- (a) contains matter contrary to law,
- (b) by reason of any omission or mis-description, has not been duly completed,
- (c) does not comply with the requirements of this Act, or
- (d) contains any error, alteration or erasure,

refuse to receive or register the document and request that the document be appropriately amended or completed and re-submitted, or that a new document be submitted in its place.

(2) Every document required by this Act to be filed or registered with the registrar

- (a) shall be in typed or printed form, and, in the opinion of the registrar, legible and sufficiently permanent for his records, and
- (b) shall be in the English language, or accompanied by a notarially certified English translation of it.

Inquiry by registrar

31. The registrar shall, upon the order of the Executive Council Member or upon receipt of a request in writing containing the signatures of

- (a) at least 50 percent of the members, where there are ten members or less in the association, or
- (b) at least ten percent of the members or six members, whichever is the greater, where there are over ten members in the association,

hold an inquiry into the affairs of the association and make a report of the results of the inquiry to the Executive Council Member.

Appointment of administrator

32.(1) If it appears to the Executive Council Member from the registrar's report made pursuant to section 31 that the affairs of the association

- (a) are being mismanaged, or
- (b) are not being conducted in accordance with cooperative principles,

he may cancel the incorporation of the association or appoint an administrator to protect the equities of the members.

(2) An administrator appointed pursuant to subsection (1)

- (a) shall have all the powers of the directors and may perform all or any of the duties of the officers of the association,
- (b) shall be responsible to the registrar for the conduct of the business of the association and carry out all orders and directions of the registrar with respect to the association, and
- (c) may pay the expenses of administration out of the funds of the association.

(3) The administrator shall take all steps and do all things necessary to protect the equities of the members and the rights of the creditors of the association, and shall maintain, so far as is practicable, the services provided by the association.

(4) Where an administrator is appointed pursuant to subsection (1), the directors and officers of the association shall not thereafter, so long as the administrator remains in charge of the conduct of the business of the association, exercise any of the powers conferred upon them by this Act and the bylaws.

(5) For the purposes of this section, the administrator shall have access to all books, accounts, securities, documents, vouchers, cash, goods, wares, merchandise and other assets of the association and any security held by the association.

(6) Subject to the approval of the registrar, the administrator may call a special general meeting of the members of the association to report to them on the affairs of the association and the steps taken by him to protect their equities.

(7) The administrator shall conduct the business of the association until the registrar is satisfied to have the management of its affairs resumed by its officers or until the association is dissolved and a liquidator is appointed to wind up its affairs.

Extra-territorial corporations

33.(1) This section does not apply to an extra-territorial corporation that has no resident agent or representative or warehouse, office, or place of business in the Yukon.

(2) No extra-territorial corporation which carries on business in the Yukon which might be carried on by an association under authority of this Act is entitled to carry on business in the Yukon under any name which includes the word "cooperative" or any abbreviation thereof for longer than 30 days after commencing to carry on business in the Yukon, unless the corporation has complied with the requirements of this section.

(3) Every extra-territorial corporation which complies with this section is deemed to be an association to which this Act applies for the purpose of section 3.

(4) Every extra-territorial corporation may be registered under this section only with the approval of the Executive Council Member, who shall refuse his approval if he is not satisfied that the corporation is organized, administered, and operated substantially on a cooperative basis.

(5) The registrar shall not register any corporation under this section unless he has received a certificate of approval signed by the Executive Council Member.

(6) Save as aforesaid, every extra-territorial corporation carrying on business in the Yukon under any name which includes the word "cooperative" or any abbreviation thereof shall register with the registrar, and Part 21 of the Business Corporations Act applies, mutatis mutandis, to such extra-territorial corporation.

(7) An extra-territorial corporation registered under this section is not required to register under the Business Corporations Act.

(8) The registrar may at any time for just cause or failure to comply with the provisions of this Act and upon notice being given to the corporation's attorney, suspend or revoke a registration under this section.

(9) Every extra-territorial corporation registered under this section and every corporate body to which written approval has been granted under section 3 of this Act shall from time to time provide the Executive Council Member with such information as he requests as to its organization, operation and administration.

(10) The revocation or suspension of the registration of an extra-territorial corporation shall not affect the validity of, nor make unenforceable any property rights, interest in land, contractual rights or obligations owned, held or entered into by such extra-territorial corporation prior to such revocation or suspension.

(11) Notwithstanding the revocation or suspension of its registration, an extra-territorial corporation may do all things necessary or desirable for the orderly winding up of its affairs, concerns and interests in the Yukon and may sue and be sued in respect thereof.

(12) During the period when the revocation or suspension of the registration of an extra-territorial corporation is in effect, the Executive Council Member may, to protect the equities of the members, appoint a person to administer the affairs, concerns and interests of the extra-territorial corporation who shall have all the powers and duties set forth in section 32 insofar as they are applicable to an extra-territorial corporation.

(13) If the suspension or revocation of the registration of an extra-territorial corporation is withdrawn, such withdrawal shall, subject to any conditions which may be imposed in connection with such withdrawal, be deemed to remove any disability or prohibition which could apply to such extra-territorial corporation by reason of the suspension or revocation.

Offences and penalties

34.(1) Every person or association who

- (a) fails to give notice, send a return or document or do or allow to be done any act or thing that the association is by this Act required to give, send, do or allow to be done,
- (b) neglects or refuses to do an act or to furnish information required for the purposes of this Act by the registrar or other person authorized under this Act, or does an act or thing forbidden by this Act, or
- (c) wilfully furnishes information in any respect false or insufficient,

commits an offence.

(2) Every association or corporation that commits an offence against this Act is liable on summary conviction to a fine not exceeding \$1,000.

(3) Every person, other than a person referred to in subsection (2), who commits an offence against this Act is liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding two months, or to both fine and imprisonment.

(4) Where a fine is imposed under subsection (3) a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed two months.

(5) An offence against this Act by an association shall be deemed to have been committed by each officer of the association where the offence of the association is caused by an officer failing to perform the duties of his position as required by the bylaws, or if there is no such officer, then by each of the directors, unless the officer or director is proved to have attempted to prevent the commission of the offence.

Regulations

35. The Commissioner in Executive Council may make regulations

- (a) prescribing the fees payable for services rendered under this Act;
- (b) prescribing standard bylaws not inconsistent with this Act;
- (c) prescribing forms for the carrying out of this Act;
- (d) generally for carrying out the purposes of this Act.

CHAPTER 35

CORONERS ACT

Appointment and removal

1.(1) The Commissioner in Executive Council may appoint one or more coroners for the Yukon and may at any time remove, supersede or dispense with any or all of them and appoint others in their place.

(2) The Commissioner in Executive Council may appoint a chief coroner who shall have jurisdiction throughout the Yukon.

(3) The powers, duties and remuneration of the chief coroner shall be such as are from time to time defined and set forth by order of the Commissioner in Executive Council.

Oaths to be taken

2.(1) A coroner shall, before entering upon the duties of his office, take and subscribe to, before a judge of the Supreme Court or the Territorial Court, justice of the peace or a person authorized by the Commissioner in Executive Council to administer oaths, an oath of allegiance and an oath of office.

(2) The oath of allegiance to be taken by a coroner is as follows: "I,, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors according to law. So help me God."

(3) The oath of office to be taken by the coroner is as follows: "I,, do solemnly and sincerely promise and swear that I will faithfully and honestly fulfill the duties that devolve upon me by reason of my appointment as a coroner and that I will not, without due authority on that behalf, disclose or make known any matter that comes to my knowledge by reason of my duties or office. So help me God."

Jurisdiction

3.(1) The coroner residing nearest the place where the death occurred or the place at which the body is found or nearest the route of travel by which such place can be most readily reached has jurisdiction to act as coroner respecting a deceased person.

(2) Notwithstanding subsection (1), a coroner has jurisdiction throughout the Yukon and the chief coroner or a judge may at any time direct a coroner to make an investigation or hold an inquest at any place in the Yukon, in which case the jurisdiction of other coroners, whether they are within subsection (1) or not, is suspended respecting such investigation or inquest.

Disqualification

4.(1) A coroner shall not conduct an inquest or make an investigation into the circumstances connected with the death of a person

- (a) on whom he has attended in his professional capacity as a medical practitioner at any time during the period of 30 days immediately prior to the day of that person's death,
- (b) on whose body he has, otherwise than in the course of an inquest or investigation in his capacity as coroner, performed an autopsy or post mortem examination, or
- (c) whose death has been caused at, on or in or in connection with a railway, mine or other work in respect of which the coroner is the owner, part owner, director, etc., or employed as a medical attendant or in some other capacity by the owner or manager or under any agreement or understanding, direct or indirect, with the employees at, on or in such work.

(2) Where a coroner who would normally exercise jurisdiction under section 3 or is directed pursuant to that section to exercise jurisdiction is disqualified from so doing under subsection (1) of this section, he shall immediately notify the chief coroner and the nearest available coroner of his disqualification.

Duty to notify coroner of death

5. A medical practitioner, undertaker, embalmer, peace officer or any person residing in the house in which the deceased resided immediately prior to his death or any other person who has reason to believe that a deceased person died as a result of violence, misadventure or unfair means, from any cause other than disease or sickness, as a result of negligence, misconduct or malpractice on the part of others or under such other circumstances as require investigation shall immediately notify the coroner who ordinarily has jurisdiction in the locality in which the body of the deceased person is found, of the circumstances relating to the death.

Warrants and investigations

6.(1) Subject to subsection (3) where a coroner is notified that there is, within his jurisdiction, the body of a deceased person respecting whom there is reason to believe that death resulted from violence, misadventure or unfair means or a cause other than disease or sickness, as a result of negligence, misconduct or malpractice on the part of others or under such other circumstances as require investigation, he shall, unless disqualified from acting under this Act issue his warrant, in the prescribed form, to take possession of the body and shall view the body and make such further inquiry as may be required to satisfy himself whether or not an inquest is necessary.

(2) Unless otherwise directed by the chief coroner or a judge, where a coroner has issued a warrant under this section, no other coroner shall issue a warrant or interfere in the case.

(3) Where a coroner is notified of a death occurring without the attendance of a medical practitioner, he is not required to issue his warrant to take possession of the body or view the body, if, after inquiry into all the circumstances connected with the death, he is satisfied that it is unnecessary to hold an inquest.

(4) For the purposes of making inquiries under this section, a coroner may request the assistance of one or more peace officers who shall, upon such request, make immediate inquiries into the circumstances of the death and submit a detailed report of the results of such inquiries to the coroner.

(5) A coroner may, with the approval of the chief coroner, employ experts to assist him in an inquiry.

Coroner's powers

7.(1) A coroner may, in exercising his or her duties for investigations, inquiries and inquests

- (a) view any dead body, and
- (b) take possession of any dead body.

(2) A coroner may, in exercising his or her duties for investigations, inquiries and inquests with respect to the death of a person,

- (a) enter and inspect any place where the coroner believes, on reasonable grounds, the deceased person's body to be or have been, and
- (b) arrange for the disinterment of the deceased person's body.

(3) A coroner shall not arrange for the disinterment of a body under paragraph (2)(b) without the authorization of the chief coroner.

(4) A coroner may, where he or she believes on reasonable grounds that to do so is necessary for the purposes of an investigation, inquiry or inquest with respect to the death of a person,

- (a) inspect any place in which the coroner has reasonable grounds to believe that the deceased person was, within such period of time as may be reasonable for the purposes of the investigation, inquiry or inquest, prior to death,
- (b) secure the scene or area where the coroner believes, on reasonable grounds, the death of the person to have occurred to enable investigation to be carried out for a period not exceeding 48 hours or for such other period as the chief coroner may authorize, and
- (c) where authorized by a search warrant obtained pursuant to subsection (6) seize anything that the coroner believes, on reasonable grounds, is material to the investigation.

(5) The coroner may authorize a peace officer to exercise all or any of his or her powers under subsections (1), (2) or (4), but where the power is conditional on the belief of the coroner, the belief must be that of the coroner personally.

(6) A justice of the peace, who is satisfied by information upon oath that there are reasonable grounds to believe that there is in a building, receptacle or place, anything that there are reasonable grounds to believe will afford evidence in respect of the circumstances of a death, may issue a warrant authorizing a coroner to search for and seize any such thing.

(7) Where anything is seized under paragraph (4)(c), the coroner shall keep it in safe custody and shall return it to the person from whom it was seized as soon as practicable after the conclusion of the investigation, inquiry or inquest, unless the coroner is authorized or required by law to dispose of it otherwise.

Procedure without inquest

8.(1) Where the coroner, after investigation, is satisfied that an inquest is unnecessary, he shall

- (a) issue his warrant to bury the body, in the prescribed form,
- (b) forthwith transmit to the chief coroner an affidavit, in the prescribed form, setting forth briefly the result of the inquiry and the grounds on which he issued the burial warrant, and
- (c) forthwith transmit to the funeral director or undertaker or other person having charge of the body the information and particulars required under the Vital Statistics Act.

(2) Notwithstanding the decision of a coroner and transmission of an affidavit under subsection (1), the chief coroner may direct the coroner or some other coroner to hold an inquest on the body and the coroner so directed shall forthwith hold an inquest.

Requirements for inquest

9.(1) Where a coroner, after investigation, has good reason to believe that a deceased person came to his death as a result of violence, misadventure or unfair means or as a result of negligence, misconduct or malpractice on the part of others or under such other circumstances as require an inquest, he shall hold an inquest.

(2) Before holding an inquest, the coroner shall make an affidavit in the prescribed form which shall be returned and filed by the coroner with the inquisition.

(3) Subsection (2) does not apply to an inquest held at the direction of the chief coroner or a judge or an inquest held on the body of a prisoner who died in or about any prison, gaol or lock-up or in the custody of a peace officer.

Direction of chief coroner or judge to hold inquest

10. Where the chief coroner or a judge has reason to believe that a deceased person came to his death under circumstances which, in his opinion, make the holding of an inquest advisable, he may direct any coroner to conduct an inquest into the death of such person and the coroner so directed shall conduct an inquest in accordance with this Act, whether or not he or any other coroner has viewed the body, made an inquiry or investigation, held an inquest into or done any other act in connection with the death.

Death of prisoner

11. Where a prisoner in a prison, gaol or lock-up or in the custody of the Royal Canadian Mounted Police or a peace officer dies and notice of his death is given to a coroner by the warden or other official or person in charge or in whose custody the prisoner was, the coroner shall issue his warrant in the prescribed form and hold an inquest on the body.

Inquest without exhumation

12.(1) Where the body of a person respecting whom it is necessary to hold an inquest has been buried and the coroner is of opinion that no good purpose would be affected by disintering the body for the purposes of the inquest, the chief coroner or a judge may, either upon application to him or otherwise, issue written permission to the coroner concerned to proceed therewith without disintering the body.

(2) Where the body of a person respecting whom it is necessary to hold an inquest has been transported out of the Yukon to be interred, the chief coroner or a judge may, either upon application to him or otherwise, issue written permission to the coroner concerned to proceed therewith without having the body brought back to the Yukon.

Inquest without viewing body

13. Where a coroner is satisfied that a death, respecting which it is necessary to hold an inquest, has occurred within his jurisdiction, but, either due to the cause of death or for any other reason, the body or any part thereof cannot be found or recovered the coroner may, after first obtaining the written consent of the chief coroner or a judge, proceed to hold, without any view of the body, an inquiry as to the cause of death and it shall be conducted in all other respects in the same manner as other inquests held under this Act.

Preservation of scene of death

14. Where an inquest is to be held upon the body of a person who met death by violence in the wreck of a building, bridge, structure, embankment, aircraft, motor vehicle, boat, machine or apparatus, the coroner may take charge of all wreckage and place peace officers in charge thereof in order to prevent any disturbance of the wreckage until such examinations as are deemed necessary by the coroner have been completed.

Post-mortem examination

- 15.**(1) Subject to subsections (2) and (3), a coroner may, where he considers it advisable,
- (a) for the purposes of an investigation, or
 - (b) prior to the termination of an inquest,

conduct a post-mortem examination or direct that a post-mortem examination be conducted by a medical practitioner.

(2) Where a coroner proposes to conduct a post-mortem examination or to direct a medical practitioner to do so for the purposes of an investigation and an inquest has not been ordered, the examination shall not be made without the permission of a judge, the chief coroner or a person authorized by the chief coroner.

(3) Where the coroner has reason to believe that the death was directly or indirectly caused by the improper or negligent action of a medical practitioner or other person, that medical practitioner or other person shall not be allowed to perform or assist at the post-mortem examination.

(4) Where a coroner is of opinion that the body of a deceased person that has been buried should be disinterred for the purposes of an examination or where he is so directed by the chief coroner or a judge, the coroner shall issue a warrant in the prescribed form.

(5) A copy of a coroner's warrant for disinterment shall be sent to the registrar of vital statistics and a re-burial certificate secured.

(6) The coroner shall send to the chief coroner the accounts in respect of a post-mortem examination.

Inquests involving mining accidents

16.(1) Where an inquest is held concerning a death caused by an accident at, or in connection with a mine, the coroner shall send reasonable notice of its time and place to a person who is an inspector under the Occupational Health and Safety Act or a person authorized to act for him and such inspector or other person is entitled to be present and to cross-examine any witness at the inquest.

(2) Where the inspector or other person who receives notice of an inquest fails to appear at the appointed time or place or requests a postponement or adjournment of the inquest, the coroner may postpone or adjourn the inquest if he deems it advisable in the public interest to do so, but no postponement or adjournment shall exceed 24 hours.

(3) In the case of an inquest under this section, the jury, if any, shall wherever practicable contain at least three employees of the mine, of whom at least one is familiar with the work in respect of which the accident arose.

Coroner's juries

17.(1) At an inquest held pursuant to this or any other Act, a coroner shall, where he is of opinion that it is practicable to secure a jury, sit with a jury but may, where he is of opinion that it is not practicable to secure a jury, proceed without a jury, and, in the latter case, has full authority to find such verdict as a jury might have found.

(2) Subject to this Act or any other Act, a coroner's jury shall consist of six persons who are qualified to serve and liable to serve as jurors under the Jury Act.

(3) Where in his opinion it is practicable to secure a coroner's jury, the coroner shall, as soon as possible, issue his warrant in the prescribed form to a sheriff, or other peace officer to summon six persons to form the coroner's jury.

(4) The summons to a person to serve on a coroner's jury shall be in the prescribed form and shall specify the time, place and purpose of the inquest and the name and address of the person upon whom it is to be served.

(5) Subject to section 16, no person who, whether or not liable or qualified to serve as a juror under the Jury Act, is

- (a) an officer, employee or inmate of a hospital, asylum, charitable institution, gaol, prison or lockup in which the death of a deceased person occurred, or
- (b) the owner or an employee of the owner of any building or premises used for any trade or business and in which the death of a deceased person occurred,

shall serve on the coroner's jury at an inquest respecting the death of such deceased person.

Use of jury

18.(1) The sheriff, or other peace officer to whom the coroner's warrant is issued under subsection 17(3) shall attend at the time and place appointed for the inquest and make his return as to the summoning of the jurors.

(2) Where six jurors are present the coroner shall proceed with the inquest.

(3) Where less than six jurors are present upon the return of the summons, the coroner shall order the sheriff, or other peace officer to summon, by word of mouth if necessary, a sufficient number of persons, whether qualified jurors or not, to complete the jury and where a full jury cannot be obtained within one hour from the time fixed for the commencement of the inquest, the coroner may proceed with a jury of not less than three jurors or dispense with a jury.

(4) Where a coroner's jury consists of six persons, five of them may return a verdict but, where the jury consists of less than six persons, the verdict must be unanimous.

Report where no jury, etc.

19. Where an inquest is held without a coroner's jury or with a coroner's jury consisting of less than six persons, the inquisition shall state that the inquest has been so held and give the reasons therefor.

Arrest of juror for failure to appear

20.(1) Where a person duly summoned to serve on a coroner's jury does not, after being openly called three times, appear in answer to the summons, the coroner may, after proof upon oath that the summons has been served upon such person, issue a warrant to a peace officer commanding him to arrest such person and bring him before the coroner at the time and place specified in the warrant.

(2) Where a person who is referred to in subsection (1) is brought before the coroner and fails to show cause why he did not obey the summons or refuses without reasonable excuse to serve, the coroner may impose upon him a fine not exceeding \$50 plus costs or may, in default of payment of such fine, commit him, by warrant in the prescribed form, to prison for a term not exceeding 30 days.

Witnesses

21.(1) A coroner may issue a summons respecting any person who, in his opinion may be able to give material evidence at an inquest, requiring him to appear at the time and place mentioned therein, to testify to all matters within his knowledge relative to the subject matter of the inquest and to bring with him and produce any document, book, paper, article or thing that he has in his possession or under his control relative to the subject matter of the inquest.

(2) The original summons may contain the names of any number of witnesses and the copy served on each witness may do likewise or may contain only the name of the witness upon whom it is served and shall be served in the same manner as under the Jury Act.

(3) Where a person duly summoned to give evidence at an inquest fails to appear or refuses to be sworn or to give evidence at such inquest, the coroner may, after proof upon oath, that the summons has been served upon such person, issue a warrant to a peace officer commanding him to arrest such person and bring him before the coroner at the time and place specified in the warrant.

(4) Where a person who is referred to in subsection (3) is brought before the coroner and fails to show cause why he did not obey the summons or has refused without reasonable excuse to be sworn or to give evidence, the coroner may impose upon him a fine not exceeding \$50

plus costs or may, in default of payment of such fine, commit him, by warrant in the prescribed form, to prison for a term not exceeding 30 days.

Procedure at inquests

22.(1) Where a coroner's jury is to sit at an inquest, the coroner shall, before commencing any other proceedings at the inquest, swear the jurors or cause them to be sworn before him to inquire diligently touching the death in respect of which the inquest is to be held and to render a true verdict according to the evidence.

(2) The coroner and the jury, if any, shall, at the first sitting of the inquest, view the body, unless a view has been dispensed with under this Act, and the coroner shall examine, upon oath or affirmation, all persons he thinks expedient to examine as witnesses.

(3) A person who has been charged or is likely to be charged with an offence relating to the death concerning which the inquest is held is not compellable to give evidence at the inquest and the coroner shall so advise such person before he gives evidence.

(4) Counsel representing Her Majesty may attend at an inquest and may examine or cross-examine the witnesses called and the coroner shall summon any witness required on behalf of Her Majesty.

(5) A coroner may employ the services of an interpreter at an inquest.

Record of evidence

23.(1) Subject to subsection (2), the coroner shall put into writing the evidence of each witness, or so much thereof as he deems material and each deposition shall be signed by the witness concerned and by the coroner.

(2) With the consent of the chief coroner, a judge or counsel representing Her Majesty, the evidence or any part thereof may be taken in shorthand by a stenographer appointed for that purpose by the coroner and duly sworn to truly and faithfully report the evidence, and, where so taken, the signatures of the witnesses are unnecessary but the transcript shall be signed by the coroner and certified by the stenographer that it is a true report of the evidence.

(3) Shorthand evidence need not be transcribed into English unless the chief coroner, a judge or counsel representing Her Majesty so directs or any person requests a transcript and pays the stenographer therefor.

Verdict and inquisition

24.(1) After viewing the body, unless a view is dispensed with under this Act, and after hearing the evidence and the summing up by the coroner, the coroner's jury shall render their verdict, or the coroner shall in the absence of a jury pronounce his verdict, and the verdict shall be certified by an inquisition in writing, in the prescribed form, setting forth, so far as the evidence indicates, the identity of the deceased and how, when and where he came to his death.

(2) An inquisition shall be signed by the jurors who concur in the verdict and by the coroner.

Disagreement of jury

25.(1) Where in a coroner's jury of six members five of them cannot agree on a verdict or where in a coroner's jury of less than six members there is not unanimous agreement, the coroner may discharge the jury after having first taken the findings that have been agreed upon.

(2) The coroner shall then submit the evidence, the findings agreed upon, if any, and a report of the inquest to the chief coroner or a judge, either of whom may order the coroner to summon another jury and hold a second inquest or take such other action as the chief coroner or judge deems proper.

Adjournment

26.(1) A coroner may, in order to obtain further evidence, adjourn an inquest from time to time and for such period as he thinks necessary and may, upon an adjournment, take the recognizances of jurors and witnesses for their appearance at the adjourned sittings.

(2) Where an inquest is adjourned and a juror who had attended is unable to attend, by reason of death, illness or other good cause, at the resumed sittings, the coroner may proceed with the inquest if at least three jurors are present or proceed without a jury.

Procedure after inquest reports

27. As soon as possible after the conclusion of an inquest held by him, a coroner shall

- (a) forward to the chief coroner or a judge, as the case may be, the following:
 - (i) the inquisition in the prescribed form,
 - (ii) the affidavit, if any, in the prescribed form,
 - (iii) any depositions of witnesses taken pursuant to subsection 23(1),
 - (iv) a transcript of the evidence taken pursuant to subsection 23(2) where the chief coroner, a judge or counsel representing Her Majesty has ordered it to be transcribed and, where no such order has been given, the stenographer's notes of the evidence,
 - (v) such exhibits as may be forwarded or, where they are too bulky or cannot otherwise be moved, a description thereof, and
- (b) forward to the undertaker or other person having charge of the body or to the district registrar of the registration district in which the death occurred, as the case may require, such information as is required to be furnished under the Vital Statistics Act.

Failure to notify coroner

28. Every person who, under section 5, is required to notify a coroner of the death of a person and, unless some other person referred to in that section has already given the necessary notice, fails to do so commits an offence and is liable upon summary conviction to a fine not exceeding \$100.

Action by disqualified coroner

29. A coroner who makes an investigation or conducts an inquest when he is, pursuant to section 4, disqualified from so doing commits an offence and is liable upon summary conviction to a fine not exceeding \$500.

Disturbance of scene of death

30. Where, except for the purpose of saving life or relieving suffering, a person, without authority from the coroner, interferes with, destroys, carries away or alters the position of wreckage or anything connected therewith resulting from the wreck of a building, bridge, structure, embankment, aircraft, motor vehicle, boat, machine or apparatus that has caused death by violence, such person commits an offence and is liable upon summary conviction to a fine not exceeding \$500, and where it is shown that the offence was wilfully committed for the purpose of making away with or destroying evidence, the person guilty thereof is liable on summary conviction to a fine not exceeding \$500, or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

General offence and penalty

31. Every person who violates a provision of this Act for which no punishment is elsewhere provided in this Act commits an offence and is liable upon summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

Annual report

32. Every coroner shall at the end of each year transmit to the chief coroner a statement, in the prescribed form setting forth the investigations, inquests and their particulars made and conducted by him during such year.

Murder and manslaughter

33. Where a death occurs as a result of which a person is charged with murder or manslaughter, the chief coroner or a judge may, but need not, direct that no inquest shall be held or continued concerning that death.

Powers of chief coroner

34. The chief coroner may take over from any other coroner an inquiry or inquest at any stage thereof and has exclusive jurisdiction in the matter of the inquiry or inquest, and may in his discretion

- (a) continue the proceedings in the stage at which they were when he assumed jurisdiction, or
- (b) commence the proceedings de novo in which event everything previously done in the matter is of no effect.

Fees and allowances

35. Unless otherwise prescribed in an Act, the fees and allowances payable to coroners, witnesses, jurors, stenographers, interpreters or medical practitioners in connection with their duties or service under this Act are those prescribed by the Commissioner in Executive Council.

Regulations

36. The Commissioner in Executive Council may make such regulations as he deems necessary for the carrying out of the provisions of this Act.

CHAPTER 36

CORRECTIONS ACT

Interpretation

1. In this Act,

- “correctional institution” means any place in the Yukon declared to be a common gaol pursuant to this Act;
- “court” means any court of competent jurisdiction within the Yukon;
- “director” means the director of corrections appointed pursuant to this Act;
- “director of family and children’s services” means the director of family and children’s services designated under Part 4 of the Children’s Act;
- “inmate” means a person who is sentenced to imprisonment, or otherwise lawfully detained at a correctional institution;
- “probation officer” means a probation officer holding office pursuant to this Act;
- “superintendent” means a person in charge of any correctional institution;
- “young person” has the same meaning as under the Young Offenders Act (Canada);
- “youth court” has the same meaning as under the Young Offenders Act (Canada);
- “youth worker” has the same meaning as under the Young Offenders Act (Canada).

PART 1

DIRECTOR OF CORRECTIONS

Appointment of director

2.(1) The Commissioner in Executive Council may appoint a director of corrections who shall hold office during pleasure.

(2) The Commissioner in Executive Council may appoint such persons to assist the director in the performance of any of his duties under this Act as he deems necessary.

Duties of director

3.(1) The director shall

- (a) ensure that the provisions of this Act are carried out and that all returns provided for or required are made,
- (b) encourage and assist in the establishment of such societies, committees and agencies as he deems advisable to further the purposes of this Act,
- (c) advise any society, committee or agency with respect to the performance of its duties,
- (d) ensure that the officers in charge of correctional institutions and probation officers keep a record of
 - (i) all inmates, and
 - (ii) all persons placed on probation,
- (e) inspect or direct and supervise the visiting of any child or adult and the inspection of any place where an adult is placed or confined pursuant to this Act,

- (f) prepare and submit an annual report to the Executive Council Member, and
- (g) perform such other duties as may devolve upon him under any other Act.

(2) The director may prescribe standards of living accommodation in respect of any type of correctional institution in which a child or adult may be placed or confined.

PART 2

CORRECTIONAL INSTITUTIONS

Correctional institutions established

4.(1) The places other than those referred to in paragraph 44(1)(a) of the Yukon Act (Canada) now in use or declared to be common gaols shall, until otherwise ordered by the Commissioner in Executive Council, be known as correctional institutions for the reception, care and confinement of inmates.

(2) The following places are declared to be common gaols:

- (a) the Whitehorse Correctional Centre;
- (b) all mobile correctional camps and worksites connected therewith, established, maintained or operated pursuant to section 5.

Mobile camps

5. The Commissioner in Executive Council may provide for the establishment, maintenance and operation of mobile correctional camps and work sites connected therewith as part of any correctional institution.

Appointment of staff

6. The Executive Council Member may appoint such staff as may be required for the maintenance and operation of correctional institutions, and for the treatment of inmates, and every person so appointed shall discharge the duties of and hold any office authorized by law.

Work and education

7.(1) Any person who is sentenced to imprisonment in any of the correctional institutions of the Government of the Yukon shall do such work or perform such duties as the superintendent may direct, within, or outside the limits of the institution of which he is an inmate and for which he is certified to be medically fit to perform.

(2) The director may authorize any inmate to attend any school or other institution for the purpose of receiving vocational or other treatment or training.

(3) Every inmate who is employed or is required to perform duties as mentioned in subsection (1), and every inmate under subsection (2) who is undergoing vocational or other training or treatment, is subject to the rules and regulations and discipline of the correctional institution in which he is confined and to the provisions of the Prisons and Reformatories Act (Canada) for preventing escapes and preserving discipline.

(4) Every street, highway, or public thoroughfare on which inmates pass on going to, or returning from, work and every place where they are employed or undergoing training or treatment is, for the purposes of this Act, a part of the correctional institution in which such inmates are confined.

Medical treatment

8.(1) A superintendent, upon the advice of a medical practitioner, or in the case of medical emergency, shall arrange for any inmate of a correctional institution to be removed to a hospital, or other suitable facility, for medical, surgical or other treatment.

(2) The superintendent shall advise the director in writing of the circumstances of any such removal.

(3) The superintendent, on the advice of medical authority, may direct that any inmate removed pursuant to subsection (1) be returned to the correctional institution from which he was taken.

Patients in custody

9.(1) Any inmate removed to a hospital or other facility pursuant to section 8 shall be deemed to be still in custody in the correctional institution from which he was removed.

(2) Where an inmate is removed to a hospital or other facility pursuant to section 8, the superintendent of the institution from which he was removed, and such other persons as he may delegate, shall have a right of access at all times to the inmate.

(3) The superintendent, where he considers it necessary, may designate a person to ensure the custody of the inmate at the hospital or other facility to which he is removed.

(4) Time spent by an inmate of a correctional institution in a hospital or other facility shall be considered part of the sentence for which he was committed to the institution.

Free return transport

10. The director may furnish an inmate, upon his discharge from a correctional institution, with transportation to the place of conviction or to any other reasonable destination.

PART 3 WORK RELEASE PROGRAMS

Establishment of programs

11. The Commissioner in Executive Council, subject to such terms and conditions as he considers advisable, may establish under the administrative authority of the director, a work release program whereby a person sentenced to a correctional institution, in order to assist such person's rehabilitation, may be granted the opportunity to do one or more of the following things:

- (a) obtain employment;
- (b) continue to work at his employment;

- (c) conduct his own business or other self-employment including housekeeping and attending to the needs of his family;
- (d) attend an educational institution.

Residence or other place to be institution

12. For the purpose of this Part, where there is no correctional institution near the place of employment of an inmate participating in a work release program the Commissioner in Executive Council, if he considers it advisable, may designate a place to be a correctional institution or he may enter into an agreement with any person for housing participants in a work release program.

Workers subject to rules

13. Every inmate of a correction institution who participates in a work release program continues to be subject to the conditions of this Act and to the rules and regulations of the institution to which he was committed, and if he fails to return to the institution as required under the work release program he may be apprehended without warrant by a peace officer and returned to the correctional institution where he was confined.

Pay remitted to director

14.(1) The employer of an inmate released under the work release program shall, when so requested by the director, remit to the superintendent the total earnings of such inmate, less any deductions required by law.

(2) A superintendent may disburse the money received by him under subsection (1) as prescribed in the regulations.

(3) A superintendent receiving money pursuant to the provisions of subsection (1) shall keep a proper record of the receipt and disbursement thereof, and render an accounting thereof to the inmate.

**PART 4
PROBATION**

Probation officers

15.(1) The Commissioner in Executive Council may

- (a) appoint a Chief Probation Officer and such other probation officers as may be required to carry out the provisions of this Act, and
- (b) designate probation officers who may function as youth workers under the Young Offenders Act (Canada).

(2) A probation officer who has been designated a youth worker shall, in connection with his employment as a youth worker, be under the supervision of the director of family and children's services.

(3) A probation officer appointed under this section shall, under the supervision of the director of corrections, serve any court, other than a youth court, in the Yukon, and shall perform such functions as can by law devolve upon a probation officer in the proceeding in that court.

(4) A probation officer who has been designated a youth worker shall, under the supervision of the director of family and children's services, serve any youth court in the Yukon, and shall perform such functions as can by law devolve upon a youth worker in the proceeding in youth court.

Officer of court and peace officer

16. A probation officer is, for the purpose of discharging his duties, an officer of every court in the Yukon and a peace officer.

Reports to court

17.(1) A probation officer charged with the supervision of a person on whom the passing of sentence was suspended shall report to the court if the person fails to carry out the terms or conditions on which the passing of sentence was suspended.

(2) A probation officer shall conduct such inquiries and afford such supervision as necessary to give effect to the provisions of the Parole Act (Canada).

PART 5 YOUNG OFFENDERS

Functions of provincial director

18. For the purposes of this Part, the director of family and children's services shall be and perform the functions of provincial director under the Young Offenders Act (Canada).

Powers concerning the Young Offenders Act

19. The Commissioner in Executive Council may

- (a) establish or designate facilities to be used as places of temporary detention or as places for open custody or secure custody within the scope and for the purposes of the Young Offenders Act (Canada),
- (b) establish or designate facilities, programs or services for the implementation of dispositions made under the Young Offenders Act (Canada),
- (c) make regulations respecting the operation of any facility, program or services established or designated under paragraphs (a) or (b),
- (d) for the purposes of subsection 7(5) of the Young Offenders Act (Canada), designate the director of family and children's services or any other person to be a person whose authorization is required before a young person who has been arrested may be detained prior to the young person's appearance before a youth court or justice, and
- (e) for the purposes of subsection 7(5) of the Young Offenders Act (Canada), prescribe offences in respect of which a young person may, or may not, be detained prior to his appearance before a youth court or justice.

Diversion committee powers of probation officers

20. A probation officer who has been designated a youth worker may, for the purposes of Part 4 of the Children's Act,

- (a) perform all the functions of a diversion committee in any part of the Yukon in which a diversion scheme may be provided but for which no diversion committee has been appointed, and

- (b) in any part of the Yukon for which a diversion committee has been appointed, assist the diversion committee in the performance of its functions.

PART 6

GENERAL

Visitors

21.(1) Any person authorized by the Executive Council Member shall be permitted to visit any of the facilities mentioned in this Act.

(2) If an inmate so wishes, a cleric may visit the inmate at any correctional institution for the purpose of instructing the inmate in religion on such days and at such times as the superintendent may authorize.

Inspectors

22.(1) The Executive Council Member, and any person authorized by him, and any person designated to be a correctional institution inspector may, at any time, enter any correctional institution, and shall have access to every part thereof and to every person confined therein and may,

- (a) examine all papers, documents, vouchers, records, books and other things belonging thereto,
- (b) investigate the conduct of any person employed in and about a correctional institution, or of any person found within the premises appurtenant thereto,
- (c) question any person therein,
- (d) summon any person before him by order under his hand and examine that person under oath touching any matter relating to any breach of the rules of a correctional institution or any matter affecting the interest of such institution, and
- (e) by the same or like order, compel the production of books, papers and writing before him.

(2) All correctional institution inspectors shall have right of access to any correctional institution.

(3) When a correctional institution inspector has visited a correctional institution, he shall furnish a report to the Executive Council Member concerning his visit to the correctional institution.

Duties of the superintendent

23. A superintendent has the control and management of the correctional institution, of which he is in charge and is responsible for the administration thereof, and may make rules governing the conduct of the inmates and staff of the correctional institution.

Suspension of staff

24. Subject to the Public Service Commission Act, the director may suspend any staff member or employee for cause that warrants such action until the circumstances of the case have been reported to and acted upon by the Executive Council Member.

Trespassing and loitering at correctional institution

25. Every person who trespasses or loiters in or upon any grounds, buildings, yards, offices or other premises appurtenant to or forming part of a correctional institution commits an offence.

Offence and penalty

26. Every person who violates any provision of this Act or the regulations commits an offence and is liable, on summary conviction, to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

Agreements with Canada

27. The Commissioner in Executive Council may, on behalf of the Government of the Yukon, enter into agreements with the Government of Canada in respect of any matter he or she considers advisable relating to the purposes of this Act.

Regulations

28. The Commissioner in Executive Council may make such regulations as he deems necessary for carrying out the purposes and provisions of this Act.

CHAPTER 37

COURT OF APPEAL ACT

Court of Appeal established

1. There shall be a Court of Appeal in the Yukon called the Court of Appeal which shall be a superior court of record and shall have the same powers, jurisdiction and authority in relation to matters arising in the Yukon possessed immediately prior to January 1, 1971 by the Court of Appeal for British Columbia in relation to matters arising in British Columbia in the exercise of its ordinary jurisdiction and, without restricting the generality of the foregoing, the Court of Appeal has jurisdiction and power to hear and determine

- (a) all appeals or motions in the nature of appeals respecting judgments, orders or decisions of the Supreme Court or a judge thereof, and
- (b) all other petitions, motions, matters or things whatever that might lawfully be brought in England before a Divisional Court of the High Court of Justice or before the Court of Appeal on January 1, 1971.

Where appeal lies

2. An appeal lies to the Court of Appeal

- (a) from every judgment, order or decree made by the Supreme Court or a judge thereof and whether final or interlocutory,
- (b) from every decision of the Supreme Court or a judge thereof in any of the following matters or in any proceeding in connection with them or any of them, namely:
 - (i) certiorari;
 - (ii) quo warranto;
 - (iii) mandamus;
 - (iv) prohibition;
 - (v) habeas corpus, and
- (c) under the provisions of any Act of the Legislature or of the Parliament of Canada.

Composition of Court of Appeal

3. The Court of Appeal shall consist of a Chief Justice and such other justices of appeal as the Governor in Council may appoint from among the judges and supernumerary judges of the Court of Appeal of British Columbia and the judges are ex officio judges of the Supreme Court.

Oath of judges

4. Every judge of the Court of Appeal shall, before assuming the duties of his office, take and subscribe before a judge of the Supreme Court, the Commissioner or a person appointed by the Commissioner in Executive Council for that purpose, the following oath: "I do solemnly and sincerely promise and swear that I will duly and faithfully and to the best of my skill and knowledge execute the powers and trusts reposed in me as one of the judges of the Court of Appeal. So help me God."

Chief Justice

5. Where the Chief Justice of the Court of Appeal is unable to act or the office is vacant, the senior of the other justices of appeal has and may exercise and perform the powers and functions of the Chief Justice.

Chief Justice to preside

6. The Chief Justice of the Court of Appeal has rank and precedence over all other judges of the Yukon and shall preside at any sittings of the Court of Appeal at which he is present and the senior of the other justices of appeal present shall preside at any sittings of the Court of Appeal at which the Chief Justice of the Court of Appeal is not present.

Sittings

7. The Court of Appeal may sit in the Yukon or in British Columbia.

Quorum

8. Three judges of the Court of Appeal constitute a quorum and may lawfully hold court.

Registrar and staff

9.(1) There shall be a registrar of the Court of Appeal who shall perform such functions and exercise such powers as may be determined from time to time by the Chief Justice of the Court of Appeal.

(2) The Commissioner in Executive Council shall appoint the registrar of the Court of Appeal and such other officers, clerks and employees as are necessary to the operation of the Court of Appeal.

(3) The clerk of the Supreme Court is ex officio a deputy registrar of the Court of Appeal and may exercise and perform such powers and functions as may be determined from time to time by the Chief Justice of the Court of Appeal.

(4) No person shall by virtue only of an appointment under this Act be deemed to be a member of the public service of the Yukon.

Notice of appeal

10. Notice of an appeal to the Court of Appeal shall be given within 30 days from the day the judgment, order or decree appealed from is pronounced or within such additional time as the judge who made the same or a judge of the Court of Appeal may allow.

Rules

11. The judges of the Court of Appeal may make rules for regulating the practice and procedure upon appeals to the Court of Appeal.

Rules of British Columbia Court of Appeal applicable

12. Proceedings in appeals under this Act, when not otherwise provided for by this Act or the rules made under section 11, shall be as nearly as possible in conformity with the rules of the Court of Appeal for British Columbia.

Stay of execution

13. Execution of the judgment appealed from shall not be stayed except under order of the judge of the Supreme Court or the Court of Appeal, or a judge thereof, and upon such terms as may be just.

CHAPTER 38

CREDITORS RELIEF ACT

Interpretation

1. In this Act, "sheriff" includes duly appointed bailiffs, coroners and any person discharging the duties of sheriff in the particular case for the time being.

No priorities

2. Subject to the provisions of this Act there is no priority among execution creditors.

Sheriff's record of levy

3. When a sheriff levies money upon an execution against the property of a debtor, he shall forthwith enter in a book to be kept in his office, a note or memorandum in a form approved by the Commissioner in Executive Council, the date and the amount of each levy and the date upon which the entry was made and the book shall be open to public inspection, without charge, during office hours.

Attachment proceeds distributable

4. Money realized by the sheriff as the result of attachment of personal property shall be distributed under the provisions of this Act, and shall be deemed to be money levied under execution.

Distribution of money levied

5. Subject to section 8, the money levied by a sheriff upon execution against the property of a debtor shall at the expiration of two months from the levy, unless otherwise ordered by a judge, be distributed rateably among all execution creditors and other creditors whose executions or certificates given under this Act were in the sheriff's hands at the time of the levy, or who have delivered executions or certificates to the sheriff within the said two months or within such further time as may be ordered by a judge; but where money is realized by sale of land for which a certificate of title has been granted under the Land Titles Act (Canada), the period of two months shall be computed from the date of confirmation of the sheriff's sale under the Act.

Distribution of subsequent levies

6.(1) Where the sheriff, subsequently to the entry of the note or memorandum but within two months thereof, levies a further amount upon the property of the debtor, the same shall be dealt with as if such amount had been levied prior to the entry of such note or memorandum, pursuant to section 3.

(2) Where, after the two months, a further amount is levied a new note or memorandum shall be entered and the distribution to be made of the amount so levied, and of any further amount levied within two months of such last mentioned entry, shall be governed by the entry thereof in accordance with section 5 and subsection (1) of this section, and so on from time to time but a judge may, on application made ex parte or upon notice, as the judge may determine,

delay any of such distributions or any part thereof to give reasonable time for obtaining judgment or a certificate in the prescribed form, and may fix a date for such distribution.

Equality of all executions

7. In the distribution of money under this Act creditors who have executions against goods and lands, or against goods only or lands only, shall be entitled to share rateably with all others any money realized under execution either against goods or lands or against both.

Costs made preference

8. When the amount levied by the sheriff is not sufficient to pay the executions and certificates with costs in full, the money shall be applied to the payment rateably of the debts and costs after retaining the sheriff's fees and after payment in full of the taxed costs of execution, or of obtaining and delivering a certificate and extra costs of seizure and sale incurred by the creditor whose writ of execution or certificate was placed in the sheriff's hands first among those under whose executions or certificates the levy was made.

What creditors share in distribution

9. No creditor is entitle to share in the distribution of money levied from the property of a debtor unless by the delivery of a writ of execution, or otherwise under this Act, he has established a claim against the debtor either alone or jointly with some other creditor.

Interpleader proceedings

10. Where proceedings are taken by the sheriff for relief under any provisions relating to interpleader, those creditors only who are parties thereto and who agree to contribute pro rata, in proportion to the amount of their executions or certificates, to the expense of contesting any adverse claim, are entitled to share in any benefit that may be derived from the contestation of such claims so far as may be necessary to satisfy their executions or certificates.

Carriage of proceedings

11. A judge may direct that one creditor shall bear the carriage of the interpleader proceedings on behalf of all creditors interested.

Costs

12. The costs of interpleader proceedings shall, as between lawyer and client, be a first charge upon the money or goods that may be found by the proceedings to be applicable upon the executions or certificates.

Claims for wages

13.(1) All persons employed by an execution debtor at the time of the seizure under which money has been levied upon any execution and of which a note of the levy has been made as prescribed in section 3, or within one month before such seizure, who, prior to the expiration of the time fixed for the distribution of their claims for wages or salary with the particulars thereof proved by affidavit in the prescribed form, are, subject to this Act, entitled to be paid out of the money so levied the amount of wages or salary due to them respectively by the execution debtor, not exceeding wages or salary for three months, in priority to the claims of the other creditors of the execution debtor, and are entitled to share pro rata with such other creditors as to the residue, if any, of their claims; such wages or salary shall be for arrears only then owing or accrued, and not for any unearned portion.

(2) On receipt of any claim mentioned in subsection (1) the sheriff shall forthwith give notice thereof in writing, with particulars, to the execution debtor, either personally or by registered mail, and the sheriff has the same right to interplead in respect thereof as he would have in case of any adverse claim to money levied by him under execution.

(3) This section applies to wages or salary, whether the employment in respect of which the same may be payable is by the hour, day, week, month or year.

Exemptions

14.(1) Where money levied is the proceeds of the sale of an article under execution upon a judgment rendered in an action for the price of the article, and such article would otherwise be exempt from seizure under the Exemptions Act, such money shall not be subject to distribution under the terms of section 5 or 6, but shall be applied upon the execution under which it was levied.

(2) In case the amount levied as mentioned in subsection (1) is more than sufficient to pay the execution debt with costs in full, the balance in the sheriff's hands shall be paid over to the execution debtor.

(3) In case such amount is insufficient to pay the execution debt with costs in full, the execution creditor shall be entitled to share in any money of the execution debtor which may be in the sheriff's hands for distribution under the terms of section 5 or 6 to the extent of the unpaid balance.

CERTIFICATE OF PROOF OF CLAIM

Proceedings by other creditors where execution unsatisfied

15. When the sheriff has seized goods and chattels under a writ of execution, or a debtor allows an execution against his lands to remain unsatisfied for nine months after it has been placed in the sheriff's hands, the creditors or claimants in respect of such overdue debts may take the following proceedings:

- (a) an affidavit in the prescribed form of the debt and the particulars thereof may be made in duplicate by the creditor, or by one of the creditors in case of a joint debt, or by a person cognizant of the facts;
- (b) the claimant shall serve on the debtor one of the duplicates and a notice in the prescribed form;
- (c) where the affidavit and notice are to be served out of the Yukon, a judge shall, by order fix the time after which the next step may be taken by the claimant as hereinafter provided;
- (d) where no notice is given under paragraph (g), the affidavit and notice may be personally served upon him, if in the Yukon, by forwarding to him by registered mail a duplicate original of the affidavit and a true copy of the notice, and such service shall be deemed sufficient if a receipt from the postmaster for the letter containing such original copy, and a post office receipt for such letter, purporting to be signed by the debtor, are produced as exhibits to the affidavit of service and the affidavit and notice shall be deemed to be served on the day of the date of the receipt which purports to be

- signed by the debtor, but notwithstanding anything herein contained, a judge may order substitutional or other service, or may direct some act to be done which shall be deemed sufficient service;
- (e) the claimant shall file with the clerk of the Supreme Court one of the duplicate affidavits of claim and a copy of the notice with an affidavit of service thereof in the prescribed form;
 - (f) prior to or simultaneously with the filing with the clerk of the Supreme Court of the affidavit there shall be filed with him a certificate of the sheriff or an affidavit showing that such proceedings have been had against the debtor as entitle the creditor to proceed under this Act;
 - (g) an execution debtor may give notice in writing to the sheriff that any claims may be served upon a lawyer in the Yukon whose name and address shall be given, or by mailing the same to an address stated in the notice;
 - (h) the sheriff shall thereupon enter the notice in a book to be kept by him for the purpose, and, so long as any execution that was in the sheriff's hand at the time the notice was given remains in his hands, shall repeat such entry immediately below any entry made in respect of the execution, unless the notice is revoked in writing, in which case the entry thereof shall be marked 'revoked';
 - (i) so long as the notice is not revoked the affidavit of claim and notice may, where a lawyer is named, be served upon an execution debtor by serving the same upon the lawyer, or if mailing is required then by mailing the same by registered post to the address in the notice given by the execution debtor;
 - (j) where the notice served on a debtor does not state some place within three miles of the office of the clerk of the Supreme Court at which service may be made upon the claimant, or does not give the name and address of some lawyer in the Yukon who may be served on the claimant's behalf, service of any notice, paper or document may be made upon the claimant by filing the same in the office of the clerk of the Supreme Court and in such case shall be deemed good service.

Certificate granted where claim undisputed

16. When the claim is not contested as provided in this Act, the clerk of the Supreme Court, after ten days from the day of service, or after the time mentioned in the order provided for by paragraph 15(c), on the application of the claimant and his filing proof of due service of the affidavit and notice, or where the claim is contested, upon the determination of the dispute in favour of the claimant either in whole or in part, shall deliver to the creditor a certificate in the prescribed form; and, where the claim is disputed as to a part only, the claimant may elect by a writing filed with the clerk to abandon such part and shall be entitled to a certificate as to the residue.

Effect of certificate

17.(1) Upon delivery of the certificate to the sheriff, the claimant shall be deemed to be an execution creditor within the meaning of this Act and is entitled to share in any distribution as if he had delivered an execution to the sheriff, and the certificate binds the lands and goods of the debtor in the same manner and to the same extent as an execution, subject to the debt being afterwards disputed by a creditor as hereinafter provided.

(2) For the purpose of interpleader proceedings the certificate shall be deemed to be an execution.

(3) Where the certificate is obtained by a lawyer his name and address shall be endorsed thereon; and, if obtained by the claimant in person, there shall be endorsed thereon a statement of some place within three miles of the office of the clerk of the Supreme Court, at which service may be made upon him, and in default thereof service of any notice, paper or document may be made upon the claimant by filing the same in the office of the clerk of the Supreme Court and in such case shall be deemed good service.

(4) On receiving the certificate the sheriff shall make a further seizure of the property of the debtor to the amount of the debt so claimed, and the sheriff's fees; and so from time to time in case further certificates are received.

Duration of certificate

18.(1) A certificate shall remain in force for six years from the date thereof but may from time to time be renewed in the same manner as an execution.

(2) Notwithstanding the expiry of an execution or certificate before the termination of two months from the date of entry of a note or memorandum under section 3, the execution or certificate, as to any money levied during such two months, shall be deemed to be in full force and effect.

(3) Notwithstanding the expiry of a certificate, it may be renewed in the same manner as if it had not expired, and when renewed it shall, subject to the rights of third parties accrued since the date of expiry, be of the same force and effect as if it had been renewed prior to that date.

Contestation of claim

19.(1) The claim may be contested by the debtor or by any creditor of the debtor.

(2) Where the debtor contests the claim he shall file with the clerk of the Supreme Court an affidavit stating that he has a good defence to the claim or to a specified part of it on the merits, but a judge may dispense with the affidavit on terms or otherwise.

(3) The debtor shall file his affidavit within ten days after service upon him of the affidavit of claim and the notice, or within the time mentioned in the order provided for by paragraph 15(c), as the case may be, or within such further time as a judge may allow.

(4) Where the contest is by a creditor he shall file with the clerk of the Supreme Court an affidavit to the effect that he has reason to believe that the debt claimed is not actually and in good faith due from the debtor to the claimant; but a judge may dispense with the affidavit on terms or otherwise.

(5) Notice of contest, whether by the debtor or by a creditor, together with a copy of the affidavit, if any, shall be served upon the claimant within five days after filing the affidavit, or after the order of the judge if the affidavit is dispensed with.

(6) The affidavit by a creditor may be filed and a certified copy thereof delivered to the sheriff at any time before distribution is made, and the sheriff shall forthwith give notice of the receipt of such certified copy to the claimant.

(7) The affidavit of the debtor or other contestant shall have endorsed thereon a statement of some place within three miles of the office of the clerk of the Supreme Court at which service may be made upon him, or the address of a lawyer in the Yukon who may be served on his behalf, and in default thereof service of any notice, paper or document may be made upon the debtor or contestant by filing the same in the office of the clerk of the Supreme Court.

(8) Where the address of a lawyer given for service is not within three miles of the clerk's office, service may be made upon him by mailing papers by registered post to him at the address so given.

(9) The claimant whose claim is contested may apply to a judge for an order allowing his claim and determining the amount; and if he does not make such application within eight days after receiving notice of the contest or within such further time as the judge may allow, which extension may be granted either before or after the expiration of the time limited, he shall be taken to have abandoned his claim.

(10) Where the contestant is a creditor and there is reason to believe that the contest is not being carried on in good faith any other creditor may apply for an order permitting him to intervene in the contest.

Distribution in case of contestation

20. Where a claim is contested by a creditor after a certificate has been placed in the sheriff's hands the sheriff, unless a judge otherwise orders, shall levy as if such contest had not been made, and shall until the determination of the contest retain in a bank the amount that would be apportionable to the claim if valid, and shall as soon after the expiry of the two months as is practicable distribute the residue of the money made among those entitled.

Trial of contested claims

21. A judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried for the determination thereof and may make such order as to the costs of the proceedings as he deems just.

Production and examination

22. The same proceedings may be had for the production of documents and for the examination of parties or others, either before or at the trial, as may be taken in an ordinary action, and such proceedings may also be taken before the application to a judge and as a foundation therefor.

Clerk to keep records

23.(1) The clerk of the Supreme Court shall keep a book in which before giving a certificate or issuing an execution for a claim, he shall, with reference to every claim in respect of which he gives a certificate or issues an execution, enter the following particulars:

- (a) the name and address of the claimant, and of the debtor;

- (b) the date of the entry;
- (c) the amount of the debt, exclusive of costs;
- (d) the amount of costs;
- (e) where the proceedings have been set aside, that fact, and shortly the reason therefor.

(2) The entry shall, subject to this Act, have the effect of and be a final judgment of the Supreme Court for the debt and costs.

(3) The clerk shall index the entries in a book alphabetically under the names of the debtors.

(4) Where the original papers are lost or destroyed, a copy of the entry shall be evidence of the matters therein set forth.

Payments without seizure

24.(1) Where the debtor, without any seizure by the sheriff, pays the full amount owing in respect of the executions and claims in the sheriff's hands at the time of such payment, no note or memorandum shall be entered as required by section 3 and no further proceedings shall be taken under this Act against the debtor by virtue of the executions having been in the sheriff's hands.

(2) Except as provided in subsection (1), after an execution has been filed with the sheriff or a certificate has been delivered to him, the withdrawal or expiry of the execution upon which the proceedings are founded or any stay upon the writ or the satisfaction of the plaintiff's claim thereon, or the setting aside or return of the writ, shall not affect the proceedings to be taken under this Act, and, except so far as the action taken in regard to the writ may affect the amount to be levied, the sheriff shall proceed and levy upon the goods or lands of the debtor or both as he would have proceeded had the writ remained in his hands in full force to be executed, and may also take the like proceedings as he would have been entitled to take had the writ been a writ of venditioni exponas.

(3) Where a debtor, without any seizure by the sheriff, pays to the sheriff part of the amount owing in respect of an execution or certificate in the sheriff's hands and there is at the time no other execution or certificate in the sheriff's hands the sheriff shall apply the same on the execution or certificate so in his hands and sections 3 and 5 shall not apply to the money so received by the sheriff.

Funds in court belonging to execution debtor

25. Where there is in any court a fund belonging to an execution debtor or to which he is entitled, the same or a sufficient part thereof to pay the executions and certificates in the sheriff's hands may, on application of the sheriff or any party interested, be paid over to the sheriff and shall be deemed to be money levied under execution within the meaning of this Act.

Distribution where amount levied insufficient

26.(1) Where, at the time for distribution, the money is insufficient to pay all claims in full, the sheriff shall first prepare for examination by the debtor and his creditors a list of the creditors entitled to share in the distribution, with the amount due to each for principal, interest and costs.

(2) The list shall be so arranged as to show the amount payable to each creditor and the total amount to be distributed; and the sheriff shall deliver, or send by registered post to the debtor and to each creditor or his lawyer, a copy of the list.

(3) Where within ten days after all the copies have been delivered or posted, or within such further time as a judge may allow, no objection is made as provided by this Act, the sheriff shall make distribution forthwith pursuant to such list.

(4) Where objection is made the sheriff shall forthwith distribute rateably so much of the money, and among such persons, as will not interfere with the effect of the objection in case the same should be allowed.

(5) Any person affected by the proposed scheme of distribution may contest the same by giving, within the time mentioned in subsection (3), a notice in writing to the sheriff, stating his objection to the scheme and the grounds thereof.

(6) The contestant shall, within ten days thereafter, apply to a judge for an order adjudicating upon the matter in dispute, otherwise the contest shall be taken to be abandoned.

(7) The contestant shall, within the time mentioned in subsection (6), obtain from a judge an appointment for hearing and determining the matter in dispute.

(8) A copy of the appointment and a notice in writing in the prescribed form of the objections, stating the grounds thereof, shall be served by the contestant upon the debtor unless he is the contestant, and upon the creditors of such of them as a judge may direct.

(9) A judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried with or without a jury for the determination thereof, and may make such order as to the costs of the proceedings as he deems just.

(10) Where a claimant is held to be not entitled, or to be entitled to part only of his claim, the money retained pending the contest, or the portion as to which the claimant failed, shall be distributed among the creditors who would have been entitled thereto, as the same would have been distributed had the claim in respect thereof not been made.

Direction by judge to avoid unnecessary parties and trials

27. Where several creditors are interested in a contest, either for or against the same, a judge shall give such directions for saving the expense of an unnecessary number of parties and trials, and of unnecessary proceedings, as he deems just, and shall direct by whom and in what proportions any costs incurred in the contest or in any proceedings thereunder shall be paid, and whether any and what costs shall be paid out of the money levied.

PROVISIONS AFFECTING SHERIFF**Sheriff entitled to single poundage only**

28. Where money is to be distributed under this Act the sheriff is not entitled to poundage as upon separate executions or certificates but only upon the net proceeds distributed by him and at the same rate as if the whole amount had been payable under one writ.

Sheriff's return after levy

29. When money is made under an execution, the same shall be taken for the purposes of the sheriff's return and otherwise to be made upon all the executions and certificates entitled to the benefits thereof, and the sheriff shall, upon payment being made to the person entitled upon such execution or certificate, endorse thereon a memorandum of the amount so paid, but he shall not, except on the request of the party who issued the writ or by direction of a judge, return the writ until the same has been fully satisfied, or unless the same has expired by effluxion of time in which case the sheriff shall make a formal return of the amount paid thereon.

Compelling payment by sheriff

30. The like proceedings may be taken to compel payment by the sheriff of money payable in respect to an execution or other claim as can be taken to compel the return by the sheriff of a writ or execution.

Sheriff's record

31. The sheriff shall, pending the distribution of the money levied keep in the book mentioned in section 3 a statement showing in respect of any debtor on whose property money has been levied the following particulars:

- (a) the amount levied or received and the dates of levy or receipt;
- (b) each execution or certificate in his hands and the amount thereof;

and such statement shall be amended from time to time as additional amounts are levied or received or further executions or certificates are received.

Sheriff to give information

32. The sheriff shall at all times, without fee, answer any reasonable question that he may be asked orally with respect to the estate of the debtor by a creditor or any one acting on behalf of a creditor, and shall aid him in obtaining full information as to the value of the estate and the probable dividend to be realized therefrom, or any other information in connection with the estate that creditor may reasonably desire to obtain.

Undisposable money to be placed in bank

33. Where a sheriff has money in his hands that by reason of this Act or otherwise he cannot immediately pay over, he shall deposit the money in a bank to be designated by the Commissioner in Executive Council and the deposit shall be made in the name of the sheriff in trust.

GENERAL PROVISIONS

One seizure sufficient

34. One seizure by the sheriff of the goods and lands of the debtor shall be deemed sufficient and shall be deemed a seizure on behalf of all creditors sharing under such seizure as provided in this Act.

Direction by judge to sheriff where claim is disputed

35.(1) A judge may direct the sheriff to levy for an amount sufficient to cover a claim that is in dispute or part thereof, or, if it appears to him that it is improbable that the debtor has other sufficient property, he may direct the sheriff to retain in his hands during the contest the share that, if the claim is sustained, will be apportionable to it, or a part thereof.

(2) An order to levy under this section confers on the sheriff the same authority as he would have under an execution.

Decisions binding on all creditors

36. The decision of a judge binds the debtor and all his creditors, unless it appears that the decision was obtained by fraud or collusion.

Evidence in proceeding before judge

37. Upon any proceedings before a judge the evidence may be taken orally or by affidavit as the judge may direct.

Irregularities not to void proceedings

38. No proceedings under this Act shall be void for any defect of form, and the Rules of Court for amending or otherwise curing irregularities that may from time to time be in force apply to this Act, and any proceedings wrongfully taken under this Act may be set aside by a judge with or without costs as he may think fit.

Regulations

39.(1) The Commissioner in Executive Council may prescribe the fees and costs to be payable for all services under this Act.

(2) The Commissioner in Executive Council may prescribe the forms to be used for the purposes of this Act.

CHAPTER 39

DANGEROUS GOODS TRANSPORTATION ACT

Interpretation

1. In this Act,

- “analyst” means any person designated as an analyst pursuant to section 10 or pursuant to the federal Act;
- “container” means transport equipment, and includes equipment that is carried on a chassis, strong enough to be suitable for repeated use, and designed to facilitate the transportation of goods without intermediate reloading, but does not include vehicles;
- “dangerous goods” means any product, substance or organism included by its nature or by the regulations in any of the prescribed classes of dangerous goods;
- “federal Act” means the Transportation of Dangerous Goods Act (Canada) and the regulations made under that Act;
- “highway” has the same meaning as in the Highways Act;
- “inspector” means a person designated as an inspector pursuant to section 11;
- “packaging” means any receptacle or enveloping material used to contain or protect dangerous goods, but does not include a container or vehicle;
- “safety mark” includes any design, symbol, device, sign, label, placard, letter, word, number or abbreviation, or any combination thereof, that is prescribed for display on dangerous goods or containers, packaging or vehicles used in the transportation of dangerous goods;
- “safety requirements” means requirements for the transportation of dangerous goods, the reporting of that transportation, the training of persons engaged in that transportation and the inspection of that transportation;
- “safety standards” means standards regulating the design, construction, equipment, functioning or performance of containers, packaging or vehicles used in the transportation of dangerous goods;
- “shipping document” means any document that accompanies dangerous goods being transported and that describes or contains information relating to the dangerous goods and, without restricting the generality of the foregoing, includes a bill of lading, cargo manifest, shipping order and way-bill;
- “vehicle” means a device in, upon or by which a person or thing may be transported or drawn upon a highway.

Application of the Act

2.(1) Subject to subsection (2), this Act applies to the transportation of dangerous goods on any highway by any vehicle, whether or not for hire or reward.

(2) This Act does not apply to any transportation of dangerous goods while under the sole direction or control of the Minister of National Defence for Canada.

Act prevails

3. Where the provisions of this Act conflict with any other Act, this Act prevails, unless expressly stated otherwise.

Permits

4.(1) The Executive Council Member may issue a permit exempting any person or dangerous goods from any of the provisions of this Act with respect to the transportation of dangerous goods.

(2) The Executive Council Member may designate in writing any person as a person authorized to issue a permit referred to in subsection (1).

(3) A permit issued pursuant to this section may contain any terms or conditions that the issuer considers appropriate.

(4) A permit shall not be issued under this section unless the issuer is satisfied that the manner of transporting the dangerous goods provides a level of safety at least equivalent to that provided by compliance with this Act and the regulations.

(5) Notice of the issuance of every permit shall be published in the Yukon Gazette.

Prohibited transportation

5. No person shall transport any dangerous goods in a vehicle on a highway unless

- (a) all applicable prescribed safety requirements are complied with, and
- (b) the vehicle and all containers and packaging in it comply with all applicable prescribed safety standards and display all applicable prescribed safety marks.

Safety standards

6. No person shall

- (a) put any prescribed safety mark on any container, packaging or vehicle used or intended for use in the transportation of dangerous goods, or
- (b) deliver or distribute any container, packaging or vehicle used or intended for use in the transportation of dangerous goods on which any prescribed safety mark is displayed, unless the container, packaging or vehicle complies with the prescribed safety standards.

Emergency plans

7. The Executive Council Member may require any person who engages in the transportation of dangerous goods to prepare, in the prescribed manner and circumstances, emergency plans for implementation in the event of any discharge, emission or escape of dangerous goods from any container, packaging or vehicle.

Accidents

8.(1) Where any discharge, emission or escape of dangerous goods from any container, packaging or vehicle occurs, the person who, at that time, has the charge, management or control of the dangerous goods shall, in the prescribed manner and circumstances, report the discharge, emission or escape.

(2) Every person required to make a report under subsection (1) shall, as soon as possible in the circumstances, take all reasonable emergency measures consistent with public safety to repair or remedy any dangerous condition or reduce or mitigate any danger to life, health, property or the environment that results or may reasonably and probably be expected to result from the discharge, emission or escape.

(3) Where an inspector is satisfied on reasonable and probable grounds that a discharge, emission or escape referred to in subsection (1) has occurred and that immediate action is necessary in order to carry out any reasonable emergency measures referred to in subsection (2), the inspector may take such measures or the inspector may request that such measures be taken by any person the inspector considers qualified to do so.

(4) Any inspector or other person required, requested or authorized to take reasonable emergency measures pursuant to subsection (2) or (3) may enter and have access to any place or property and may do all reasonable things in order to comply with those subsections or either of them.

(5) Any person requested to act under subsection (3) is not personally liable either civilly or criminally in respect of any act done or omission occurring in the course of complying with the request unless it is shown that the person did not act reasonably in the circumstances.

Evidence

9. A shipping document or safety mark appearing on any container, packaging or vehicle is prima facie evidence of the contents of that container, packaging or vehicle.

Analysts

10. The Executive Council Member may designate any person as an analyst for the purposes of this Act.

Inspectors

11.(1) The Executive Council Member may designate any person as an inspector for the purposes of this Act.

(2) An inspector shall be furnished with a certificate of designation stating the purposes, classes of dangerous goods and vehicles in respect of which the inspector has been designated.

(3) On entering or inspecting any container, packaging or vehicle, the inspector shall, if so requested, produce the certificate to the person in charge thereof.

Inspections

12.(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may, at any time, stop and inspect any vehicle and its load where he or she believes on reasonable and probable grounds that dangerous goods are being transported, and open and inspect any container, packaging or vehicle wherein or whereby he or she believes that the dangerous goods are being transported.

- (2) In the course of an inspection pursuant to subsection (1), an inspector may
- (a) for the purpose of analysis, take samples of anything that he or she believes on reasonable and probable grounds to be dangerous goods, and
 - (b) examine, make copies of and take extracts from any books, records, shipping documents or things that he or she believes on reasonable and probable grounds contain any information relevant to the administration or enforcement of this Act or the regulations.

(3) The owner or person who has the charge, management or control of any container, packaging or vehicle inspected pursuant to this section shall give the inspector all reasonable assistance in his or her power to enable the inspector to carry out the inspector's duties pursuant to this Act or the regulations.

Detention

13.(1) Where an inspector is satisfied on reasonable and probable grounds that

- (a) any discharge, emission or escape of dangerous goods from any container, packaging or vehicle transporting the dangerous goods is occurring, or has occurred,
- (b) any serious and imminent danger of a discharge, emission or escape referred to in paragraph (a) exists, or
- (c) any safety provision of this Act or the regulations is being or has been contravened, the inspector may detain any dangerous goods, container, packaging or vehicle in respect of which the condition has arisen or the contravention has occurred.

(2) Any property detained under this section shall be released when

- (a) the provisions of this Act and the regulations have, in the opinion of the inspector, been complied with, or
- (b) the danger to life, health, property or the environment has, in the opinion of the inspector, been prevented or adequately reduced, as the case may be.

(3) Any property detained pursuant to this section remains the responsibility of the owner or person who has the charge, management or control of the property at the time that it is detained.

Abandoned dangerous goods

14. Any dangerous goods that on reasonable and probable grounds appear to an inspector to be abandoned or to have deteriorated and to be a danger to persons, property or the environment may be destroyed or otherwise disposed of by the inspector in such manner as is appropriate in the circumstances.

Obstruction of inspectors

15. No person shall, while an inspector is exercising powers or carrying out duties under this Act,

- (a) fail to comply with any reasonable request of the inspector,
- (b) knowingly make any false or misleading statement, verbal or written, to the inspector,

- (c) unless authorized by the inspector, remove, alter or interfere in any way with anything detained or removed by the inspector, or
- (d) otherwise obstruct or hinder the inspector.

Certificate of inspection, detention or sampling

16.(1) Where an inspector inspects, detains or takes a sample of anything under this Act, the inspector shall, if the thing is sealed or closed up, provide the person in charge thereof with a certificate in the prescribed form evidencing the inspection, detention or taking of a sample, as the case may be.

(2) A certificate provided under this section relieves the person to whom or for whose benefit it is provided of liability with respect to the inspection or taking of a sample evidenced by the certificate, but it does not otherwise exempt that person from compliance with this Act and the regulations.

Certificate or report of inspector or analyst

17.(1) Subject to subsections (3) and (4), a certificate or report purporting to have been signed by an inspector or analyst stating that he or she has inspected, analysed or examined a vehicle, packaging, container, shipping document, product, substance, or organism and stating the results of the inspection, analysis or examination, is admissible in evidence in any prosecution for an offence against this Act or the regulations as prima facie proof of the statements contained in the certificate or report without proof of the signature or official character of the person appearing to have signed the certificate or report.

(2) Subject to subsections (3) and (4), a copy or an extract taken by an inspector pursuant to paragraph 12(2)(b) and appearing to have been certified under his signature as a true copy or extract is admissible in evidence in any prosecution for an offence against this Act or the regulations without proof of the signature or official character of the person appearing to have signed the copy or extract and, in the absence of any evidence to the contrary, has the same probative force as the original document would have if it had been proved in the ordinary way.

(3) The party against whom a certificate or report is produced pursuant to subsection (1) or against whom a copy or an extract is produced pursuant to subsection (2) may, with the leave of the court, require the attendance of the inspector or analyst who signed or appears to have signed the certificate, report, copy or extract for the purposes of cross-examination.

(4) No certificate, report, copy or extract referred to in subsection (1) or (2) shall be received in evidence unless the party intending to produce it has served on the party against whom it is intended to be produced a notice of such intention together with a duplicate of the certificate, report, copy or extract.

Offences and penalties

18.(1) Every person who contravenes section 5 or 6 commits an offence and is liable on summary conviction to a fine of not more than \$50,000 in the case of a first offence and to a fine of not more than \$100,000 for each subsequent offence, to imprisonment for a term of not more than two years, or to both such fine and imprisonment.

(2) Every person who contravenes any provision of this Act or the regulations for which no other punishment is provided by this Act commits an offence and is liable on summary conviction to a fine of not more than \$10,000, to imprisonment for a term of not more than one year, or to both such fine and imprisonment.

Recovery of costs by government

19.(1) The Government of the Yukon may recover the cost and expenses of and incidental to the taking of any measures pursuant to sections 8 or 14 jointly and severally from any persons who, through their fault or negligence or that of others for whom they are by law responsible, caused or contributed to the circumstances giving rise to the taking of action under those sections, to the extent that such costs and expenses can be established to have been reasonably incurred in the circumstances.

(2) All claims pursuant to this section may be sued for and recovered by the Government of the Yukon with costs in proceedings brought or taken therefor in the name of the Government of the Yukon in the Supreme Court.

(3) Nothing in this section shall be construed as limiting or restricting any right of recourse or indemnity that any person who is liable under subsection (1) may have against any other person.

(4) No civil remedy for any act or omission is suspended or affected by reason only that the act or omission is an offence under this Act or gives rise to liability under this section.

(5) No proceedings in respect of a claim under this section may be instituted after two years from the day the events in respect of which the proceedings are brought or taken occurred or became evident.

Defence to prosecution

20. In any prosecution for an offence against this Act or the regulations, it is a defence for the person charged to prove that he or she took all reasonable measures to comply with this Act and the regulations.

Offence by employee or agent

21. In any prosecution for an offence against this Act or the regulations, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge of the accused and that the accused took all reasonable measures to prevent its commission.

Offence by officer, director or agent of a corporation

22. Every officer, director or agent of a corporation who directs, authorizes, assents to, acquiesces in or participates in the commission of an offence against this Act or the regulations is a party to and guilty of the offence and liable on summary conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Limitation period

23. No prosecution for an offence against this Act or the regulations is to be commenced after two years from the day of the commission of the alleged offence.

Inter-governmental agreements

24.(1) The Commissioner in Executive Council may enter into agreements with any municipal or provincial government or the Government of Canada with respect to the administration and enforcement of this Act and the regulations, the federal Act, or legislation of any other province that deals with the handling or transporting of dangerous goods.

(2) An agreement entered into under subsection (1) may provide for any matters necessary for or incidental to the implementation, administration or enforcement agreed on or for the apportionment of any costs, expenses or revenues arising therefrom.

Directives regarding transportation

25.(1) Where the Executive Council Member considers it necessary for the protection of the public, property or the environment, the Executive Council Member may, in respect of any matter not provided for in this Act, and in accordance with the regulations, direct any person engaged in the transportation of dangerous goods to cease any activity or to carry it on in any manner consistent with the intention of this Act.

(2) A direction under subsection (1) shall be confirmed in writing by the Executive Council Member within 24 hours after it is made, and it shall be published in the Yukon Gazette.

(3) Any person who receives a directive pursuant to subsection (1) may apply to have the decision reviewed or appeal the decision in the manner set out in the regulations, but that person shall comply with the directive until the review or appeal is finally determined.

Financial responsibility

26. The Executive Council Member may, subject to any regulations, require any person who engages in or proposes to engage in the transportation of dangerous goods or any class of dangerous goods to provide evidence of financial responsibility in the form of insurance or an indemnity bond, or in any other form satisfactory to the Executive Council Member.

Crown

27. The Crown is bound by this Act.

Regulations

28.(1) The Commissioner in Executive Council may make regulations

- (a) prescribing classes, divisions, subdivisions and groups of dangerous goods;
- (b) prescribing products, substances and organisms to be included in the prescribed classes of dangerous goods;
- (c) specifying, for each product, substance and organism, the class, division, subdivision or group into which it falls;
- (d) determining or providing the manner of determining the class, division, subdivision or group into which any dangerous goods fall;

- (e) exempting from the application of any provision of this Act or the regulations the transportation of dangerous goods in any quantities or concentrations, in any circumstances, for any purposes or in any containers, packaging or vehicles as are specified in the regulations;
- (f) prescribing the manner of identifying any quantities or concentrations of dangerous goods exempted pursuant to paragraph (e);
- (g) prescribing the manner of application for the issuance of a permit under section 4;
- (h) prescribing circumstances in which the transportation of dangerous goods is prohibited;
- (i) specifying dangerous goods that shall not be transported in any circumstances;
- (j) prescribing safety marks, safety requirements and safety standards of general or particular application;
- (k) prescribing shipping documents and other documents to be used in the transportation of dangerous goods, the information to be included in those documents and the persons by whom and manner in which those documents are to be used and retained;
- (l) prescribing forms for the purposes of this Act and the regulations;
- (m) respecting the circumstances and manner in which emergency plans referred to in section 7 shall be prepared;
- (n) respecting the circumstances and manner in which the report of any discharge, emission or escape of dangerous goods referred to in section 8 shall be made and designating the person to whom such a report shall be made;
- (o) prescribing the circumstances in which fees are or are not payable for inspections under this Act and determining the amount of those fees;
- (p) respecting the qualifications, training and examination of inspectors, prescribing the forms of the certificates referred in sections 11 and 16, and prescribing the manner in which inspectors shall carry out their duties under this Act;
- (q) respecting the notice of direction and the effect, duration, review and appeal of directives mentioned in section 25;
- (r) respecting evidence of financial responsibility of any person engaged in or proposing to engage in the transportation of dangerous goods or any class of dangerous goods;
- (s) respecting the form, amount, nature, class, terms and conditions of insurance or bond that, under section 26, may be required to be provided and carried by persons or classes of persons while transporting dangerous goods in a vehicle or a class of vehicle on a highway;
- (t) generally, respecting any matter the Commissioner in Executive Council considers necessary to carry the purposes and provisions of this Act into effect.

(2) Any regulation made under subsection (1) may adopt by reference, in whole or in part, with any changes that the Commissioner in Executive Council considers necessary, any code, standard or regulation made by the Government of Canada, and may require compliance with any code, standard or regulation so adopted.

CHAPTER 40

DAY CARE ACT

Interpretation

1. In this Act,

- “board” means the Day Care Services Board established under section 3;
- “chairperson” means the chairperson of the board;
- “chief medical health officer” means that person appointed by the Commissioner in Executive Council as the chief medical health officer for the Yukon pursuant to the Public Health Act;
- “day care centre” means a facility established and maintained for the provision of a day care service;
- “day care service” means a service operated for the provision of care, maintenance and supervision of not less than seven children of not more than six years of age by a person, other than a person related by consanguinity or marriage to those children to whom the service is provided, for any one period of time consisting of more than three but less than 24 consecutive hours;
- “director” means the Director of Human Resources;
- “family day-home” means a dwelling unit used primarily for the domestic purposes of one or more persons as a single housekeeping unit, but which is also used for the provision of a family day-home service;
- “family day-home service” means a service operated for the provision of care, maintenance and supervision of not less than four nor more than six children of not more than six years of age by a person, other than a person related by consanguinity or marriage to those children to whom the service is provided, for any one period of time consisting of more than three but less than 24 consecutive hours;
- “operator” means any person, partnership, organization, society or corporation licensed under this Act to provide a day care or family day-home service.

Licence required

2. No person shall provide a day care service or a family day-home service unless licensed as an operator by the Day Care Services Board pursuant to this Act.

Day Care Services Board

3.(1) There shall be a board to be called the Day Care Services Board, consisting of a chairperson and four other members appointed pursuant to this section.

(2) The director or a person appointed by him to represent him shall be a member and secretary of the board.

(3) The chief medical officer of health or such person as may be appointed by him to represent him shall be a member of the board.

(4) The chairperson and two other members shall be appointed by the Commissioner in Executive Council to hold office at pleasure for a period not exceeding three years from the date of their appointment.

(5) A retiring board member is eligible for re-appointment.

(6) In the event of the absence or incapacity of a member of the board, the Commissioner in Executive Council may appoint a person to take the place of that member for such period as he deems fit.

(7) Where a casual vacancy occurs in the board, the Commissioner in Executive Council may appoint a person to fill the vacancy for the unexpired portion of the retiring member's term of office.

(8) No vacancy on the board impairs the right of the remaining members to act until the vacancy is filled.

(9) The Commissioner in Executive Council shall fix

- (a) the remuneration to be paid to the members of the board, and
- (b) travelling and living expenses to be paid to the members of the board in connection with the performance of their duties when absent from their ordinary place of residence.

(10) Meetings of the board shall be held at the call of the chairperson.

(11) Three members constitute a quorum, and, in the event of the absence or inability to act of any member the remaining members may execute the powers and carry out the duties of the board.

(12) The board may make rules governing the conduct of its own procedure.

Application for licence

4.(1) Any application for a licence to operate a day care service or family day-home service shall be made to the board in the prescribed form, together with such accompanying documents and information as may be required by the board.

(2) The board shall, within 14 days from the receipt of any application, fix a time, date and place for the hearing and consideration of the application, and the time for such hearing and consideration shall be not more than 21 days from the receipt of the application.

(3) Before any hearing or consideration is given any application for a licence under this section, the person so applying therefor shall give the board an opportunity to make such inspections of the facilities proposed by him for use as a day care centre or a family day-home, as the case may be, as the board may require.

(4) The board shall give the person making an application under this section an opportunity to make representations, in person, by correspondence or by agent, with respect to that application at the time, date and place fixed for the hearing and consideration of the application.

(5) The board may require any person making an application under this section to give public notice, at such time and in such manner as the board considers reasonable under the circumstances, to the effect that any objection to the application shall be submitted to the board in writing not less than seven days prior to the date fixed for the hearing and consideration of the application.

(6) Where any objection to an application has been submitted to the board pursuant to subsection (5), the board shall give both the person making the objection and the person making the application an opportunity to make representations, in person, by correspondence or by agent, with respect to that application at the time, date and place fixed for the hearing and consideration of the application.

Hearing of application and granting of licence

5.(1) The board shall meet at the time, date and place fixed for the hearing and consideration of an application made pursuant to section 4 and shall hear such representations with respect to the application as are made pursuant to that section.

(2) The board shall determine, following due consideration of the application and any representation with respect thereto, whether or not to grant a licence to provide a day care service or family day-home service to the person making an application therefor pursuant to section 4, having regard to the circumstances of that person, this Act and the regulations made hereunder.

(3) The board may, where it has determined pursuant to subsection (2) to grant a licence to a person making an application therefor, grant that licence subject to such terms and conditions as it may see fit to impose upon the licence having regard to the circumstances of that person, this Act and the regulations made hereunder.

(4) Upon having determined pursuant to subsection (2) whether or not to grant a licence to a person making an application therefor, the chairperson of the board shall communicate that determination in writing together with the reasons therefor, to the person who made the application, the director and any person who made an objection thereto pursuant to this Act.

(5) Where the board has determined pursuant to subsection (2) to grant a licence to a person having made an application therefor, it shall issue the licence.

(6) Where the board has granted a licence subject to such terms and conditions as it saw fit to impose upon the licence pursuant to subsection (3), it shall give the person to whom the licence was granted an opportunity to make representations in person, by correspondence or by agent with respect to those terms and conditions.

(7) The board may, upon hearing any representation made with respect to the terms and conditions of a licence granted pursuant to this section, confirm, vary or rescind those terms and conditions in any manner it may see fit, having regard to the circumstances of the person having made the application therefor, this Act and the regulations made hereunder.

Copy of licence

6. Every operator of a day care centre or family day-home shall make available upon request a copy of any licence granted under this Act together with a copy of any terms or conditions imposed upon the licence.

Annual inspection

7.(1) The director shall cause every day care centre and family day-home operated by any person licensed as an operator pursuant to this Act to be inspected annually in such manner and by such person or persons as he may direct.

(2) The director shall submit to the board and to the operator of any day care centre or family day-home that was inspected pursuant to subsection (1) a report respecting any such inspection within 30 days of that inspection.

(3) Where any report made under subsection (2) contains a recommendation that the licence of any operator be revoked, the board shall give that operator an opportunity to make representations before the board, in person, by correspondence or by agent with respect to the recommendation in particular or the report in general.

(4) The board may, upon hearing any representation made pursuant to subsection (3), revoke the licence of an operator or impose upon the licence such terms and conditions as it sees fit, having regard to the circumstances of the operator, this Act and the regulations made hereunder.

(5) Where the board revokes a licence pursuant to subsection (4), the operator providing the day care or family day-home service under that licence shall, notwithstanding the revocation, be deemed to have a valid and subsisting licence for the ten day period immediately following the revocation.

Regulations

8.(1) The Commissioner in Executive Council may make regulations

- (a) prescribing the form of application for a licence to provide a day care or family day-home service;
- (b) respecting the nature of the documentation and information that shall accompany any application for a licence to provide a day care or family day-home service;
- (c) prescribing the form and categories of licences to provide a day care or family day-home service;
- (d) prescribing such terms and conditions as may apply to licences generally;
- (e) prescribing standards relating to facility location, space allocation, sanitary facilities, health conditions, fire and electrical safety, eating and sleeping accommodations, nutrition, activity programs, activity areas, staffing, security, administration and record-keeping;

- (f) prescribing such other things as may be deemed necessary for the better carrying out of the spirit and intent of this Act.

(2) The Commissioner in Executive Council may make regulations

- (a) establishing a subsidy program for persons who are parents or guardians of children to whom day care may be provided under this Act;
- (b) governing all aspects of the program, including eligibility for the subsidy, the making of applications, the calculation of the amount of the subsidy and such other matters as the Commissioner in Executive Council considers appropriate.

Offence and penalty

9. Subject to subsection 7(5), any person who provides a day care service or a family day-home service without a valid and subsisting licence issued pursuant to this Act commits an offence and is liable on summary conviction to a fine not exceeding \$250 or to a term of imprisonment not exceeding 60 days, or to both fine and imprisonment, and each day that the provision of such service is continued without a valid and subsisting licence issued pursuant to this Act shall be deemed to constitute a separate offence for the purposes of this section.

CHAPTER 41

DEFAMATION ACT

Interpretation

1. In this Act,

“broadcasting” means the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone and the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves;

“defamation” means libel or slander;

“newspaper” means a paper containing news, intelligence, occurrences, pictures or illustrations, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding 36 days between the publication of any two of such papers, parts or numbers;

“public meeting” means a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether admission thereto is general or restricted.

Defamation is actionable per se

2. An action lies for defamation and may be brought without alleging or proving special damage.

Allegations of plaintiff

3. In an action for defamation the plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense, and the pleading shall be put in issue by the denial of the alleged defamation; and, where the matters set forth, with or without the alleged meaning, show a cause of action, the pleading is sufficient.

Apology in mitigation of damages

4. In an action for defamation in which the defendant has pleaded only a denial of the alleged defamation or has suffered judgment by default or judgment has been given against him on motion for judgment on the pleadings, he may give evidence, in mitigation of damage, that he made or offered a written or printed apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering the apology, that he did so as soon afterwards as he had an opportunity.

Payment into court by way of amends

5. The defendant may pay into court, with his defence, a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, with or without a denial of liability, and the payment has the same effect as payment into court in other cases.

General or special verdict at jury trial

6.(1) Where an action for defamation is tried with a jury, the jury may give a general verdict upon the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged defamation and of the sense ascribed to it in the action; but the presiding judge shall, according to his discretion, give his opinion and directions to the jury on the matter in issue as in other cases; and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict, whether general or special, shall be the same as in other cases.

(2) Where an action for defamation is tried by a judge without jury, the judge may make such finding of a general or special nature as he sees fit.

Consolidation of actions

7.(1) Upon an application by two or more defendants in two or more actions brought by the same person for the same or substantially the same defamation, a judge may make an order for the consolidation of the actions so that they shall be tried together.

(2) Where an order has been made under subsection (1), and before the trial of the actions, the defendants in any new actions instituted in respect of any such defamation are also entitled to be joined in a common action upon a joint application by the new defendants and the defendants in the actions already consolidated.

Opinions of others

8.(1) Where the defendant published alleged defamatory matter that is an opinion expressed by another person, a defence of fair comment shall not fail for the reason only that the defendant did not hold the opinion if,

- (a) the defendant did not know that the person expressing the opinion did not hold the opinion, and
- (b) a person could honestly hold the opinion.

(2) For the purpose of this section, the defendant is not under a duty to inquire into whether the person expressing the opinion does or does not hold the opinion.

Damages and costs in consolidated actions

9.(1) In a consolidated action under section 7, the jury or a judge, as the case may be, shall assess the whole amount of the damages, if any, in one sum, but a separate verdict or finding shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately.

(2) Where the jury or a judge, as the case may be, makes a verdict or finding against the defendants in more than one of the actions so consolidated, the amount of the damages shall be apportioned between and against the defendants; and, where the plaintiff is awarded the costs of the action, the judge shall make such order as he deems just for the apportionment of the costs between and against the defendants.

Privileged publications

10.(1) A fair and accurate report, published in a newspaper or by broadcasting, of

- (a) a public meeting,

- (b) proceedings in the Senate or House of Commons of Canada or the Yukon Legislative Assembly or any of its committees or the legislating body of a province or a committee of any such body, except where neither members of the public nor reporters are admitted,
- (c) a meeting of commissioners authorized to act by or pursuant to a statute or other lawful authority of the Government of Canada or of any province, or
- (d) a meeting of any board or local authority formed or constituted under any Act of the Parliament of Canada, under any Act of the Legislature, or under any Act of a province, or of a committee appointed by any such board or local authority,

is privileged, unless it is proved that the publication was made maliciously.

(2) The publication in a newspaper or by broadcasting at the request of any department, bureau or office or public officer of the Government of the Yukon, council of a municipality, Government of Canada or government of a province, of a report, bulletin, notice or other document issued for the information of the public is privileged, unless it is proved that the publication was made maliciously.

(3) Nothing in this section applies to the publication of seditious, blasphemous or indecent matter.

(4) Subsections (1) and (2) do not apply where,

- (a) in the case of publication in a newspaper, the plaintiff shows that the defendant was requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, or
- (b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(5) Any privilege existing by law in the Yukon at the time of the commencement of this Act shall continue to apply and is not limited or abridged by this section.

(6) This section does not apply to the publication of any matter not of public concern or the publication of which is not for the public benefit.

Reports of court proceedings privileged

11.(1) A fair and accurate report, published in a newspaper or by broadcasting, of proceedings publicly heard before any court is absolutely privileged, if

- (a) the report contains no comment,
- (b) the report is published contemporaneously with the proceedings that are the subject matter of the report, or within 30 days thereafter, and
- (c) the report contains nothing of a seditious, blasphemous or indecent nature.

(2) Subsection (1) does not apply where,

- (a) in the case of publication in a newspaper, the plaintiff shows that the defendant was requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, or
- (b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

Headlines and captions

12. For the purpose of sections 10 and 11, every headline or caption in a newspaper that relates to any report therein shall be deemed to be a report.

NEWSPAPERS AND BROADCASTING

Application of the following sections

13. Sections 14 to 19 apply to actions for defamation against the proprietor or publisher or a newspaper or the owner or operator of a broadcasting station or an officer, servant or employee of the newspaper or broadcasting station in respect of defamatory matter published in the newspaper or broadcast from the station.

Notice of action

14.(1) No action lies unless the plaintiff has, within three months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant 14 days notice in writing of his intention to bring an action.

(2) A notice under subsection (1) shall specify the language complained of and shall be served on the defendant in the same manner as a statement of claim.

Limitation of actions

15.(1) An action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, or an officer, servant or employee of the newspaper or broadcasting station for defamation contained in the newspaper or broadcast from the station shall be commenced within six months after the publication of the defamatory matter has come to the notice or knowledge of the person defamed.

(2) An action commenced within the period prescribed in subsection (1) may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same broadcasting station within a period of one year before the commencement of the action.

Place of trial

16. An action shall be tried in the district where the chief office of the newspaper or of the owner or operator of the broadcasting station is situated or wherein the plaintiff resides at the time the action is brought; but, upon the application of either party, a judge may direct the action to be tried, or the damages to be assessed, in any other district if it appears to be in the interests of justice, and may impose such terms as to payment of witness fees and otherwise as he deems proper.

Mitigation of damages by apology or retraction

17.(1) The defendant may prove in mitigation of damages that the defamatory matter was inserted in the newspaper or was broadcast without actual malice and without gross negligence, and that, before the commencement of the action, or at the earliest opportunity afterwards, the defendant

- (a) inserted in the newspaper in which the defamatory matter was published a full and fair retraction thereof and a full apology for the defamation, or, where the newspaper is one ordinarily published at intervals exceeding one week, that he offered to publish such retraction and apology in any newspaper to be selected by the plaintiff, or
- (b) broadcast such retraction and apology, from the broadcasting stations from which the defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the defamatory matter was broadcast or as near as possible to that time.

(2) The defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of defamation to the same purport or effect as that for which action is brought.

Where recovery of special damages only

18.(1) The plaintiff shall recover only special damages where it appears at the trial that

- (a) the alleged defamatory matter was published in good faith,
- (b) there was reasonable ground to believe that its publication was for the public benefit,
- (c) it did not impute to the plaintiff the commission of a criminal offence,
- (d) the publication took place in mistake or misapprehension of the facts, and
- (e) a full and fair retraction of and a full apology for any statement therein alleged to be erroneous were published before the commencement of the action
 - (i) where the alleged defamatory matter was published in a newspaper, in the same newspaper in as conspicuous a place and type as was the alleged defamatory matter, or
 - (ii) where the alleged defamatory matter was broadcast, from the same broadcasting stations on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(2) Subsection (1) does not apply to case of defamation against any candidate for public office unless the retraction and apology were made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the day of election for such office.

Name of proprietor, etc., to be published

19.(1) No defendant in an action for defamation published in a newspaper is entitled to the benefit of section 14, 15 or 18 unless the name of the proprietor and publisher and address of the publication are stated in a conspicuous place in the newspaper.

(2) The production of a printed copy of a newspaper is prima facie evidence of the publication of the printed copy and of the truth of the statements mentioned in subsection (1).

(3) No owner, operator, officer, servant or employee of a broadcasting station who is a defendant in an action for defamation published by broadcasting is entitled to the benefit of section 14, 15 or 18 unless the broadcasting station has, within ten days after receiving a written request from the person bringing such action, supplied that person with the names and addresses of the owner or operator of the station and of the officers, servants and employees of the station who were involved in the broadcast in respect of which the action is brought.

CHAPTER 42

DENTAL PROFESSION ACT

Interpretation

1. In this Act,

- “authorized service” means a dental service performed pursuant to section 23, 24 or 25;
- “dental assistant” means a person authorized to provide direct assistance to a dentist in the performance of the dentist’s duties and under his immediate supervision;
- “dental corporation” means a corporation licensed pursuant to this Act to practise dentistry in the Yukon;
- “dental hygienist” means a person registered under section 23 and authorized to perform those dental services set out in subsection 25(1);
- “dental therapist” means a person registered under section 23 and authorized to perform those dental services set out in subsection 25(1) or (2);
- “dentist” means a natural person who is licensed pursuant to this Act to practise dentistry in the Yukon;
- “dentistry” means the treatment, advice, service or attendance that is usually rendered or performed by dentists in the practice of their profession and includes the practice of dental surgery;
- “licence” means a licence to practise dentistry in the Yukon issued pursuant to this Act;
- “medical health officer” means such medical health officer appointed pursuant to the Public Health Act as the Commissioner in Executive Council may designate for the purposes of this Act;
- “register” means the dental register.

Licence required to practise

2.(1) No person shall practise dentistry in the Yukon unless he is licensed pursuant to this Act.

(2) Subsection (1) does not apply to a denture technician in respect of his practice of denture mechanics pursuant to the Denture Technicians Act or to a medical practitioner.

(3) No corporation shall practise dentistry in the Yukon except through or by means of dentists.

(4) For the purposes of subsection (3), the practice of dentistry by a corporation shall be deemed not to be carried on by clerks, secretaries, nurses or assistants performing services that are not ordinarily considered by law, custom or practice to be services that may be performed only by a dentist.

Register of dentists

3.(1) The Executive Council Member shall keep a register, called the dental register, in which shall be entered the names of all persons who are, pursuant to this Act, entitled to be registered in the dental register, and a licence may be issued to any such person.

(2) A licence issued under this Act expires on March 31 immediately following the day on which the licence comes into force.

Qualifications

4.(1) A person who

- (a) is a graduate of a school or college of dentistry in Canada, or
- (b) has been issued a certificate of qualification
 - (i) by the Dominion Dental Council of Canada or the National Dental Examining board of Canada, or
 - (ii) under the seal of a dental college, society or association established in any province, stating that he has been duly registered as a practising dentist and has practised as such in a province within two years immediately prior to his application for a licence under this Act,

and who pays the fees required by this Act, is entitled to be registered in the register.

(2) The Executive Council Member may refuse to register the name of a person in the register where

- (a) he is entitled to be registered under clause (1)(b)(ii) but is no longer entitled to practise dentistry in the province, or
- (b) he is not entitled to be registered under clause (1)(b)(ii) and he acquired the qualifications relied on under paragraph (1)(a) or clause (1)(b)(i) more than two years before his application for a licence under this Act.

(3) A corporation is entitled to be registered in the register where

- (a) all of its issued share capital having voting rights under any circumstances belongs to one or more dentists,
- (b) all of its directors are dentists, and
- (c) it pays the prescribed registration fee.

(4) The Executive Council Member may refuse to register the name of a corporation in the register where he would be entitled to remove its name from the register under subsection 9(2).

Shareholder of dental corporations

5.(1) Except as provided by subsection (2), no person who is not a dentist is entitled to exercise voting rights in respect of any shares in a dental corporation.

(2) Where a shareholder in a dental corporation dies, his personal representative may hold his shares and exercise his voting rights for 90 days after the date of death.

Deficiency in shareholder qualifications

6. Notwithstanding section 9, where a dental corporation ceases to be entitled to be registered in the register under section 4 by reason only of the death of one of its shareholders, the removal of his name from the register or the suspension of his licence, the dental corporation has a period of 90 days after the death, removal or suspension in which to rectify the deficiency in its entitlement to be registered.

Application of the Act to dentists

7. The relationship of a dentist to a dental corporation, whether as a shareholder, director, officer or employee, does not affect the application of this Act to him.

Licence fee

8.(1) Every person who is registered in the register shall send to the Executive Council Member at the time his name is registered in the register and subsequently on or before March 31 in each year the prescribed annual licence fee.

(2) Different annual licence fees may be prescribed for dentists and dental corporations.

Removal of name from register

9.(1) The Executive Council Member shall remove from the register the name of a person registered therein who does not, on or before June 30 in any year, pay the prescribed annual licence fee.

(2) The Executive Council Member may remove the name of a dental corporation from the register where he is satisfied that

- (a) the corporation is not in good standing under the Business Corporations Act,
- (b) the articles or bylaws of the corporation unduly restrict the ability of the corporation to practise dentistry,
- (c) the corporation is not entitled to be registered in the register under section 4,
- (d) the corporation has been convicted of an offence under subsection 2(3) and the time for appealing the conviction has expired,
- (e) any person has been convicted of an offence in respect of the corporation under section 17 and the time for appealing the conviction has expired, or
- (f) any person who is not a dentist has exercised voting rights in respect of any shares in the corporation except as provided by section 6.

(3) A person whose name is removed from the register pursuant to subsection (1) or (2) is not entitled to practise dentistry in the Yukon until his name has been restored to the register pursuant to subsection (4).

(4) A person whose name is removed from the register under subsection (1) or (2) is entitled to have his name restored to the register and to receive a licence upon payment of such fee in addition to the prescribed annual licence fee and by satisfying the Executive Council Member that he is entitled to be registered in the register under section 4.

Special permits

10.(1) The Executive Council Member may, on the recommendation of the medical health officer, issue a permit to practise dentistry in such parts of the Yukon, for such periods of time, upon such terms and conditions and upon payment of such fees as the Commissioner in Executive Council may prescribe, to any person who

- (a) has completed a four year course of study in dentistry at a college or school of dentistry of recognized standing,
- (b) has received a diploma or certificate of qualification from any such college or school, and
- (c) is eligible for registration as a dentist in a province

if, in the opinion of the Executive Council Member, such person is of good character and is qualified from the standpoint of his professional proficiency to practise dentistry; and for the purposes of this Act, a person shall, when practising the profession of dentistry pursuant to this section, be deemed to be licensed.

(2) For the purposes of this Act, the medical health officer may delegate any of the powers or duties accorded him pursuant to this Act or the Public Service Commission Act to any person he may designate.

Requirement for a licence

11. No person is entitled to receive a fee or remuneration for professional services rendered or materials or appliances provided by him in the practice of dentistry unless he is licensed under this Act at the time the services are rendered or the materials or appliances are provided.

Liability for malpractice

12.(1) Notwithstanding any other Act, every person who is a shareholder of a dental corporation or any other corporation during a time when it is practising dentistry is liable for malpractice to the same extent and in the same manner as if the shareholders of the corporation during that time were practising dentistry as a partnership or, where there is only one shareholder, as an individual.

(2) In subsection (1), “shareholder” means a holder of shares having any voting rights.

(3) The liability of any person practising dentistry is not affected by the fact that he does so as an employee or on behalf of a corporation.

Board of inquiry

13.(1) The Commissioner in Executive Council may appoint two or more persons described in paragraph 4(1)(a) or (b) to act as a board of inquiry for the purpose of investigating any complaint made against a person practising dentistry with respect to an alleged contravention of this Act or any complaint of malpractice or infamous, disgraceful or improper conduct on the part of a person practising dentistry.

(2) A board of inquiry appointed pursuant to subsection (1) may make rules and regulations under which the inquiry is to be held and has power

- (a) to summon and bring before it any person whose attendance it considers necessary to enable the board properly to inquire into the matter complained of,
- (b) to swear and examine all persons under oath,
- (c) to compel the production of documents, and
- (d) to do all things necessary to provide a full and proper inquiry.

(3) A board of inquiry may direct that the person who made the complaint it is appointed to investigate shall deposit with the board, as security for the costs of the inquiry and to the person complained against, a sum not exceeding \$500.

(4) Where the board of inquiry finds that a complaint is frivolous or vexatious, it may cause to be paid to the Executive Council Member out of the deposit for security mentioned in subsection (3) such portion of the costs of the inquiry and to the person complained against as it deems advisable, and where the board does not so find or where there is any balance of the deposit remaining, the deposit or balance thereof shall be returned to the person who deposited it.

(5) A majority of the members of a board of inquiry is a quorum.

(6) A board of inquiry shall, after investigation of a complaint pursuant to this section, make a finding and shall immediately report its finding to the Executive Council Member, and where it finds that the person complained against is guilty of a contravention of this Act or of malpractice or of infamous, disgraceful or improper conduct, may, in its report to the Executive Council Member, recommend that such person be

- (a) reprimanded,
- (b) fined in an amount named by the board, such amount not to exceed \$500,
- (c) struck off the register and his licence cancelled, or
- (d) struck off the register and his licence suspended for a definite period named by the board.

(7) The board of inquiry shall, at the time it sends its report to the Executive Council Member pursuant to subsection (6), notify the person complained against of its finding and of the recommendations for punishment, if any, made by it in such report.

(8) Every person who

- (a) fails, without valid excuse, to attend an inquiry under this section,
- (b) fails to produce any document, book or paper in his possession or under his control, as required under this section, or
- (c) at an inquiry under this section
 - (i) refuses to be sworn in or affirm, or to declare, as the case may be, or
 - (ii) refuses to answer any proper question put to him by the board of inquiry,

commits an offence and is liable on summary conviction to a fine not exceeding \$100, or to imprisonment for a term not exceeding three months, or to both fine and imprisonment.

Appeal to judge

14.(1) A person against whom a finding has been made by a board of inquiry may, within 30 days after the finding has been made, appeal from such finding to a judge.

(2) The judge before whom an appeal is made under subsection (1) may hear the appeal at such time and in such manner as he deems just and he may, by order, quash, alter or confirm the finding of the board of inquiry.

Action on recommendation by board or court order

15.(1) Where a dentist has been found guilty of a contravention of this Act, of malpractice, or of infamous, disgraceful or improper conduct by a board of inquiry and no appeal has been taken from the finding or the time for appeal has expired, the Executive Council Member shall, after receiving the report from the board, impose the penalty recommended by it, and

- (a) in the case of a reprimand, reprimand the dentist in writing and note the reprimand in the register,
- (b) in the case of a fine, make an order fining the dentist, which order shall be filed in the appropriate court and have the same effect as an order of that court,
- (c) in the case of a recommendation to strike off the register and cancel his licence, have the name of the dentist struck off the register and cancel his licence, and
- (d) in the case of a recommendation to strike off the register and suspend his licence, have the name of the dentist struck off the register and suspend his licence for such time as the board has recommended.

(2) Where a judge on appeal confirms or alters the finding of a board of inquiry, his order in the case of a fine shall be carried out in the usual way and in the case of any other punishment referred to in subsection (1) shall be directed to the Executive Council Member and carried out by him in the same manner as provided by subsection (1).

(3) This section applies with the necessary changes to dental corporations.

Application for reinstatement

16.(1) A dentist whose name has been struck off the register and whose licence has been cancelled or suspended pursuant to section 15 may,

- (a) where he has not taken any appeal from the finding, within one year from the date of the finding of the board of inquiry, apply to the Commissioner in Executive Council to have his name restored to the register, or
- (b) where he has appealed from the finding, within one year from the date of an order made under subsection 14(2), apply to a judge for an order directing the Executive Council Member to have his name restored to the register.

(2) The Commissioner in Executive Council or a judge may, upon application under subsection (1), order the Executive Council Member to reinstate a dentist on the register and renew his licence and restore his rights and privileges in such manner and upon such conditions as the Executive Council Member or judge may decide.

(3) The Executive Council Member shall, upon receiving an order under subsection (2) to do so, reinstate a dentist on the register and renew his licence and restore his rights and privileges in such manner and upon such conditions as the order directs.

(4) This section applies with the necessary changes to dental corporations.

Illegal practice

17. A person who, not being licensed pursuant to this Act,

- (a) practises dentistry,
- (b) wilfully or falsely pretends to be licensed to practise dentistry, or
- (c) purports by public advertisement, card, circular, sign or otherwise, to practise dentistry or in any way leads people to believe that he is qualified to practise dentistry in the Yukon,

commits an offence and is liable upon summary conviction to a fine of \$50 and for every day on which he commits any such offence he shall be deemed to have committed a separate offence.

Burden of proof

18. In any prosecution for an offence under this Act, the burden of proof as to the right of the defendant to practise dentistry in the Yukon is on the defendant.

Limitation of action

19. No prosecution for an offence under this Act shall be instituted after two years from the date the offence was committed.

Emergency aid may be given

20. Nothing in this Act shall be deemed to prohibit a person giving necessary aid to a person who appears to be in urgent need of aid, if the aid is not given for hire or gain and the giving of such aid is not made a business or means of gaining a livelihood.

Federal government employees

21. Nothing in this Act applies to a person who practises dentistry in the Yukon in the course of his duties as an employee of the Government of Canada, unless he practises dentistry on his own behalf in the Yukon outside the course of his duties as an employee of the said Government.

Dental assistants

22.(1) A dentist may authorize a dental assistant to give specific routine dental assistance to a patient who has been examined by the dentist if the assistance is given under the immediate supervision of the dentist.

(2) No dental assistant may give dental service except as provided by subsection (1).

Dental hygienists and dental therapists

23.(1) The Executive Council Member shall keep a register of dental hygienists and dental therapists in which he may, upon application, enter the name of any person qualified to provide the services of a dental hygienist or dental therapist by training at a school, university or college of dentistry, dental hygiene or dental therapy approved by the Commissioner in Executive Council.

(2) No person shall perform the services of a dental hygienist or dental therapist unless he is registered as a dental hygienist or a dental therapist pursuant to this Act.

(3) No person registered under this section commits an offence for anything done by him in the performance of an authorized service as a dental hygienist or dental therapist.

Requirement for examination of patients by a dentist

24.(1) Subject to subsection (2), no dental hygienist or dental therapist shall perform any of the dental services set out in section 25 with respect to any patient unless a dentist licensed pursuant to this Act has first examined the patient and has authorized, in writing, a specific treatment to be performed by the dental hygienist or dental therapist for that patient.

(2) Any dental hygienist or dental therapist registered pursuant to section 23 may, in the case of an emergency and where no professional dental advice or assistance is available, provide to a patient any of the dental services set out in section 25 that he normally would perform under the direction of a dentist without authorization of a specific treatment for the patient by a dentist.

Services provided by hygienists and therapists

25.(1) Any dentist licensed pursuant to this Act may authorize any person registered as a dental hygienist or dental therapist pursuant to section 23 to perform any of the following dental services under his direction:

- (a) the cleaning, scaling and polishing of teeth;
- (b) the instruction and demonstration of oral hygiene;
- (c) the application of such prophylactic solutions and anticariogenic substances as the Commissioner in Executive Council may approve;
- (d) specific dental duties of a minor nature.

(2) Where a dental therapist registered pursuant to section 23 has successfully completed a course approved by the Commissioner in Executive Council in the extraction and filling of teeth, any dentist licensed pursuant to this Act may, with the approval of the medical health officer and subject to such conditions as he may impose, authorize in writing such dental therapist to perform in addition to those dental services set out in subsection (1), any of the following dental services:

- (a) the exposing and development of dental radiographs or x-rays;
- (b) the administration of local anaesthetic solutions by filtration and mandibular block methods;
- (c) the placement of prescribed restorations in deciduous and permanent teeth;
- (d) the performance of vital pulpotomies for deciduous teeth;
- (e) the performance of uncomplicated extractions of deciduous and permanent teeth;
- (f) the taking of dental impressions for study casts.

(3) Any dental hygienist or dental therapist who is authorized by a dentist to perform any dental service pursuant to this section may perform such service pursuant to the direction of that dentist, but not necessarily under the immediate supervision of that dentist.

Emergencies

26. In the case of an emergency, any dentist licensed pursuant to this Act may, with the permission of the medical health officer, authorize a dental therapist registered pursuant to section 23 to perform any of the dental services set out in paragraphs 25(2)(a) to (f) notwithstanding that such authorization is not in writing as required by subsection 25(2).

Regulations

27. For the purpose of carrying into effect the provisions of this Act according to the true intent and meaning thereof, the Commissioner in Executive Council may make such regulations as may be deemed necessary and not inconsistent with the spirit of this Act, and without restricting the generality of the foregoing, the Commissioner in Executive Council may make regulations

- (a) prescribing fees with respect to registration and licensing of dentists, dental corporations, dental hygienists and dental therapists;
- (b) respecting the services performed by dental assistants, dental hygienists or dental therapists pursuant to this Act;
- (c) respecting the registration and licensing of dentists, dental hygienists and dental therapists;
- (d) respecting the nature of records to be maintained by dentists regarding their supervision of dental hygienists or dental therapists.

Offence and penalty

28. A person who violates section 24 or a regulation commits an offence and is liable on summary conviction to a fine of \$50 and for every day on which he commits any such offence he shall be deemed to have committed a separate offence.

Offence and penalty

29. Every person who violates the provisions of section 25 commits an offence and is liable on summary conviction to a fine not exceeding \$50 or to imprisonment for a term not exceeding one month, or to both fine and imprisonment.

Action against hygienist

30.(1) Where a dental hygienist has been found guilty of an offence under section 28 or 29 and no appeal has been taken from the conviction or the time for appeal has expired, the Executive Council Member may suspend his licence for a period not exceeding six months or may have his name struck off the register and cancel his licence.

(2) Where a judge on appeal upholds a conviction, the Executive Council Member may proceed in the same manner as provided by subsection (1).

Application for reinstatement of hygienist

31.(1) A dental hygienist whose name has been struck off the register and whose licence has been cancelled pursuant to section 30 may, at any time, apply to the Executive Council Member to have his name reinstated on the register.

(2) The Executive Council Member may, upon application under subsection (1) and after hearing the applicant, reinstate him on the register, renew his licence and restore his rights and privileges, in such manner and upon such conditions as the Executive Council Member may decide.

References in other Acts

32. In every Act or regulation enacted or made at any time, a reference to a person authorized to practise dentistry in the Yukon shall be read as including a dental corporation, except as provided otherwise.

CHAPTER 43

DENTURE TECHNICIANS ACT

Interpretation

1. In this Act,

“denture technician” means a person who is registered under this Act as a denture technician;

“denture mechanics” means

- (a) taking impressions or bite registrations for the purpose of supplying, making, altering or repairing any complete upper or complete lower prosthetic denture to be fitted to an edentulous arch,
- (b) fitting any complete upper or complete lower prosthetic denture to an edentulous arch,
- (c) supplying, making, altering or repairing any complete upper or complete lower prosthetic denture in respect of which the person who supplies, makes, alters or repairs the denture performs a function described in paragraph (a) or (b), and
- (d) advising any person in respect of any function described in paragraph (a), (b) or (c),

but does not include the insertion or fitting of an immediate denture in the mouth of the intended wearer or the adjustment of an immediate denture and does not include any procedure that alters any oral tissue;

“registrar” means the registrar designated pursuant to section 3.

Practice of denture mechanics

2.(1) No person shall practise denture mechanics or hold himself out as qualified or entitled to practise denture mechanics unless he is a denture technician.

(2) Subsection (1) does not apply to a dentist licensed or a dental hygienist or dental technician registered under the Dental Profession Act or to a medical practitioner.

(3) A denture technician may practise denture mechanics but shall not engage in any other aspect of dentistry.

(4) In a prosecution or any other proceeding under this Act, if it is proven that a person has practised denture mechanics, the burden of establishing a subsisting registration or licence under this or any other Act rests on the person who alleges that the practice was authorized by such a registration or licence.

(5) In a prosecution or any other proceeding under this Act, proof of the performance of one act of denture mechanics work is sufficient to prove the practice of denture mechanics.

Registration

3.(1) The Executive Council Member shall designate a member of the public service to function as registrar of denture technicians.

(2) The registrar shall keep a register of denture technicians in which he shall enter the name of any person who applies for registration and is qualified under subsection (3) to practise denture mechanics.

(3) Any person who has, with the prescribed standard of performance, completed a course of studies and training approved by the Commissioner in Executive Council is qualified to practise denture mechanics and is entitled, upon payment of the prescribed fee, to have his name entered on the registry as a denture technician.

Registration fees

4.(1) A denture technician shall pay to the registrar such annual or other periodic fee as may be prescribed.

(2) A denture technician may not enforce against any person a contract in respect of the performance of any denture mechanics work if the contract is made or the work is performed during a period in respect of which the denture technician has failed to pay the fee required by subsection (1), but such a contract is enforceable against the denture technician.

Partial dentures

5. A denture technician who has, with the prescribed standard of performance, completed a course of studies and training prescribed by the Commissioner in Executive Council may be registered as a denture technician qualified to practise denture mechanics with partial dentures and may practise denture mechanics with partial dentures in accordance with a written referral from a dentist and with such conditions and limitations as may be prescribed by the Commissioner in Executive Council.

Enforcement and discipline

6.(1) The registrar may apply to a judge of the Supreme Court for and the judge may grant an injunction enjoining any person from continuing conduct that is in contravention of this Act or the regulations.

(2) Breach of an order made under subsection (1) may be dealt with as a contempt of court.

(3) Where a denture technician has acted with professional incompetence or has contravened any provision of this Act or the regulations, a judge of the Supreme Court may, upon the application of the registrar,

- (a) cancel the registration of the denture technician for such specified period of time as the judge thinks fit, or
- (b) impose, for such specified period of time as the judge thinks fit, reasonable restrictions on the right of the denture technician to practise denture mechanics, including the restriction that he not practise denture mechanics as a sole practitioner or that he not perform specified acts of denture mechanics.

(4) Where an order is made under subsection (3) by reason of the professional incompetence of the denture technician,

- (a) the purpose of the order shall be the protection of existing and prospective clients rather than the punishment of the denture technician,

- (b) the judge may include in the order reasonable stipulations about conditions or qualifications which, if met or achieved, will entitle the denture technician to an abridgement of the period of time for the cancellation or restriction, and
- (c) where no stipulations as described in paragraph (b) are included in the order, the judge may, at any time subsequent to making the order and upon the application of the denture technician, abridge the period of time for the cancellation or restriction if the judge is satisfied that there has been a material change in the competence of the denture technician to practise denture mechanics.

(5) In this section professional incompetence means unfitness to continue in the practise of denture mechanics by reason of having displayed a lack of the knowledge, skill or judgment in the care of one or more patients that it is reasonable to expect of a denture technician or by reason of failure to take reasonable care for the welfare of one or more patients.

Offence and penalty

7. Any person who contravenes a provision of this Act commits an offence and is liable on summary conviction to a fine of up to \$2,000 or imprisonment for as long as six months, or both.

Regulations

8. The Commissioner in Executive Council may make regulations

- (a) prescribing courses of studies and training which, if successfully completed with the required standard of performance, qualify a person for registration as a denture technician or as a denture technician qualified in respect of partial dentures;
 - (b) prescribing the required standard of performance for successful completion of the courses of studies and training referred to in paragraph (a);
 - (c) prescribing conditions and limitations in respect of the practice of denture mechanics with partial dentures;
 - (d) prescribing registration fees and annual or other periodic fees.
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CHAPTER 44

DEPENDANTS RELIEF ACT

Interpretation

1. In this Act,

“child” includes a child of the deceased en ventre sa mere at the date of the deceased’s death;

“deceased” means a testator or a person dying intestate;

“dependant” means

- (a) the widow or widower of the deceased,
- (b) a child of the deceased who is under the age of 16 years at the time of the deceased’s death,
- (c) a child of the deceased who is 16 years of age or over at the time of the deceased’s death and unable by reason of mental or physical disability to earn a livelihood,
- (d) a grandparent, parent or descendant of the deceased who, for a period of at least three years immediately prior to the date of the death of the deceased, was dependent upon him for maintenance and support,
- (e) a person divorced from the deceased who, for a period of at least three years immediately prior to the date of death of the deceased, was dependent upon the deceased for maintenance and support, or
- (f) a person of the opposite sex to the deceased not legally married to the deceased who, for a period of at least three years immediately prior to the date of the death of the deceased, lived and cohabited with the deceased as the spouse of the deceased and was dependent upon the deceased for maintenance and support;

“letters probate” and “letters of administration” include letters probate, letters of administration or other legal documents purporting to be of the same legal nature granted by a court in another jurisdiction and resealed in the Yukon;

“order” includes a suspensory order.

Order for support

2. Where a deceased has not made adequate provision for the proper maintenance and support of his dependants or any of them, the Supreme Court, on application by or on behalf of the dependants or any of them, may order that such provision as it considers adequate be made out of the estate of the deceased for the proper maintenance and support of the dependants or any of them.

Suspensory order

3. The Supreme Court, on application by or on behalf of the dependants or any of them, may make a suspensory order suspending in whole or in part the administration of the deceased’s estate, for such time and to such extent as the Supreme Court may decide.

Others who could apply

4. Where an application for an order under section 2 is made by or on behalf of a dependant, it may be dealt with by the Supreme Court as, and in so far as the question of limitation is concerned it shall be deemed to be, an application on behalf of all persons who might apply.

Powers of the Supreme Court

5.(1) The Supreme Court, upon the hearing of an application under this Act, may

- (a) inquire into and consider all matters that it considers should be fairly taken into account in deciding upon the application,
- (b) in addition to the evidence adduced by the parties appearing, direct such other evidence to be given as it considers necessary or proper,
- (c) accept such evidence as it considers proper of the deceased's reasons, so far as ascertainable,
 - (i) for making the dispositions made by his will, or
 - (ii) for not making adequate provision for a dependant,including any statement in writing signed by the deceased, and
- (d) refuse to make an order in favour of any dependant whose character or conduct is such as, in the opinion of the Supreme Court, disentitles the dependant to the benefit of an order under this Act.

(2) In estimating the weight to be given to a statement referred to in paragraph (1)(c), the Supreme Court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

Court orders

6.(1) The Supreme Court, in any order making provision for maintenance and support of a dependant, may impose such conditions and restrictions as it considers fit.

(2) Provision may be made out of income or capital or both and may be made in one or more of the following ways, as the Supreme Court deems fit:

- (a) an amount payable annually or otherwise;
- (b) a lump sum to be paid or held in trust;
- (c) any specified property to be transferred or assigned, absolutely or in trust or for life, or for a term of years to or for the benefit of the dependant.

(3) Where a transfer or assignment of property is ordered, the Supreme Court may

- (a) give all necessary directions for the execution of the transfer or assignment by the executor or administrator or such other person as the Supreme Court may direct, or
- (b) grant a vesting order.

Subsequent proceedings

7. Where an order has been made under this Act, the Supreme Court at any subsequent date may

- (a) inquire whether the dependant benefited by the order has become entitled to the benefit of any other provision for his proper maintenance or support,

- (b) inquire into the adequacy of the provision ordered, and
- (c) discharge vary or suspend the order, or make such other order as it considers fit in the circumstances.

Additional powers of the court

8. The Supreme Court at any time may

- (a) fix a periodic payment or lump sum to be paid by a legatee, devisee or a beneficiary under an intestacy to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he is interested,
- (b) relieve such portion of the estate from further liability, and
- (c) direct
 - (i) the manner in which such periodic payment is to be secured, or
 - (ii) to whom such lump sum is to be paid and the manner in which it is to be dealt with for the benefit of the person to whom the commuted payment is payable.

Stay of distribution

9.(1) Where an application is made and notice of it is served on the executor, administrator or trustee of the estate of the deceased, he shall not, after service of the notice upon him, unless all persons entitled to apply consent or the Supreme Court otherwise orders, proceed with the distribution of the estate until the Supreme Court has disposed of the application.

(2) Nothing in this Act prevents an executor, administrator or trustee from making reasonable advances for maintenance and support to dependants who are beneficiaries.

(3) Where an executor, administrator or trustee distributes any portion of the estate in violation of subsection (1), if any provision for maintenance and support is ordered by the Supreme Court to be made out of the estate, the executor, administrator or trustee is personally liable to pay the amount of the distribution to the extent that such provision or any part thereof ought, pursuant to the order or this Act, to be made out of the proportion of the estate distributed.

Incidence of order

10.(1) Subject to subsection (2), the incidence of any provision for maintenance and support ordered falls rateably upon that part of the deceased's estate to which the jurisdiction of the Supreme Court extends.

(2) The Supreme Court may order that the provision for maintenance and support be made out of and charged against the whole or any portion of the estate in such proportion and in such manner as to it seems proper.

Priority of order

11. For the purpose of enactments relating to succession duties and gift taxes, where an order, other than an order under section 21, is made under this Act in respect of

- (a) a deceased who died leaving a will, the will of the testator shall be considered to have had effect from the date of the deceased's death as if it had been executed with such variations as are necessary to give effect to the order, or

- (b) a deceased who died intestate, the provisions of the Intestate Succession Act applicable to the distribution of the intestate's estate shall be construed as having been amended in the manner and to the extent the order alters the operation of those provisions.

Ancillary powers

12. The Supreme Court may give such further directions as it considers necessary for the purpose of giving effect to an order.

Filing of order

13.(1) A certified copy of every order made under this Act, other than an order made under section 21, shall be filed with the clerk of the Supreme Court.

(2) A memorandum of the order shall be endorsed on or annexed to the copy in the custody of the clerk of the letters probate or letters of administration, as the case may be.

Limitation period

14.(1) Subject to subsection (2), no application for an order under section 2 may be made except within six months from the grant of letters probate of the will or of letters of administration.

(2) The Supreme Court, if it considers it just, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application.

Devise under contract

15. Where a deceased

- (a) has in his lifetime, bona fide and for valuable consideration, entered into a contract to devise and bequeath any property real or personal, and
- (b) has by his will devised and bequeathed that property in accordance with the provisions of the contract,

the property is not liable to the provisions of an order made under this Act except to the extent that the value of the property in the opinion of the Supreme Court exceeds the consideration received by the deceased therefor.

Assignment of benefit

16. Where provision for the maintenance and support of a dependant is ordered pursuant to this Act, a mortgage, charge or assignment of or with respect to such provision, made before the order of the Supreme Court making such provision is entered, is invalid.

Waiver of benefit

17. Any agreement by or on behalf of a dependant that this Act does not apply or that any benefit or remedy provided by this Act is not to be available is invalid.

Appeal

18. An appeal lies to the Court of Appeal from any order made under this Act.

Enforcement

19.(1) A direction or order made under this Act, other than an order under section 21, may be enforced against the estate of the deceased in the same way and by the same means as any other judgment or order of the Supreme Court against the estate may be enforced.

(2) The Supreme Court may make such order or direction or interim order or direction as may be necessary to secure to the dependant out of the estate the benefit to which he is found entitled.

Transactions before death

20.(1) Subject to section 15, for the purpose of this Act, the capital value of the following transactions effected by a deceased before his death, whether benefiting his dependant or any other person, shall be included as testamentary dispositions as of the date of the death of the deceased and shall be considered to be part of his net estate for purposes of ascertaining the value of his estate:

- (a) gifts mortis causa;
- (b) money deposited, together with interest thereon, in an account in the name of the deceased in trust for another or others with any chartered bank, savings office or trust company, and remaining on deposit at the date of the death of the deceased;
- (c) money deposited, together with interest thereon, in an account in the name of the deceased and another person or persons and payable on death pursuant to the terms of the deposit or by operation of law to the survivor or survivors of those persons with any chartered bank, savings office or trust company, and remaining on deposit at the date of the death of the deceased;
- (d) any disposition of property made by a deceased whereby property is held at the date of his death by the deceased and another as joint tenants with right of survivorship or as tenants by the entireties;
- (e) any disposition of property made by the deceased in trust or otherwise, to the extent that the deceased at the date of his death retained, either alone or in conjunction with another person or persons by the express provisions of the disposing instrument, a power to revoke such disposition, or a power to consume, invoke or dispose of the principal thereof, but the provisions of this paragraph do not affect the right of any income beneficiary to the income accrued and undistributed at the date of the death of the deceased;
- (f) any amount payable under a policy of insurance effected on the life of the deceased and owned by him.

(2) The capital value of the transactions referred to in paragraphs (1)(b), (c) and (d) shall be considered to be included in the net estate of the deceased to the extent that the funds on deposit were the property of the deceased immediately before the deposit or the consideration for the property held as joint tenants or as tenants by the entireties was furnished by the deceased.

(3) Dependants claiming under this Act have the burden of establishing that the funds or property, or any portion thereof, belonged to the deceased.

(4) Where the other party to a transaction described in paragraphs (1)(c) or (d) is a dependant, such a dependant shall have the burden of establishing the amount of his contribution, if any.

(5) This section does not prohibit any corporation or person from paying or transferring any funds or property, or any portion thereof, to any person otherwise entitled thereto unless there has been personally served on such corporation or person a certified copy of a suspensory order made under section 3 enjoining such payment or transfer.

(6) Personal service upon the corporation or person holding any such fund or property of a certified copy of such suspensory order is a defence to any action or proceeding brought against the corporation or person with respect to the fund or property during the period such order is in force and effect.

(7) This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights.

Charging of gifts

21.(1) Where, upon an application for an order under section 2, it appears to the Supreme Court that

- (a) the deceased has within one year prior to his death made an unreasonably large disposition of real or personal property
 - (i) as an immediate gift inter vivos, whether by transfer, delivery, declaration of revocable or irrevocable trust or otherwise, or
 - (ii) the value of which at the date of the disposition exceeded the consideration received by the deceased therefor, and
- (b) there are insufficient assets in the estate of the deceased to provide adequate maintenance and support for the dependants or any of them,

the Supreme Court may, subject to subsection (2), order that any person who benefited, or who will benefit, by the disposition pay to the executor, administrator or trustee of the estate of the deceased or to the dependants or any of them, as the Supreme Court may direct, such amount as the Supreme Court considers adequate for the proper maintenance and support of the dependants or any of them.

(2) The amount that a person may be ordered to pay under subsection (1) shall be determined in accordance with the following rules:

- (a) no person to whom property was disposed of is liable to contribute more than an amount equal to the extent to which the disposition was unreasonably large;
- (b) if the deceased made several dispositions of property that were unreasonably large, no person to whom property was disposed of shall be ordered to pay more than his pro rata share based on the extent to which the disposition was unreasonably large;
- (c) the Supreme Court shall consider the injurious effect on a person to whom property was disposed of from an order to pay in view of any circumstances occurring between the date of the disposition of the property and the date on which the transferee received notice of the application under section 2;

- (d) if the person to whom the property was disposed of has retained the property, he is not liable to contribute more than the value of his beneficial interest in the property;
- (e) if the person to whom property was disposed of has disposed of or exchanged the property in whole or in part, he is not liable to contribute more than the combined value of any remaining original property and any remaining proceeds or substituted property;
- (f) for the purposes of paragraphs (d) and (e), "value" is the fair market value as at the date of the application under section 2.

(3) In determining whether a disposition of property is a disposition of an unreasonably large amount of property within the meaning of subsection (1), the Supreme Court shall consider

- (a) the ratio of the value of the property disposed of to the value of the property determined under this Act to comprise the estate of the deceased at the time of his death,
- (b) the aggregate value of any property disposed of under prior and simultaneous dispositions, and for this purpose the Supreme Court shall consider all dispositions drawn to its attention whether made prior or subsequent to one year prior to the death of the deceased,
- (c) any moral or legal obligation of the deceased to make the disposition,
- (d) the amount, in money or money's worth, of any consideration paid by the person to whom the property was disposed, and
- (e) any other circumstance that the Supreme Court considers relevant.

Crown

22. The Crown is bound by this Act.

CHAPTER 45

DEVOLUTION OF REAL PROPERTY ACT

Interpretation

1. In this Act,

“mentally disordered person” includes an idiot and a person of unsound mind;

“personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person.

Devolution of real property upon personal representatives

2.(1) Real property to which a deceased person was entitled for an interest not ceasing on his death shall on his death, notwithstanding any testamentary disposition, devolve upon and become vested in his personal representative as if it were personal property.

(2) A testator shall be deemed to have been entitled at his death to any interest in real property passing under any gift contained in his will which operates as an appointment under a general power to appoint by will.

(3) The personal representative is the representative of the deceased in regard to his real property to which he was entitled for an interest not ceasing on his death as well as in regard to his personal property.

(4) Probate and letters of administration may be granted in respect of real property only, although there is no personal property.

Personal representative to hold as trustee

3. Except as provided in this Act, the personal representative of a deceased person holds the real property as trustee for the persons by law beneficially entitled thereto, and those persons have the same right to require a transfer of real property as persons beneficially entitled to personal property have to require a transfer of such personal property.

Rules of law to apply

4. Except as provided in this Act, all enactments and rules of law, and any jurisdiction of the Supreme Court with respect to the appointment of administrators or to probate or letters of administration, or dealings before probate in the case of personal property, and with respect to costs and other matters in the administration of personal property in force before April 1, 1955, and all powers, duties, rights, equities, obligations and liabilities of a personal representative in force on April 1, 1955 with respect to personal property, apply and attach to the personal representative and have effect with respect to real property vested in him.

Saving provision as to administration of assets

5. Without prejudice to the rights and powers of a personal representative, the appointment of a personal representative in regard to real property does not, except as otherwise provided in this Act, affect

- (a) any rule as to the marshalling or administration of assets,
- (b) the beneficial interest in real property under any testamentary disposition,
- (c) any mode of dealing with any beneficial interest in real property or the proceeds of the sale thereof, or
- (d) the right of any person claiming to be interested in the real property to take proceedings for the protection or recovery thereof against any person other than the personal representative.

Administration of real property

6. In the administration of the assets of a deceased person his real property shall be administered in the same manner, subject to the same liabilities for debts, costs and expenses and with the same incidents, as if it were personal property, but nothing in this Act alters or affects the order in which real and personal assets respectively are now applicable, as between different beneficiaries, in or toward the payment of funeral and testamentary expenses, debts or legacies, or the liability of real property to be charged with payment of legacies.

Personal representatives to be deemed “heirs”

7. When any part of the real property of a deceased person vests in his personal representative under this Act, the personal representative, in the interpretation of any Act or in the construction of any instrument to which the deceased was a party or under which he was interested, shall while the estate remains in the personal representative be deemed in law the heir of the deceased as respects such part unless a contrary intention appears, but nothing in this section shall affect the beneficial right to any property or the construction of words of limitation of any estate in or by any deed, will or other instrument.

Conveyance or sale of real property

8.(1) At any time after the date of probate or letters of administration, the personal representative may convey the real property to any person entitled thereto, and may make the conveyance either subject to a charge for the payment of any money which the personal representative is liable to pay, or without any such charge, and on the conveyance being made subject to a charge for all moneys, if any, which the personal representative is liable to pay, all liabilities of the personal representative in respect of the real property shall cease, except as to any acts done or contracts entered into by him before such conveyance.

(2) At any time after the expiration of one year from the date of probate or of letters of administration if the personal representative has failed, on the request of the person entitled to any real property, to convey the real property to that person, the Supreme Court may, if it thinks fit, on the application of that person and after notice to the personal representative, order that the conveyance be made, and in default may make an order vesting the real property in such person as fully and completely as might have been done by a conveyance thereof from the personal representative.

(3) If, after the expiration of one year, the personal representative has failed, either to convey the real property or any portion thereof to the person entitled thereto or to sell and dispose of it, the Supreme Court may, on the application of any person beneficially interested, order that the real property or portion be sold on such terms and within such period as may appear reasonable and, on the failure of the personal representative to comply with such order,

may direct a sale of the real property or portion upon such terms as to cash or credit, or partly one and partly the other, as may be deemed advisable.

Powers of sale

9. The personal representative may sell the real property for the purpose not only of paying debts but also of distributing the estate among the persons beneficially entitled thereto, whether or not there are debts, and it shall not be necessary that the persons beneficially entitled shall concur in any such sale except where it is made for the purpose of distribution only.

Sale for distribution only

10.(1) Except as provided in this Act, no sale of real property for the purpose of distribution only is valid as respects any person beneficially interested unless he concurs therein.

(2) Where, in the case of such a sale, a mentally disordered person is beneficially interested or adult beneficiaries do not concur in the sale, or where under a will there are contingent interests or interests not yet vested or the persons who may be beneficiaries are not yet ascertained, the Supreme Court may, upon satisfactory proof that such sale is in the interest and to the advantage of the estate of the deceased and the persons beneficially interested therein, approve such sale, and any sale so approved is valid as respects such contingent interests and interests not yet vested and is binding upon such mentally disordered person, non-concurring persons and beneficiaries not yet ascertained.

(3) If an adult accepts a share of the purchase money, knowing it to be such, he is deemed to have concurred in the sale.

Where an infant is interested

11. No sale, where an infant is interested, shall be valid without the written consent or approval of the public administrator or, in the absence of such consent or approval, without an order of the Supreme Court.

Distribution or division

12. The personal representative may, with the concurrence of the adult persons beneficially interested, and the approval of the public administrator on behalf of infants or mentally disordered persons if any infants or lunatics are interested, divide or partition and convey the real property of the deceased person, or any part thereof, to or among the persons beneficially interested.

Other powers of personal representatives

13.(1) The personal representative may, subject to the provisions of any will affecting the property,

- (a) lease the real property or any part thereof for any term not exceeding one year,
- (b) lease the real property or any part thereof, with the approval of the Supreme Court, for a longer term, and

- (c) raise money by way of mortgage of the real property or any part thereof for the payment of debts, or for payment of taxes on the real property to be mortgaged and, with the approval of the Supreme Court, for payment of other taxes, the erection, repair, improvement or completion of buildings, or the improvement of lands, or for any other purpose beneficial to the estate.

(2) Where infants or mentally disordered persons are interested, the approvals or order required by sections 11 and 12 in case of a sale is required in the case of a mortgage, under paragraph (1)(c), for payment of debts or payment of taxes on the real property to be mortgaged.

Real property sold or distributed

14.(1) A person who purchases real property in good faith and for value from the personal representative, or from a person beneficially entitled thereto to whom it has been conveyed by the personal representative, holds it freed and discharged from any debts or liabilities of the deceased owner except those specifically charged thereon otherwise than by his will and, where the purchase is from the personal representative, freed and discharged from all claims of the persons beneficially interested.

(2) Real property which has been conveyed by the personal representative to a person beneficially entitled thereto continues to be liable for the debts of the deceased owner so long as it remains vested in such person, or in any person claiming under him not being a purchaser in good faith and for value, as it would have been if it had remained vested in the personal representative, and in the event of a sale or mortgage thereof in good faith and for value by a person beneficially entitled he shall be personally liable for such debts to the extent to which the real property was liable when vested in the personal representative but not beyond the value thereof.

Concurrence of personal representatives

15.(1) Subject to subsection (2), where there are two or more personal representatives, a conveyance, mortgage, lease or other disposition of real property devolving under this Act shall not be made without the concurrence therein of all such representatives or an order of the Supreme Court.

(2) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance, mortgage, lease or other disposition of the real property may be made by the proving executor or executors for the time being, without an order of the Supreme Court, and shall be as effectual as if all the persons named as executors had concurred therein.

Rights hereby conferred to be additional

16. The rights and immunities conferred by this Act upon personal representatives are in addition to, and not in derogation of, the powers conferred by any other Act or by the will.

Duties on real property

17. Nothing in this Act shall alter any duty payable in respect of real property or impose any new duty thereon.

CHAPTER 46

DISTRESS ACT

Charges for distress

1. No person who makes a distress for rent or who is employed to make a distress or to do any act in the course of a distress or to carry a distress into effect shall levy, take or receive costs in respect of the distress other than the prescribed fees.

Charges for extrajudicial seizure

2. No person who makes a seizure under a security interest, lien note or other extrajudicial procedure or who is employed to make a seizure or to do any act in the course of a seizure or to carry a seizure into effect shall levy, take or receive costs in respect of the seizure other than the prescribed fees.

Work must be done

3. No person shall charge for any service, work or thing under this Act unless that service, work or thing has been actually done, made or provided.

Remedy by person who is overcharged

4. Where costs are charged in respect of a distress or seizure contrary to section 1, 2 or 3, the person against whom such costs are charged may, by notice of motion, summon the person charging such costs before a judge of the Supreme Court and the judge may order the person charging the costs to pay to the person against whom they were charged any sum not exceeding treble the amount charged together with the costs of the proceedings under this section.

Vendors and mortgagees of land

5.(1) The rights of a mortgagee or a vendor of land or their assigns, under a mortgage or agreement of sale, to distress for interest in arrears or principal due upon the mortgage or agreement of sale are, notwithstanding anything to the contrary in the mortgage or agreement of sale or in any other agreement relating to the mortgage or agreement of sale, limited to the goods and chattels of the mortgagor or purchaser or their assigns that are not exempt from seizure under the Exemptions Act.

(2) A mortgagee or vendor of land may make an application in writing to the tenant or other person occupying the land or any part of the land for payment to the mortgagee or vendor of the rent or rentable value of the land or part of the land occupied to the extent of interest or principal due and payable to the mortgagee or vendor by the mortgagor or purchaser under the mortgage or agreement of sale and to the extent of the sums paid by the mortgagee or vendor in respect of taxes, levies and insurance premiums, or in respect of any prior mortgage or charge upon the land, for which the mortgagor or purchaser is liable.

(3) Rent or rentable value under subsection (2), whether or not the mortgagor or purchaser has attained, is payable to and recoverable by the mortgagee or vendor from the tenant or other person liable to pay the same or occupying the land or any part thereof by any remedy, proceeding or claim available as between a landlord and his tenant under the Landlord and Tenant Act.

(4) A second or subsequent mortgagee may exercise the rights conferred by this section only with the consent in writing of all prior mortgagees or, in the absence of such consent, only where all money, other than original principal, due and payable under prior mortgages and all taxes on land are satisfied.

(5) A vendor may exercise the rights conferred by this section only with the consent in writing of all prior mortgagees and vendors or, in the absence of such consent, only where all money, other than original principal, due and payable under prior mortgages and agreements of sale and all taxes on the land are satisfied.

(6) No mortgagee or vendor acting under this section is subject to the liabilities of a mortgagee in possession.

(7) Goods and chattels distrained under this section shall be sold in the same manner as those distrained and sold for rent by a landlord under the Landlord and Tenant Act.

(8) This section applies to the personal representatives, successors and assigns of a mortgagee or vendor and applies to mortgages and agreements of sale made before as well as after the passing of this Act.

Regulations

6. The Commissioner in Executive Council may prescribe the fees to be charged under this Act.

CHAPTER 47

DOG ACT

Interpretation

1. In this Act,

“dog” includes a male or female dog and an animal that is a cross between a dog and a wolf;

“muzzle” means to secure a dog’s mouth in such a fashion that it cannot bite anything;

“officer” means a person appointed by the Commissioner in Executive Council to carry out the provisions of this Act and any member of the Royal Canadian Mounted Police;

“owner” means a person who owns, harbours, possesses or has control or custody of a dog;

“run at large” means to run off the premises of the owner either when the dog is not muzzled or when the dog is not under the control of any person.

Appointment of officers

2. The Commissioner in Executive Council may appoint any person to carry out the provisions of this Act.

Feed and water

3. No owner shall allow a dog to remain unfed or unwatered for a sufficient period either to amount to cruelty or to cause the dog to become a nuisance.

Punishment

4. No person shall punish or abuse a dog in a manner or to an extent that is cruel or unnecessary.

Running at large

5.(1) No owner shall permit a dog to run at large

- (a) within an area that may be defined by the Commissioner in Executive Council,
- (b) contrary to a bylaw made by the council of a municipality,
- (c) that is of a vicious temperament or dangerous to the public safety, or
- (d) while in heat.

(2) An officer may seize or kill a dog found running at large contrary to paragraph (1)(c) or (d).

Dogs in harness

6.(1) No person shall have a dog in harness within any settlement or within one kilometre of any settlement in the Yukon unless the dog has a muzzle or is under the custody and control of a person over 16 years of age who is capable of ensuring that the dog will not harm the public or create a nuisance.

(2) No person shall drive a dog or dog team on a sidewalk situated on the street or road of a settlement.

(3) This section does not apply in a municipality.

Seizure and sale

7.(1) An officer may seize a dog from a person whom he finds violating this Act.

(2) Subject to subsection (6), an officer who has seized a dog under subsection (1) shall restore possession of the dog to the owner thereof where

- (a) the owner claims the dog within five days after the date of seizure, and
- (b) the owner pays to the officer all expenses incurred in securing, caring for and feeding the dog.

(3) Where, at the end of five days, the dog has not been claimed by the owner under subsection (2), the officer may sell the dog at public auction.

(4) The proceeds of the sale of a dog by public auction shall be distributed in the following manner:

- (a) all expenses incurred in securing, caring for and feeding the dog shall be paid to the officer;
- (b) the expenses of the public auction shall be paid;
- (c) the balance, if any, shall be paid to the owner.

(5) Where a dog has not been claimed within five days after seizure under subsection (2) and no bid has been received at a sale by public auction, the officer may destroy or dispose of the dog as he sees fit at any time after the auction and no damages or compensation may be recovered on account of its destruction or disposal by the officer.

(6) Where, in the opinion of the officer, a dog seized under this section is injured or should be destroyed without delay for humane reasons or for reasons of safety, the officer may destroy the dog as soon after seizure as he thinks fit without permitting any person to claim the dog or without offering it for sale by public auction and no damages or compensation may be recovered on account of its destruction by the officer.

(7) Where the seizure of a dog is made for contravention of a bylaw respecting dogs passed by a council of a municipality, the provisions of the bylaw respecting the impounding, selling or killing of dogs shall apply instead of the provisions of this section.

Nuisance

8.(1) For the purposes of this section it is declared to be a nuisance where, in the vicinity of any hospital, an owner permits his dog to howl or make other noises which disturb the peace and repose of patients in such hospital.

(2) Upon complaint in writing signed by two members of the staff of a hospital setting forth the circumstances constituting a nuisance, an officer may, by notice in writing served on the person alleged to be responsible for the nuisance, require that the nuisance be abated within 48 hours from the time of service of the notice.

(3) Where any person

- (a) is responsible for a nuisance under this section,
- (b) has been served with a notice under subsection (2), and
- (c) has failed to comply with the notice by abating the nuisance within 48 hours of the time of service of the notice,

such a person is guilty of an offence.

(4) On any prosecution under this section the evidence of two members of the staff of a hospital to the effect that the peace and repose of patients therein have been disturbed by noises apparently made by a dog kept by the person accused, shall be prima facie evidence that the accused is guilty of a nuisance.

Destruction of dogs pursuing domestic animals

9. A person may kill a dog that is running at large in the act of pursuing, worrying, injuring or destroying cattle, horses, sheep, pigs or poultry.

Proceedings against owner

10.(1) On receiving a complaint made under oath that an owner has a dog that has, while running at large, within the preceding three months pursued, worried, injured or destroyed any cattle, horses, sheep, pigs or poultry, the justice may issue a summons directed to the owner of the dog requiring the owner to appear before him at a time and place therein stated to answer the complaint.

(2) Upon summary conviction on the evidence of one or more credible witnesses other than the complainant, the justice may make an order for the destruction of the dog within three days and where the dog is not destroyed pursuant to the order, the justice may in his discretion impose a fine not exceeding \$20 upon the owner.

Action for damages not barred

11. No conviction or order under section 10 shall bar the owner of cattle, horses, sheep, pigs or poultry from bringing an action for the recovery of damages for injury done thereto by a dog.

Nature of proof in civil action

12. It is not necessary for the plaintiff in an action referred to in section 11 to prove that the defendant knew of the dog's propensity to pursue, worry, injure or destroy animals and the defendant's liability shall not depend upon previous knowledge of that propensity.

Offence and penalty

13. Every person who violates any provision of this Act commits an offence and is liable upon summary conviction to a fine not exceeding \$100 or to imprisonment for a term not exceeding 30 days.

Regulations

14. The Commissioner in Executive Council may make regulations for carrying out the purposes and provisions of this Act.

CHAPTER 48

ELECTIONS ACT

Interpretation

1. In this Act,

- “administrator” means the administrator of elections appointed by the chief electoral officer pursuant to section 18;
- “agent” means a person appointed by a candidate or his official agent to represent the candidate at a polling station pursuant to section 227;
- “ballot” means a ballot paper actually or apparently placed in a ballot box under subsection 247(1);
- “by-election” means an election other than a general election;
- “candidate” means a person nominated to be a candidate at an election pursuant to section 113;
- “chief electoral officer” means the chief electoral officer appointed pursuant to section 13;
- “election officer” means the chief electoral officer, the administrator, a returning officer, assistant returning officer, deputy returning officer, enumerator, revising officer, poll clerk, interpreter or poll attendant;
- “election period” means the period from the date of issue of the writ to the expiry of ten days after the official addition of the vote or the completion of any judicial recount, whichever is the later;
- “elector” means any person qualified to vote at an election under the provisions of this Act;
- “electoral district” means an area established as an electoral district under the Electoral District Boundaries Act;
- “general election” means the several elections for which writs are issued simultaneously for all electoral districts;
- “member” means a member of the Legislative Assembly;
- “official agent” means the official agent of a candidate appointed pursuant to paragraph 114(1)(f);
- “official list” means the official list defined in section 152;
- “poll book” means the book referred to in paragraph 196(1)(h);
- “polling division” means a polling division established under section 42;
- “polling place” means a building or location at which one or more polling stations is established;
- “polling station” means premises secured for the taking of the poll of all or part of the electors of a polling division;
- “registered political party” means a political party registered under section 46;
- “vote” means cast a ballot;
- “writ” means a writ of election.

Application of Act

- 2. This Act applies to the election of members of the Legislative Assembly to represent the electoral districts established by the Electoral District Boundaries Act.

VOTING ELIGIBILITY

Qualification as an elector

3. Except as otherwise provided in this Act, every person who is or becomes resident in a polling division between the issue of the writ and the end of revision of the lists and who,

- (a) on polling day has attained the age of 19 years,
- (b) on polling day is a Canadian citizen,
- (c) on polling day has been resident in the Yukon for the previous six months, and
- (d) at a by-election only, continues to be resident in the electoral district until polling day,

is qualified as an elector to vote in that polling division.

Entitlement to vote

4. Subject to this Act, every person who is qualified as an elector is entitled to have his name included in the list of electors for the polling division in which he is or becomes resident between the date of the writ for the election and the end of revision of the list, to vote at the polling station established for that polling division.

Persons not qualified to vote

5. The following persons are not qualified to vote at an election, and shall not vote at an election:

- (a) the returning officer for each electoral district;
- (b) the chief electoral officer and the administrator;
- (c) every judge of the Supreme Court;
- (d) every person who, by reason of being deprived of his liberty of movement, while awaiting appeal or sentencing or while undergoing punishment for the commission of an offence, is unable to attend at a polling station to vote;
- (e) every person who, by reason of mental disorder, has been deprived of his liberty of movement and is therefore unable to attend at a polling station to vote, or who, by reason of mental disorder, has been deprived of the management of his property.

RESIDENCE OF ELECTORS

Residence rules

6. For the purposes of establishing the residence of a person, the following rules shall apply:

- (a) the residence of a person is the place in which his habitation is fixed and to which, when absent therefrom, he has the intention of returning;
- (b) a person does not lose his residence by reason of temporary absence from the place in which it is established;
- (c) if a person leaves the Yukon with the intention of making his residence elsewhere, he thereupon loses his residence in the Yukon;
- (d) the place where a person's family resides is considered to be his place of residence unless he takes up or continues his abode at some other place with the intention of remaining there, in which case he is considered to be a resident of the other place;

- (e) the residence of a single person is where the person usually sleeps;
- (f) a change of residence can be made only by actual removal with the intent to establish a fixed habitation in another place;
- (g) a person can have only one residence at one time;
- (h) while a person remains in the Yukon, he is considered not to have lost a residence he has established therein until he acquires another.

Entitlement at change of residence

7. For the purpose of a general election, every person shall be deemed to continue until polling day to reside in the electoral district in which he was resident when he was enumerated, and no actual change of residence during the intervening period shall deprive him of his right to vote in that electoral district or entitle him to vote in any other electoral district unless he is one of the persons described in section 8 or 147 and exercises his rights thereunder.

Temporary residence for ordinary employment

8.(1) At a general election, a person may elect to be deemed to be resident in a polling division in which he is temporarily residing while temporarily employed in the pursuit of his ordinary gainful occupation, and is entitled to have his name included in the list of electors prepared for that polling division and is qualified to vote therein at the election if

- (a) he so elects by advising the enumerator,
- (b) he is otherwise qualified as an elector,
- (c) he has been in residence therein since the date of the issue of the writ ordering the election, and
- (d) he is, at the time he is enumerated, still temporarily residing therein.

(2) The spouse or dependant of a person mentioned in subsection (1) who has come to a polling division for the purpose of accompanying the person may elect in the manner and on the conditions described in subsection (1) to be deemed to be resident in that polling division.

Residence in lodgings, hotel or hostel

9. Notwithstanding any other provision of this Act, no person shall be deemed to be resident on the enumeration date in lodgings, a hotel, hostel or refuge or similar institution, unless that person has been in continuous residence for at least five days immediately preceding his enumeration.

Candidate's residence

10. Each candidate at a general election who, on the day before the dissolution of the Legislative Assembly immediately preceding the election, was a member of the Legislative Assembly, any spouse or dependent of such a candidate who lives with him and is qualified as an elector, is entitled

- (a) to have his name entered on the list of electors for any one of the following places as he may elect:
 - (i) the place of actual residence of the former member;
 - (ii) the place, if any, in the electoral district in which the former member is a candidate where he has, at the time of his enumeration, a residence or a temporary residence;

- (iii) the place in the electoral district in which the former member is a candidate where the office of the returning officer for the electoral district is located;
 - (iv) the place, if any, where the former member had his residence for the purpose of carrying out his duties as a member, and
- (b) to vote in such one of those places as he may elect.

Government employee or student outside the Yukon

11.(1) A person who has his residence outside of the Yukon in order to pursue his ordinary occupation with the Government of the Yukon and who is otherwise qualified as an elector is deemed to be ordinarily a resident of the Yukon.

(2) A person who has his residence outside of the Yukon in order to attend an educational institution who is otherwise qualified as an elector is deemed to be ordinarily resident in the Yukon.

(3) The spouse or any dependent of a person mentioned in subsection (1) or (2), if otherwise qualified as an elector, is deemed to be ordinarily resident in the Yukon.

PART 1
ELECTION ADMINISTRATION

ELECTION OFFICERS

Qualification of election officers

12.(1) None of the following persons shall be appointed as election officers:

- (a) members of the House of Commons of Canada or of the Legislative Assembly of any province of Canada, the Northwest Territories or the Yukon;
- (b) judges of the Supreme Court;
- (c) judges of the Territorial Court;
- (d) persons who have served in the Legislative Assembly in the session immediately preceding the election or in the session in progress at the time of election in the case of a by-election;
- (e) persons who have been convicted of any offence under this or any other Act or any Act of Canada under which members of the Legislative Assembly have been elected.

(2) No person shall be appointed as an election officer unless he has attained the age of 19 years.

CHIEF ELECTORAL OFFICER

Appointment

13. The Commissioner in Executive Council shall appoint a chief electoral officer.

Restrictions on political activity

14. The chief electoral officer shall refrain from any active or public support or criticism of any candidate or any political party endorsing a candidate.

Powers

15.(1) The chief electoral officer shall

- (a) exercise general direction and supervision over the administrative conduct of elections and enforce on the part of all election officers fairness, impartiality and compliance with the provisions of this Act,
- (b) issue to election officers such instructions as from time to time he may deem necessary to ensure effective execution of the provisions of this Act, and
- (c) execute and perform all of the powers and duties assigned to him by this Act.

(2) Where, during the course of an election, it appears to the chief electoral officer that by reason of any mistake, miscalculation, emergency or unusual or unforeseen circumstances, any of the provisions of this Act do not accord with the exigencies of the situation, the chief electoral officer may, by particular or general instructions, extend the time for doing any act, increase the number of election officers or polling stations or otherwise adapt any of the provisions of this Act to the execution of its intent, to such extent as he considers necessary to meet the exigencies of the situation.

(3) The chief electoral officer may in the exercise of his powers under subsection (2) extend or postpone the time for the taking of the poll in any electoral district or any polling division only if he is satisfied that because of accident, emergency or extreme weather conditions a substantial number of electors will be unable to get to their polling station unless an extension or postponement is granted and no extension or postponement of more than 24 hours shall be granted.

Delegation of powers or duties

16. The chief electoral officer may authorize the administrator or any other officer on the staff of the chief electoral officer to exercise any of the powers, or perform any of the duties, assigned to the chief electoral officer by this Act.

Employees

17. The Commissioner in Executive Council shall, in accordance with the Public Service Commission Act, authorize the employment of such officers and employees as the chief electoral officer deems necessary for the carrying out of the duties and responsibilities assigned to or undertaken by the chief electoral officer under this Act.

ADMINISTRATOR OF ELECTIONS**Appointment**

18. The chief electoral officer shall appoint an administrator of elections who shall be his assistant.

Restrictions on political activity

19. The administrator shall refrain from any active or public support or criticism of any candidate or any political party endorsing a candidate.

Duties

20. The administrator shall assist the chief electoral officer in the performance of the duties of his office and, where the chief electoral officer fails to perform his duties or is unable at any time for any reason to perform his duties, the administrator shall act in his place.

Oath of office

21. The chief electoral officer and the administrator shall, upon their respective appointments, take an oath to perform their duties without partiality, fear, favour or affection.

RETURNING OFFICERS AND ASSISTANT RETURNING OFFICERS

Qualifications

22.(1) Every person who is a returning officer or assistant returning officer, in order that he is and remains eligible to hold that office,

- (a) shall reside in and, apart from the provisions of paragraph 5(1)(a), be qualified as an elector in the electoral district in respect of which his appointment is made, and
- (b) shall, during his appointment, refrain from any active or public support or criticism of any candidate or any political party endorsing a candidate.

(2) Every returning officer and assistant returning officer shall forthwith inform the chief electoral officer

- (a) of any matter which renders any returning officer or assistant returning officer disqualified from holding that office pursuant to subsection (1), and
- (b) of any circumstance which renders a returning officer or assistant returning officer incapable of fulfilling his duties hereunder.

Disqualification

23. Upon any returning officer or assistant returning officer becoming disqualified pursuant to section 22, his appointment shall forthwith be terminated by the Commissioner in Executive Council on the advice of the chief electoral officer, in the case of a returning officer, and by the chief electoral officer, in the case of an assistant returning officer.

Assistant returning officer assumes duties

24. Where during an election any returning officer dies, becomes incapable of fulfilling his duties, or has his appointment terminated pursuant to section 23, the assistant returning officer for that electoral district shall forthwith assume his duties and responsibilities and exercise those powers reserved to a returning officer herein until a new returning officer is appointed.

Training

25. The chief electoral officer may require the attendance of any person who is actually or prospectively a returning officer or assistant returning officer for the purposes of training or preparation for the carrying out of the duties and responsibilities that are or may be assigned to the person by this Act.

Oath of office

26. Every returning officer and assistant returning officer shall upon his appointment take the prescribed oath faithfully to perform his duties without partiality, fear, favour or affection.

RETURNING OFFICERS

Appointment

27. For each electoral district the Commissioner in Executive Council shall, after consultation with the chief electoral officer, appoint a returning officer who shall hold office during pleasure and be removable for cause.

Suspension

28. A returning officer may at any time be suspended for cause by the chief electoral officer for a period not to exceed 30 days.

Replacement action

29.(1) Where a returning officer is replaced for any reason any writ issued to him shall be acted upon by his successor as if it had been addressed to the successor.

(2) Where a returning officer is replaced for any reason any action properly taken by him pursuant to this Act shall be deemed as valid as if taken by his successor.

ASSISTANT RETURNING OFFICERS

Appointment

30.(1) For each electoral district the chief electoral officer shall, after consultation with the returning officer for that electoral district, appoint an assistant returning officer.

(2) The chief electoral officer may appoint one or more additional assistant returning officers as provided in subsection (1) in respect of any electoral district where in his opinion such appointment is warranted.

Duration

31.(1) The appointment of every assistant returning officer shall terminate one month after the polling day next following his appointment.

(2) Notwithstanding subsection (1), the chief electoral officer may extend the appointment of an assistant returning officer after the expiry of a month after polling day to assist in any matter arising out of this Act.

Dismissal

32. An assistant returning officer may be dismissed for cause by the chief electoral officer.

Suspension

33. An assistant returning officer may at any time be suspended for cause by the chief electoral officer or the returning officer of the electoral district for which he was appointed for a period not to exceed 30 days.

Publication of appointees

34. The chief electoral officer shall cause to be published, in the prescribed manner,
- (a) the name and address of every person appointed as administrator, returning officer or assistant returning officer under this Act, and
 - (b) for each returning officer and assistant returning officer, the name of the electoral district in respect of which he has been appointed.

FEES, COSTS, ALLOWANCES AND EXPENSES

Tariff of remuneration

35. The Commissioner in Executive Council shall, after consultation with the chief electoral officer, prescribe a tariff of remuneration and level of reimbursement of expenses for the administrator, returning officers, assistant returning officers, enumerators, deputy returning officers, poll clerks, interpreters, poll attendants and other staff provided for in this Act.

Yukon Consolidated Revenue Fund

36.(1) The fees, costs, allowances and expenses payable in respect of an election shall be paid out of the Yukon Consolidated Revenue Fund.

(2) Where the fees and allowances provided for by tariff made pursuant to section 35 are not sufficient remuneration for the services performed or required to be performed at any election in respect of a particular electoral district or a particular election officer, or where any claim for any necessary service performed or for materials supplied for or at an election is not covered by the tariff, the Commissioner in Executive Council shall, upon request of the chief electoral officer authorize the payment of such sum or additional sums for such services or materials supplied as he considers just and reasonable in the circumstances out of the Yukon Consolidated Revenue Fund.

(3) Any expenses incurred by or on behalf of the chief electoral officer for preparing and printing election material or for the purchase of election supplies or services shall be paid out of the Yukon Consolidated Revenue Fund.

Chief electoral officer reviews accounts

37. The chief electoral officer shall, in accordance with the tariff made pursuant to section 35, review all accounts relating to the conduct of an election.

Accountable advance

38. An accountable advance may be made to an election officer to defray office and other incidental expenses recognized in the tariff made pursuant to section 35.

Returning officer certifies accounts

39. The returning officer shall certify all accounts submitted by him to the chief electoral officer and shall be responsible for their correctness.

Forfeiture of payment

40. Any election officer who fails to carry out any of the services required to be performed by him at an election shall upon the determination of the chief electoral officer forfeit his right to all or part of the payment for his services and expenses.

Training

41. In respect of attendance provided for in section 25, a person is entitled to receive remuneration and reimbursement of expenses at the rate fixed under section 35 for returning officers or assistant returning officers, as the case may be.

POLLING DIVISIONS**Established at last general election**

42. The polling divisions of an electoral district shall be those established for the last general election, unless the chief electoral officer at any time considers that a revision of the boundaries thereof is necessary, in which case he shall instruct the returning officer for the electoral district to carry out such a revision and shall fix the date by which the revision is to be complete.

Revision by returning officer

43.(1) A returning officer may on his own motion, but with the prior consent of the chief electoral officer, revise the polling division boundaries in the returning officer's electoral district.

(2) The returning officer in carrying out a revision shall

- (a) give due consideration to the polling divisions established by municipal authorities and geographical and other factors that may affect the convenience of the electors in casting their ballots at the appropriate polling station, which shall be established by the returning officer at a convenient place in the polling division or elsewhere as provided in section 172, and
- (b) subject to paragraph (a), relocate and define the boundaries of the polling divisions of his electoral district so that each polling division, wherever practicable, contains not more than 300 electors.

Increase in size

44. Where by reason of a practice locally established, or of local conditions it is more convenient to constitute a polling division including substantially more than 300 electors, the returning officer may, with the approval of the chief electoral officer and notwithstanding anything in paragraph 43(2)(b), constitute a polling division including more than 300 electors.

Submission of revision

45. Forthwith, upon completion of a revision pursuant to section 42 or 43, the returning officer shall submit to the chief electoral officer a report of the revision including the definition of the boundaries of any revised polling division.

REGISTERED POLITICAL PARTY**Organization promoting candidates**

46. Any organization that has as its primary purpose the promotion of candidates for election to the Legislative Assembly may apply to the chief electoral officer to be a registered political party.

Subscribed by signatures of members

47. An application under section 46 shall be made in the prescribed form and shall be subscribed by the signatures of at least 100 members of the organization who are qualified to vote in an election under this Act.

Name

48. No organization shall be registered as a political party under section 46 by a name that is, in the opinion of the chief electoral officer, likely to cause confusion with another registered political party.

Candidate endorsed by party

49. Where the candidate has the endorsement of a registered political party and wishes to have the name of the party shown on the election documents relating to him, a statement in writing, signed by the leader of the party or representative designated by the leader and stating the name of the party and that the candidate is endorsed by the party, shall be filed with the returning officer at the time the nomination paper is filed.

Independent candidate

50. Where a candidate does not file a statement in accordance with section 49, or where a candidate files such a statement and such statements have not been filed in respect of the same registered political party by at least seven other candidates in the election or by at least eight candidates in the immediately preceding general election, the political affiliation of the candidate shall be described by the word "independent" followed by such other word or words requested in writing by the candidate indicating his political interest but which shall not include the full name of any registered political party.

**PART 2
ELECTION PERIOD**

WRIT OF ELECTION

Issued by the Commissioner

51. Every election shall be instituted by a writ of election in the prescribed form, issued by the Commissioner and transmitted to the chief electoral officer.

Dated

52. Every writ of election shall be dated, shall specify the date of nomination day and polling day and, at a general election, shall be made returnable on or before a date determined by the Commissioner.

Writs at a general election dated the same

53. At a general election the writs for all electoral districts shall be dated on the same day and shall name the same day for the poll which shall be no earlier than the 31st day after the issue of the writ.

Published

54. Every writ of election shall be published in the prescribed manner.

Transmitted to the returning officer

55. A writ of election shall be transmitted by the chief electoral officer to the person appointed to be returning officer for every electoral district in which an election is to be held and shall be forwarded to him as soon as possible after its issue by whatever means the chief electoral officer deems appropriate.

Endorsed by the returning officer

56. Upon receipt of a writ the returning officer shall endorse upon it the date on which he received it and sign the endorsement.

Procedure for returning officer

57.(1) Every returning officer to whom a writ is transmitted shall, forthwith upon its receipt or upon notification by the chief electoral officer of issue thereof, promptly take or cause to be taken the proceedings directed by this Act necessary for the election to be regularly held, and any returning officer who wilfully neglects to do so is guilty of an offence.

(2) Every returning officer shall, forthwith upon the receipt of notice that a writ has been issued for an election in his electoral district, open an office in some convenient place in the electoral district where the electors can have access to him and maintain the office throughout the election period.

(3) Either the returning officer or the assistant returning officer shall remain continuously on duty in the office of the returning officer during the hours that the polls are open.

Materials to the returning officer

58. Within the time specified herein, or if no time is specified, whenever it is deemed expedient and, at the latest, immediately after the issue of the writ of election, the chief electoral officer shall cause to be transmitted to every returning officer

- (a) a sufficient number of indexed copies of this Act and such instructions prepared by the chief electoral officer as are required for the proper conduct of an election by the returning officer and to enable the returning officer to supply to every election officer a copy of such instructions as the chief electoral officer considers necessary to guide the election officer in the performance of his duties, and
- (b) sufficient supplies to enable every election officer to carry out the duties and procedures provided herein.

Withdrawal of writ

59. Where the chief electoral officer certifies that by reason of extreme weather, natural disaster or civil disturbance, it is impracticable to carry out the provisions of this Act in any electoral district where a writ has been issued ordering an election,

- (a) the Commissioner shall order withdrawal of the writ,
- (b) a notice of the withdrawal of the writ shall be published in the same manner as the publication of the writ pursuant to section 54,
- (c) a further writ ordering an election shall be issued within three months of the withdrawal of the writ, and
- (d) the election shall thereafter be conducted according to the procedures described in this Act for a by-election.

PROCLAMATION

Issued by the returning officer

60. Within four days after he receives the writ of election or within six days after he has been notified by the chief electoral officer of the issue of such a writ, whichever is the sooner, every returning officer shall issue a proclamation in the prescribed form under his hand indicating

- (a) the place and time fixed for the nomination of candidates,
- (b) the day on which a poll is to be held in case a poll is necessary and the hours between which ballots may be cast,
- (c) the days on which an advance poll is to be held and the hours between which ballots may be cast,
- (d) the numbers and fully described boundaries of polling divisions of the electoral district and the polling places therein,
- (e) the names of any assistant returning officers appointed by the chief electoral officer,
- (f) the place and times where application may be made for a revision of the lists of electors,
- (g) the place and time where the returning officer will conduct the official addition,
- (h) an exact description of the place in the electoral district where the returning officer has established his office pursuant to subsection 57(2), and
- (i) the place and time where the returning officer will declare the result of the election pursuant to section 321.

Place, day and time of nomination and revision

61.(1) The place fixed pursuant to paragraph 60(1)(a) for the nomination of candidates shall be the office of the returning officer or some other place in the electoral district convenient for the majority of electors in the electoral district.

(2) The day and time indicated pursuant to paragraph 60(1)(f) shall be determined as described in section 138.

Day and time of official addition

62. The time indicated pursuant to paragraph 60(1)(g) shall, at a general election, be not earlier than the Thursday immediately following polling day and not later than the tenth day following polling day unless the chief electoral officer gives his prior written approval of a different time.

Transmitted and posted

63. Within the time specified in section 60, every returning officer shall transmit a copy of the proclamation to the chief electoral officer and cause copies of the proclamation to be posted in conspicuous public places in the electoral district.

ENUMERATOR

Qualified as an elector

64. Each enumerator who is to be appointed pursuant to section 65 shall be a person who is qualified as an elector and resident in the electoral district in which he is to act as an enumerator or, with the prior approval of the chief electoral officer, in an adjacent electoral district, but in no event shall an enumerator be a returning officer or an assistant returning officer.

Appointment and oath

65.(1) As soon as possible after the receipt by him of notice by the chief electoral officer that a writ of election has been issued for his electoral district, every returning officer shall appoint, in the prescribed form, one or two persons in each polling division to enumerate the electors therein and shall require each such person to take an oath of office in the prescribed form.

(2) Where 50 or less electors are known to reside in a polling division, only one enumerator shall be appointed for that polling division.

(3) Where only one person is appointed under subsection (1) or subsection (2) to enumerate the electors in any polling division, the returning officer for the polling division shall forthwith report the fact to the chief electoral officer.

Appointment and oath for nursing or retirement home

66. The returning officer for the electoral district in which a nursing or retirement home is situated shall appoint in the prescribed form, for each nursing or retirement home under section 221, one enumerator, who shall take an oath in the prescribed form.

Appointment and oath for hospital or corrections centre

67. The returning officer for an electoral district in which a hospital or corrections centre is situated shall appoint in the prescribed form one enumerator for each such institution, who shall take an oath in the prescribed form.

Reference to a pair of enumerators

68.(1) Where two enumerators are appointed for a polling division every reference in this Act to an enumerator shall, where the context so requires, be deemed to be a reference to a pair of enumerators and they shall, in relation to every process of the preparation of their list of electors,

- (a) act jointly and not individually, and
- (b) report forthwith to the returning officer who appointed them the fact and the details of any disagreement between them.

(2) The returning officer shall decide any matter of difference between enumerators and shall communicate his decision to the enumerators who shall accept and apply it as if it had been originally their own decision.

Replacement

69.(1) A returning officer may at any time replace any enumerator appointed by him by appointing, subject to section 64, another enumerator to act in place of the person already appointed.

(2) Any enumerator replaced pursuant to subsection (1),

- (a) shall, upon request in writing supplied by the returning officer, deliver or give up to the subsequent appointee or to any other authorized person, any election documents, papers and written information that he has obtained for the purpose of the performance of his duties, and
- (b) on default, is guilty of an offence.

Duties

70. Every enumerator shall,

- (a) exercise the utmost care in preparing the list of electors for the polling division for which he has been appointed, and
- (b) take all necessary precautions to ensure that the list when complete contains the surname, initials and residence address of every qualified elector in the polling division for which he has been appointed and does not contain the name of any person who is not so qualified.

Offences

71. Every enumerator who, wilfully and without reasonable excuse, omits from the list of electors the name of any person entitled to have his name entered thereon, or enters on the list the name of any person not entitled to have his name entered thereon is guilty of an offence and shall, in addition to any other punishment to which he may be liable, forfeit his right to payment for his services as enumerator.

Payment after revision of lists

72. The chief electoral officer shall not pay any enumerator's account until after the revision of the lists of electors has been compiled.

List of enumerators

73. Every returning officer shall

- (a) prepare, on the special form prescribed for that purpose, a list of the names and addresses of all enumerators appointed by him pursuant to section 65 and of the polling divisions for which they are to act,
- (b) forthwith upon its completion, send a copy of the list to the chief electoral officer,
- (c) post up, and keep posted up in his office during the period of the preparation of the lists of electors a copy of the list of names and addresses of enumerators, and
- (d) permit any person to inspect the list of names and addresses of enumerators at all reasonable times.

LISTS OF ELECTORS

Returning officer causes preparation

74.(1) Every returning officer shall, as soon as possible following the issue of a writ of election to him, cause to be prepared for his electoral district and pursuant to this Act, preliminary lists of all persons who are qualified as electors in the polling divisions comprised therein.

(2) The preliminary lists of electors shall be prepared in accordance with section 75 and revised in accordance with section 140.

Completed by day 13

75.(1) Not later than the 13th day after the issue of the writ, every enumerator shall prepare, in the prescribed form, a complete list of the surnames, initials and residence addresses of persons who are qualified electors in the polling division for which he has been appointed.

(2) For the purposes of subsection (1) and paragraphs 70(1)(b) and 87(1)(a), “residence address” means the numbers or letters, and the street name, designating the location of a residence, but where there is no such number, letter or street name, a mailing address may be provided.

Prepared in street or surname order

76. The list prepared pursuant to section 75 shall be prepared by street and number wherever the residence of the elector is so identified, otherwise in alphabetical order of surname.

For a hospital or corrections centre

77. For each hospital or corrections centre, one list of electors for each electoral district for which electors have been enumerated shall be prepared in alphabetical order of surnames, showing

- (a) the number or letters and street name designating the location of the residence of each elector in his electoral district, or
- (b) where there is no such number, letter or street name, the mailing address of the elector.

For a plebiscite or by-election

78.(1) Where a plebiscite or by-election is to be held in an electoral district, and

- (a) the writ of election for a plebiscite or by-election is issued within one year after the issue of the writ of election for an election in that electoral district in the course of a general election, and
- (b) an official list of electors was prepared for and in the course of the general election and delivered to the chief electoral officer pursuant to subsection 82(2) and paragraphs 83(1)(c), 84(1)(c) and 150(1)(b),

that official list shall be the preliminary list of electors for the subsequent plebiscite or by-election, as the case may be, and subsection 74(1) does not apply in respect of the subsequent plebiscite or by-election.

(2) Upon the occurrence of such event as referred to in subsection (1), the chief electoral officer shall forward to the returning officer with the writ of election sufficient certified copies of the official list of electors mentioned in subsection (1) for each polling division of the electoral district.

(3) The certified copies shall be delivered by the returning officer to the revising officers appointed and the returning officer or revising officer, as the case may be, shall post, revise, correct, certify, and otherwise act in all respects as if such certified copies were lists of electors preliminarily prepared, completed and signed by an enumerator as in this Act provided.

Not of record at a by-election or plebiscite

79. If there is in any electoral district a polling division for which a list of electors is not of record in the office of the chief electoral officer, a list for such polling division shall for the purposes of any by-election or plebiscite be wholly prepared in the manner provided for a general election by this Act.

Reproduced by returning officer

80. The returning officer shall, immediately upon receipt of the preliminary list of electors from the enumerator pursuant to section 95,

- (a) correct any errors of a clerical nature in the name and particulars of any elector appearing on the list,
- (b) satisfy himself as to the legibility of the list,
- (c) cause to be reproduced, by whatever means are available to him, sufficient copies of the list to comply with the requirements of this Act, and
- (d) keep a copy of each list available for public inspection during the hours his office is open until the close of the poll on polling day.

Copies of lists to candidates by day 17

81. Immediately after the preliminary lists of electors have been reproduced and not later than the 17th day after the issue of the writ, the returning officer shall furnish three copies of the preliminary lists of electors for all polling divisions in his electoral district to each candidate in the electoral district.

Posted and delivered by day 17

82.(1) Each returning officer shall, not later than the 17th day after the issue of the writ, cause one copy of the preliminary lists of electors for all polling divisions in his electoral district to be posted in a prominent place within each polling division in his electoral district.

(2) Each returning officer shall, not later than the 17th day after the issue of the writ, deliver or mail to the chief electoral officer one copy of the preliminary lists of electors for all polling divisions in his electoral district.

Posted and delivered for a nursing or retirement home

83. Immediately after the preliminary lists of electors have been reproduced for an institution poll under section 221, and not later than the 17th day after the issue of the writ, the returning officer shall

- (a) deliver or mail three copies of the list to each candidate,

- (b) post one copy of the list in the nursing or retirement home, and
- (c) deliver or mail one copy of the list to the chief electoral officer.

Posted and delivered for a hospital or corrections centre

84. Immediately after the preliminary lists of electors enumerated under section 94 have been reproduced, and not later than the 17th day after the issue of the writ, the returning officer shall

- (a) deliver or mail one copy of the list to each relevant candidate,
- (b) post one copy of the list in the hospital or corrections centre, and
- (c) deliver or mail one copy of the list to the chief electoral officer.

After the death of a candidate

85. The lists of electors to be used at a new election pursuant to section 129 shall be the official list of electors prepared and revised after the issue of the writ.

For a registered political party

86. Notwithstanding section 338, a copy of all the lists of electors prepared for the immediately preceding general election shall be given to each political party upon its registration, and within six months after every general election, along with any list of electors prepared for a by-election held since the previous general election.

ENUMERATION

By house-to-house visits

87. Every enumerator, after taking his oath as such, shall

- (a) forthwith proceed to ascertain the surname, initials and residence address of every person who is entitled to have his name entered on the list of electors at the pending election in the polling division for which he has been appointed,
- (b) obtain the information that he may require by a house-to-house visit and from such other sources of information as may be available to him, and
- (c) leave at the residence of every person whose name and particulars are to be included in the preliminary list, a notice in the prescribed form signed by him, which shall be detached from the enumerator's record book.

Electors with same name and address

88. Where two electors residing at the same address have the same surname and initials, the enumerator shall insert after the surname and initials of each, such further words as are necessary to distinguish the two electors by sex, by their ages in relation to each other or by occupation.

Electors surname

89. The surname under which a person is registered on the list prepared under subsection 75(1) may be whatever name the person commonly uses to identify himself in the polling division.

Elector advised of the right to vote by proxy

90. Every enumerator visiting a house shall advise every person present whose name he enters on the list of electors of the right to cast a vote by proxy in accordance with this Act and, if requested, leave a proxy application in the prescribed form for each person who requests it or for whom it is requested.

Enumerators choose times of visits

91. Where two enumerators are appointed for one polling division, one enumerator shall choose the time for the visits referred to in section 92 on every second day during the enumeration and the other enumerator shall choose the time on the alternate days.

Two visits to each dwelling place

92.(1) Every enumerator shall, unless satisfied that no qualified elector residing in a dwelling place remains unregistered, visit every dwelling place in the polling division at least twice, once between the hours of nine o'clock in the forenoon and six o'clock in the afternoon and once between the hours of seven o'clock and ten o'clock in the afternoon.

(2) Where, on the visits referred to in subsection (1), the enumerator is unable to communicate with any person from whom he can secure the names and particulars of the qualified electors residing at any dwelling place, the enumerator shall leave at the dwelling place a notice, in the prescribed form, on which shall be stated,

- (a) the day and hour of any subsequent visit that the enumerator may elect to make,
- (b) his name,
- (c) the name of the returning officer,
- (d) the address and telephone number of the returning officer's office established pursuant to subsection 57(2), and
- (e) the place, date and time at which the lists may be revised.

In a nursing or retirement home

93. Enumeration for an institution poll in a nursing or retirement home shall be conducted in the same manner as provided elsewhere in this Act for the conduct of enumeration.

In a hospital or corrections centre

94.(1) A person who is qualified to vote in an electoral district is entitled to be enumerated to vote by mail-in ballot in that district where, at the time of enumeration,

- (a) he is in a hospital in the Yukon to which he has been admitted as a patient, or
- (b) he is in a corrections centre in the Yukon where he is being held on remand.

(2) Where a person is enumerated under subsection (1),

- (a) he shall advise the enumerator if he knows he has been enumerated to vote at a polling station,
- (b) he shall not vote by proxy, and
- (c) he shall not vote as a proxy voter for any other person.

(3) Where a person referred to in subsection (1) chooses not to be enumerated to vote by mail-in ballot,

- (a) the enumerator shall advise him of the date, time and place of revision hearings in his electoral district, and
- (b) this section does not affect his entitlement to vote in person, to vote by proxy, or to vote as a proxy voter for another person.

(4) Except as otherwise provided in this section, enumeration under this section shall be conducted in the same manner as provided elsewhere in this Act for the conduct of enumeration.

Delivery of lists by day 13

95. Upon completion of the preliminary list of electors and not later than the 13th day after the issue of the writ, every enumerator shall transmit to the returning officer

- (a) the original of the preliminary list of electors prepared under subsection 75(1) for the polling division for which he was appointed, together with his record books containing the copies of the notices left by him under section 87 and subsection 92(2), and
- (b) an oath, in the prescribed form, stating that the list is complete and correct.

Posting of lists

96. Every enumerator shall, on the day that, pursuant to section 95, he transmits or delivers the preliminary list of electors to the returning officer, post up or cause to be posted up, one copy of the list in a conspicuous place to which the public has access within the polling division.

Endorsement of lists

97. Every enumerator shall endorse on the list posted up pursuant to section 96 the dates, times and place at which a person who is or claims to be a qualified elector in the electoral district may make application to the revising officer for revision of the lists.

Copy of list kept by enumerator

98. Every enumerator shall, for the duration of the election period, keep a copy of the preliminary list of electors prepared under section 75.

Enumerator's badge

99.(1) When making his house-to-house visit, pursuant to section 87, every enumerator shall wear and prominently display an enumerator's badge provided by the chief electoral officer as evidence of his authority to register the names of the electors residing in the polling division.

(2) Any enumerator wearing an enumerator's badge except as authorized by subsection (1) or any person wearing such badge without authority or wearing any other badge purporting to be an enumerator's badge, is guilty of an offence.

Enumerator's account not certified

100. Upon receipt of the enumerator's record books and the preliminary list of electors, the returning officer shall carefully examine such documents and if, in his judgement, the list is incomplete or contains the name of any person whose name should not be included on the list, he shall not certify the enumerator's account and shall forward the account uncertified to the chief electoral officer with a special report attached thereto stating the relevant facts.

PROXY VOTING**By reason of absence from the Yukon**

101. Where an elector whose name appears on a list of electors for an electoral district is qualified to vote in the electoral district and has reason to believe that he will be unable to vote at the election by reason of his absence from the Yukon, he may by proxy application in the prescribed form, appoint another elector whose name appears on a list of electors for, and who is qualified to vote in, the electoral district to be his proxy voter to vote for him and in his place at the election.

Proxy application

102.(1) A proxy application shall be consented to in the prescribed form by the elector who is appointed by another elector to be his proxy voter.

(2) Any elector who has signed a proxy application pursuant to subsection (1) or any proxy voter named in such application may apply in person for a proxy certificate

- (a) at any time prior to polling day, to the returning officer, or
- (b) at a revision hearing, to the revising officer.

Proxy certificate

103.(1) A returning officer shall issue a proxy certificate in the prescribed form where

- (a) he receives a completed proxy application and consent in the prescribed form prior to polling day, and
- (b) he is satisfied that
 - (i) the elector is entitled to appoint a proxy voter under section 101, and
 - (ii) the names of the elector and the proxy voter both appear on a list of electors for the electoral district in which the elector is qualified to vote.

(2) A revising officer shall issue a proxy certificate in the prescribed form where

- (a) he receives a completed proxy application and consent in the prescribed form at a revision hearing, and
- (b) he is satisfied as to the matters referred to in clauses (1)(b)(i) and (ii).

(3) Upon the completion of a proxy certificate pursuant to subsection (1) or (2) the returning officer or revising officer shall

- (a) deliver the original copy of the certificate to the elector or proxy voter who has applied to him,

- (b) transmit a copy of the proxy certificate to the deputy returning officer for the polling division in which the elector is qualified to vote, and
- (c) retain a copy of the certificate together with the application.

Withdrawal of proxy certificate

104.(1) Where a proxy certificate has been issued for an elector, he may withdraw the certificate by mailing or delivering a statement in the prescribed form to the returning officer for his electoral district or the deputy returning officer for his polling division, but the withdrawal is of no effect if the proxy has been exercised.

(2) Where a returning officer receives a withdrawal of proxy he shall

- (a) transmit one copy to the elector,
- (b) transmit one copy to each of the deputy returning officers for the polling division in which the elector is qualified to vote, and
- (c) retain one copy.

(3) Where a deputy returning officer receives a withdrawal of proxy, he shall give one copy to the elector and retain one copy.

Proxy voter entitled to vote

105. An elector who has been appointed, in accordance with section 101, to be a proxy voter at an election, and who votes as a proxy voter at the election, is, notwithstanding section 250, but subject to any other provision of this Act, entitled to vote in his own right at the election.

Offences

106. Every person commits an offence who, at an election,

- (a) appoints more than one proxy voter,
- (b) being ineligible to vote by proxy, fraudulently appoints a proxy voter,
- (c) having appointed a proxy voter and not having withdrawn the appointment in accordance with section 104, himself votes,
- (d) applies to vote as a proxy voter for more than one elector, or
- (e) except in accordance with section 101, makes a proxy application or votes as a proxy at an election.

CANDIDATES AND NOMINATION

Qualification of a candidate

107.(1) Subject to this Act, any person who is qualified to vote at an election is eligible to be nominated as a candidate and elected as a member of the Legislative Assembly for an electoral district notwithstanding that he is not resident in that electoral district.

(2) No person may be nominated as a candidate for an election in more than one electoral district at the same election.

Statement of ineligibility

108.(1) No person may be nominated or elected as a member of the Legislative Assembly if he would be ineligible to become a member and sit and vote in the Legislative Assembly pursuant to any other Act unless the grounds for his ineligibility be such that he can divest himself of them within 30 days after his election and that upon his nomination he files with the returning officer a statement by him in the prescribed form disclosing all the grounds that exist for his ineligibility and undertaking that upon his election he will, within 30 days of being declared elected, divest himself of such grounds for ineligibility.

(2) Where a candidate files a statement pursuant to subsection (1), the returning officer shall forthwith

- (a) advise every other candidate of the fact,
- (b) transmit a copy of the statement to the chief electoral officer, and
- (c) permit during the hours his office is open, any elector, candidate or agent to scrutinize a copy of the statement.

(3) A candidate who has filed a statement and undertaking pursuant to subsection (1) and who is subsequently elected and who fails within 30 days of the official announcement of his election to divest himself of the grounds for his ineligibility is guilty of an offence and his election is void.

Election of ineligible candidate is void

109. The election of any person who is by this Act declared to be ineligible as a candidate is void.

Nomination day

110.(1) Nomination day in every electoral district shall be the tenth day after the issue of the writ.

(2) If nomination day would otherwise fall on a public holiday, the day for the close of the nomination shall be the next day following that is not a Sunday or public holiday.

Time for receiving nominations

111.(1) The nomination paper shall be filed with the returning officer at any time after the issue by the returning officer of the proclamation pursuant to section 60 and before two o'clock in the afternoon of the day fixed for nomination.

(2) The returning officer shall attend at noon on nomination day at the place fixed for the nomination of candidates in the proclamation issued pursuant to section 60 and shall remain until two o'clock in the afternoon of the same day for the purpose of receiving the nominations of such candidates as the electors desire to nominate.

Assistant returning officer receives nominations

112.(1) An assistant returning officer appointed pursuant to section 30, may be authorized in writing by the returning officer of the electoral district to receive nominations for candidates for election in that electoral district and to fulfill any of the responsibilities assigned to the returning officer under section 111, 114, 115, 117, 120, 122, 124, 134 or 136.

(2) Where the returning officer has authorized one or more assistant returning officers to accept nominations, the provisions of this section shall apply to such assistant returning officers as if they were the returning officer.

Electors nominate a candidate

113.(1) Any 25 or more persons qualified as electors in an electoral district in which an election is to be held may, whether or not their names are on any list of electors, nominate a candidate for that electoral district by causing a nomination paper to be filed with the returning officer.

(2) The nomination paper shall be signed by the 25 or more persons nominating the candidate before a witness who shall require each person to declare to him that he is qualified as an elector in the electoral district and who shall appear before a justice of the peace, commissioner of oaths, notary public, peace officer, returning officer or assistant returning officer and declare that he witnessed the signatures and that the persons so declared to him that they were electors.

(3) A person being nominated as a candidate is entitled to be the witness under subsection (2) for the persons nominating him.

Nomination paper

114.(1) A nomination paper is not valid nor shall it be accepted by the returning officer unless

- (a) it is prepared in the prescribed form and is signed by the witness and by the justice of the peace, commissioner of oaths, notary public, peace officer, returning officer or assistant returning officer before whom the witness made the declaration referred to in section 113,
- (b) it contains the name, address and political affiliation or interest, if any, of the candidate,
- (c) it states an address within the Yukon for service of any legal process, notice or other document issued or to be served, either under this Act or under the Controverted Elections Act, upon the candidate,
- (d) it contains the consent in writing of the person thereto nominated, signed by him and witnessed,
- (e) it contains or is accompanied by a statement duly signed by the candidate that he is qualified to be a candidate at the election, subject to any statement he has filed under subsection 108(1),
- (f) it contains the appointment, name and address of the official agent of the candidate duly signed by the candidate, and
- (g) it is accompanied by a deposit of \$200 in the form of Bank of Canada notes, a certified cheque drawn on a Canadian chartered bank, a money order, or any combination thereof.

(2) For the purposes of paragraph (1)(b) the name of a candidate may include a nickname by which the candidate is commonly known but may not include any title, degree, prefix or suffix.

(3) Every person who signs a nomination paper consenting to be a candidate at an election knowing that he is ineligible to be a candidate at the election and who fails to file a statement pursuant to subsection 108(1) is guilty of an offence.

(4) Where a nomination paper is signed by more than 25 persons, the nomination paper is not invalid by reason only that some of those persons are not qualified electors, if at least 25 of the persons who so signed are qualified electors.

Returning officer shall not refuse to accept

115. The returning officer shall not refuse to accept any nomination paper for filing by reason only that he believes the candidate to be ineligible unless the ineligibility may be determined from the nomination paper.

Candidate's deposit

116.(1) The deposit referred to in paragraph 114(1)(g) shall be remitted by the returning officer to the chief electoral officer and paid into the Yukon Consolidated Revenue Fund.

(2) Every candidate who receives a number of votes that is no less than 25 percent of the number of votes received by the candidate who is returned as elected, shall receive a refund of the deposit paid on his behalf pursuant to paragraph 114(1)(g).

Returning officer's receipt

117. A returning officer who receives a nomination paper which complies with section 114 shall give his receipt for the nomination paper and deposit and such receipt is in every case sufficient proof of the filing of the nomination paper and of the consent of the candidate.

Close of nominations

118. After two o'clock in the afternoon on nomination day, no further nomination shall be receivable or be received.

Correction to nomination paper

119. Any candidate may, before the expiration of one hour after the close of nominations, supply in writing to the returning officer any particulars of the candidate's name, address or political affiliation or interest that he considers to have been insufficiently or inaccurately given in his nomination paper, or the candidate may, within that time, in writing direct the returning officer to omit any of his given names from the ballot paper or to indicate those names by initial only, and the returning officer shall comply with any such direction and include in the ballot paper any such additional or corrected particulars.

Order of names by drawing of lots

120.(1) At the time fixed for the close of nominations the returning officer shall, in the presence of any candidates, official agents and electors who are present, establish, by the drawing of lots, the order in which the names of candidates shall appear on the ballot paper.

(2) Forthwith upon the completion of the drawing of lots under subsection (1), the returning officer shall record the results of the draw, and at least two of the witnesses shall verify the results by statutory declaration in the prescribed form.

Grant of poll

121. If at the close of the time for receiving nominations two or more candidates remain nominated, the returning officer shall grant a poll for taking the votes of the electors and deliver a list of the candidates nominated and the names and addresses of their official agents to every candidate or to his official agent.

Announcement of candidates and official agents

122.(1) The returning officer shall announce, at the place of nomination and immediately upon the close of nominations, and shall, on or immediately after the day of nomination, cause to be posted in the same places as the proclamation issued pursuant to section 60 is posted, a notice containing the name, address and political affiliation or interest, if any, of every candidate and the name and address of the official agent of every candidate as prescribed.

(2) Where a candidate has filed a statement pursuant to subsection 108(1) the returning officer shall cause to be inserted in the notice pursuant to subsection (1) after the name of the candidate the words "statement filed pursuant to subsection 108(1) of the Elections Act".

Incapacity of official agent

123. In the event of the death or incapacity of his official agent, the candidate shall forthwith give notice to the returning officer of the appointment of another official agent in his place in writing and signed by the candidate including the name and address of the person appointed, which shall be forthwith posted by the returning officer as provided in subsection 122(1).

Materials to candidates

124. Every returning officer shall furnish free of charge to every candidate for the electoral district or his official agent as soon as possible and not later than seven days after the close of nominations,

- (a) one copy of the proclamation issued by him pursuant to section 60,
- (b) three copies of a map showing the polling divisions in the electoral district,
and
- (c) three copies of every preliminary list of electors.

Notices to candidates

125. The leaving, between the hours of nine o'clock in the morning and six o'clock in the afternoon, of a copy of any process, notice or other document with an occupant of, or if there is no occupant, at the address stated in the nomination paper pursuant to paragraph 114(1)(c), shall be deemed for all purposes to be personal service upon the candidate of the process, notice or other document.

Vote void for other than officially nominated candidate

126. Any vote given at an election for any person other than a candidate officially nominated in the manner prescribed by this Act is void.

Report of rejected nomination

127. A returning officer shall include with his return to the chief electoral officer a report of his proceedings and of any nomination proposed and rejected for non-compliance with this Act.

Acclamation

128. Where only one candidate has been officially nominated for an electoral district within the time fixed for that purpose, the returning officer shall

- (a) forthwith declare the candidate elected,
- (b) make his return to the chief electoral officer in the prescribed form that the candidate is duly elected for the electoral district,
- (c) within 48 hours thereafter send a certified copy of the return to the person elected, and
- (d) as soon as possible forward to the chief electoral officer the writ of election and all election material not used or required for use in the election.

DEATH OF A CANDIDATE

After the close of nominations

129. Where any candidate dies after the close of the nominations and before the closing of the polls, the returning officer shall, after consultation with the chief electoral officer, fix another day for the nomination of candidates.

Notice of new day of nominations

130. Notice of the new day fixed for the nomination of candidates, which shall be a Monday not more than 30 days from the death of the candidate, nor less than 20 days from the issue of the notice, shall be given by a further proclamation distributed and posted up as provided in section 60, and there shall also be named by the proclamation a new day for polling, which shall be the 21st day after the new day fixed for the nomination of candidates subject to subsection 110(2).

Report to the chief electoral officer

131. Full particulars of any action taken under section 130 shall be reported forthwith in writing by the returning officer who takes the action to the chief electoral officer.

WITHDRAWAL OF A CANDIDATE

Prior to 2 o'clock on day 13

132. A candidate who has been officially nominated at an election may withdraw at any time prior to two o'clock in the afternoon of the 13th day after the issue of the writ by filing, in person, with the returning officer a declaration in writing to that effect signed by him and attested by the signatures of two electors who are qualified to vote in the electoral district in which he was officially nominated.

Ballots cast are void

133. Where a candidate at an election withdraws under section 132, any ballots cast for him at the election are void.

After ballot papers printed

134. Where a candidate has withdrawn after the ballot papers are printed, the returning officer shall,

- (a) inform, by mail, telegraph or telephone confirmed by mail, each deputy returning officer in his electoral district of the withdrawal, and

- (b) send a notice of the withdrawal to each deputy returning officer.

Duties of deputy returning officer

135. Where a candidate withdraws as set out in section 134 each deputy returning officer shall

- (a) post up in a conspicuous place in his polling station on polling day a notice of withdrawal signed by the returning officer or if no such notice be available, a notice signed by the deputy returning officer, and
- (b) cause every ballot paper to have the word “withdrawn” written or stamped in red over the name of the candidate who has withdrawn.

Only one candidate remains

136. Where, after a candidate has withdrawn, only one candidate remains, the returning officer shall, without waiting for the poll, return as duly elected the remaining candidate in accordance with section 128.

Offence to publish false statement

137. Every person who, for the purpose of procuring the election of a candidate, publishes a false statement of the withdrawal of another candidate at the election is guilty of an offence.

REVISION

Times and dates

138. The times and dates endorsed pursuant to section 97 shall be six o’clock to nine o’clock in the afternoon on the 18th and 19th days after the issue of the writ.

Appointment and oath of revising officer

139.(1) Every returning officer shall appoint one or more revising officers for each polling division, who may be his assistant returning officer, an enumerator or any other person qualified as an elector in the electoral district.

(2) Every revising officer shall be appointed in the prescribed manner and upon his appointment shall take an oath in the prescribed form.

(3) A returning officer may himself act as a revising officer in one or more polling divisions in his electoral district, where the returning officer has been unable to find any suitable person to act as a revising officer for such polling division.

Purpose

140. At the place, dates and times specified in sections 97 and 138, the revising officer shall attend for the purpose of hearing and disposing of applications for the revision of the list.

Public revision hearings

141. The hearing of revisions shall be open to the public.

Representative allowed

142. Any person claiming to be a qualified elector in the polling division may attend in person or by representative to make application for the revision of the list.

Two declarations only

143. A person may make a declaration under section 144 or 145, but the total number of declarations made by one person at revision hearings shall not exceed two.

Addition of a name

144. If any revising officer or the returning officer, during the hearing of revisions, is fully satisfied from representations made to him by any credible person, verified by a statutory declaration in the prescribed form, that the name of any qualified elector has been omitted from the list of electors of the polling division to which such elector belongs, he shall add the name to the copy of the list in his possession and shall initial the addition.

Deletion of a name

145.(1) If any revising officer or the returning officer, during the hearing of revisions, is fully satisfied on representations made to him by any credible person, verified by a statutory declaration in the prescribed form, that there is on the list the name of any person who is not qualified as an elector of the polling division, he shall remove such name therefrom by drawing a line through the name and shall initial the removal.

(2) Where the name of a person is removed from a list pursuant to subsection (1), the revising officer or returning officer who removed it shall forthwith give that person notice thereof, either in person or by sending written notice by registered mail to the address shown on the list and to any other address at which the officer believes the person may be found.

Correction of a name or address

146. If any revising officer or the returning officer finds that the name or address of any elector is inaccurately stated in the list, he shall make the necessary change and shall initial the correction.

Change of residence after enumeration

147. Notwithstanding any other provision of this Act, any person who, during the period between his being enumerated and the end of revision of the list of electors, changes his place of residence from one polling division to another polling division in the same or another electoral district, and is otherwise qualified as an elector, may, if he so elects, apply in person or by representative during the hearing of revisions to have his name included in the list of electors for that other polling division, and, upon the inclusion of his name in the list of electors for that other polling division, is entitled to vote at the polling station established for that other polling division.

Close of revision

148. At nine o'clock in the afternoon of the last day as specified in section 138, or as soon thereafter as all applications of persons present at that time have been disposed of, the revising officer shall

- (a) certify as many copies of the revised preliminary list of electors as the returning officer may require by means of a certificate in the prescribed form,

- (b) attach the certificate referred to in paragraph (a) to each copy of the revised preliminary list immediately after the last name on the list,
- (c) complete two copies of his statement of changes and additions in the prescribed form, and
- (d) deliver the certified lists and the two copies of his statement to the returning officer for the electoral district.

No further changes after certification

149. Where a revising officer has certified the revised preliminary lists of electors under section 148, he shall make no further changes to the lists.

Statement of changes and additions

150.(1) Each returning officer shall, upon receipt of the copies of the statements of changes and additions for all polling divisions in his electoral district delivered to him under section 148,

- (a) keep one copy of each statement on file in his office, where it shall be available for public inspection during the hours his office is open, and
- (b) deliver or mail one copy of each statement to the chief electoral officer.

(2) The returning officer shall, in the prescribed manner, within three days of the close of revision hearings, transmit to each candidate a list of changes and additions to the list of electors.

Delivery of lists to deputy returning officer

151. Each returning officer shall, upon receipt of the certified revised preliminary lists of electors for all polling divisions in his electoral district delivered to him under section 148, deliver to each deputy returning officer those lists for use at the taking of the poll.

Official list of electors

152. The revised copy of the list of electors as certified by the revising officer under paragraph 148(1)(a) shall be the official list of electors to be used at the taking of the poll.

Official list at a plebiscite or by-election

153. The certified copy revised in accordance with this Act shall be the official list of electors for the polling division to which it relates.

Offences

154. A person who corruptly makes a false statement for the purpose of inducing a revising officer or returning officer

- (a) to omit or delete the name of any person entitled to have his name entered on the list of electors, or
- (b) to insert or retain on the list the name of any person who is not entitled to have his name so inserted or retained,

is guilty of an offence.

Appeal to returning officer

155.(1) The decision of a revising officer may be appealed to the returning officer and the decision of the returning officer is final.

(2) The returning officer shall amend the certified revised preliminary lists of electors and the copies of the revising officer's statement of changes and additions to reflect his decisions on appeals under subsection (1), and he shall initial all such amendments.

For a mail-in poll

156.(1) Where a revising officer removes a name from the list of electors for a polling division designated under section 160, he shall immediately advise the returning officer, who shall

- (a) draw a line through the name of the elector in the poll book prescribed under section 163, and
- (b) enter opposite the elector's name "name removed" and initial the entry.

(2) Where a revising officer enters a name on the list of electors for a polling division designated under section 160, he shall immediately advise the returning officer, who shall mail or cause to be delivered a mail-in ballot paper to that elector.

BALLOT PAPERS FOR A MAIL-IN POLL

In the prescribed form

157.(1) Every ballot paper for a mail-in poll shall be in the prescribed form.

(2) All ballot papers for a mail-in poll shall be in the same form and as nearly as possible identical, and each ballot paper shall be a printed paper on which shall appear a space for writing the name of one candidate.

(3) The ballot paper shall be printed upon paper of the prescribed dimensions, colour, weight and quality.

Affidavit of printer

158. The ballot papers shall bear the name of the printer who shall upon delivering the ballot papers to the administrator, deliver therewith an affidavit in the prescribed form setting forth the description of the ballot papers so printed by him and the number of ballot papers supplied to the administrator, and stating that no other ballot papers relating to a mail-in poll for that electoral district have been supplied by him to any other person or retained by him.

Returning officer's receipt

159. Upon receipt of ballot papers from the administrator, the returning officer shall forthwith mail or deliver to the administrator a receipt in the prescribed form for the number of ballot papers received.

MAIL-IN POLLING DIVISION

For a polling division with 15 or less electors

160. Where in an electoral district after enumeration it is found by the returning officer that 15 or less electors are resident in a polling division, the returning officer may direct the electors to vote by a mail-in poll.

Ballot paper forwarded to elector

161. The returning officer shall, not later than nine days prior to polling day, mail or cause to be delivered to each qualified elector in the polling division

- (a) a ballot paper in the prescribed form pursuant to section 157, which has been initialled by the returning officer,
- (b) a ballot paper envelope in the prescribed form for the marked ballot paper,
- (c) a certificate envelope in the prescribed form,
- (d) an outer envelope in the prescribed form for transmission to the returning officer,
- (e) a list of the candidates and the name of the registered political party endorsing each candidate or the word "independent", and
- (f) instructions for marking the mail-in ballot paper.

Elector's name crossed on list

162. The returning officer shall draw a line through the name of the elector on the preliminary list of electors and enter opposite the elector's name the words "mail-in ballot".

Record in poll book

163. The returning officer shall keep a record in a separate poll book in the prescribed form of the name of each elector to whom he has mailed or delivered a mail-in ballot paper.

Voting procedure

164. An elector to whom a ballot paper has been mailed or delivered under section 161 shall, in order to vote,

- (a) mark the ballot paper, and
- (b) deliver, cause to be delivered or mail the outer envelope containing the ballot paper, the ballot paper envelope and the certificate envelope to the returning officer.

Returning officer receives ballot paper

165. Upon receipt of a mail-in ballot paper, the returning officer shall remove the certificate envelope from the outer envelope and

- (a) if fully satisfied as to the identity of the elector whose ballot paper is enclosed he shall
 - (i) place the certificate envelope in a ballot box kept by him for that purpose, and
 - (ii) make a note in the poll book opposite the name of the elector that the mail-in ballot paper has been returned, or
- (b) if he is not satisfied as to the identity of the elector he shall retain the certificate envelope unopened, mark it "not identified", and place the envelope unopened in the envelope for spoiled ballot papers.

Late ballot paper not counted

166.(1) A ballot paper under section 161 not in fact received by the returning officer by the close of polls on polling day shall not be counted.

(2) Where an envelope referred to in paragraph 164(1)(b) is received by a returning officer after the close of polls on polling day, he shall transmit it, unopened, to the chief electoral officer, who shall destroy it without opening it.

Communications disruption

167. In the event of a communications disruption during an election the returning officer shall

- (a) direct that polling stations and ordinary polling procedures be used,
- (b) cancel all mail-in ballots, and
- (c) publish the location of the polling place for the polling division.

MAIL-IN POLL IN A HOSPITAL OR CORRECTIONS CENTRE

Ballot paper forwarded to elector

168. The returning officer of an electoral district containing a hospital or corrections centre shall, not later than nine days prior to polling day, mail or cause to be delivered to each elector enumerated under section 94 a mail-in ballot paper initialled by the returning officer and envelopes in the prescribed forms, and instructions for marking the mail-in ballot paper.

Electors not identified

169. Where the returning officer is not satisfied as to the identity of an elector enumerated under section 94, upon receipt of the elector's ballot paper, he shall retain the certificate envelope unopened and mark it "not identified", and the envelope shall be placed in a spoiled ballot paper envelope.

Polling in the same manner as a mail-in polling division

170. Except as otherwise provided in this Act, the polling of electors in a hospital or corrections centre shall be done in the same manner as provided in sections 161 to 166 for the conduct of mail-in polls.

At a general election only

171. Sections 94 and 168 apply only during the conduct of a general election and do not apply during any by-election.

POLLING STATIONS

Fixed and provided for after the issue of the writ

172.(1) As soon as possible after the issue of the writ of election, every returning officer shall fix and provide for each polling division a polling station in a place in the division which is central or convenient for the electors.

(2) Notwithstanding subsection (1) whenever the greater convenience of electors would be suited thereby

- (a) the polling place for a polling division may, with the prior consent of the chief electoral officer instead of being fixed and provided for in the polling division, be fixed and provided for in a nearby place in the same electoral district or in another electoral district,

- (b) a polling place may be established where the polling stations of all or any of the polling divisions of any locality may be centralized, and a central polling place so established shall not comprise more than ten polling divisions unless the chief electoral officer has given his prior permission for the establishment of a central polling place comprising more than ten polling divisions, or
- (c) one or more polling stations may be established for one polling division and, in such case, the official list prepared and published pursuant to section 152 shall be divided into separate lists for each based on the convenience of electors and each list shall be arranged by street and number, where possible, otherwise in alphabetical order of surname.

In a school or public building

173.(1) Whenever possible, the returning officer shall locate the polling station in a school or other suitable public building and in a central place in the building that will provide ease of access to electors.

(2) A returning officer may take and use as a polling place any school building that is the property of any school board or the Government of the Yukon or any agent thereof.

Convenient access and exit

174. Every polling station shall be located so that

- (a) access to it is convenient to all persons, including handicapped persons,
- (b) if possible, it is at street level, and
- (c) if possible, it has separate doors for electors to enter to cast their ballots and to leave after having done so.

Sign to identify polling place

175. Outside each polling place there shall be placed, during the time that the poll is open, a conspicuous sign identifying the polling place.

POLLING BOOTHS

Arranged for privacy

176. Every polling station shall contain one or more polling booths so arranged that each elector is screened from observation and from interference or interruption while he marks his ballot paper.

Pencil attached

177. In every polling booth there shall be provided for the use of electors in marking their ballot papers, a table or desk with a hard, smooth surface and a suitable black lead pencil, which shall be kept properly sharpened throughout the hours of polling.

Instructions for construction

178. The chief electoral officer may give to the returning officer such instructions as he deems necessary as to the construction and method of making polling booths.

BALLOT BOXES

Provided by chief electoral officer

179. The chief electoral officer shall

- (a) obtain for each electoral district such ballot boxes as are required, or
- (b) give to each returning officer instructions to obtain ballot boxes of a uniform size and shape.

Of durable material and with a slit

180. Each ballot box shall be made of some durable material with a slit or narrow opening on the top so constructed that, while the poll is open, the ballot papers may be introduced therein but cannot be withdrawn therefrom unless the ballot box is unsealed and opened.

Provided with a sealing plate

181. Each ballot box shall be provided with a sealing plate, permanently attached, to affix the special seal provided by the chief electoral officer for sealing the ballot box.

Deputy returning officer may obtain

182. Where a returning officer fails to furnish a ballot box to any deputy returning officer at any polling station within the time prescribed by this Act, the deputy returning officer shall otherwise procure it or cause it to be made in accordance with section 180.

BALLOT PAPERS FOR A REGULAR OR ADVANCE POLL

In the prescribed form

183.(1) Every ballot paper shall be in the prescribed form and shall have a counterfoil and a stub with a line of perforations between the ballot paper and the counterfoil and a line of perforations between the counterfoil and the stub.

(2) All ballot papers in an electoral district shall be in the same form and as nearly as possible identical and each ballot paper shall be a printed paper on which shall appear,

- (a) the names of the candidates, arranged in the order established pursuant to subsection 120(1), with given names or nicknames preceding, set out as those names appear in their nomination papers, and
- (b) the name of the registered political party endorsing the candidate or his political interest, if any, as declared pursuant to paragraph 114(1)(b) at the time of nomination of that candidate, set out under the name of the candidate.

(3) The ballot papers shall be printed upon paper of the prescribed dimensions, colour, weight and quality.

Different number on each ballot paper

184. Every ballot paper for an electoral district shall have a different number which number shall be printed both on the back of the stub and on the back of the counterfoil.

Bound or stitched in books

185. The ballot papers shall be bound or stitched in books containing 25, 50 or 100 ballot papers, as may be most suitable for the polling stations considering the number of electors in each.

Affidavit of printer

186. The ballot papers shall bear the name of the printer who shall, upon delivering the ballot papers to the administrator, deliver therewith an affidavit, in the prescribed form, setting forth the description of the ballot papers so printed by him, the number of ballot papers supplied to the administrator and stating that no other ballot papers relating to that electoral district have been supplied by him to any other person or retained by him.

Returning officer's receipt

187. Upon the receipt of ballot papers from the administrator, the returning officer shall forthwith mail or deliver to the administrator a receipt in the prescribed form for the number of ballot papers received.

DEPUTY RETURNING OFFICERS**Appointment and oath**

188.(1) As soon as convenient after the issue of the writ of election, every returning officer shall, in the prescribed form, appoint one deputy returning officer for each polling station established in his electoral district.

(2) Every deputy returning officer shall, before acting as such, take an oath in the prescribed form.

Returning officer or assistant returning officer may act with permission

189. No returning officer or assistant returning officer may act as a deputy returning officer unless he has the prior permission of the chief electoral officer to do so.

Enumerator may act

190. A returning officer may appoint as deputy returning officer a person who has acted as enumerator if no other suitable person can be found by the returning officer who is willing and able to act as deputy returning officer.

Relieved of duties

191.(1) A returning officer may, at any time, relieve any deputy returning officer appointed by him of his duties and appoint another person to perform those duties.

(2) Any deputy returning officer who is relieved of his duties under subsection (1) or who refuses or is unable to fulfill his duties hereunder

- (a) shall forthwith, upon receiving written notice from the returning officer of the appointment of a substitute for him, deliver up to the returning officer or to such other person as the returning officer may appoint, the ballot box and all ballot papers and the lists of electors and other papers in his possession as deputy returning officer, and
- (b) on default thereof is guilty of an offence.

At an advance poll

192. Every returning officer shall, in the prescribed form, appoint a deputy returning officer for one or more polling stations, who shall take an oath in the prescribed form.

At a nursing or retirement home

193. The returning officer for the electoral district in which an institution poll in a nursing or retirement home is to be held shall appoint in the prescribed form a deputy returning officer for the polling station, who shall take an oath in the prescribed form.

List of deputy returning officers to candidates

194. The returning officer shall furnish to each candidate or his agent, at least three days before polling day, a list of the names and addresses of every deputy returning officer appointed to act in the electoral district with the address and the number of the polling station at which he shall act.

List of deputy returning officers posted

195. At least three days before polling day, each returning officer shall

- (a) post up in his office a list of the names and addresses of all the deputy returning officers appointed to act in the electoral district, with the addresses and numbers of their respective polling stations, and
- (b) permit free access to, and afford full opportunity for the inspection of, the list by interested persons during the hours his office is open.

Materials to deputy returning officer

196.(1) Every returning officer shall furnish to every deputy returning officer in his electoral district, at least two days before polling day,

- (a) a sufficient number of ballot papers for at least the number of electors on the official list of electors of the polling division,
- (b) a statement showing the number of ballot papers so supplied with their serial numbers,
- (c) the necessary materials for electors to mark their ballot papers,
- (d) a sufficient supply of printed directions in the prescribed form for the guidance of electors in voting,
- (e) a copy of instructions, prescribed by the chief electoral officer, referred to in section 58,
- (f) the official lists of electors referred to in section 152,
- (g) a ballot box,
- (h) a blank poll book in the prescribed form,
- (i) the several forms of oaths or affirmations to be administered, and
- (j) the necessary envelopes and such other forms and supplies as may be authorized or furnished by the chief electoral officer.

(2) Upon receiving the ballot papers from the returning officer every deputy returning officer shall count them and forthwith mail or deliver to the returning officer a receipt for the number of ballot papers in the prescribed form.

List of electors to deputy returning officer

197. Every returning officer shall deliver to every deputy returning officer in his electoral district one copy of the official list of electors for each polling division in the electoral district by enclosing it in the ballot box with the ballot papers and other supplies required by section 196.

List of electors for an advance poll

198. The returning officer shall furnish to the deputy returning officer of an advance poll,

- (a) for each polling division in the electoral district a copy of the certified revised preliminary list of electors marked "advance poll", and
- (b) for each polling division for which the deputy returning officer is responsible, copies of issued proxy certificates.

List of electors delivered by revising officer

199. In remote polling divisions the chief electoral officer may direct that the certified revised preliminary list of electors, as prepared by the revising officer, shall be delivered or transmitted by the revising officer directly to each deputy returning officer, and they shall use the list for the taking of the poll.

Responsible for security of election supplies

200. Until the opening of the poll, each deputy returning officer shall take every precaution for the safekeeping of the blank poll book, official lists of electors, envelopes, ballot papers, ballot box and other election supplies, and shall take every precaution to prevent any person from having unlawful access to them.

POLL CLERKS**Appointment and oath**

201. Every deputy returning officer shall, as soon as possible after his appointment, appoint, in the prescribed form, a poll clerk, who before acting as such shall take the oath in the prescribed form.

Name entered in the poll book

202. The name of the poll clerk shall be written in the poll book.

Enumerator may act

203. A deputy returning officer may appoint as his poll clerk a person who has acted as enumerator but he shall report the appointment forthwith to his returning officer.

Replaces deputy returning officer

204.(1) Where a deputy returning officer dies or is unable to act, the returning officer may appoint another in his place as deputy returning officer and, if no such appointment is made, the poll clerk, without taking another oath of office, shall act as deputy returning officer.

(2) Where a poll clerk acts as deputy returning officer, he shall appoint a poll clerk in the prescribed form which shall be written in the poll book to act in his place who before acting as such shall take the oath in the prescribed form.

Residence exception

205. No person shall be appointed as a deputy returning officer or poll clerk unless he is a person qualified as an elector in the electoral district within which he is to act except with the written permission of the chief electoral officer.

INTERPRETERS AND POLL ATTENDANTS

Appointment and oath of interpreter

206.(1) Every deputy returning officer who has reason to believe that there will be electors voting at a polling station who do not understand the English language shall appoint by writing in the prescribed form for the polling station an interpreter familiar with the English language and with a language with which such electors will be familiar.

(2) Every interpreter upon his appointment shall be required to take an oath in the prescribed form.

Purpose of interpreter

207. Where a deputy returning officer does not understand the language spoken by an elector, that officer shall, in accordance with section 206, appoint and swear an interpreter, who shall be the means of communication between him and the elector with reference to all matters required to enable such elector to vote.

Appointment and oath of poll attendant

208.(1) The returning officer or deputy returning officer may appoint one or more poll attendants to promote the orderly movement of electors to and from their polling stations in a polling place.

(2) Poll attendants shall be appointed and sworn in the prescribed form.

Reason for appointment stated

209. Every returning officer or deputy returning officer who has appointed a poll attendant shall state his reason for making the appointment in the place provided for that purpose on the polling station account.

Election officer voting

210.(1) A deputy returning officer, poll clerk, interpreter or poll attendant may vote at the polling station at which his attendance is required for the performance of his duties notwithstanding that his name is not on the list of electors for that polling station if he is a qualified elector in the electoral district.

(2) Where a person votes under subsection (1), the poll clerk shall enter his name and address in the poll book, together with a statement that he has voted under subsection (1).

ADVANCE POLLS

Days and time

211. Advance polls shall be the 23rd and 24th days after the issue of the writ between the hours of two and eight o'clock in the afternoon.

For an absent or incapacitated elector

212. For the purpose of polling the vote of an elector or a proxy voter who has reason to believe that he will be absent from the polling division on polling day, or an elector who is physically incapacitated, the chief electoral officer shall direct the returning officer to establish an advance poll in a polling place either within the electoral district or in another electoral district.

Number of advance polling stations

213. The chief electoral officer may direct that one or more advance polling stations be established for an electoral district.

Conduct of an advance poll

214. An advance poll shall be conducted in the same manner as is provided for in this Act for the conduct of a poll and counting of the ballots on the polling day of an election.

Poll clerk's duties at an advance poll

215. At an advance poll each elector shall declare his name and address, whereupon the poll clerk shall ascertain if the name of the elector appears on the list of electors for that polling division.

Poll book entries

216. The poll clerk shall enter in the poll book opposite the name of each elector, as soon as the elector's ballot paper has been deposited in the ballot box, the words "voted" and "advance poll".

Voting at an advance poll

217. Where it has been ascertained that an applicant elector is qualified to vote or to exercise a proxy,

- (a) his name and address shall be entered in the poll book in the prescribed form to be kept by the poll clerk, a consecutive number being prefixed to the elector's name in the appropriate column of the poll book,
- (b) he shall take an oath or affirmation in the prescribed form, and
- (c) subject to sections 254, 255 and 257, he shall be allowed to vote.

Duties at close of poll each day

218. At the close of the advance poll each day the deputy returning officer shall

- (a) affix a seal in the prescribed form across the slit in the ballot box,
- (b) place the poll book, the oaths of electors in the envelope provided for that purpose, the unused ballot papers and stubs in the envelope provided for that purpose, the spoiled ballot papers, if any, in the envelope provided for that purpose and the other election materials into a document envelope provided for that purpose and seal it in the prescribed form, and

- (c) prevent any person from having unlawful access to the ballot box and other election materials.

Duties at close of last day

219. At the close of the advance poll the deputy returning officer shall

- (a) count the number of electors whose names appear in the poll book as having voted, and make an entry thereof on the line immediately below the name of the elector who voted last, thus: “the number of electors who voted at this election in this polling station is,” and sign his name thereto,
- (b) prepare in the prescribed form a list of all electors who voted at the advance poll including the name, address, number on the official list of electors and polling division number of each elector, and
- (c) transmit it to the returning officer for the electoral district.

Returning officer processes and transmits lists

220. Upon receiving the list of electors referred to in paragraph 219(1)(b) of an advance poll, the returning officer shall

- (a) draw a line through the name of each advance elector on the list of electors to be used on polling day, and enter the words “advance poll”, and
- (b) transmit to each candidate, not later than three days prior to polling day, a copy of the list of electors who voted at the advance poll.

POLLING IN A NURSING OR RETIREMENT HOME

At a general election or by-election

221. For the purpose of a general election or a by-election, where a person is a resident in a nursing or retirement home and is qualified as an elector, he shall vote in the electoral district in which the home is located.

Need determined by returning officer

222. The returning officer of an electoral district containing any nursing or retirement home shall determine the need for an institution poll to be held in the home.

Time of voting on polling day

223. Polling at an institution poll in a nursing or retirement home shall be between ten o'clock in the forenoon and four o'clock in the afternoon on polling day.

Polling station located in institution

224. Polling at an institution poll in a nursing or retirement home shall be conducted in a polling station located in the nursing or retirement home.

Conduct of a poll in an institution

225. Except as otherwise provided in sections 223 and 224, polling at an institution poll in a nursing or retirement home shall be conducted in the same manner as provided elsewhere in this Act for the conduct of a poll and counting of the ballots on the polling day of an election.

Responsibility for security of election supplies

226. The deputy returning officer shall prevent any person from having unlawful access to the ballot box and any other election materials at an institution poll in a nursing or retirement home.

CANDIDATES' AGENTS**Appointment and oath of an agent**

227.(1) A candidate or his official agent may appoint in writing in the prescribed form one or more agents to represent the candidate at a polling station.

(2) Forthwith on being admitted to a polling station each agent shall deliver his written appointment to the deputy returning officer.

(3) Each of the agents of the candidate, on being admitted to the polling station, shall take an oath in the prescribed form to keep secret the name of the candidate for whom the ballot paper of any elector is marked in his presence.

(4) Any agent bearing a written authorization from the candidate or from the official agent of the candidate in a prescribed form shall be deemed an agent of the candidate within the meaning of this Act and is entitled to represent the candidate.

Two agents per candidate at any time

228. A candidate or the official agent of a candidate may appoint as many agents as he deems necessary for a polling station except that only two agents for each candidate may be present at the polling station at any time.

Dispute determined by deputy returning officer

229. Any dispute as to which agent or agents may be in the room where the poll is taken shall be determined by the deputy returning officer.

Rights and duties of agent

230.(1) An agent of a candidate may,

- (a) during the hours of polling, but at no other time, examine the poll book and take any information therefrom except where an elector would be delayed in casting his ballot thereby, and
- (b) convey during the hours of polling any information obtained by the examination referred to in paragraph (a) to any agent of the candidate who is on duty outside the polling station.

(2) If the agents entitled to be present in the room of the polling station during polling hours are in attendance at least 15 minutes before the hour fixed for opening of the poll, they are entitled to have the ballot papers supplied for use thereat carefully counted in their presence before the opening of the poll, and to inspect the ballot papers and all other papers, forms and documents relating to the poll.

Candidate may undertake duties

231. A candidate may himself undertake the duties that any agent of his, if appointed, might have undertaken hereunder or may assist his agent in the performance of his duties, may be present at any place at which his agent may pursuant to this Act be authorized to attend but shall in such case take the oath prescribed in subsection 227(3).

Deputy returning officer may order to leave

232. The deputy returning officer may order to leave the polling station any candidate or agent representing a candidate who obstructs the taking of the poll, speaks to any elector who has stated that he does not wish to be spoken to or commits at the polling station any offence against this Act and any person who refuses to obey such an order forthwith is guilty of an offence.

Non-attendance shall not invalidate any act

233. The non-attendance of any candidate, official agent or agent representing a candidate at any time or place required by or permitted by this Act does not in any way invalidate any act or thing done during the absence of the agent and wherever in this Act any expressions are used requiring or authorizing any act to be done at the polls or elsewhere, in the presence of candidates, official agents or agents representing the candidate, such expressions shall be deemed to refer to the presence of such candidates, official agents or agents representing the candidates as are authorized to attend, and as have in fact attended at the time and place where such act or thing is being done.

POLLING DAY**Day of polling shall be a Monday**

234.(1) The day fixed for holding the poll shall, at any election, be a Monday, unless the Monday of the week in which it is desired to hold the poll is a public holiday and, in any such case, the day fixed for the poll shall be Tuesday of the same week.

(2) Where, pursuant to subsection (1), the day fixed for the poll at an election is a Tuesday, the provisions of this Act requiring anything to be done on a specified day or within a specified period of time before or after polling day apply as if polling day were the immediately preceding Monday.

Hours of polling

235. The poll shall be opened at the hour of eight o'clock in the forenoon and kept open until eight o'clock in the afternoon on polling day, and every deputy returning officer shall receive, during that time in the polling station assigned to him and in the manner prescribed in this Act, the votes of the electors qualified to vote at the polling station.

Official list of electors

236. The list of electors to be used at an election shall be the official list of electors, referred to in section 152.

OPENING OF THE POLL

Printed directions to electors

237. Every deputy returning officer shall, on polling day, at or before the opening of the poll, cause such printed directions to the electors as have been supplied to him by the chief electoral officer to be posted up in conspicuous places in or about the polling station and also in each polling booth of the polling station.

Ballot papers initialled

238.(1) Before the opening of the poll, on polling day, the deputy returning officer shall, at the polling station and in full view of such of the candidates or their agents as are present, affix uniformly his initials in the space provided for that purpose on the back of every ballot paper supplied to him by the returning officer.

(2) The initials of the deputy returning officer shall be inscribed in ink.

(3) For the purpose of initialling, the ballot papers shall not be detached from the books in which they have been bound or stitched.

Ballot box locked

239.(1) At the hour fixed for opening the poll, the deputy returning officer shall

- (a) show the ballot box to the persons present in the polling place so that they may see that it is empty,
- (b) seal the empty ballot box in such a manner as to prevent it being opened without breaking the seal,
- (c) place the box on a desk or table in full view of all present, and
- (d) keep the box so placed and sealed until the close of the poll.

(2) Immediately after the ballot box is locked and sealed, the deputy returning officer shall call upon the electors to vote.

Persons present at a polling station

240.(1) During the time that the poll remains open at a polling station, no person other than

- (a) the deputy returning officer,
- (b) the poll clerk,
- (c) any interpreters or poll attendants appointed,
- (d) the candidates, and
- (e) two agents for each candidate,

shall enter the room where the ballots are cast except to vote nor remain in that room for a period longer than the period necessary to enable him to vote.

(2) Where in the opinion of the deputy returning officer the room where the ballots are cast may become too crowded he may order that no more than one agent for each candidate may enter or remain in the room at one time.

(3) The deputy returning officer shall ensure the admission of every elector into the polling station, and shall see that they are not impeded or molested at or about the polling station.

(4) A deputy returning officer may, if he deems it advisable, direct that not more than one elector for each polling booth shall be present in the room where the vote is taken at any time.

MANNER OF VOTING

By ballot

241. The taking of the poll shall be by ballot, and each elector shall receive from the deputy returning officer a ballot paper, on the back of which that officer has, as required by section 238, affixed his initials so placed, as indicated in the prescribed form, that when the ballot paper is folded the initials can be seen without unfolding the ballot paper.

Deputy returning officer instructs each elector

242. The deputy returning officer shall instruct each elector how to affix his mark, shall properly fold the elector's ballot paper, and shall direct the elector to return the ballot paper when marked, folded as shown.

Elector shall declare name and address

243.(1) Each elector upon entering the room where the poll is taken shall declare his name and address whereupon the poll clerk shall ascertain if the name of the elector appears on the official list of electors for the polling station.

(2) An elector, before receiving a ballot paper from the deputy returning officer, shall give his name and address,

- (a) to the deputy returning officer and poll clerk, and
- (b) upon request, to an agent of a candidate in the polling station.

Poll clerk makes entries in poll book

244. Every poll clerk shall

- (a) make such entries in the poll book as the deputy returning officer, pursuant to this Act, directs,
- (b) enter in the poll book the name and address of every person who applies for or receives a ballot paper,
- (c) enter in the poll book opposite the name of each elector, as soon as the elector's ballot paper has been deposited in the ballot box, the word "voted",
- (d) enter in the poll book the word "sworn" or "affirmed" opposite the name of each elector to whom any oath or affirmation has been administered, indicating the nature of the oath or affirmation,
- (e) enter in the poll book the words "refused to be sworn" or "refused to affirm" or "refused to answer" opposite the name of each elector who has refused to take an oath or to affirm, when he has been legally required to do so, or who has refused to answer questions that he has been legally required to answer, and

- (f) enter in the poll book the words ‘‘readmitted and allowed to vote’’ opposite the name of each elector readmitted on the direction of the returning officer.

No proof of right to vote required

245. The deputy returning officer, poll clerk or agents of candidates shall not request, demand or order that an elector, to prove his right to vote at a polling station, produce

- (a) a birth certificate,
- (b) naturalization papers,
- (c) a notice issued pursuant to paragraph 87(1)(c), or
- (d) any other document whatsoever.

Elector marks ballot paper

246. An elector on receiving a ballot paper shall forthwith

- (a) proceed into a polling booth and there mark his ballot paper by making a cross or check mark with a black lead pencil within the small circular space on the ballot paper in which the natural colour of the paper appears, at the right of the name of the candidate for whom he intends to vote,
- (b) fold the ballot paper as directed so that the initials on the back of it and the printed serial number on the back of the counterfoil can be seen without unfolding it, and
- (c) hand the ballot paper to the deputy returning officer.

Deputy returning officer removes counterfoil

247.(1) Upon receipt of a ballot paper handed to him pursuant to section 246, the deputy returning officer shall forthwith

- (a) without unfolding it, ascertain by examination of the initials and printed serial number that it is the same ballot paper that was delivered to the elector, and
- (b) if it is the same ballot paper, in full view of the elector and all others present, remove and destroy the counterfoil and himself deposit the ballot paper in the ballot box.

(2) Every person who makes any written record of the printed serial number appearing on the back of the counterfoil of a ballot paper is guilty of an offence.

Elector shall vote without delay

248. Every elector shall vote without undue delay and shall leave the polling station as soon as his ballot paper has been put into the ballot box.

Electors vote if present at close of poll

249.(1) If at the hour of closing of the poll there are any electors in the polling station or in line at the door, who are qualified to vote and have not been able to do so since their arrival at the polling station, the poll shall be kept open a sufficient time to enable them to vote before the outer door of the polling station is closed, but no person who is not actually present at the polling place at the hour of closing shall be allowed to vote, even if the poll is still open when he arrives.

(2) The deputy returning officer shall have the responsibility and authority to determine whether an elector arrived at the polling place in time to vote.

Elector shall not vote more than once

250. Except as provided by section 105, no elector shall at an election vote more than once in an electoral district or vote in more than one electoral district.

Issue of second ballot paper

251. An elector who has inadvertently dealt with the ballot paper delivered to him in such manner that it cannot conveniently be used shall return it to the deputy returning officer who shall

- (a) deface it in such manner as to render it a spoiled ballot, and
- (b) deliver another ballot paper to the elector.

OATHS OF ELECTORS

Subject to any oath elector votes

252. Subject to his taking any oath or affirmation authorized by this Act to be required of him, every person whose name appears on an official list of electors shall be allowed to vote at the polling station where his name appears on the list.

Oath only as provided for

253. Except as provided in this Act, no oath shall be required of any person whose name is entered on the list of electors.

Offence to misrepresent disqualification criteria

254. Every deputy returning officer or poll clerk presiding at a polling station who, while administering to any person any oath or affirmation, mentions as a disqualification any fact or circumstance that is not a disqualification according to this Act is guilty of an offence.

Refusal to take oath

255.(1) No elector who has refused to take any oath or affirmation or to answer any question, as by this Act required, shall receive a ballot paper or be admitted to vote or be again admitted to the polling place to vote.

(2) Where an elector is asked to take an oath or affirmation which he claims is not prescribed pursuant to this Act and he refuses, he may appeal to the returning officer and if, after consultation with the deputy returning officer or the poll clerk of the appropriate polling station, the returning officer decides that the oath or affirmation was not in fact prescribed by this Act, he shall direct that such elector be admitted to the poll and that he be allowed to vote if the elector is otherwise qualified to vote.

Oath not required on receipt of ballot paper

256. When an elector has been given a ballot paper no one shall require him to take the oath or affirmation referred to in section 257, 258 or 259.

Oath of qualification

257.(1) An elector, if required by the deputy returning officer, the poll clerk, one of the candidates or an agent of a candidate, shall, before receiving his ballot paper, take in the prescribed form an oath or affirmation as to his identity and that he is a qualified elector.

(2) Where an elector refuses to take an oath or affirmation pursuant to subsection (1), lines shall be drawn through his name on the list of electors and the word “refused to be sworn” or “refused to affirm” shall be written thereafter.

Oath of identity

258.(1) Where there is contained in the official list of electors any name, address or other words used to distinguish the elector pursuant to section 88 that corresponds so closely with the identity of a person by whom a ballot paper is demanded, that it appears reasonably probable to the deputy returning officer that the entry in the official list of electors was intended to refer to him, the person is, upon taking, in the prescribed form, an oath that he is qualified as an elector and believes that he is the person intended to be described by the entry and complying in all other respects with the provisions of this Act, entitled to receive a ballot paper and to vote.

(2) In any case referred to in subsection (1), the name, address or other words used to distinguish the elector pursuant to section 88 shall be correctly entered in the poll book and the fact the oath has been taken shall be entered in the proper column of the poll book.

Issue of second ballot paper in same name

259.(1) Subject to all other provisions of this Act as to proof of qualifications as an elector and the administration of oaths, if a person representing himself to be a particular elector applies for a ballot paper after another person has voted as that person, he shall be entitled to receive a ballot paper and to vote after taking the oath of identity in the prescribed form, and otherwise establishing his identity to the satisfaction of the deputy returning officer.

(2) In any case referred to in subsection (1), the poll clerk shall enter in the poll book, opposite the name of the elector,

- (a) a note of his having voted on a second ballot paper issued under the same name,
- (b) the fact of the oath of identity having been taken, and the fact of any other oath being required and taken, and
- (c) any objections made on behalf of any of the candidates.

PROXY VOTING**Proxy voter entitled to vote for elector**

260. Notwithstanding section 250, but subject to the other provisions of this Act, a proxy voter is entitled to vote at the election for and in the place of the elector who appointed him where the elector has not voted and the proxy voter

- (a) delivers to the deputy returning officer of the polling division in which the elector who appointed him to be his proxy voter is qualified to vote, a proxy certificate, and

- (b) verifies by statutory declaration made before the deputy returning officer that he has not already voted in the election as a proxy voter, and that, to the best of his knowledge, the elector who appointed him is absent from the Yukon.

Names of proxy voter and elector on list

261. Where an elector produces a proxy certificate the poll clerk shall ascertain whether the names of both the person holding a proxy certificate and the person on whose behalf the proxy is to be exercised appear on an official list of electors for the electoral district.

Poll book entries

262. When it has been ascertained that an applicant elector is qualified to vote or to exercise a proxy at a polling station,

- (a) his name and address shall be entered in the poll book to be kept by the poll clerk in the prescribed form, a consecutive number being prefixed to the elector's name in the appropriate column of the poll book, and
- (b) he shall immediately be allowed to vote, unless any person requires that he first take an oath or affirmation pursuant to section 257 or 258.

Deputy returning officer retains proxy certificate

263. Where a proxy voter is allowed to vote at an election as provided under section 260,

- (a) the poll clerk shall enter in the poll book opposite the elector's name, in addition to any other required entry, the fact that the elector voted by proxy, together with the name of the proxy voter, and
- (b) the deputy returning officer shall retain the proxy certificate and, in accordance with paragraph 285(1)(c), transmit it to the returning officer.

INCAPACITATED ELECTORS

Deputy returning officer marks ballot paper

264.(1) The deputy returning officer, on the application of anyone who is blind, unable to read or so physically incapacitated as to be unable to vote in the manner prescribed by this Act, shall

- (a) require the elector to take an oath in the prescribed form of his incapacity to vote without assistance,
- (b) assist the elector in the presence of no other persons by marking his ballot paper in the manner directed by him, and
- (c) place the ballot paper in the ballot box.

(2) Where any elector has had his ballot paper marked as provided in subsection (1), the poll clerk shall enter in the poll book opposite the elector's name, in addition to any other requisite entry, the reason why such ballot paper was so marked.

Ballot box removed to elector

265. Where a physically handicapped elector is unable to enter the polling place without undue difficulty and so requests, the deputy returning officer may remove the ballot box, together with all unused or spoiled ballot papers in the polling station, the poll book and other documents from the polling place to a place, either within the same building or outside the building but not further than 50 metres from an entrance to the building.

Poll clerk and agents accompany

266. A deputy returning officer who removes a ballot box from a polling station as provided in section 265 shall be accompanied by the poll clerk and any candidate or candidate's agent may accompany the deputy returning officer.

Elector marks ballot paper unobserved

267. A deputy returning officer who removes a ballot box from a polling station as provided in section 265 shall ensure that the elector may mark his ballot paper without being observed and cast the ballot paper without interference or interruption.

SECRECY**By candidate, election officer, agent or other person**

268. Every candidate, election officer, agent or other person in attendance at a polling station or at the counting of the ballots shall maintain and aid in maintaining the secrecy of the voting, and no candidate, election officer, agent or other person shall

- (a) at the polling station, interfere with, or attempt to interfere with, an elector when marking his ballot paper, or otherwise attempt to obtain information as to the candidate for whom any elector is about to vote or has voted,
- (b) at the counting of the ballots, attempt to ascertain the number on the counter-foil of any ballot paper,
- (c) at any time, communicate any information as to the manner in which any ballot paper has been marked in his presence in the polling station,
- (d) at any time or place, directly or indirectly, induce or endeavour to induce any elector to show his ballot paper after he has marked it, so as to make known to any person the name of the candidate for or against whom he has so cast his ballot,
- (e) at any time, communicate to any person any information obtained at a polling station as to the candidate for whom any elector at the polling station is about to vote or has voted, or
- (f) at the counting of the ballots, attempt to obtain any information or communicate any information obtained at the counting as to the candidate for whom any particular ballot is cast.

By elector

269. No elector shall

- (a) upon entering the polling station and before receiving a ballot paper, openly declare for whom he intends to vote,
- (b) show his ballot paper, when marked, so as to allow the name of the candidate for whom he has voted to be known, or
- (c) before leaving the polling station, openly declare for whom he has voted.

By deputy returning officer

270. No deputy returning officer shall inquire or see for whom the elector intends to vote, except when the elector is unable to vote in the manner prescribed by this Act on account of inability to read, blindness or physical incapacity.

Offence to contravene

271. Every person who contravenes or fails to observe any provision of section 268 or 269 is guilty of an offence.

CONDUCT AT POLLING STATIONS

Weapons

272. No person shall arm himself during any part of polling day with any offensive weapon and, thus armed, approach within one kilometre of a polling station, unless called upon to do so by lawful authority.

Propaganda

273.(1) No person shall engage actively in the issue or promotion of political propaganda within 100 metres of a polling station during the hours that the polls are open.

(2) No person shall use, wear or display any flag, ribbon, label, poster or badge in a polling station or within 100 metres of a polling station on polling day, if the item appears to support any candidate or the political or other opinions entertained or supposed to be entertained by a candidate.

Offence to contravene

274. Everyone who contravenes any of the provisions of section 272 or 273 is guilty of an offence.

Badges for election officials

275.(1) On polling day every deputy returning officer, poll clerk, agent, poll attendant and interpreter shall wear a badge in a prominent manner which shall show his office.

(2) The badges mentioned in subsection (1) shall be in the prescribed form.

COUNTING OF THE BALLOTS

Order of procedure

276.(1) Immediately after the close of the poll, in the presence and in full view of the poll clerk and the candidates or their agents such as are present, and of at least two electors if none of the candidates are represented, the deputy returning officer shall, in the following order,

- (a) count the number of electors whose names appear in the poll book as having voted and make an entry thereof on the line immediately below the name of the elector who voted last, thus: "the number of electors who voted at this election in this polling station is", and sign his name thereto,
- (b) count the spoiled ballot papers, if any, place them in the special envelope supplied for that purpose, indicate thereon the number of spoiled ballot papers and seal it,
- (c) count the unused ballot papers undetached from the books of ballot papers, place them with all the stubs of all used ballot papers in the special envelope supplied for that purpose and indicate thereon the number of unused ballot papers,

- (d) check the number of ballot papers supplied by the returning officer against the number of spoiled ballot papers, if any, the number of unused ballot papers and the number of electors whose names appear in the poll book as having voted, in order to ascertain that all ballot papers are accounted for,
- (e) open the ballot box and empty its contents upon a table, and
- (f) count the number of ballots cast for each candidate on one of the tally sheets supplied, giving full opportunity to those present to examine each ballot.

(2) The poll clerk and as many as three witnesses shall be supplied with a tally sheet in the prescribed form upon which they may keep their own score as the name of the candidate for whom each ballot is cast is called out by the deputy returning officer.

Rejected ballots

277.(1) In counting the ballots, the deputy returning officer shall reject all ballots

- (a) that have not been supplied by him,
- (b) that have not been marked for any candidate,
- (c) on which votes have been given for more than one candidate,
- (d) that have not been marked in the small circular space, on which the natural colour of the paper appears, at the right of the name of the candidate, unless the deputy returning officer and the poll clerk are unanimously agreed that the manner in which the ballot is marked indicates a clear and unambiguous preference for one candidate, and that the ballot is not otherwise invalid for any ground specified in any other provision of this Act, in which case the ballot shall not be rejected, or
- (e) upon which there is any writing or mark by which the elector could be identified.

(2) No ballot shall be rejected pursuant to subsection (1) by reason only that

- (a) it has on it any writing, number or mark placed thereon by any deputy returning office, or
- (b) it has been marked with a writing instrument other than a black lead pencil or with a mark other than a cross or check mark, if the mark does not constitute identification of the elector.

(3) The deputy returning officer shall place all the rejected ballots in a special envelope which then shall be sealed by the deputy returning officer with a seal in the prescribed form signed by the deputy returning officer and the poll clerk.

Counterfoil attached to ballot

278.(1) Where, in the course of counting the ballots, any ballot is found with the counterfoil still attached thereto, the deputy returning officer shall, while carefully concealing the number thereon from all persons present and without examining it himself, remove and destroy the counterfoil.

(2) A deputy returning officer shall not reject a ballot merely by reason of his former failure to remove the counterfoil.

(3) Nothing in this section relieves a deputy returning officer from any penalty to which he may become liable by reason of his failure to remove and destroy a counterfoil at the time of the casting of the ballot to which it relates.

Ballot not initialled

279.(1) Where, in the course of counting the ballots, a deputy returning officer discovers that he has omitted to affix his initials to the back of any ballot, as required by section 238 and as indicated on the prescribed form, he shall, in the presence of the poll clerk and the agents of the candidates, affix his initials to the ballot and count the ballot as if it had been initialled in the first place, if he is satisfied that

- (a) the ballot is one that has been supplied by him,
- (b) a bona fide omission has been made, and
- (c) every ballot paper supplied to him by the returning officer has been accounted for, as required by paragraph 276(1)(d).

(2) Nothing in subsection (1) relieves a deputy returning officer from any penalty to which he may have become liable by reason of his failure to affix his initials on the back of any ballot paper before handing it to an elector.

Objections to ballot

280.(1) Each deputy returning officer shall

- (a) keep a record on the special form printed in the poll book, of every objection made by any candidate or his agent or any elector present, to any ballot found in the ballot box, and
- (b) decide every question arising out of the objection.

(2) The decision of a deputy returning officer pursuant to subsection (1) is final, subject to reversal on recount or on petition questioning the election or return.

(3) Every objection shall be numbered and a corresponding number placed on the back of the ballot and initialled by the deputy returning officer.

Counted ballots sealed in envelopes

281. The deputy returning officer shall place all the ballots counted for each candidate in a special envelope for each candidate, and each of the envelopes then shall be sealed by the deputy returning officer with a seal in the prescribed form signed by the deputy returning officer and the poll clerk.

Agents may sign seals

282. Agents present at the sealing of envelopes under subsection 277(3) or section 281 may sign the seals if they wish to do so.

Closing oath

283. Each deputy returning officer and poll clerk, immediately after the completion of the counting of the ballots, shall take and subscribe, respectively, the oath in the prescribed form which shall remain attached to the poll book.

Statement of poll

284. Each deputy returning officer shall make the necessary number of copies of the statement of the poll in the prescribed form as follows:

- (a) one copy shall remain attached to the poll book;
- (b) one copy shall be retained by the deputy returning officer;
- (c) one copy, for the returning officer, shall be enclosed in a special envelope supplied for the purpose, sealed by the deputy returning officer and deposited by itself in the ballot box;
- (d) one copy shall be delivered to each of the candidates' agents;
- (e) one copy shall be mailed to each candidate, in the special envelope provided for the purpose.

Procedure following count

285.(1) Upon completion of the counting of the ballots and ballot papers under sections 276 to 284, the deputy returning officer shall place the following things in an envelope supplied for this purpose:

- (a) the poll book;
- (b) the envelopes containing the unused and spoiled ballot papers, the rejected ballots and the ballots counted for each candidate;
- (c) the proxy certificates;
- (d) the envelope containing the official list of electors;
- (e) the appointments of candidates' agents.

(2) Upon compliance with subsection (1), the deputy returning officer shall

- (a) seal the envelope in the prescribed form,
- (b) sign the envelope,
- (c) place the sealed envelope in the ballot box,
- (d) place all other documents used at the poll in the ballot box,
- (e) record in the prescribed form the serial number of the special seal supplied for sealing the ballot box,
- (f) place the record of the serial number in the ballot box,
- (g) seal the ballot box with the seal referred to in paragraph (e), and
- (h) subject to sections 290 and 291, deliver the ballot box personally to the returning officer, or send it to him by registered mail.

(3) Upon his compliance with subsections (1) and (2), each deputy returning officer shall mail or deliver to the returning officer

- (a) the polling station account, in the prescribed form, and
- (b) his fee and expense claims, and the fee and expense claims of the poll clerk.

(4) Where a deputy returning officer fails to comply with this section, he shall, in addition to any other penalty to which he may be liable, receive no remuneration under section 35, unless the chief electoral officer is of the opinion that his failure to comply with this section was made in good faith.

For an advance poll

286. Immediately after the close of the poll on polling day, the deputy returning officer and the poll clerk shall, and one witness for each candidate may, attend at the returning office or the place to which they may be directed by the returning officer and count the ballots pursuant to sections 276 to 284.

For a nursing or retirement home

287. Immediately after eight o'clock in the afternoon on polling day, the deputy returning officer and the poll clerk shall, and one witness for each candidate may, attend at the returning office or the place to which they may be directed by the returning officer and count the ballots for each candidate in the electoral district.

For a hospital or corrections centre

288.(1) Immediately after the close of the poll, the returning officer shall

- (a) place all the rejected ballots in separate special envelopes for any electoral district, and seal each envelope in the prescribed form, and
- (b) place all the ballots counted for candidates in the same electoral district in a special envelope for each electoral district, indicate thereon the number of ballots for each candidate, and seal each of the envelopes in the prescribed form.

(2) The returning officer shall make the necessary number of copies of the statement of the poll in the prescribed form as follows:

- (a) one copy for each electoral district, which shall remain in the poll book;
- (b) one copy for the returning officer of each electoral district sealed in the prescribed form in the special envelope provided for that purpose, which shall be immediately delivered or mailed to the returning officer of each electoral district;
- (c) one copy for each candidate in each electoral district, which shall be mailed in a special envelope provided for that purpose;
- (d) one copy for each electoral district for the returning officer of the electoral district in which the hospital or corrections centre is located.

For a mail-in polling division

289. Immediately after the close of the poll the returning officer shall

- (a) proceed pursuant to paragraphs 276(1)(a) to (c),
- (b) open the ballot box and remove the certificate envelopes,
- (c) open the certificate envelopes, remove the ballot envelopes and place the certificate envelopes in the special envelope provided for that purpose,
- (d) ensuring that any elector's identity shall not be recognized, open the ballot envelopes and remove the ballots, and
- (e) count the ballots pursuant to sections 276 to 284, otherwise following procedures required for an ordinary poll.

BALLOT BOX RETURN

Returning officer directs method

290. A returning officer may, with the advance written approval of the chief electoral officer, direct a deputy returning officer to return a ballot box otherwise than by personal delivery or registered mail.

Appointment of ballot box messenger

291. A returning officer may appoint in writing one or more persons to collect ballot boxes from polling stations specified in the appointment.

Oath of ballot box messenger

292. A person who collects a ballot box under section 291 shall, upon delivery of the ballot box to the returning officer, subscribe to an oath in the prescribed form to the effect that the ballot box has not been opened while in his care.

OFFICIAL ADDITION

Returning officer examines seals

293. A returning officer, upon the receipt of each ballot box and each unopened envelope containing the statement of the poll for a hospital or corrections centre, shall

- (a) take every precaution for their safekeeping and for preventing any person other than himself and his assistant returning officer from having access thereto,
- (b) examine the special seal affixed to each ballot box by a deputy returning officer, pursuant to subsection 285(2)(g),
- (c) if the seal is not in good order, affix his own special seal, and
- (d) record the condition of the special seal required to be affixed by the deputy returning officer to the ballot box, in the appropriate column of a record book to be kept by the returning officer in the prescribed form.

Dates, time and procedure

294. After all the ballot boxes and each envelope containing the statement of the poll for a hospital or corrections centre have been received, the returning officer shall, at ten o'clock in the forenoon, at the place and day fixed in the proclamation issued by him pursuant to section 60 for the official addition and in the presence of such of the candidates or their official agents as attend the proceedings, open the ballot boxes and each envelope containing the statement of the poll for a hospital or corrections centre and, from the statements of the poll contained in the ballot boxes and each envelope, officially add up the number of ballots cast for each candidate and the number of rejected ballots.

Statement of poll missing in ballot box

295.(1) Where any ballot box does not appear to contain a statement of the poll, either loose or in its separate envelope as required by section 284, the returning officer may, for the purposes of finding a statement of the poll, open the large envelope found in the ballot box and appearing to contain miscellaneous papers and, upon so doing, shall place all the papers, other than the statement of the poll, if found, in a special large envelope which shall be sealed and duly endorsed by him.

(2) Nothing in subsection (1) authorizes the opening of any envelope appearing to contain only ballots cast for the various candidates, but, in the absence of other information, the endorsements on such envelopes may be adopted as indicating the result of the poll at the polling station in question.

Returning officer declares candidate with most ballots

296. Forthwith after the official addition, the returning officer shall,

- (a) declare and cause to be published in the prescribed manner the name of the candidate for whom the greatest number of ballots has been cast,
- (b) prepare his certificate in writing, in the prescribed form, showing the number of ballots cast for each candidate, and
- (c) deliver a copy of that certificate to each candidate or his representative.

Application for a recount

297. Where, on the official addition, there is an equality of ballots cast for two or more candidates and an additional ballot cast for one of such candidates would enable one of those candidates to be declared as having obtained the greatest number of ballots, or the difference between the number of ballots cast for the candidate receiving the greatest number of ballots and another candidate is ten or less, the returning officer shall forthwith,

- (a) apply for a recount to a judge of the Supreme Court, and
- (b) give written notice to each candidate at the election or his official agent of the application for a recount.

Ballot boxes not received

298. Where, on the day fixed for the official addition, a returning officer has not received all the ballot boxes or the information required by sections 284 and 285 to be communicated to him he shall adjourn the proceedings for a period not exceeding seven days.

Statement of poll unavailable

299. Where

- (a) the statement of the poll for any polling station cannot be found and the number of ballots cast thereat for the several candidates cannot be ascertained, or
- (b) for any other cause, the returning officer cannot, at the day and hour appointed by him for that purpose, ascertain the exact number of ballots cast for each candidate,

the returning officer may thereupon adjourn to a future day and hour the official addition, and so from time to time, except that the aggregate of such adjournments shall not exceed two weeks.

Ballots boxes destroyed or lost

300. Where any ballot boxes have been destroyed or lost or, for any other reason, are not forthcoming within the time fixed by this Act, the returning officer shall ascertain the cause of the disappearance of the ballot boxes and obtain from each of the deputy returning officers whose ballot boxes are missing, or from any other persons having them, a copy of the statement of the poll furnished to the candidates or their agents, as required by this Act, the whole verified on oath.

Statement of poll cannot be obtained

301.(1) Where a statement of the poll or copies thereof cannot be obtained, the returning officer

- (a) shall ascertain, by such evidence as he is able to obtain, the total number of ballots cast for each candidate at the several polling stations,
- (b) to that end, may order any deputy returning officer, poll clerk or other person to appear before him at a day and hour to be named by him, and to bring all necessary papers and documents with him, of which day and hour and of the intended proceedings the candidates shall have notice, and
- (c) may examine on oath the deputy returning officer, poll clerk or other person, respecting the matter in question.

(2) In the case of an adjournment by reason of any deputy returning officer not having placed in the ballot box a statement of the poll, the returning officer shall, in the meantime, use all reasonable efforts to ascertain the exact number of ballots cast for each candidate in the polling station of the deputy returning officer and, to that end, has the powers set out in subsection (1).

Report to chief electoral officer

302. In any case arising under section 300 or 301, the returning officer shall declare the name of the candidate for whom the greatest number of ballots appears to have been cast, and shall mention specially, in a report to be sent to the chief electoral officer with the return to the writ, the circumstances accompanying the disappearance of the ballot boxes, or the want of any statement of the poll, and the mode by which he ascertained the number of ballots cast for each candidate.

Offence to refuse returning officer's order

303. Every person is guilty of an offence who refuses or neglects to obey the order of a returning officer issued under this Act in any case where ballot boxes are not forthcoming and it is necessary to ascertain by evidence the total number of ballots cast for each candidate at a polling station.

JUDICIAL RECOUNT**Judge appoints a time on application**

304. Where a judge of the Supreme Court

- (a) receives an application for a recount from a returning officer pursuant to section 297, or
- (b) receives an application, prior to the end of the sixth day following the completion of the official addition, supported by a credible witness, and the applicant deposits with the clerk of the court the sum of \$200 as security for costs and it is made to appear that
 - (i) a deputy returning officer in counting the ballots has improperly counted or improperly rejected any ballots or has made an incorrect statement of the number of ballots cast for any candidate, or
 - (ii) the returning officer has improperly conducted the official addition,

the judge shall appoint a time for the recount, which time shall, subject to section 305, be within four days after the receipt of the application.

Order of recounts

305. Where applications for recounts in respect of two or more electoral districts are made under this section to the same judge, the judge shall

- (a) proceed with the recounts in the order in which applications are received by him, and
- (b) subject to section 313, proceed continuously from day to day until the last recount has been completed.

Returning officer notified

306. A judge who receives an application pursuant to paragraph 304(1)(b) shall forthwith notify the returning officer.

Candidates notified

307.(1) The judge to whom an application for a recount is made shall appoint and give written notice to the candidates or their agents of a time and place at which he will proceed to conduct the recount.

(2) The judge may order that service of a notice given under subsection (1) may be substitutional.

Returning officers summoned

308.(1) The judge to whom an application for a recount is made shall issue a summons directing the returning officer to attend at the time and place appointed pursuant to subsection 307(1) with the envelopes containing all the ballot papers and ballots, and the statements of the poll signed by the deputy returning officers.

(2) The judge to whom an application for a recount is made shall issue a summons directing a returning officer of an electoral district in which ballots were cast under section 168 for any candidate in the electoral district for which a recount is to take place to attend at the time and place appointed pursuant to subsection 307(1) with the envelopes containing all the ballot papers and ballots for that electoral district.

(3) A returning officer shall obey a summons issued pursuant to subsection (1) or (2) and shall attend throughout the proceedings.

Candidate entitled to be present

309. Each candidate is entitled to be present at the proceedings and to be represented by not more than three agents appointed to attend, but, except with the permission of the judge, no other person shall be present at the recount.

Procedure

310.(1) At the time and place appointed pursuant to subsection 307(1), and in the presence of such of the persons authorized by this Act to attend as do attend, the judge shall proceed to make the addition from the statements of the poll contained in the ballot boxes

returned by the deputy returning officers, and to recount all the ballot papers and ballots returned by the deputy returning officers and, in doing so, the judge

- (a) shall open the sealed envelopes containing the ballot papers and ballots, and
- (b) shall not take cognizance of any other election documents.

(2) At a recount, the judge shall

- (a) recount the ballots according to the directions in this Act set forth for deputy returning officers at the close of the poll,
- (b) verify or correct the statement of the poll giving the ballot paper account and the number of ballots cast for each candidate, and
- (c) if necessary or required, review the decision of the returning officer with respect to the number of ballots cast for a candidate at any polling place where the ballot box used was not forthcoming when the returning officer made his decision or where the proper statements of the poll were not found therein.

Power of judge

311.(1) For the purpose of arriving at the facts as to a missing ballot box or statement of the poll, the judge has all the powers of a returning officer with regard to the attendance and examination of witnesses who, in the case of non-attendance, are subject to the same consequences as in the case of refusal or neglect to attend on the summons of a returning officer.

(2) For the purpose of making a recount pursuant to section 310, a judge has the power of summoning before him any deputy returning officer or poll clerk as a witness and of requiring him to give evidence on oath, or on solemn affirmation, and has the same power to enforce the attendance of such a witness and to compel him to give evidence as is vested in the Supreme Court in civil cases.

Counterfoil attached

312.(1) Where, in the course of a recount, any ballot is found with the counterfoil still attached to it, the judge shall remove and destroy the counterfoil.

(2) The judge shall not reject a ballot by reason merely of the deputy returning officer's failure to remove the counterfoil from it or to affix his initials to the back of it.

Times

313. The judge shall, as far as practicable, proceed continuously, except on Sunday, with the recount, allowing only necessary recess for refreshment, and excluding, except as he otherwise openly directs, the hours between six o'clock in the afternoon and nine o'clock in the next following morning.

Ballots under seal during recess

314. During a recess or excluded time at a recount, the ballot papers, ballots and other documents shall be kept enclosed in packages under the seal of the judge and of such other of the persons as are authorized to attend at the recount and desire to affix their seals to the packages.

Judge supervises packaging and sealing

315. The judge shall personally supervise the packaging and sealing of ballot papers, ballots and documents at a recount and take all necessary precautions for the security of the papers and documents.

Recount terminated

316. Notwithstanding anything in this Act, a judge may, at any time after an application for a recount has been made to him, terminate the recount upon request in writing by the applicant to him for such termination.

Procedure at conclusion

317. At the conclusion of a recount, the judge shall

- (a) seal all the ballot papers and ballots in the appropriate envelopes, add the number of ballots cast for each candidate as ascertained at the recount, and certify forthwith in writing in the prescribed form the result of the recount to the returning officer, who shall, as prescribed in section 321, declare the election of the candidate for whom the greatest number of ballots has been cast, and
- (b) deliver a copy of the certificate to each candidate, in the same manner as the prior certificate delivered by the returning officer under section 296, which certificate shall be deemed to be substituted for the certificate previously issued by the returning officer.

Tie determined by drawing of lots

318. Where a recount made pursuant to section 310 results in an equal number of ballots having been cast for two or more candidates who also have the greatest number of ballots cast for them in the election, the election shall be decided forthwith by the drawing of lots by the returning officer in the presence of the judge and any candidate or agent present at the time.

Costs

319.(1) Where a recount as a result of an application made pursuant to paragraph 304(1)(b) does not so alter the result of the poll as to affect the return, the judge shall

- (a) order the costs of the candidate appearing to be elected to be paid by the applicant, and
- (b) tax those costs, following as closely as possible the tariff of costs allowed with respect to proceedings in the Supreme Court.

(2) The moneys deposited as security for costs shall, so far as necessary, be paid out to the candidate in whose favour costs are awarded and, if the deposit is insufficient, the candidate in whose favour the costs are awarded may bring an action for the balance.

Clerical assistance

320.(1) Subject to the prior approval of the chief electoral officer, a judge may retain the services of such clerical assistants as are required for the proper performance of his duties under this Act.

(2) The clerical assistants referred to in subsection (1) shall be paid at a rate to be fixed by the Commissioner pursuant to section 35.

ELECTION RETURN

Date

321. Each returning officer, immediately after the tenth day next following the date upon which he has completed the official addition, unless before that time he has received notice that he is required to attend before a judge for the purpose of a recount, and, where there has been a recount, then immediately thereafter, shall forthwith declare elected the candidate for whom the greatest number of ballots has been cast by completing the return to the writ in the prescribed form.

Returning officer transmits documents

322.(1) Forthwith, upon completing the return to the writ pursuant to section 321, a returning officer shall transmit by registered mail to the chief electoral officer the following documents:

- (a) the writ of election together with his return to the writ in the prescribed form to the effect that the candidate for whom the greatest number of ballots has been cast has been duly elected;
- (b) a report of his proceedings in the prescribed form;
- (c) the recapitulation sheets in the prescribed form showing the number of ballots cast for each candidate at each polling station and making such observations as the returning officer may think proper as to the state of the election papers as received from his deputy returning officers;
- (d) the statements of the polls from which the official addition was made;
- (e) the reserve supply of undistributed blank ballot papers;
- (f) the enumerators' record books;
- (g) the revising officers' record sheets and other papers relating to the revision of the lists of electors;
- (h) the returns from the various polling stations enclosed in sealed envelopes, as described in section 285, and containing the poll book used at the poll, an envelope of stubs and of unused ballot papers, envelopes of ballots cast for the several candidates, an envelope of spoiled ballot papers, an envelope of rejected ballots and an envelope containing the official list of electors used at the poll, the written appointments of candidates' agents and the used proxy certificates;
- (i) all other documents used at the election.

(2) Where he receives notice of a recount, a returning officer shall delay transmission of the return to the writ and his report until he has received from the judge a certificate of the result of the recount, whereupon he shall transmit those documents as required by subsection (1).

Certified copy of return to each candidate

323. A returning officer shall forward to each candidate a certified copy of the return to the writ made by him.

Premature return

324. A premature return to the writ shall be deemed not to have reached the chief electoral officer until it should have reached the chief electoral officer in due course.

Incomplete or incorrect return

325. The chief electoral officer

- (a) shall, if the circumstances so require, send back the return to the writ and any or all election documents connected therewith to the returning officer for completion or correction, and
- (b) may send back to the returning officer any return to the writ that does not comply with this Act.

Commissioner advised of return

326. The chief electoral officer, on receiving the return to the writ for any member elected to serve in the Legislative Assembly, shall advise the Commissioner of the return to the writ forthwith and immediately publish, in the prescribed manner, the name of the candidate so elected.

Offence by returning officer

327. Where any returning officer wilfully delays, neglects or refuses to return any person who by the provisions of this Act ought to be returned to serve in the Legislative Assembly for an electoral district, and

- (a) there has been no election petition brought pursuant to the Controverted Elections Act respecting that person's election,
- (b) the election petition has been withdrawn, or
- (c) it has been determined on the hearing of the election petition that such person was entitled to have been returned,

the returning officer who has so wilfully delayed, neglected or refused duly to make the return of his election is guilty of an offence.

PART 3 ELECTION REQUIREMENTS

EMPLOYEE VOTING

Four consecutive hours

328.(1) An employee who is a qualified elector shall, while the polls are open on polling day at an election, have four consecutive hours for the purpose of casting his ballot.

(2) If the hours of the employee's employment do not allow for such four consecutive hours, his employer shall allow him such additional time for voting as may be necessary to provide the said four consecutive hours, but the additional time for voting shall be granted at the convenience of the employer.

No deduction from pay

329. No employer shall make any deduction from the pay of any such employee nor impose upon or exact from him any penalty by reason of absence from his work granted pursuant to section 328.

Notice to vote at an advance poll

330. Where an employee is required in his employment for services that are emergency services or are necessary to the public service, health, or safety or for the operation of scheduled public transportation services such that the employee cannot be allowed additional time without significant inconvenience or risk to the public, his employer is not bound by section 328 to allow him additional time to cast his ballot but shall, where possible, give the employee sufficient notice thereof to enable the employee to vote at an advance poll.

Offence by employer

331. Every employer who directly or indirectly refuses to grant to any elector in his employ, or by intimidation, undue influence or in any other way interferes with the granting to any elector in his employ, of whatever additional time may be necessary to allow the elector to have four consecutive hours for voting as provided in section 328 is guilty of an offence.

Government of the Yukon is an employer

332. For the purposes of sections 328 to 331 the Government of the Yukon is deemed to be an employer and is bound by sections 328 to 331.

REPORTS OF THE CHIEF ELECTORAL OFFICER**After each election**

333. The chief electoral officer shall, immediately after each election, cause to be printed and published a report stating, by polling divisions, the number of ballots cast for each candidate, the number of rejected ballots and the number of names on the list of electors, together with any other information that he may deem fit to include.

Offence by an election officer

334. Where the chief electoral officer has taken any action under subsection 378(1) in respect of the apparent commission of an offence under this Act by an election officer, or where the chief electoral officer has suspended a returning officer under section 28, the chief electoral officer shall transmit a report of the matter to the Speaker of the Legislative Assembly within ten days after the commencement of the session of the Legislative Assembly next following the election.

Any matter or amendments

335. The chief electoral officer may, at any time, transmit to the Speaker of the Legislative Assembly a report setting out

- (a) any matter that has arisen in connection with the duties of the chief electoral officer that he considers ought to be brought to the attention of the Legislative Assembly, or
- (b) any amendments that, in the opinion of the chief electoral officer, are needed to improve the administration of elections under this Act.

Tabled in the Legislative Assembly

336. Any report or recommendation received by the Speaker from the chief electoral officer pursuant to section 334 or 335 shall at the earliest opportunity be tabled by him in the Legislative Assembly.

ELECTION DOCUMENTS**Retained by chief electoral officer**

337. The chief electoral officer shall retain in his possession the election documents transmitted to him by each returning officer, with the return to the writ, for at least one year if the election is not contested during that time and, if the election is contested, then for one year after the termination of the contest.

Inspected or produced by court order

338. No election documents that are retained in the custody of the chief electoral officer pursuant to section 337 shall be inspected or produced except under a rule or order of a judge of the Supreme Court.

Chief electoral officer certifies and transmits

339.(1) Where a judge of the Supreme Court has ordered the production of any election documents, the chief electoral officer need not, unless the judge otherwise orders, appear personally to produce the documents but the chief electoral officer shall certify the documents and transmit them by registered mail to the clerk of the court, who shall, when the documents have served the purposes of the judge, return them by registered mail to the chief electoral officer.

(2) Documents purporting to be certified by the chief electoral officer are receivable in evidence without further proof thereof.

Required to maintain a prosecution

340.(1) A rule or order may be made pursuant to section 338 by a judge on his being satisfied by evidence on oath that the inspection or production of any election document is required for the purpose of instituting or maintaining a prosecution for an offence in relation to an election, or for the purpose of a petition that has been filed questioning an election or return.

(2) Any rule or order for the inspection or production of election documents may be made subject to such conditions as to persons, time, place and mode of inspection or production as the judge deems expedient.

Public records

341.(1) All reports or statements, other than election documents received from election officers, all instructions issued by the chief electoral officer pursuant to this Act, all decisions or rulings by him upon points arising under this Act and all correspondence with election officers or others in relation to any election are public records and shall be retained by the chief electoral officer for five years and may be inspected by any person upon request during business hours.

(2) Any person may take extracts from the records referred to in subsection (1) and is entitled to certified copies of those records upon payment for the preparation of those certified copies at the prescribed rate.

(3) Any copies of the records referred to in subsection (1) purporting to be certified by the chief electoral officer are receivable in evidence without further proof thereof.

CANDIDATE'S ELECTION EXPENSES AND CLAIMS**Payment by official agent**

342. No payment, other than those payments relating to the personal expenses of a candidate, and no advance, loan or deposit shall be made by or on behalf of a candidate before, during or after the election on account of the election otherwise than through his official agent.

Payments by candidate for personal expenses

343.(1) Payments relating to the personal expenses of a candidate may lawfully be made by the candidate.

(2) "Personal expenses" when used in this section includes the following expenses:

- (a) reasonable and bona fide rent of accommodation used by a candidate personally to address public meetings of electors and expenses incurred in heating, lighting and cleaning the same;
- (b) reasonable, ordinary and necessary travelling and living expenses of the candidate;
- (c) reasonable, ordinary and necessary travelling and living expenses of one speaker for each meeting who accompanies the candidate and travels with him for the purpose of speaking at a public meeting to be addressed by the candidate;
- (d) reasonable and ordinary charges for the hire of vehicles for the use of the candidate in travelling to and from public meetings and in canvassing in the electoral district and reasonable and ordinary charges for the services of a driver;
- (e) reasonable and ordinary charges for use by the candidate personally of not more than one vehicle and the services of a driver on polling day.

(3) The onus is upon the candidate to show that the personal expenses paid by him were within the scope of subsection (2) and not in excess of what is ordinarily paid for similar services and accommodation.

Claim within one month of declaration of result

344. Unless a person who has any monetary claim against a candidate for or in respect of an election sends in the claim to the agent of the candidate within one month of the day of the declaration of the result of the election, the right to recover the claim is barred.

Death of claimant

345. In case of the death within the said month of any person having such monetary claim, unless his legal representative sends in the claim within one month after probate or administration has been obtained, the right to recover the claim is barred.

Death of official agent

346. In case of the death of the official agent or of his incapacity to act, if no other agent has been appointed, the claim may be sent in or delivered to the candidate.

Claim paid with approval

347. No such claim shall be paid without the approval of the candidate and the official agent.

Late claim approved by judge

348.(1) Notwithstanding anything in section 344, any claim that would have been payable if sent in within one month of the day of the declaration may be paid by the candidate through his agent after that time if the claim is approved by a judge.

(2) All claims allowed by a judge shall within one week thereafter be advertised by the returning officer at the expense of the candidate in such manner as the judge may direct.

NOTICES AND ADVERTISING**Name and address of sponsor**

349.(1) Every printed advertisement, poster or banner having reference to an election shall include the name and address of its sponsor.

(2) Subsection (1) does not apply to any printed advertisement, poster or banner bearing only one or more of the following:

- (a) the colours or logo of a registered political party;
- (b) the name of a registered political party;
- (c) the name of a candidate.

Removal of posted material pursuant to this Act

350. Every person who erects, posts or affixes a proclamation, notice, poster or advertisement or causes such to be done pursuant to this Act shall remove it or cause it to be removed within 30 days after polling day.

Removal of posted material for a candidate or political party

351. Every person who erects, posts or affixes any notice, poster or advertisement relating to a candidate at an election or a political party supporting a candidate at an election shall remove it or cause it to be removed within 30 days after polling day.

Offence to fail to comply

352. Any person who fails to comply with section 350 or 351 is guilty of an offence.

Notice of offence posted by election officer

353. Where an election officer posts up or causes to be posted up a document referred to in section 350 or 351, a copy of section 367 shall be printed or written as a notice in large type on the document, or printed or written as a separate notice and posted up near the document so the notice may easily be read.

Notice not prescribed

354. When any election officer is authorized or required by this Act to give a public notice and no special mode of notification is indicated, the notice may be by newspaper advertisement, poster, handbill or otherwise as he considers will best effect the intended

purpose unless the Commissioner in Executive Council has previously prescribed the mode of notification of that notice in which case the notification shall be as so prescribed.

Notice posted on public building

355. Any notice which is posted up pursuant to this Act may be posted up in, or at, or affixed to any public building or structure by any means provided that it can be later removed as provided in sections 350 and 351.

Method of communication

356.(1) Where the chief electoral officer, or any election officer, is required by this Act to effect any communication by mail for the purpose of the election and he determines that the communication may not reach the person for whom it is intended in the due time if sent by mail, he may make the communication by telegraph or, when no telegraph is available, by telephone or by radio.

(2) Every communication made by telegraph, telephone or radio pursuant to subsection (1) shall be confirmed immediately in writing sent by mail.

Premature publication of results

357. Every person who publishes or broadcasts a result or purported result of the polling in any polling division or electoral district, before the hour fixed by or pursuant to this Act for the closing of the polls or before the expiry of any extension thereof, by any medium whatsoever is guilty of an offence.

OATHS AND PLEDGES

Oath administered as provided

358. Where any oath, affirmation, affidavit or declaration is authorized or directed to be made, taken or administered pursuant to this Act, it shall be administered by the person expressly required by this Act or, if no provision is made, then by the judge of any court, the returning officer, the assistant returning officer, a deputy returning officer, a poll clerk, a notary public, a justice of the peace, a commissioner of oaths, or a peace officer.

Oath administered without fee

359. All oaths, affirmations, affidavits or declarations administered pursuant to this Act shall be administered without fee.

Pledge void

360. Any candidate who signs any written document presented to him by way of demand or claim made upon him by any person between the date of the issue of the writ and the close of the polls, requiring him to follow any course of action that will prevent him from exercising freedom of action in the Legislative Assembly if elected, or to resign as a member if called upon to do so by the person is guilty of an offence, and any such document, whether or not executed for consideration is void.

Executory contract, promise or undertaking

361.(1) Every executory contract, promise or undertaking that in any way refers to or arises out of or depends upon the result of an election is void.

(2) Subsection (1) extends to the payment of lawful expenses or the doing of a lawful act.

OFFENCES

Ballot paper offences

362. Everyone is guilty of an offence who

- (a) forges a ballot paper or utters a forged ballot paper,
- (b) fraudulently alters, defaces or destroys a ballot paper or the initials of the deputy returning officer signed thereon,
- (c) without authority under this Act, supplies a ballot paper to any person,
- (d) not being a person entitled under this Act to be in possession of a ballot paper, has, without authority, any ballot paper in his possession,
- (e) fraudulently puts or causes to be put into a ballot box a ballot paper or other paper,
- (f) fraudulently takes a ballot paper out of the polling station,
- (g) without authority under this Act destroys, takes, opens or otherwise interferes with a ballot box or book or packet of ballot papers,
- (h) being a deputy returning officer, fraudulently puts his initials on the back of any paper purporting to be or capable of being used as a ballot paper at an election,
- (i) without authority under this Act prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election,
- (j) being authorized to print the ballot papers for an election, fraudulently prints more ballot papers than he is authorized to print, or
- (k) being a deputy returning officer, places upon any ballot paper any writing, number or mark with intent that the elector to whom such ballot paper is to be or has been given may be identified thereby.

Ballot box offence

363. Everyone is guilty of an offence who manufactures, constructs, has in possession, supplies to any election officer, or uses for the purposes of an election, or causes to be manufactured, constructed, supplied to any election officer, or used for the purposes of any election, any ballot box other than a ballot box obtained pursuant to section 179 or 182 or adapted in such a way as to enable a ballot paper to be improperly secreted or retained or to be damaged or destroyed.

Voting offences

364. Everyone is guilty of an offence who

- (a) applies under this Act to be included in any list of electors in the name of some other person, whether such name is that of a person living or dead or of a fictitious person,
- (b) having once to his knowledge been properly included in a list of electors under this Act as an elector entitled to vote at a pending election, applies, except as authorized by this Act, to be included in any other list of electors prepared for any electoral district as an elector entitled to vote at the same election,

- (c) applies to be included in a list of electors for a polling division in which he is not ordinarily resident,
- (d) except as authorized by section 105, applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead or of a fictitious person,
- (e) having voted once at an election, applies at the same election for another ballot paper,
- (f) votes or attempts to vote at an election or has or attempts to have his name included on a list of electors knowing that he is not qualified to vote at the election,
- (g) induces or procures any other person to vote at an election knowing that such other person is not qualified to vote at the election,
- (h) by intimidation, duress or any pretence or contrivance compels, induces or prevails upon any person to vote or refrain from voting at an election, or
- (i) represents to any person that the ballot or the manner of voting at an election is not secret.

False oaths and statements

365. Everyone is guilty of an offence who

- (a) knowingly, in any case where an oath or affirmation is authorized or directed to be taken or made pursuant to this Act, compels or attempts to compel or induces or attempts to induce any other person to take such oath or make such affirmation falsely,
- (b) knowingly, in any case where an oath or affirmation is authorized or directed to be taken or made by this Act, takes such oath or makes such affirmation falsely,
- (c) knowingly makes a false statement in any form, certificate, statement, report or other document completed pursuant to this Act, or
- (d) knowingly makes or publishes any false statement of fact in relation to the personal character or conduct of a candidate.

Non-resident canvasses for votes

366. Everyone is guilty of an offence who, while residing outside Canada, to secure the election of any candidate, canvasses for votes or in any way endeavours to induce electors to vote for any candidate at an election or to refrain from voting.

Posted documents offences

367. Everyone is guilty of an offence who without authority takes down, covers up, mutilates, defaces or alters any printed or written proclamation, notice, list of electors or other document authorized or required by this Act to be posted up.

Free access of a candidate or agent

368. Everyone is guilty of an offence who obstructs or interferes with the free access of a candidate, a candidate's official agent or agent or a person authorized in writing by the candidate as a campaign worker on his behalf to any building having more than one dwelling unit if the candidate, candidate's official agent or agent or campaign worker produces identification of his status as such.

Failure to obey order

369. Everyone is guilty of an offence who fails to obey the order of any election officer or judge properly made pursuant to this Act.

Obstruction of election officer

370. Everyone is guilty of an offence who impedes or obstructs an election officer in the performance of his duties under this Act.

Omission of an act

371. For the purposes of sections 362 to 370 and any other provision of this Act, knowingly to do or omit to do an act is deemed to be fraudulent if to do or omit to do the act results or would be likely to result in the reception of a ballot that should not have been cast or in the non-reception of a ballot that should have been cast.

Peace and good order

372. Every person is guilty of an offence who disturbs the peace and good order at an election.

Peace officer arrests without warrant

373. A peace officer may, on the complaint of a returning officer, assistant returning officer or deputy returning officer, arrest without warrant any person alleged by the complainant to have committed, or to be committing, an offence under section 372.

Inducing or preventing a vote

374.(1) Everyone who corruptly, by himself or by any other person, during an election, directly or indirectly offers, procures or provides or promises to procure or provide money, valuable consideration, office or employment to induce any person to vote or refrain from voting, and everyone who corruptly accepts or receives or agrees to accept or receive any such money, valuable consideration, office or employment is guilty of an offence.

(2) Every candidate or official agent who, by himself or by any other person, directly or indirectly, during an election before the close of polls on polling day pays or indemnifies or promises to pay or indemnify any person for loss of wages or other earnings suffered by that person in going to, being at or returning from a polling station or the neighbourhood of a polling station, with intent to influence any person to vote or refrain from voting is guilty of an offence.

Liquor

375.(1) Notwithstanding the Liquor Act, no liquor outlet shall be open for the sale of an alcoholic beverage during the hours that the polls are open within an electoral district where a poll is being held.

(2) Subsection (1) does not apply to any day on which an advance poll is held.

(3) Everyone who at any time during the hours that the polls are open on polling day sells, gives, offers or provides an alcoholic beverage at any licensed premise within an electoral district where a poll is being held, is guilty of an offence.

Disorderly conduct at a public meeting

376. Every person is guilty of an offence who, between the date of the issue of the writ for an election and the day immediately following polling day at the election, acts, incites others to act or conspires to act in a disorderly manner with the intention of preventing the transaction of business of a public meeting called for the purposes of the election.

Election officer refuses to comply

377.(1) Every election officer is guilty of an offence who fails or refuses to comply with any provision of this Act unless such election officer establishes that in failing or refusing to so comply he was acting in good faith, that his failure or refusal was reasonable and that he had no intention of affecting the result of the election, permitting any person to vote whom he did not bona fide believe was qualified to vote or preventing any person from voting whom he did not bona fide believe was not qualified to vote.

(2) It shall be deemed to be a failure to comply with the provisions of this Act to do or omit to do any act that results in the reception of a ballot that should not have been cast, or in the non-reception of a ballot that should have been cast.

Inquiry by chief electoral officer

378.(1) Where it is made to appear to the chief electoral officer that an election officer has been guilty of an offence under this Act, the chief electoral officer shall

- (a) make such inquiries as appear necessary under the circumstances, and
- (b) if it appears that proceedings for the punishment of the offence have not been properly taken or should be taken and that his intervention would be in the public interest, assist or intervene in the carrying on of such proceedings or cause them to be taken and incur such expenses as may be necessary for such purposes.

(2) Where it is made to appear to the chief electoral officer that any person has committed an offence referred to in section 71, subsection 108(3) or 114(3), section 137, section 274, section 303, section 360, paragraph 362(1)(a), (b), (c), (d), (e), (f), (g), (i) or (j), section 363 or section 369, the chief electoral officer has, in respect of that offence, the same duties and powers that he has under subsection (1) in respect of offences committed by election officers.

Chief electoral officer's powers

379.(1) For the purpose of any inquiry held pursuant to section 378, the chief electoral officer or any person nominated by him for the purpose of conducting the inquiry has the powers of a board constituted under the Public Inquiries Act.

(2) Any expense required to be incurred for the purpose of an inquiry under section 378 and of any proceedings that, pursuant to section 378, the chief electoral officer assists in carrying on or causes to be taken shall be paid out of the Yukon Consolidated Revenue Fund.

Fine and imprisonment

380. Except as otherwise provided in this Act,

- (a) every person who is guilty of an offence under this Act is liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for not more than three months, or to both fine and imprisonment, and

- (b) every person who is guilty of an offence under this Act committed with intent to corrupt or intimidate a candidate, official agent, election officer or elector, to prevent a qualified elector from voting or to destroy, forge or falsify any document made pursuant to this Act is liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for not more than one year, or to both fine and imprisonment.

VALIDITY OF ELECTIONS

Candidate's knowledge and consent required

381. No election shall, on the trial of any election petition, be void by reason only of an offence under this Act unless the thing omitted or done which constituted the offence, was omitted or done by the elected candidate in person, or his official agent or some other agent of the candidate with the candidate's actual knowledge and consent.

Controverted Elections Act not limited

382. Nothing in this Act shall be deemed to limit or impair the provisions of the Controverted Elections Act.

Restrictions on declaring election void

383. No election shall be declared void by reason only of non-compliance with the provision of this Act relating to

- (a) limitations of time,
- (b) the taking of the poll or the counting of the ballots,
- (c) any want of qualifications in the persons signing any nomination paper,
- (d) any error in the name, or omission of or error in the address of any candidate as stated on the nomination paper received by a returning officer, or
- (e) any insufficiency in any publication of any proclamation, notice or other document or any mistake in the use of the forms prescribed under this Act,

if it appears to the court that the election was conducted substantially in accordance with the principles laid down in this Act and that such non-compliance did not affect the results of the election.

Disqualification procured by perjury

384. If, at any time after a person has become disqualified, the witness on whose testimony he has become disqualified is convicted of perjury in respect of such testimony, the court, upon the motion of the person disqualified and upon being satisfied that such disqualification was procured by reason only of that perjury, may order that the disqualification thereupon cease and determine.

PROCEEDINGS RELATING TO ELECTIONS

Evidence of writ

385. In a proceeding it is not necessary at the hearing to produce the writ of election or the return thereto or the authority of the returning officer founded upon the writ of election and general evidence of such facts is sufficient.

Evidence of election

386. The certificate of the returning officer to that effect constitutes proof that the election was held and that any person therein stated to have been a candidate was a candidate and any such facts may also be proved by direct testimony.

Evidence as to vote

387. Notwithstanding the Evidence Act, the evidence of an elector to show for whom he voted at an election is not admissible in evidence in any action, suit or proceeding under this or any other Act.

Intervention in proceedings

388.(1) The chief electoral officer or any person who is a qualified elector at an election may commence proceedings against any person who has committed an offence under this Act and the court may require an elector commencing such proceedings to post security for costs in such amount as the court deems reasonable.

(2) In the event of suspension or delay at any stage of any proceeding under this Act, the court before which the matter is pending may permit the chief electoral officer or one or more electors to intervene and carry on such proceedings to a final determination.

(3) The chief electoral officer at any stage may intervene in and become a party to any proceeding commenced by or carried on by an elector pursuant to subsection (1) or (2).

Limitation of action

389. No proceedings in respect of an offence against this Act shall be commenced unless within six months after the commission of the offence or the discovery of the commission of the offence whichever is the later.

BALLOT BOXES AND SUPPLIES**Property of the Crown**

390. The ballot boxes, ballot papers, envelopes and marking instruments procured for or used at any election shall be the property of the Crown.

Deposit of ballot boxes

391. After the close of an election, each returning officer shall cause the empty ballot boxes used at the election to be deposited at a place designated by the chief electoral officer.

MISCELLANEOUS**Vacancy in representation**

392. Where a vacancy occurs in the representation of an electoral district, an election to fill the vacancy shall be held within 180 days after the vacancy occurs.

Regulations

393. The Commissioner in Executive Council may make such regulations as he deems necessary for giving effect to this Act or for carrying out the provisions hereof according to its intent and meaning.

Forms, badges, seals

394. The Commissioner in Executive Council, upon the recommendation of the chief electoral officer, may from time to time

- (a) prescribe forms, badges, seals and other election materials, for the purposes of this Act, and
- (b) prescribe the manner of publication of notices or documents that are to be published pursuant to this Act.

Application of amendments

395. No amendment to this Act or to the Electoral District Boundaries Act applies in any election for which the writ is issued within six months from the coming into force of that amendment unless, before the issue of the writ, the chief electoral officer has published in the Yukon Gazette a notice to the effect that the necessary preparations for the bringing into operation of the amendment have been made.

CHAPTER 49

ELECTORAL DISTRICT BOUNDARIES ACT

1. The following are the electoral districts in the Yukon:

ELECTORAL DISTRICT OF CAMPBELL

The Electoral District of Campbell consists of that part of the Yukon bounded by a line commencing at the point of intersection of longitude 133 degrees 15 minutes west and the south boundary of the Yukon, thence due north to latitude 62 degrees 05 minutes north, thence due east to longitude 133 degrees west, thence due north to latitude 62 degrees 25 minutes north, thence due west to longitude 133 degrees 15 minutes west, thence due north to latitude 63 degrees north, thence due east to longitude 132 degrees west, thence due north to the north boundary of the Yukon, thence southeastwardly along that boundary to longitude 129 degrees west, thence due south to latitude 61 degrees north, thence due west to longitude 129 degrees 30 minutes west, thence due south to latitude 60 degrees 06 minutes north, thence due east to longitude 128 degrees 50 minutes west, thence due south to the south boundary of the Yukon, thence due west to the point of commencement.

ELECTORAL DISTRICT OF FARO

The Electoral District of Faro consists of that part of the Yukon bounded by a line commencing at the point of intersection of latitude 62 degrees 05 minutes north and longitude 133 degrees 45 minutes west, thence due north to latitude 62 degrees 25 minutes north, thence due east to longitude 133 degrees west, thence due south to latitude 62 degrees 05 minutes north, thence due west to the point of commencement.

ELECTORAL DISTRICT OF HOOTALINQUA

The Electoral District of Hootalinqua consists of that part of the Yukon bounded by a line commencing at the point of intersection of longitude 136 degrees west and the south boundary of the Yukon, thence due north to latitude 61 degrees north, thence due west to longitude 136 degrees 30 minutes west, thence due north to latitude 61 degrees 45 minutes north, thence due east to longitude 133 degrees 15 minutes west, thence due south to the south boundary of the Yukon, thence due west to the point of commencement, excluding the City of Whitehorse.

ELECTORAL DISTRICT OF KLONDIKE

The Electoral District of Klondike consists of that part of the Yukon bounded by a line commencing at the point of intersection of latitude 63 degrees north and the west boundary of the Yukon, thence northwardly along that boundary to latitude 67 degrees north, thence due east to longitude 138 degrees west, thence due north to latitude 68 degrees 30 minutes north, thence due west to the west boundary of the Yukon, thence northwardly, eastwardly and southwardly along the west, north and east boundaries of the Yukon to latitude 66 degrees north, thence due west to longitude 137 degrees west, thence due south to latitude 63 degrees north, thence due west to the point of commencement.

ELECTORAL DISTRICT OF KLUANE

The Electoral District of Klwane consists of that part of the Yukon bounded by a line commencing at the point of intersection of latitude 63 degrees north and the west boundary of the Yukon, thence due east to longitude 138 degrees west, thence due south to latitude 61 degrees 45 minutes north, thence due east to longitude 136 degrees 30 minutes west, thence due south to latitude 61 degrees north, thence due east to longitude 136 degrees west, thence due south to the south boundary of the Yukon, thence westwardly and northwardly along the south and west boundaries of the Yukon to the point of commencement.

ELECTORAL DISTRICT OF MAYO

The Electoral District of Mayo consists of that part of the Yukon bounded by a line commencing at the point of intersection of latitude 63 degrees north and longitude 137 degrees west, thence due north to latitude 66 degrees north, thence due east to the east boundary of the Yukon, thence southeastwardly along that boundary to longitude 132 degrees west, thence due south to latitude 63 degrees north, thence due west to the point of commencement.

ELECTORAL DISTRICT OF OLD CROW

The Electoral District of Old Crow consists of that part of the Yukon bounded by a line commencing at the point of intersection of latitude 67 degrees north and the west boundary of the Yukon, thence northwardly along the west boundary of the Yukon to latitude 68 degrees 30 minutes north, thence due east to longitude 138 degrees west, thence due south to latitude 67 degrees north, thence due west to the point of commencement.

ELECTORAL DISTRICT OF TATCHUN

The Electoral District of Tatchun consists of that part of the Yukon bounded by a line commencing at the point of intersection of longitude 138 degrees west and latitude 61 degrees 45 minutes north, thence due north to latitude 63 degrees north, thence due east to longitude 133 degrees 15 minutes west, thence due south to latitude 62 degrees 25 minutes north, thence due west to longitude 133 degrees 45 minutes west, thence due south to latitude 62 degrees 05 minutes north, thence due east to longitude 133 degrees 15 minutes west, thence due south to latitude 61 degrees 45 minutes north, thence due west to the point of commencement.

ELECTORAL DISTRICT OF WATSON LAKE

The Electoral District of Watson Lake consists of that part of the Yukon bounded by a line commencing at the point of intersection of longitude 128 degrees 50 minutes west and the south boundary of the Yukon, thence due north to latitude 60 degrees 06 minutes north, thence due west to longitude 129 degrees 30 minutes west, thence due north to latitude 61 degrees north, thence due east to longitude 129 degrees west, thence due north to the north boundary of the Yukon, thence southeastwardly and westwardly along the east and south boundaries of the Yukon to the point of commencement.

ELECTORAL DISTRICT OF WHITEHORSE NORTH CENTRE

The Electoral District of Whitehorse North Centre consists of that part of the City of Whitehorse bounded by a line commencing at the point of intersection of the western prolongation of the centre line of Alexander Street and the foot of the Airport (Reserve) Escarpment, thence northwardly along the foot of the escarpment to a point due east of Coordinate Control

Monument 70G-139-1970 in the Whitehorse Coordinated Survey Area, thence due east to the centre line of the Yukon River, thence southwardly along the centre line of the Yukon River to a point being the eastern prolongation of the centre line of Jarvis Street, thence southwestwardly along that prolongation and the centre line to the centre line of Fifth Avenue, thence northwestwardly along that centre line to the centre line of Alexander Street, thence westwardly along that centre line to the point of commencement.

ELECTORAL DISTRICT OF WHITEHORSE PORTER CREEK EAST

The Electoral District of Whitehorse Porter Creek East consists of that part of the City of Whitehorse bounded by a line commencing at the point of intersection of the centre line of Wann Road and Centennial Street, thence northwestwardly along the centre line of Centennial Street to the centre line of the Alaska Highway, thence northwestwardly along that centre line to the centre line of the Klondike Highway, thence northwardly along that centre line to the northern limit of the City of Whitehorse, thence eastwardly along that limit to the centre line of the Yukon River, thence southwardly along the centre line of the Yukon River to a point due east of Coordinate Control Monument 70G-139-1970 in the Whitehorse Coordinated Survey Area, thence due west to the point of intersection of the easterly boundary of lot 262-3, Group 804, thence northwardly along the easterly boundaries of lots 262-3 and 262-4, Group 804 to the northeasterly corner of lot 262-4, thence westwardly along the northerly boundary of lot 262-4, Group 804, thence southwardly along the westerly boundaries of lots 262-4 and 262-3, Group 804 to a point due east of Coordinate Control Monument 70G-139-1970, thence due west to the point of intersection of the centre line of Mountainview Drive, thence northwestwardly along that centre line to the centre line of Hickory Street, thence northwestwardly along that centre line to the centre line of Twelfth Avenue, thence southwestwardly along the centre line of Twelfth Avenue to the centre line of Grove Street, thence northwestwardly along the centre line of Grove Street to the centre line of Thirteenth Avenue, thence southwestwardly along the centre line of Thirteenth Avenue to the centre line of Grove Street, thence northwestwardly along the centre line of Grove Street to the centre line of Fourteenth Avenue, thence northeastwardly along the centre line of Fourteenth Avenue to the centre line of Holly Street, thence northwestwardly along the centre line of Holly Street to the centre line of Wann Road, thence westwardly along the centre line of Wann Road to the point of commencement.

ELECTORAL DISTRICT OF WHITEHORSE PORTER CREEK WEST

The Electoral District of Whitehorse Porter Creek West consists of that part of the City of Whitehorse bounded by a line commencing at the point of intersection of the centre line of Wann Road and Centennial Street, thence eastwardly along the centre line of Wann Road to the centre line of Holly Street, thence southeastwardly along the centre line of Holly Street to the centre line of Fourteenth Avenue, thence southwestwardly along the centre line of Fourteenth Avenue to the centre line of Grove Street, thence southeastwardly along the centre line of Grove Street to the centre line of Thirteenth Avenue, thence northeastwardly along the centre line of Thirteenth Avenue to the centre line of Grove Street, thence southeastwardly along the centre line of Grove Street to the centre line of Twelfth Avenue, thence northeastwardly along the centre line of Twelfth Avenue to the centre line of Hickory Street, thence southeastwardly along the centre line of Hickory Street to the centre line of Mountainview Drive, thence southeastwardly along the centre line of Mountainview Drive to a point due east of Coordinate Control Monument 70G-139-1970 in the Whitehorse Coordinated Survey Area, thence due

west to the point of intersection of the easterly boundary of lot 1388, thence southwestwardly along the outer boundaries of lots 1388, 1389, 1390, 1391, 1392, 1393, 1394, and 1395 to the southwesterly corner of lot 1395, thence due west to the point of intersection of the centre line of the pipeline right-of-way, thence northwestwardly along that centre line to a point due east of Coordinate Control Monument 70G-139-1970, thence due west to the western limit of the City of Whitehorse, thence northwardly and eastwardly along the western and northern limit of the City of Whitehorse to the centre line of the Klondike Highway, thence southwestwardly along that centre line to the centre line of the Alaska Highway, thence southeastwardly along that centre line to the centre line of Centennial Street, thence southeastwardly along that centre line to the point of commencement.

ELECTORAL DISTRICT OF WHITEHORSE RIVERDALE NORTH

The Electoral District of Whitehorse Riverdale North consists of that part of the City of Whitehorse bounded by a line commencing at the point of intersection of the centre line of the Yukon River and the northern limit of the City of Whitehorse, thence eastwardly and southwardly along the northern and eastern limit of the City of Whitehorse to the point of intersection of the northeastern prolongation of the centre line of Klondike Road and the limit, thence southwestwardly along that prolongation to the centre line of Alsek Road, thence southwardly along the centre line of Alsek Road to the centre line of Peel Road, thence northwestwardly along the centre line of Peel Road to the centre line of Klondike Road, thence southwestwardly along the centre line of Klondike Road to the centre line of Lewes Boulevard, thence northwestwardly along that centre line to the centre line of Selkirk Street, thence southwestwardly along that centre line and the western prolongation of the centre line to the centre line of the Yukon River, thence northwardly along the centre line of the Yukon River to the point of commencement.

ELECTORAL DISTRICT OF WHITEHORSE RIVERDALE SOUTH

The Electoral District of Whitehorse Riverdale South consists of that part of the City of Whitehorse bounded by a line commencing at the point of intersection of the centre line of the Yukon River and the southern limit of the City of Whitehorse, thence northwardly along the centre line of the Yukon River to the point of intersection of the western prolongation of Selkirk Street, thence northeastwardly along that prolongation and the centre line of Selkirk Street to the centre line of Lewes Boulevard, thence southeastwardly along the centre line of Lewes Boulevard to the centre line of Klondike Road, thence northeastwardly along the centre line of Klondike Road to the centre line of Peel Road, thence southeastwardly along the centre line of Peel Road to the centre line of Alsek Road, thence northwardly along the centre line of Alsek Road to the centre line of Klondike Road, thence northeastwardly along that centre line and the northeastern prolongation of the centre line to the eastern limit of the City of Whitehorse, thence southeastwardly and southwestwardly along that limit to the point of commencement.

ELECTORAL DISTRICT OF WHITEHORSE SOUTH CENTRE

The Electoral District of Whitehorse South Centre consists of that part of the City of Whitehorse bounded by a line commencing at the point of intersection of the western prolongation of the centre line of Alexander Street and the foot of the Airport (Reserve) Escarpment, thence northeastwardly along that prolongation and the centre line to the centre line of Fifth Avenue, thence southeastwardly along that centre line to the centre line of Jarvis Street, thence north-

eastwardly along that centre line and the eastern prolongation of the centre line to the centre line of the Yukon River, thence southwardly along the centre line of the Yukon River to a point due east of the northernmost corner of lot 523, Group 804, thence due west to the foot of the escarpment, thence northwestwardly along the foot of the escarpment to the point of commencement.

ELECTORAL DISTRICT OF WHITEHORSE WEST

The Electoral District of Whitehorse West consists of that part of the City of Whitehorse bounded by a line commencing at the point of intersection of the western prolongation of the centre line of Alexander Street and the foot of the Airport (Reserve) Escarpment, thence southwardly along the foot of the escarpment to a point due west of the northernmost corner of lot 523, Group 804, thence due east to the centre line of the Yukon River, thence southwardly along the centre line of the Yukon River to the southern limit of the City of Whitehorse, thence southwestwardly and northwestwardly along that limit to the point due west of Coordinate Control Monument 70G-139-1970 in the Whitehorse Coordinated Survey Area, thence due east to the point of intersection of the centre line of the pipeline right-of-way, thence southwardly along that centre line to a point due west of the southwesterly corner of lot 1395, thence due east to the southwesterly corner of that lot 1395, thence northeastwardly along the outer boundaries of lots 1395, 1394, 1393, 1392, 1391, 1390, 1389 and 1388 to a point due east of Coordinate Control Monument 70G-139-1970, thence due east to the point of intersection of the westerly boundary of lot 262-3, Group 804, thence northwardly along the westerly boundaries of lots 262-3 and 262-4 to the northwesterly corner of lot 262-4, thence eastwardly along the northerly boundary of lot 262-4 to the easterly corner of lot 262-4, thence southwardly along the easterly boundaries of lots 262-4 and 262-3, Group 804 to a point due east of Coordinate Control Monument 70G-139-1970, thence due east to the foot of the escarpment, thence southwardly along the foot of the escarpment to the point of commencement.

CHAPTER 50

ELECTRICAL PROTECTION ACT

Interpretation

1.(1) In this Act,

- “apprentice” means a person who has entered into an agreement with the Executive Council Member pursuant to the Apprentice Training Act under which the person undertakes to pursue a course of training in the construction electricians trade;
- “approved” with regards to an electrical installation means approved by the chief inspector;
- “bond” means lawful money of Canada, a surety bond payable to the Government of the Yukon, or Government of Canada Savings Bonds properly assigned to the Government of the Yukon;
- “chief inspector” means the chief electrical inspector appointed under section 2;
- “code” means the Canadian Electrical Code, Part 1, as amended from time to time;
- “connect” means to connect terminals or wires capable of supplying electrical energy to any electrical equipment to such electrical equipment;
- “contractor” means electrical contractor;
- “electrical contractor” means any person, company, firm, organization or partnership performing or engaging to perform, either for his or its own use or benefit, or for that of another, any electrical installation or any other work to which this Act applies;
- “electrical installation” means the installation of any system of wiring in or upon any land, building or premises from the point where electrical power or energy is delivered therein or thereon to the point where such power or energy can be used, including electrical equipment and any wiring connected therewith, and the maintenance, alteration, extension and repair of such equipment or wiring;
- “electrical permit” or “permit” means an electrical permit or permit issued pursuant to section 7;
- “employer” means a person other than a licensed contractor who employs one or more qualified electricians whether employed in the business of the employer or the service of the owner or occupant in a building or in a plant, an assembly of public, apartment, commercial, industrial, institutional, storage and mixed occupancy buildings, or in any other premises that may be designated by the Commissioner in Executive Council;
- “inspector” means an inspector appointed under section 2 and includes the chief inspector;
- “licence” means a licence issued pursuant to this Act;
- “owner” when referring to electrical equipment or property or wiring includes a lessee, occupant and person in charge of premises;
- “qualified electrician” means a person who is the holder of a certificate of qualification issued under the Apprentice Training Act for the construction electricians trade;
- “registered owner” means a person who is registered in the records of the land titles office as owner of land and appurtenances thereto;
- “single family dwelling” means a dwelling unit consisting of a detached house, a semi-detached house or a duplex;
- “temporary certificate” means a temporary certificate issued pursuant to section 16.

(2) Unless the context otherwise requires, words and expressions used in this Act have the same meaning as in the code.

(3) This Act does not apply to the maintenance and repair of any electrical installation to which the Canadian Electrical Code, Part V, applies.

Appointment of inspectors

2. The Commissioner in Executive Council may appoint a chief inspector and one or more inspectors to carry out the provisions of this Act.

Powers of inspectors on inspections

3.(1) An inspector may

- (a) place in operation or stop or cause to be placed in operation or stopped any electrical equipment that is being inspected,
- (b) except in the case of a single family dwelling, require the preparation and production to him of plans and specifications of the installation of the electrical equipment and wiring that are satisfactory to him, and
- (c) remove or cause to be removed any obstruction that may prevent a thorough inspection.

(2) An inspector may at any reasonable time enter and examine any premises other than a dwelling and the electrical equipment or wiring in or upon such premises.

(3) An inspector may with the consent of the owner, at any reasonable time, enter and examine any dwelling and the electrical equipment and wiring in or upon such dwelling.

(4) Where an inspector shows a justice of the peace that he has reasonable cause to believe and does believe that an electrical installation in a dwelling is a hazard to the occupants of the dwelling or to the public generally or that an offence against this Act has been committed therein, the justice of the peace may issue a warrant authorizing and requiring the inspector to enter and examine the dwelling at such time or times as may be stated in the warrant.

Standards for installations

4.(1) The Canadian Electrical Code, Part 1, as amended from time to time is the standard to which all installations of electrical equipment wiring shall conform.

(2) Where in the opinion of an inspector the installation or use of electrical equipment or wiring contrary to the requirements of the code would not create an undue hazard to life or property, he may permit such installation or use.

Inspectors powers where installation dangerous

5.(1) Where in the opinion of an inspector any electrical equipment or wiring constitutes a hazard to life or property, he may

- (a) order the owner of the electrical equipment or wiring to put it in a safe condition within such time as the inspector may fix,
- (b) order the owner not to use electrical energy in such electrical equipment or wiring until it is put in a condition satisfactory to the inspector,

- (c) order the adoption of such practices as will in his opinion make such electrical equipment or wiring safe for use,
- (d) by notice in writing, prohibit all unqualified persons from working on or in proximity to any electrical equipment or wiring while it is energized,
- (e) by notice in writing, prohibit all unqualified persons from entering or remaining in or upon premises where there is such electrical equipment or wiring, and
- (f) order the authority that supplies electric energy to withhold the supply of that energy to the premises in or upon which such electrical equipment or wiring is found until it is put in a condition satisfactory to the inspector.

(2) An electrical authority to which an order is given pursuant to paragraph (1)(f) shall forthwith comply with the terms of the order.

Plans to be submitted for approval

6.(1) Plans and specifications for

- (a) the installation of electrical equipment and wiring in any public, industrial, commercial or other building in which the safety of the public is concerned,
- (b) the installation of any generator, transformer, switchboard, large storage battery or other large electrical equipment, and
- (c) such other installations as may be prescribed,

shall be submitted to an inspector by or on behalf of the owner of the premises in or upon which it is proposed to make any such installation, and work shall not be commenced on the installation until the inspector has approved the plans and specifications in writing.

(2) Plans and specifications submitted under subsection (1) shall not be approved by an inspector until the prescribed fees have been paid by or on behalf of the owner.

Permit required for installations and repairs to electrical wiring

7.(1) An inspector may issue in respect of any premises a permit entitling the holder of the permit to install, alter or extend any electrical equipment or wiring on such premises.

(2) No person shall unless he holds a permit, install, alter or extend any electrical equipment or wiring.

(3) An inspector shall not issue a permit except to an owner or to an electrical contractor who holds a valid and subsisting licence issued pursuant to section 13.

(4) Notwithstanding subsections (2) and (3) where the applicant for a permit satisfies the chief inspector

- (a) that there is no contractor or qualified electrician available to do the work or,
- (b) that by reason of distance of the premises from a place where there is a contractor or qualified electrician the expense of doing the work would be unreasonable,

the chief inspector may issue a permit.

(5) Where a person satisfies an inspector that

- (a) he is the owner of a single family dwelling which is owned and occupied by him or, or
- (b) the premises in respect of which a permit is applied for is a single family dwelling which will be owned and occupied by him on completion,

an inspector may endorse on the permit permission for the applicant to install, alter or extend any electrical equipment or wiring in the dwelling.

(6) Section 12 does not apply to work done pursuant to a permit endorsed pursuant to subsection (5).

Notice to be given for inspection

8.(1) A person who does electrical work pursuant to a permit issued under section 7 shall give sufficient notice to an inspector of the time when the work may be conveniently inspected at any stage in its progress.

(2) No electrical equipment or wiring shall be made inaccessible by any person until it has been inspected and approved in writing by an inspector.

Inspector shall permit supply of electricity

9. Where an inspector is satisfied that any installation, alteration or extension of, or repair to, any electrical equipment or wiring has been carried out in accordance with this Act, he shall give permission to the appropriate supply authority or person to supply electric energy to such equipment or wiring.

No electricity without permission

10. No supply authority or person shall supply any electric energy to any electrical equipment or wiring in or upon any premises unless permission has been given by an inspector under section 9 to supply electrical energy to such equipment or wiring.

Orders and decisions of inspectors

11.(1) An inspector may

- (a) disapprove in whole or in part any plans and specifications submitted to the inspector,
- (b) require the alteration of any electrical equipment or wiring,
- (c) require the cutting off of the supply of electrical energy to any electrical equipment or wiring, or
- (d) refuse to permit the installation or operation of any electrical equipment or wiring.

(2) An order or decision of an inspector pursuant to subsection (1) may be made orally or in writing but if made orally shall be confirmed by a written order by the inspector.

(3) Any person aggrieved by an order or a decision pursuant to subsection (1) may appeal the order or decision to the chief inspector by forwarding by registered mail a statement in writing on the matter complained of to the chief inspector within 21 days after the notification to him of the order or decision appealed or within such further time as the chief inspector may allow.

(4) The chief inspector may amend, vary or revoke any order or decision appealed from under subsection (1), and his decision is final and binding.

Contractor must have valid licence

12. No person shall make an electrical installation or install electrical equipment or advertise or hold himself out as a contractor unless he holds a valid and subsisting licence issued under section 13.

Issuance, maintenance and use of licences

13.(1) The Executive Council Member may issue to a qualified electrician or person who employs a qualified electrician an electrical contractor's licence to engage in business as an electrical contractor.

(2) Every applicant for an electrical contractor's licence shall deposit with the chief inspector a bond in the prescribed form and amount.

(3) No surety may cancel a bond for an electrical contractor, without the written consent of the chief inspector.

(4) Where a contractor's licence has been issued to a person who has become eligible by employing a qualified electrician the licence shall be cancelled if the holder ceases to employ a qualified electrician.

(5) Any person who is not himself a qualified electrician, shall not perform electrical work to which this Act applies except as an assistant to and under the continuous supervision of a qualified electrician engaged in the same work.

Revocation or suspension of licence

14.(1) Where,

- (a) the holder of a licence has contravened any provision of this Act or the regulations in his operations as an electrical contractor,
- (b) a licence was issued in error and ought not to have been issued,
- (c) a licence has been used for an improper or fraudulent purpose,
- (d) the holder of a licence no longer employs a qualified electrician,
- (e) the holder of a licence has made a material misstatement in the application for the licence,
- (f) the holder of a licence has failed to comply with any order duly and properly issued by an inspector within the time stated in the notice of the order,
- (g) the work done by persons employed by the holder of a licence has been consistently below the standards required under any provision of this Act or the regulations,
- (h) the holder of a licence has been consistently lax in rectifying faults and defects in the work undertaken by him,
- (i) the holder of a licence or his agent or employee or a person working directly under his supervision has persistently violated any provision of the Act or the regulations,

- (j) the holder of a licence has failed to notify the chief inspector in writing of a change of the qualified electricians in his employment, within 14 days of such change, or
- (k) the holder of a licence has demonstrated gross incompetence or untrustworthiness in carrying on the business of electrical contracting,

the chief inspector may suspend or revoke the licence or may refuse to grant or renew the licence.

(2) Where the chief inspector revokes, suspends or refuses to grant or renew a licence he shall inform the applicant or the licence holder and the Executive Council Member of his reasons in writing and also the effective date of his action and, in the case of a suspension, the duration of such suspension.

(3) In determining whether to continue a suspension or revocation, or to refuse to grant or renew a licence, the Commissioner in Executive Council may and shall when so requested in writing by the applicant or licensee appoint an advisory board consisting of

- (a) a representative of electrical contractors,
- (b) a representative of qualified electricians,
- (c) a representative of the Executive Council Member

which shall hold a hearing and make a report to the Executive Council Member with such recommendation as it considers just.

(4) The representative of the Executive Council Member upon the advisory board shall act as chairperson, and for the purposes of their duties in connection with the investigation and hearing contemplated by this section, the board has the same powers as are vested in the chief inspector.

(5) Notice of a revocation or suspension of a licence may be published in such manner as the Executive Council Member considers necessary for the protection of the public.

Defective work

15.(1) Where an inspector finds that any electrical installation or equipment supplied and installed does not comply with this Act, the inspector shall forthwith send notice of the defective work to the contractor and owner and must therein specify a time of not less than three days wherein the defects shall be remedied.

(2) If the work is not satisfactorily completed by the annual anniversary date of the contractors licence, the chief inspector shall delay the issuing of a new licence until the defects listed are completed.

(3) If the defects are not remedied within the time specified the chief inspector may cause the necessary work to be done or electrical equipment to be supplied by another contractor, in such a manner as to conform to the requirements of this Act and the regulations, and the chief inspector may, after giving written notice to the contractor either by registered mail, or by personal service, apply the bond in whole or in part to the amount expended in doing the work or supplying the equipment.

(4) A notice pursuant to subsection (1) shall be deemed to have been received by the contractor or the owner seven days after such notice has been mailed to the contractor or owner.

Qualified electrician status

16.(1) No person may work as or hold himself out as a qualified electrician unless he is a qualified electrician within the meaning of this Act.

(2) The chief inspector may issue a temporary certificate to any person who satisfies him that he is a qualified electrician from another jurisdiction or holds a tradesman qualifications certificate in the construction electricians trade issued by an authority outside the Yukon for such period as will enable him to obtain a qualification certificate in the construction electricians trade pursuant to the Apprentice Training Act, but no such temporary certificate will be valid for any period in excess of three months.

(3) The holder of a temporary certificate issued pursuant to this section may work as, and hold himself out as, a qualified electrician for the period of validity of the certificate.

Qualifications for employer's staff and monthly report

17.(1) No employer may employ on his staff any person to take charge of an electrical installation or install electrical equipment therein, except a person who is a qualified electrician.

(2) Notwithstanding subsection (1), no employer may order or permit any apprentice or other employee or person, not being a qualified electrician, to perform electrical work to which this Act applies, except as an assistant to and under the continuous supervision of a qualified electrician engaged upon the same piece of work.

(3) Every employer shall on or before the tenth day of each month send or deliver to the chief inspector a report of all electrical work done on his premises during the preceding month.

(4) The report shall be signed by the employer or his designated agent.

Public utilities and equipment manufacturers

18.(1) An employee of a recognized electric power or communications public utility may do electrical work connected with the installation, alteration, repair or maintenance of equipment necessary for the operation of the public utility which has been assigned to him as part of his duties by the public utility.

(2) A manufacturer of electrical equipment or his employee may do electrical work necessary for the manufacture or repair of such equipment in the manufacturer's factory or shop, but shall not connect, alter or maintain electrical equipment in the factory which is not intended to be incorporated into the manufactured products of the factory.

(3) A manufacturer of electrical equipment or his employee may do electrical work involved with the testing and adjustment of electrical equipment manufactured at this factory, but shall not connect such equipment.

Exceptions

19.(1) The following work is not prohibited by this Act:

- (a) the connecting or disconnecting of electrical devices approved for detachable connection, by means of a flexible cord and approved attachments plug cap, to corresponding approved receptacles properly connected to an electrical power supply circuit operating at not more than 300 volts, except where the device is a component of a system from which its disconnection may create a hazard;
- (b) the routine replacement of lamps, switches or receptacles connected to conductors of existing branch circuits protected by over-current devices rated or set at not more than 30 amperes, in buildings served at not more than 150 volts to ground;
- (c) the rewinding and repair of electric motors subject to the Canadian Electrical Code Current Edition but not the connection or reconnection of such devices;
- (d) the replacement or repair of electrical components in a fuel burning appliance by an oil burner mechanic who holds in respect of that appliance certification of competency under the Apprentice Training Act;
- (e) the replacement or repair of electrical components in equipment by an engineer who holds in respect of that equipment certification of competency under the Boiler and Pressure Vessels Act.

(2) In subsection (1), “fuel burning appliance” means a device to convert hydrocarbon fuel by combustion into energy, and includes all components, controls, piping, and wiring, whether mechanical or electrical, needed for proper functioning of the device.

Licences non-transferable

20. Licences shall be non-transferable and no licence holder shall permit his licence to be used or displayed by any person other than himself or his employee.

Proof of licence

21. The holder of a licence shall produce such licence at the request of an inspector.

Failure to produce licence

22. A person who fails to produce the licence at the request of an inspector is prima facie presumed not to be the holder of a licence.

Display of licence

23. The holder of every licence referred to in section 13 shall prominently display it in a place of business or employment or, where not so displayed, keep it available for ready production upon the request of an inspector.

Offence and penalty

24.(1) A person who contravenes a provision of this Act or the regulations, or who refuses or neglects to comply with an order made by the chief inspector under this Act or the regulations commits an offence and is liable on summary conviction to a fine of up to \$500 and, in the case of a continuing offence, to a further fine of \$100 for each day during which the offence continues after the first day or part of a day, and in default of payment, to imprisonment for up to one month.

(2) A court which convicts a person of a contravention of this Act or a refusal or neglect to obey an order made pursuant to this Act may order such person to comply with any provision of this Act or the regulations or to carry out the order of the chief inspector as the case may be within such time as may be fixed by the court, and any breach of such an order of the court shall constitute a fresh offence pursuant to this Act.

Business licence

25. Subsection 8(1) of the Business Licence Act shall not apply in respect of a licence obtained pursuant to this Act.

Regulations

26. The Commissioner in Executive Council may make such regulations as he deems necessary for carrying out the purposes and provisions of this Act.

CHAPTER 51

ELEVATOR AND FIXED CONVEYANCES ACT

Interpretation

1. In this Act,

“fixed conveyance” means a fixed system or device for conveyance to which this Act applies;

“inspector” means an inspector appointed under section 3;

“owner” includes a lessee of a fixed conveyance.

Application of Act

2.(1) This Act applies to passenger elevators, freight elevators, dumbwaiters, escalators, inclined passenger lifts, belt lifts, aerial tramways, chairlifts, ski tows, rope tows, mechanized parking garages, speed-walks and speedramps.

(2) The Commissioner in Executive Council may designate any fixed conveyor system, whether vertical, inclined or horizontal, to be a fixed conveyance to which this Act applies or does not apply.

Inspector

3. The Commissioner in Executive Council may appoint inspectors for the purposes of this Act.

Powers of inspector

4.(1) An inspector may, in the execution of his duties under this Act and for enforcing this Act and the regulations,

- (a) gain access to and inspect at all reasonable times by day or night any fixed conveyance,
- (b) enter, pass over or through any land, building or premises for the purpose of this Act,
- (c) demand the production of any register, certificate, plan or document pertaining to any fixed conveyance and may examine and copy the same,
- (d) make such examination and inquiry as may be necessary to ascertain whether the requirements of this Act and the regulations are being complied with,
- (e) for the purpose of any investigation, inquiry or examination made by him under the authority of this Act, administer an oath and summon any person to give evidence and produce plans, specifications, files and records, and
- (f) exercise such other powers as are necessary for carrying out the provisions of this Act and the regulations.

(2) All plans, specifications, files and records produced and inspected pursuant to paragraph (1)(c) or (e) shall be treated by the inspector as confidential, except for the purpose of this Act.

(3) The owner of a fixed conveyance and his agents and servants shall furnish any necessary assistance required by an inspector for the exercise of his duties under this Act and the regulations.

(4) Where a fixed conveyance is installed in a private residence and an inspector has inspected the completed installation and found it to be in accordance with this Act and the regulations, he will give his approval thereof in writing and thereafter the Act does not apply to that fixed conveyance, except where

- (a) the owner or occupier of the residence requests an inspection,
- (b) any alteration is proposed to be made to the conveyance, or
- (c) the Commissioner in Executive Council orders an inquiry under section 13.

Certificate of appointment of inspector

5. An inspector shall be furnished with a certificate of his appointment and shall, if required, produce his certificate on applying for admission to any premises.

Persons accompanying inspector

6. When he deems it necessary, an inspector may take with him into any premises, an engineer or other specialist.

Waiver of responsibility

7. An inspector or a person lawfully accompanying an inspector is not required to sign or give any release or waiver of responsibility before entering any place pursuant to this Act and any such release is void.

Liability of inspector

8. While acting pursuant to this Act or the regulations, an inspector or a person lawfully accompanying an inspector is not liable for any injury, loss or damage occasioned thereby.

Approval of fixed conveyances

9.(1) The Executive Council Member may, subject to the regulations, approve or refuse to approve different types of fixed conveyances and any component parts thereof.

(2) Where any type of fixed conveyance or component part submitted for approval requires special examination the person making the submission may be required to supply all the necessary materials, parts, plans and specifications and to pay such fees as may be fixed by regulations.

(3) No person shall

- (a) install a fixed conveyance, or
- (b) install in or attach to a fixed conveyance any component part,

of a type that the Executive Council Member has refused to approve.

Direction for remedial action

10.(1) Where an inspector notes any condition that contravenes a regulation or is otherwise inconsistent with good operating practices relating to a fixed conveyance, he may bring the condition to the attention of the owner or his agent, who shall take such remedial action as may be required by the inspector within the specified time.

(2) Where an inspector notes an unsafe condition that in his opinion presents an immediate hazard to persons using a fixed conveyance, the inspector may direct that the conveyance be taken out of service until such time as the hazard is removed and the owner or his agent shall comply with the direction of the inspector.

Appeal

11. A person affected by a decision of an inspector may appeal to the Executive Council Member.

Notice of accident

12. An owner of a fixed conveyance or his agent shall

- (a) notify an inspector as soon as possible after the happening of any accident involving the fixed conveyance that results in death or serious injury or damage to equipment, and
- (b) if requested by an inspector, submit as early as possible, a full report in writing of any accident involving the fixed conveyance that results in death or injury or damage to equipment.

Investigation of accident

13.(1) Any accident involving a fixed conveyance that results in death, injury or damage to equipment may be investigated by an inspector.

(2) The Commissioner in Executive Council may cause an inquiry to be held into any accident involving a fixed conveyance that results in death or injury or damage to equipment.

Protection of evidence

14.(1) Until permission is received from an inspector, no unauthorized person shall

- (a) interfere with the scene of an accident involving a fixed conveyance save to prevent further damage or to remove injured or deceased persons or hazards, or
- (b) remove or tamper with any safety device, guard or other protective equipment.

(2) For the purposes of investigation and inquiry and to prevent it being lost or misplaced, an inspector may remove from the scene of an accident any article, part or thing that in his opinion may have caused or contributed in any way to the accident.

(3) The powers given to an inspector by this section shall not be construed as derogating from or interfering with the powers and duties of peace officers and coroners.

Approval of proposed alterations

15.(1) Before erecting or altering a fixed conveyance, the owner or his agent shall submit such relevant plans, blueprints, drawings and specifications as may be required by an inspector and no person shall

- (a) construct or alter the conveyance, or
- (b) commence the construction or alteration,

until such time as the plans, blueprints, drawings and specifications have been certified as approved pursuant to subsection (2).

(2) If the plans, blueprints, drawings and specifications provide for the fulfillment of the requirements of this Act and the regulations, an inspector authorized shall certify the plans, blueprints, drawings and specifications as approved.

Posting of certificate or licence

16. A certificate or licence issued pursuant to this Act or the regulations shall be posted by the owner or his agent as directed by an inspector.

Posting of notices

17. The Executive Council Member may approve the issuing of notices or bulletins dealing with the use of fixed conveyances and the owner or his agent shall post such notices or bulletins as directed by an inspector.

Removal or defacing of bulletins prohibited

18. No unauthorized person shall remove, alter or deface any certificate, licence or notice or bulletin posted pursuant to this Act or the regulations.

Regulations

19. The Commissioner in Executive Council may make regulations

- (a) with respect to the construction, maintenance and use of any type or class of fixed conveyance;
- (b) prescribing the nature and frequency of inspections to be made of fixed conveyances or any type or class thereof;
- (c) prescribing the requirements for or the conditions under which approval may be given pursuant to sections 9 and 15;
- (d) prohibiting or restricting the use of any type or class of fixed conveyance, either generally or for particular purposes;
- (e) respecting the issue of certificates and licences, including the conditions under which they may be granted, suspended, revoked or transferred;
- (f) prescribing the fees payable in respect of any approval of plans, blueprints, drawings and specifications, or otherwise, in respect of inspections and in respect of the issue of certificates and licences, and the persons by whom the fees are to be paid;
- (g) respecting such other matters as may be necessary for carrying out the intent of this Act, including the adoption of all or part of any safety code, order, regulations or standard.

Commencement of prosecution

20.(1) No prosecution shall be commenced for an offence against this Act, unless it is commenced by

- (a) an inspector,
- (b) a member of the Royal Canadian Mounted Police, or
- (c) any other person authorized in writing by the Executive Council Member to do so.

(2) No prosecution for an offence against this Act shall be commenced after the expiration of one year from the date of the commission of the offence.

Offence and penalty

21.(1) Every person who

- (a) violates a provision of this Act or of any regulation or rule made thereunder, or
- (b) fails to obey an order or direction given thereunder by the Executive Council Member or an inspector,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$1000.

(2) A person who fails to obey a written order or direction given by the Executive Council Member or an inspector is, in addition to the fine prescribed in subsection (1), liable on summary conviction to a fine not exceeding \$100 for each day on which he fails to obey that order or direction.

(3) Where an offence is one that might have endangered the safety of persons or caused serious personal injury or a dangerous accident and was wilfully committed by the act, default or negligence of the person guilty thereof, that person is, upon summary conviction, liable either in substitution for or in addition to any pecuniary penalty that may be imposed, to imprisonment for a term not exceeding three months.

CHAPTER 52

EMERGENCY MEDICAL AID ACT

Interpretation

1. In this Act, “medical practitioner” includes a person who is registered as a medical practitioner in any other jurisdiction and entitled to practise medicine in that jurisdiction.

Liability for provision of emergency medical aid

2. Where, in respect of a person who is ill, injured or unconscious as a result of an accident or other emergency,

- (a) a medical practitioner voluntarily
 - (i) renders emergency medical services or first aid assistance, and
 - (ii) the services or assistance are not rendered at a hospital or other place having adequate medical facilities and equipment, or
- (b) a person other than a medical practitioner voluntarily renders emergency first aid assistance,

the medical practitioner or other person is not liable for damages for injuries to or the death of that person alleged to have been caused by an act or omission on his part in rendering the medical services or first aid assistance, unless it is established that the injuries or death were caused by gross negligence on his part.

CHAPTER 53

EMPLOYMENT AGENCIES ACT

Interpretation

1. In this Act,

“employment agency” means the business of carrying on an agency, bureau, office, organization or system, the purpose or object of which is

- (a) to provide or find or assist in providing or finding, or to provide facilities for finding, work or employment for persons seeking it, or
- (b) to put employers and persons seeking employment into communication with one another,

and includes the carrying on of the business of counselling or testing persons for a fee, reward or other remuneration to assist them in securing employment;

“registrar” means the registrar of employment agencies appointed under this Act.

Exemptions

2.(1) This Act does not apply to

- (a) an employment office maintained by an employer as part of his business organization for the exclusive purpose of engaging workers for the business, or to the employer operating such an employment office,
- (b) a trade school registered under the Trade Schools Regulation Act or to a person operating such a trade school, in respect of securing or endeavouring to secure employment for the students or graduates of the trade school,
- (c) a trade union within the meaning of the Fair Practices Act, or
- (d) any non-profit society or organization excluded by order of the Commissioner in Executive Council pursuant to subsection (2).

(2) Where the Commissioner in Executive Council is satisfied in respect of any non-profit society or organization that the society or organization provides or finds or assists in providing or finding or provides facilities for finding work or employment for its members or members of their families, he may by order exclude the society or organization from the provisions of this Act.

Appointments

3. The Commissioner in Executive Council may appoint a registrar, deputy registrar and such officers as he may consider necessary for the purpose of carrying out the provisions of this Act.

Registration

4. No person shall operate an employment agency in the Yukon unless he is registered under this Act.

Application for registration of agency

5. Where a person

- (a) applies in the prescribed form,
- (b) pays the prescribed fee,
- (c) furnishes such security as is prescribed by the regulations, and
- (d) complies with the qualifications prescribed by the regulations,

the registrar may register him and issue a certificate of registration, accordingly.

Display of certificates

6. Every person registered pursuant to section 5 shall display his certificate of registration in a conspicuous place in the premises in which he carries on business.

Expiration and renewal of certificate

7. Every registration under this Act shall expire on March 31 next following the date of registration and a person who is registered may make application to the registrar for the renewal of his registration.

Prohibition

8. No person shall directly or indirectly demand or collect any fee, reward or other compensation

- (a) from a person who is seeking employment, or information respecting employers wanting employees, or
- (b) from a person for securing or endeavouring to secure employment for him, or for providing him with information respecting any employer wanting an employee.

Strike or lockout

9. Where a legal strike or lockout is in progress, no employment agency shall, knowingly,

- (a) send or assist in sending any person, or
- (b) cause any person to be sent

to take employment in place of an employee who is on strike or locked out without informing the person of the existence of the strike or lockout.

Penalty

10. Every person who contravenes any provision of this Act or the regulations commits an offence and is liable, on summary conviction, to a fine not exceeding \$500, or to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

Regulations

11. The Commissioner in Executive Council may make regulations

- (a) prescribing the qualifications of applicants for registration;
- (b) classifying employment agencies;
- (c) prescribing the nature and amount of the security to be furnished by employment agencies or any class thereof;
- (d) prescribing the records, books and accounts that shall be kept by employment agencies or any class thereof;

- (e) requiring, providing for and prescribing the annual or other returns that shall be made to the registrar by employment agencies or any class thereof;
 - (f) fixing the fees to be paid for registration of employment agencies or any class thereof;
 - (g) providing for the inspection of employment agencies;
 - (h) prescribing forms and providing for their use;
 - (i) generally, for the purpose of carrying out the provisions of this Act.
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CHAPTER 54

EMPLOYMENT STANDARDS ACT

PART 1

INTERPRETATION AND APPLICATION

Interpretation

1.(1) In this Act,

“board” means the Employment Standards Board established under section 85;

“collective agreement” means an agreement in writing between an employer or an employer’s organization acting on behalf of an employer, on the one hand, and a trade union acting on behalf of the employees of the employer in collective bargaining or as a party to an agreement with the employer or employer’s organization, on the other hand, containing terms or conditions of employment of the employees including provisions with reference to rates of pay and hours of work;

“conditions of employment” means all matters and circumstances in any way affecting employers and employees in respect of the employment relationship;

“day” means any period of 24 consecutive hours after the commencement of work;

“director” means the employment standards officer who is appointed by the Executive Council Member as the director of employment standards;

“employee” includes

- (a) a person, including a deceased person, in receipt of or entitled to wages for employment or services performed for another,
- (b) a person being trained by an employer for the purpose of the employer’s business, and
- (c) a person who was an employee;

“employer” means a person who employs an employee and includes a former employer;

“general holiday” means New Year’s Day, Good Friday, Victoria Day, Canada Day, Discovery Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day and includes any day substituted for any such general holiday pursuant to subsection 28(2) or 35(1);

“member of the employer’s family”, in respect of an employer, means the employer’s spouse, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother or half-sister, and a person who stands in the place of parent to the employer or to whom the employer stands in the place of parent, whether or not there is any degree of consanguinity between that person and the employer;

“qualified medical practitioner” means a person entitled to engage in the practice of medicine under the laws of the Yukon or a province;

“overtime” means hours of work in excess of the standard hours of work;

“pay period” means any period of employment, not exceeding 16 consecutive calendar days, established by the employer for the computation of wages;

“standard hours of work” means the hours of work described in section 6;

“trade union” means an organization of employees formed for purposes that include the regulation of relations between employers and employees;

“wages” includes salaries, commissions, compensation or seasonal bonuses paid or payable by an employer to an employee for his services or labour, money required to be paid by an employer to an employee under this Act or by order of the board, and money required to be paid for an employee’s benefit under a contract of employment or a collective agreement to a fund, insurer or other person, but does not include gratuities, money that is paid at the discretion of the employer and that is not related to hours of work, production or efficiency, travelling allowances or expenses, or other expenses;

“week” means, in relation to Part 2, the period between midnight on Saturday and midnight on the immediately following Saturday.

(2) Where the employer is a corporation and its controlling shareholder is an individual, any person who bears to the controlling shareholder any relationship described in the definition of “member of the employer’s family” in subsection (1) shall be deemed to be a member of the employer’s family, and this Act shall apply to that person and to the corporation in the same way as it would if the controlling shareholder were the employer.

Application of the Act

2.(1) This Act applies to every employee employed in the Yukon and to the employer of every such employee.

(2) This Act does not apply to the Government of the Yukon or to the employees of the Government of the Yukon.

Pre-eminence of the Act

3. This Act applies notwithstanding any other law or any custom, contract or arrangement, whether made before or after the date on which this Act comes into force, but nothing in this Act shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to him than his rights or benefits under this Act.

**PART 2
HOURS OF WORK**

Application of this Part

4.(1) This Part does not apply to

- (a) an employee who is a member of the employer’s family,
- (b) a travelling salesperson,
- (c) an individual whose duties are primarily of a supervisory or managerial character,
- (d) a member or student of such professions as may be designated by the regulations as a profession to which this Part does not apply, and
- (e) such other persons or classes of persons as may be designated by the regulations as persons or classes of persons to which this Part does not apply.

(2) An individual to whom paragraph 4(1)(c) applies is not included in the application of this Part by reason only of the occasional performance of duties other than those of a supervisory or managerial character.

Disputes as to application of this Part

5. Subject to subsection 73(1) and section 102, where there is a dispute as to whether this Part applies in relation to any person or class of persons the matter shall be determined by the director.

Standard hours of work

6. Subject to this Part, the working hours of an employee shall not exceed eight hours in a day and 40 hours in a week.

Work in excess of standard hours

7. Subject to this Part, no employer shall cause or permit an employee to work in excess of the standard hours of work unless the employer complies with section 8.

Overtime pay

8.(1) Where an employer requires or permits an employee to work in excess of the standard hours of work, he shall pay to the employee one and one-half times his regular wages for all hours worked in excess of

- (a) eight in a day, or
- (b) 40 in a week, but excluding from this calculation hours worked in excess of eight in a day.

(2) Where a week contains a general holiday to which an employee is entitled,

- (a) the references to hours in a week in subsection (1) shall be reduced by eight hours for each general holiday in the week, and
- (b) in calculating the overtime hours worked by an employee in that week, no account shall be taken of hours worked by him on the general holiday.

Special cases

9.(1) Where, in the opinion of the director, the nature of the work justifies irregular distribution of an employee's hours of work, the director may order that the standard hours of work of that employee in a week may be averaged in respect of a period of two or more weeks in such manner and in such circumstances as may be prescribed in the order.

(2) Notwithstanding any other provision contained in this Part, where employees of an employer are represented by a trade union for the purpose of bargaining collectively, and the employer and the trade union so agree in writing, the director may order that the standard hours of work of those employees in a week may be averaged in respect of a period of two or more weeks, in such circumstances as may be prescribed in the order.

(3) The director may limit the duration of an order under subsection (1) or (2) to such period of time during which he considers the circumstances under which the order is made will continue to exist.

Short work weeks

10. Where the employees of an employer are represented by a trade union for the purpose of bargaining collectively and the employer and the trade union so agree in writing, or where employees of an employer are not so represented and the employer and a majority of the employees so agree in writing, the employees may work a maximum of 10 hours in any day over a period of four days in a week or 12 hours in any day over a period of three days in a week, as the agreement may specify, without requiring the employer to pay overtime pay pursuant to subsection 8(1) in respect of hours worked pursuant to the agreement in excess of eight hours in a day.

Days of rest

11.(1) Except as may be otherwise prescribed by the regulations, standard hours of work in a week shall wherever practicable be so scheduled and actually worked that each employee has at least two full days of rest in the week and wherever practicable Sunday shall be one of the normal days of rest in a week.

(2) Notwithstanding subsection (1), where the employer requires or permits the employee to work regularly in excess of the daily standard hours of work, the employer

- (a) may require the employee to work up to 28 continuous days without a day of rest, and
- (b) may require the employee to work up to seven more days continuous with the period of 28 days described in paragraph (a),

where the additional work is necessary in order to complete the project upon which the employee was employed during those 28 days.

(3) An employee who is required or permitted to work a work schedule under subsection (2) is entitled

- (a) to at least one day of rest for each continuous seven days of work, and
- (b) to take his accrued days of rest continuously with each other.

Eating periods

12.(1) An employer shall ensure that each employee has an eating period of at least one-half hour at intervals that will ensure that no employee will work longer than five consecutive hours without an eating period.

(2) For the purpose of computing the hours worked by an employee, the period allowed the employee for eating shall not be counted as hours worked unless the employee is required to work during those periods.

Rest periods

13.(1) Except for an emergency and subject to subsection (2), an employer shall ensure that each employee has a rest period of at least eight consecutive hours free from work between each shift worked.

(2) Where, on the application of an employer, the director is satisfied that the rest period of eight consecutive hours referred to in subsection (1) would impose an unreasonable hardship on the employer because of the specific circumstances surrounding a specific project or piece of

work, the director may order that the rest period be shortened to six consecutive hours for the period of time during which he considers the specific circumstances will continue to exist.

Split shifts

14. Where an employee works a split shift, the employer shall limit the employee's standard hours of work to the 12 hours immediately following commencement of his shift.

Order limiting hours of work

15. Where the director is satisfied after such inquiry as he considers adequate, that the hours of work of an employee are excessive or are detrimental to the employee's health or safety he may, by order,

- (a) require an employer to limit the daily or weekly hours of work or both to not less than eight in a day or 40 in a week,
- (b) require the employer to post and keep posted a copy of the order in a conspicuous place to which all employees have ready access to read the order, and
- (c) allow the employer to exceed the limit of hours of work of employees established under paragraph (a) under such conditions and for such periods of time as the director considers appropriate.

PART 3 MINIMUM WAGES

Rate

16. Subject to this Part, an employer shall pay to each employee who is 17 years of age or over a wage at the rate of not less than the rate established by the Employment Standards Board pursuant to section 18 or not less than the equivalent of that rate for the time worked by the employee.

Determination of minimum wages

17.(1) The board may, from time to time,

- (a) fix on the basis of time, the minimum wage to be paid by employers to employees, and
- (b) fix the amount by which the wages of an employee may be reduced for any pay period below the minimum wage, either by deduction from wages or by payment from the employee to the employer, where board or lodging or both are furnished by or on behalf of an employer to an employee, if the arrangement is accepted by such employee.

(2) Where on the application of the director or an employer, employee or trade union representing employees directly affected by the matter, the board deems it necessary, it may

- (a) require employers to pay employees who report for work at the call of the employer, wages for such minimum number of hours as may be prescribed whether or not the employee is called upon to perform any work after so reporting for work,

- (b) fix the maximum price to be charged for board, whether full or partial, supplied by or on behalf of an employer to an employee, and the maximum deduction to be made in respect of board from the wages of the employee by the employer,
- (c) fix the maximum price to be charged for living quarters, either permanent or temporary, furnished by or on behalf of an employer to an employee, whether or not such quarters are self-contained and whether or not the employer retains general possession and custody of them, or the maximum deduction to be made in respect of the quarters from the wages of the employee by the employer,
- (d) fix the charges or deductions for furnishing uniforms or other articles of wearing apparel that an employer may require an employee to wear, and require an employer in any specified circumstances to provide, maintain or launder uniforms or other articles of wearing apparel that he requires an employee to wear,
- (e) fix the charges or deductions for furnishing any tools or equipment that an employer may require an employee to use and for the maintenance and repair of any such tools or equipment,
- (f) specify the circumstances and occupations in which persons under 17 years of age may be employed by an employer, fix the conditions of such employment and prescribe the minimum wage for such employment, and
- (g) exempt, upon such terms and conditions and for such periods as are considered advisable, any employer from the application of section 16 in respect of any class of employees who are being trained on the job, if the training facilities provided and used by the employer are adequate to provide a training program that will increase the skill or proficiency of an employee.

(3) On an application pursuant to subsection (2) the board may expand the scope of its inquiry into the matter to include all employers and employees or one or more classes of employers or employees.

(4) Where the wages of an employee are computed and paid on a basis other than time or on a combined basis of time and some other basis, the board may, by order

- (a) fix a standard basis of work to which a minimum wage on a basis other than time may be applied, and
- (b) fix a minimum rate of wage that in its opinion is the equivalent of the minimum rate set forth in paragraph (1)(a).

(5) Subject to this Part, an employer shall pay to each employee who is paid on a basis other than time a wage at a rate not less than the minimum rate fixed by the order under subsection (4).

(6) No employer shall employ a person under 17 years of age

- (a) in such occupations as may be prescribed by the regulations,
- (b) at a wage less than the minimum wage prescribed by the regulations for the occupation in which such person is employed, or
- (c) contrary to such conditions as may be prescribed by the regulations.

(7) Any order of the board made pursuant to this section shall not come into effect until it has been approved by the Commissioner in Executive Council.

PART 4

ANNUAL VACATIONS

Interpretation

18. In this Part,

“vacation pay” means four percent of the wages of an employee during a year of employment in respect of which he is entitled to a vacation;

“year of employment” means the continuous employment of an employee by one employer for a period of 12 consecutive months beginning with the date the employment began or any subsequent anniversary date thereafter.

Application of this Part

19.(1) This Part applies to all employees, including employees who are employed on a part-time, seasonal or temporary basis.

(2) This Part does not apply to an employee who is a member of the employer’s family.

Entitlement to vacation with pay

20.(1) Subject to this Part, every employee is entitled to and shall be granted a vacation with vacation pay of at least two weeks in respect of every completed year of employment.

(2) Vacation pay shall be deemed to be wages.

Time for vacation and payment

21. The employer of an employee who under this Part has become entitled to a vacation with vacation pay

- (a) shall grant to the employee the vacation to which he is entitled, which shall begin not later than ten months immediately following the completion of the year of employment for which the employee became entitled to the vacation, and
- (b) shall, at least one day before the beginning of the vacation, or at such earlier time as the regulations prescribe, pay to the employee the vacation pay to which he is entitled in respect of that vacation.

Agreement between employer and employee

22.(1) An employer and employee may enter into a written agreement whereby the employee will not take the annual vacation to which he is entitled under section 20.

(2) Where an employer and an employee enter into a written agreement pursuant to subsection (1), the employer is not subject to the provisions of section 21 with respect to that employee.

(3) Where an agreement referred to in subsection (1) is entered into, the employer shall, within ten months after the date on which the employee became entitled to the vacation, pay to the employee in addition to any other amount due to him, his vacation pay for the year immediately preceding the date on which he became entitled to the vacation.

Vacation including general holiday

23. Where a general holiday occurs during the vacation granted to an employee pursuant to this Part, the vacation to which the employee is entitled under this Part shall be extended by one day, and the employer shall pay to the employee, in addition to the vacation pay, the wages to which the employee is entitled for that general holiday.

End of employment before end of year

24.(1) Where the employment of an employee by an employer is terminated before the completion of the employee's year of employment, the employer shall, within three days from the date of termination, pay to the employee

- (a) any vacation pay then owing by him to the employee under this Part in respect of any prior completed year of employment, and
- (b) four percent of the wages of the employee during the completed portion of his year of employment.

(2) Notwithstanding paragraph (1)(b), an employer is not required to pay an employee any amount under that paragraph unless the employee has been continuously employed by him for a period of ten working days or more.

Transfer of employer's business

25.(1) In this section, "transfer" in relation to a business includes a sale, lease or other disposition of the business and a merger of the business with another business.

(2) For the purposes of this Part, where an employer employs an employee in connection with a business, and the employer transfers the business to another employer, the employment of the employee by the two employers before and after the transfer of the business shall, notwithstanding the transfer, be deemed to be continuous with the employer to whom the business is transferred.

Regulations

26. The Commissioner in Executive Council may make regulations for carrying out the purposes and provisions of this Part and, without restricting the generality of the foregoing, may make regulations

- (a) prescribing the notices to be given to or by employees of the times when vacations may be taken;
- (b) defining the absences from employment that shall be deemed not to have interrupted continuity of employment;
- (c) providing for the application of this Part where, owing to illness or other unavoidable circumstances, an employee has been absent from his employment.

PART 5

GENERAL HOLIDAYS

Interpretation

27.(1) In this Part,

“continuous operation” means an operation or service normally carried on without regard to Sundays or public holidays.

(2) For the purposes of this Part, a person is deemed to be in the employment of another person when he is available at the call of such other person whether or not he is called upon to perform any work.

Entitlement to holidays with pay

28.(1) Subject to this Part, every employer shall give to each of his employees a holiday with pay in respect of every general holiday falling within any period of their employment.

(2) Where a general holiday falls on a day that is a non-working day for an employee, the employee is entitled to and shall be granted a holiday with pay on the working day immediately following the general holiday.

Calculation of wages for holidays with pay

29.(1) Subject to subsection (2),

- (a) an employee whose wages are calculated on a weekly or monthly basis shall not have his weekly or monthly wages reduced for a week or month in which a general holiday occurs by reason only of his not working on the general holiday,
- (b) an employee whose wages are calculated on a daily or hourly basis shall, for a general holiday on which he does not work, be paid at least the equivalent of the wages he would have earned at his regular rate of wages for his normal hours of work, and
- (c) an employee whose wages are calculated on any basis other than a basis referred to in paragraphs (a) or (b) shall, for a general holiday on which he does not work, be paid at least the equivalent of his daily wages, based upon the average of his daily wages, exclusive of overtime or bonus, for the week in which such general holiday occurs.

(2) An employee who works less than the standard hours of work or who works irregular hours shall be paid at least the equivalent of the wages he would have earned for the average number of hours he worked on each working day during the two-week period immediately preceding the week in which the general holiday falls.

Calculation of wages for working on holiday

30. Subject to section 35, an employee who is required to work on a day in respect of which he is entitled under this Part to a holiday with pay shall be paid, in addition to his regular payment made in accordance with section 29, at a rate at least equal to the applicable overtime rate.

Substitution of other non-working day

31. An employee who is not required to work on a general holiday shall not be required to work on another day that would otherwise be a non-working day in the week in which that holiday occurs, unless he is paid at a rate at least equal to the applicable overtime rate.

Holiday pay is wages

32. Pay granted to an employee in respect of a general holiday on which he does not work shall be deemed to be wages.

Exceptions

33. No employee is entitled to be paid in respect of a general holiday on which he does not work

- (a) where the general holiday occurs during the first 30 days of his employment by an employer,
- (b) where he did not report for work on that day after having been called to work on that day, or
- (c) where, without the consent of his employer, he has not reported for work on either his last regular working day preceding or his first regular working day following the general holiday, except where his absence was permitted by this Act.

Custodial work, essential services and continuous operations

34. Where an employee employed in or in relation to custodial work, essential services or a continuous operation is required to work on a day that is a holiday under this Part, he shall, in addition to his regular rate of pay for the hours worked by him on that day,

- (a) be paid not less than the applicable overtime rate for all hours worked by him on that day, or
- (b) be given a holiday with pay in accordance with section 28 at some other time which may be added to his annual vacation or granted as a holiday with pay at a time convenient to him.

Agreement between employer and employees

35.(1) Notwithstanding any other provision contained in this Part, where employees of an employer are represented by a trade union for the purpose of bargaining collectively and the employer and the trade union so agree in writing, or where employees of an employer are not so represented and the employer and a majority of the employees so agree in writing, a general holiday shall be observed by such employees on a specific working day other than the general holiday.

(2) Where an employer and a trade union or a majority of employees, as the case may be, make an agreement pursuant to subsection (1) with respect to a general holiday, the working day specified in the agreement shall be deemed to be the general holiday for the purposes of this Part.

PART 6

MATERNITY LEAVE

Entitlement to leave

36.(1) An employee is entitled to a leave of absence from work, without pay, in accordance with subsection (2) where the employee

- (a) has completed 12 months of continuous employment by an employer,
- (b) submits to her employer a written request for leave under this subsection at least four weeks before the day on which she intends to commence such leave, and
- (c) provides her employer with a certificate of a qualified medical practitioner stating that she is pregnant and estimating the probable date of birth of the child.

(2) The leave of absence to which an employee is entitled pursuant to subsection (1) shall consist of a period of 17 weeks or such shorter period as the employee may request and is agreed to by her employer.

(3) An employee who has, pursuant to subsection (1), requested a leave of absence for a period may, with the consent of her employer, resume employment before the expiration of that period.

(4) Where an employee gives birth or the pregnancy is terminated before a request for leave is made under subsection (1), the employer shall, on the employee's request and on receipt of a certificate of a qualified medical practitioner stating that the employee has given birth or the pregnancy terminated on a specific date, grant the employee a leave of absence from work, without pay, for a period of six consecutive weeks, or such shorter period as the employee may request, commencing on the specified date.

Maternity leave at request of employer

37.(1) An employer may, at any time within the period of six weeks preceding the probable date of birth of the child, require an employee to commence a leave of absence under section 36.

(2) Where the duties of the employee cannot reasonably be performed because of the pregnancy, an employer may at any time, with the consent of the director, require an employee to commence a leave of absence under section 36.

(3) Where an employer requires an employee to commence a leave of absence pursuant to subsection (1), the provisions of this Part apply with all necessary changes to that leave of absence.

Continuous service and transfer of business

38.(1) The services of an employee who is absent from work in accordance with this Part shall be considered continuous for the purpose of this Act.

(2) Section 25 applies to this Part.

Reinstatement on termination of leave

39.(1) An employee who resumes employment on the expiration of the leave of absence granted in accordance with this Part shall be reinstated in all respects by the employer in the position occupied by her on the date such leave commenced, or in a comparable position.

(2) An employer who reinstates an employee pursuant to subsection (1) shall pay the employee not less than the wages and benefits that had accrued to her on the date the leave of absence commenced and all increments to wages and the benefits to which the employee would have been entitled had the leave not been taken.

(3) Where the employer has suspended or discontinued operations during the leave of absence granted under this Part and has not resumed operations on the expiry of the leave of absence, the employer shall, on resumption of operations and subject to any seniority provisions in a collective agreement, comply with subsection (1).

Termination or alteration of employment

40. An employer shall not terminate an employee, or change a condition of employment of an employee without the employee's written consent because of an absence authorized by this Part or because of the employee's pregnancy, unless the employee has been absent for a period exceeding that permitted under this Part.

Contravention of this Part

41. Where the director is satisfied that an employer has contravened this Part, he may make one or more orders requiring the employer to do one or more of the following:

- (a) comply with this Part;
- (b) remedy or cease doing an act;
- (c) reinstate an employee and pay her any wages lost by reason of the contravention;
- (d) instead of reinstating her, pay an employee compensation in respect of wages lost by reason of the contravention.

PART 7

EQUAL PAY

Sex discrimination

42. No employer or person acting on behalf of an employer shall discriminate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee, or vice versa, employed by him for similar work performed in the same establishment under similar working conditions and the performance of which requires similar skill, effort and responsibility, except where such payment is made pursuant to

- (a) a seniority system,
- (b) a merit system,
- (c) a system that measures earnings by quality or quantity of production, or
- (d) a differential based on any factor other than sex.

Reduction of pay

43. No employer shall reduce the rate of pay of an employee in order to comply with section 42.

Actions by organizations

44. No organization of employers or employees, as the case may be, or its agents shall cause or attempt to cause an employer to pay his employees rates of pay that are in contravention of section 42.

Determination of money owing to employee

45. Where an employer has not complied with section 42 the director may determine the amount of money owing an employee and such amount shall be deemed to be unpaid wages.

PART 8

TERMINATION OF EMPLOYMENT

Interpretation

46. In this Part,

“temporary layoff” means an interruption of an employee’s employment by an employer for a period

- (a) not exceeding 13 weeks of layoff in a period of 20 consecutive weeks, or
- (b) exceeding 13 weeks of layoff, where the employer recalls the employee to employment within a time fixed by the director;

“terminate” includes

- (a) a layoff of an employee from employment, other than a temporary layoff, or
- (b) the alteration of a condition of employment that the director declares to be a termination of an employee’s employment.

Application of this Part

47.(1) This Part does not apply to

- (a) the construction industry,
- (b) a seasonal or intermittent undertaking that operates for less than six months in a year,
- (c) an employee discharged for just cause,
- (d) an employee whose employer has failed to abide by the terms of the employment contract,
- (e) an employee on temporary layoff,
- (f) an employee employed under a contract of employment that is impossible to perform due to an unforeseeable event or circumstance, or
- (g) an employee who has been offered and who has refused reasonable alternative employment by his employer.

(2) Section 25 applies to this Part.

(3) Sections 48 to 55 do not apply to an employee who is represented by a trade union for the purpose of bargaining collectively.

Notice required

48.(1) Where an employee has completed six consecutive months of employment with an employer,

- (a) the employer shall not terminate the employment of the employee without giving the employee one week's notice in writing, and
- (b) the employee shall not terminate his employment with the employer without giving the employer one week's notice in writing.

(2) The period of notice prescribed in subsection (1) shall not coincide with an employee's annual vacation.

Pay in lieu of notice

49. Where an employer terminates the employment of an employee without having given the notice required by section 48 he shall pay to the employee one week's wages at his regular rate of pay for his normal hours of work.

Deduction in lieu of notice

50.(1) Where an employee terminates his employment with an employer without having given the notice required by section 48, the employer may, with the consent of the employee, deduct from the wages due to the employee an amount equal to one week's wages of the employee at his regular rate of pay for his normal hours of work.

(2) Where an employee to whom subsection (1) applies does not consent to the deduction from his wages of the amount referred to in subsection (1), the employer shall pay that amount to the director.

(3) Where the director receives the payment of an amount pursuant to subsection (2), he shall investigate the matter and may make one or more of the following orders:

- (a) determining whether the employee was required by this Part to give notice pursuant to section 48;
- (b) to repay the amount to the employer;
- (c) to pay the amount to the employee where section 48 does not apply or where it would be inequitable in the circumstances to deprive the employee of his wages.

Temporary lay off becoming permanent

51.(1) Where an employer temporarily lays off an employee and the layoff exceeds a temporary layoff, the employee shall be deemed to have been terminated at the commencement of the temporary layoff and the employer shall pay the employee the amount required by section 49.

(2) Where subsection (1) applies to the temporary layoff of an employee by an employer, the employer may, with leave of the board, extend the period of the temporary layoff of the employee for such period of time as the board may order.

Changes to employment after notice

52. Where the notice referred to in section 48 has been given, the employer shall not, without the consent of the employee, alter his rate of wages or any other term or condition of his employment.

Continuation of employment after expiration of notice

53. Where an employee continues to be employed after the expiry of the period of notice given under section 48, the notice is without effect.

Termination by change of employment conditions

54. Where an employer has substantially altered a condition of employment and the director is satisfied that the purpose of the alteration is to discourage the employee from continuing in the employment of the employer, he may declare that the employer has terminated the employment of the employee.

Contraventions of this Part

55. Where the director is satisfied that an employer has contravened this Part, he may make one or more orders requiring the employer to do one or more of the following:

- (a) comply with this Part;
- (b) remedy or cease doing an act;
- (c) pay any wages lost by reason of the contravention.

Notice to director

56.(1) Any employer who terminates, either simultaneously or within any period not exceeding four weeks, the employment of a group of 25 or more employees shall, in addition to any notice required to be given by him under section 48, give notice to the director of his intention to do so

- (a) at least four weeks before the date of the termination where not more than 49 and not less than 25 employees are terminated,
- (b) at least eight weeks before the date of the termination where not more than 99 and not less than 50 employees are terminated,
- (c) at least 12 weeks before the date of the termination where not more than 299 and not less than 100 employees are terminated, and
- (d) at least 16 weeks before the date of the termination where 300 or more employees are terminated.

(2) Any employer who, either simultaneously or within any period not exceeding four weeks, places a group of 50 or more employees on temporary layoff shall give notice to the director of his intention to do so at least four weeks before the date of the temporary layoff.

PART 9**SPECIAL LEAVE WITHOUT PAY****Sick leave**

57.(1) No employer shall dismiss or lay off an employee solely because of his absence due to illness or injury if the period of absence does not exceed the employee's entitlement under subsection (2).

(2) An employee's entitlement under subsection (1) with respect to an employer is one day without pay for every month he has been employed by that employer less the number of days on which the employee has previously been absent due to illness or injury, but an employee's maximum net entitlement at any time under this subsection shall not exceed six days.

(3) An employer may request that an employee claiming to be entitled to the benefit of this Part produce the certificate of a qualified medical practitioner as a condition of his entitlement.

Bereavement leave

58.(1) In this section, "immediate family" means a spouse, parent, child, including a child to whom the employee stands in the place of parent, brother, sister, father-in-law, mother-in-law, common-law spouse and any relative permanently residing in the employee's household or with whom the employee resides.

(2) In the event of the death of a member of his immediate family, every employee is entitled to and shall be granted bereavement leave without pay for up to three days that occur during the period commencing the day of the death and ending two days after the funeral.

Contravention of this Part

59.(1) Where the director is satisfied that an employer has contravened this Part, he may make one or more orders requiring the employer to do one or more of the following:

- (a) comply with this Part;
- (b) reinstate an employee and pay him any wages lost by reason of the contravention;
- (c) instead of reinstating him, pay an employee compensation in respect of wages lost by reason of the contravention.

(2) Section 25 applies to this Part.

**PART 10
PAYMENT OF WAGES**

Employer's records

60.(1) Every employer shall keep records relating to the wages of his employees, their hours of work, and the general holidays, annual vacations and conditions of employment of his employees.

(2) Every employer shall keep the records referred to in subsection (1) in his principal place of business in the Yukon.

(3) The director may require an employer to supply any information referred to in subsection (1) by a notice to that effect served personally or sent by certified mail addressed to the last known address of the employer, and the employer shall supply the information within such reasonable time as is specified in the notice.

Employee's statement

61. Every employer shall, at least once in each month, furnish to each employee a statement in writing setting out

- (a) the period for which the payment of wages is made,
- (b) the number of hours for which payment is made,
- (c) the rate of wages,
- (d) details of the deductions made from the wages, and
- (e) the actual sum being received by the employee.

Time for payment of wages

62.(1) Subject to subsection (2) an employer shall, not later than seven days after the expiration of each pay period, pay to his employees all wages, other than vacation pay, owing to him in respect of such pay period.

(2) When the employment of an employee is terminated at any time, the employer shall pay to the employee within three days from the date of termination all wages then owing to him.

Method of payment

63. An employer shall pay all wages

- (a) in lawful currency of Canada,
- (b) by cheque, bill of exchange or order to pay, payable on demand, drawn on a savings institution, or
- (c) by deposit to the credit of the employee's account in a savings institution designated by the employee.

Disappearance of employee

64.(1) Where an employer is required to pay wages to an employee, and the employee cannot be found for the purpose of making such payment, the employer shall, within six months after the wages became due and payable, pay the wages to the director, and payment made to the director shall be deemed payment to the employee.

(2) Any amount received by the director under subsection (1) shall be trust money under the Financial Administration Act and shall be deposited in an account to be known as the Yukon Employment Standards Act Suspense Account and the director may authorize payment out of the account to, or on behalf of, any employee whose wages were held therein.

(3) The director shall keep a record of receipts and disbursements in respect of the Yukon Employment Standards Act Suspense Account.

(4) Where, upon the expiration of three years from the date the director received a payment under subsection (1), no claim has been made by the employee entitled thereto for such wages, the amount so held shall, upon the order of the Commissioner in Executive Council, be forfeited to and become the property of the Government of the Yukon.

PART 11
ADMINISTRATION AND GENERAL

INVESTIGATION OF COMPLAINTS

Posting of notices concerning this Act

65. The director may require an employer to post and keep posted a notice relating to the administration or enforcement of this Act or the regulations in a conspicuous place where it is most likely to come to the attention of his employees, and the employer shall post and keep posted any such notice.

Director and officers

66.(1) The Executive Council Member shall designate a person in the public service to be the director to administer this Act, who shall have such powers and perform such functions and duties as are conferred by this Act, including all of the powers of an employment standards officer.

(2) The deputy head of the department responsible for the administration of this Act shall designate persons in the public service to be employment standards officers to administer this Act, who shall have such powers and perform such functions and duties as may be conferred by this Act.

(3) For the purposes of enforcing this Act, the regulations, or any order made under this Act or the regulations, an employment standards officer shall conduct such investigations as may be necessary and may,

- (a) at any reasonable time, enter any place to which the public is customarily admitted,
- (b) with the consent of an occupant apparently in charge of the premises, enter any other place,
- (c) for his examination, request the production of documents or things that are or may be relevant to his investigation, and
- (d) upon giving a receipt therefor, remove from any place documents produced in response to a request under paragraph (c) for the purpose of making copies of them or extracts from them.

(4) An employment standards officer who removes documents pursuant to paragraph (3)(c) shall return those documents within 72 hours of the time when he removes them.

(5) Where any person who has or may have documents or other things that are or may be relevant to the investigation denies the investigating employment standards officer entry to any place, instructs the officer to leave any place, or impedes or prevents an investigation by the officer in a place, the employment standards officer may apply to a justice of the peace for a warrant to enter under subsection (7).

(6) If a person refuses to comply with a request of an employment standards officer for production of documents or things, the employment standards officer may apply to a justice of the peace for an order for the production of the documents or things.

(7) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there are reasonable grounds to believe it is necessary that a place being used as a dwelling, or to which entry has been denied, be entered to investigate any matter under this Act, he may issue a warrant to enter in the prescribed form authorizing entry by any employment standards officer named in the warrant.

(8) Where a justice of the peace is satisfied by evidence on oath or affirmation that a request under subsection (3) for production of a document or thing has been refused and that there are reasonable grounds to believe that production of the document or thing is necessary to investigate any matter under this Act, he may make an order for the production of documents in the prescribed form authorizing any employment standards officer named in the order to seize the documents or things described in the order.

(9) An order under subsection (8) for the production of documents or other things may be included in a warrant to enter issued under subsection (7) or may be made separately from such a warrant.

(10) A warrant issued under subsection (7) and any separate order made under subsection (8) shall be executed at such reasonable time as shall be specified in the warrant or order.

(11) Every warrant issued under subsection (7) and every separate order made under subsection (8) shall name a date on which it expires, which shall be a date not later than 14 days after it is issued or made.

(12) An employment standards officer shall be supplied by the Executive Council Member with a certificate of his authority, and on entering any place shall, if so requested, produce the certificate to the person who asks to see evidence of his authority.

Oaths and declarations

67. An employment standards officer may administer all oaths and take and receive all affidavits and statutory declarations.

Officer's determination of unpaid wages

68.(1) Where an employment standards officer finds that an employer has failed to pay an employee any wages due to the employee, the employment standards officer may determine the difference between the wages actually paid to the employee and the wages to which the employee is entitled and, if the amount of the difference is agreed to in writing by the employer and the employee, the employer shall, within three days after the date of the agreement, pay that amount to the employee or, if the director so orders, to the director who shall pay it over to the employee forthwith upon the receipt thereof by him.

(2) When an employer has made payment of the wages agreed to be due in accordance with subsection (1), no prosecution for failure to pay an employee the full wages to which he was entitled under this Act shall be instituted against the employer.

Complaints

69. A complaint under this Act shall be made to the director or an employment standards officer

- (a) in respect of wages alleged to be due, within one year after the last date on which payment of the wages was to be made to an employee and an employer failed to make it, or
- (b) in respect of other matters, within one year after the date on which the subject matter of the complaint arose.

Confidentiality

70. Where the complainant makes a request to the director or an employment standards officer that his name and identity be withheld, it shall not be disclosed to any person except where disclosure

- (a) is necessary for the purposes of proceeding under this Act, or
- (b) is considered by the director or the board to be in the public interest.

Investigation of complaints

71.(1) On receiving a complaint within the time permitted under section 69, the director or an employment standards officer shall investigate the complaint.

(2) Notwithstanding subsection (1), the director may

- (a) refuse to investigate a complaint where he considers that the complaint is frivolous, vexatious, trivial or has not been initiated in good faith, and
- (b) cease investigating a complaint where, in his opinion, there is insufficient evidence to substantiate the complaint.

(3) The director may institute an investigation without receiving a complaint where he considers it necessary to determine that the requirements of this Act are being complied with.

(4) The director may, on application to him or on his own motion, reconsider a decision, order, authorization or direction made by him and may vary or revoke his decision, order, authorization or direction.

(5) For the purposes of this Act, the director has the protection, privileges and powers of a board appointed under the Public Inquiries Act.

Reference to the board

72. Where the director is unable to resolve a complaint made under this Act he may refer the matter to the board for a decision.

Appeal to the board

73.(1) A person affected by a decision, order, authorization or direction made by the director may appeal to the board.

(2) An appeal must be made in writing and delivered to the director within 14 days after the date of the decision, order, authorization or direction of the director.

(3) Where the director receives an appeal pursuant to subsection (2), he shall forward the appeal forthwith to the board.

(4) An appeal may, with leave of the board, be taken after the expiration of the time set by subsection (2).

Decision on appeal

74. Where the board considers an appeal made to it under section 73, it may deny or allow the appeal in whole or in part and may make any order that it considers the director ought to have made.

CERTIFICATE FOR WAGES

Director's demand for unpaid wages of employee

75.(1) Where the director is satisfied that wages are due to an employee from an employer he may serve on the employer a demand that the employer pay to the director the amount of the wages due.

(2) An employer who receives a demand from the director pursuant to subsection (1) shall, within 14 days of the date on which the demand is served on him,

- (a) pay the amount set out in the demand, or
- (b) serve the director with a notice that he disputes or disagrees that the amount set out in the demand is due.

(3) Subject to subsection (4), where an employer fails to comply with paragraph (2)(a) or where the employer serves a notice under paragraph (2)(b) and the director is unable to resolve the dispute or disagreement, the director may issue a certificate showing the amount of wages that in his opinion is owed by the employer to the employee.

(4) The director shall not issue a certificate pursuant to subsection (3) with respect to wages due from an employer to an employee until

- (a) he has obtained a statutory declaration from the employee or his authorized representative setting out the particulars of the wages due,
- (b) a copy of the statutory declaration has been served on the employer, and
- (c) five days have elapsed since the date on which the statutory declaration was served on the employer.

(5) Where a certificate has been issued under subsection (3), the director shall forthwith serve the employer and each employee named in the certificate with a notice setting out

- (a) the amount of wages shown in the certificate that is owed or will become owing by the employer to the employee,
- (b) the date on which the certificate was issued, and
- (c) that if the employer or any employee named in the certificate desires to dispute or disagree with any amount shown in the certificate he or she may, within 14 days after the notice is served on him or her, appeal to the Employment Standards Board.

(6) The director may file a certificate issued under subsection (3) in the office of the clerk of the Supreme Court where

- (a) the time for appealing to the board under section 76 has expired and no such appeal has been filed with the board, or

- (b) an appeal to the board under section 76 has been finally disposed of, with or without a further appeal to the court as provided in that section.

(7) Where a certificate has been amended on appeal under section 76, the certificate shall not be filed under subsection (6) unless it shows the amendment.

(8) A certificate filed in the office of the clerk of the Supreme Court under subsection (6) shall be deemed to be a judgment of the court in favour of an employee named therein and may be enforced as a judgment of the court by the employee or by the director on behalf of the employee against the employer for the amount shown in the certificate.

Review of certificate

76.(1) Where the employer or an employee named in the certificate issued in accordance with subsection 75(3) disputes or disagrees with the amount of the wage that is shown in the certificate, the employer or employee may, within 14 days after being served with notice of the issuance of the certificate apply to the board to have the amount of the wages shown in the certificate reviewed.

(2) An application under subsection (1) shall be served on the director and the respondent employee or employer.

(3) The board shall begin its hearing within 14 days of receiving the application under subsection (1).

(4) Subject to subsection 90(1), the board shall determine the amount of the unpaid wages due and owing to an employee named in the certificate and shall make any amendment required to the certificate in order to make the certificate accord with its decision.

(5) Where an employer or an employee affected by the decision of the board made pursuant to subsection (4) disputes or disagrees with the decision, he may, within 14 days after being served with notice of the decision, apply to the Supreme Court to have the amount of wages shown in the certificate reviewed.

(6) An application under subsection (5) shall be made in accordance with the Rules of Court by originating application which shall be served on the board, the director and the respondent employee or employer.

(7) The Supreme Court shall consider the application and make such order as it deems appropriate, including any amendment required to the certificate to make the certificate accord with the order.

Certificate precludes lawsuit

77. After the director has issued a certificate pursuant to section 75 the employee shall not, without the written consent of the director, commence any other proceeding to recover unpaid wages unless the certificate is cancelled and not replaced under section 75.

Liability of directors of corporation

78.(1) Notwithstanding any other provision in this Act or any provision in any other Act, the directors of a corporation are jointly and severally liable to an employee of the corporation for all debts, not exceeding two months wages, due for services performed for the corporation and not exceeding 12 months vacation pay earned by the employee while they are the directors.

(2) Where wages that are owed to an employee by an employer that is a corporation are due and unpaid after 30 days from the date on which a certificate in respect of the unpaid wages is filed in the office of the clerk of the Supreme Court under section 75, the director may issue, against one or more of the directors of the corporation who, in the opinion of the director, are liable under subsection (1) for the unpaid wages of the employee named in the certificate, a supplementary certificate showing the amount of wages owed to the employee.

(3) Where a supplementary certificate is issued under subsection (2), the director shall forthwith serve the directors of the corporation against whom it is directed with a notice setting out

- (a) the amount of wages shown in the certificate that is owed to the employee,
- (b) the date on which the certificate was issued, and
- (c) a statement to the effect that if any person named in the certificate desires to dispute or disagree with any amount shown in the certificate he or she may, within 14 days after the notice is served on him or her, appeal to the Employment Standards Board.

(4) The director may file a supplementary certificate issued under subsection (2) in the office of the clerk of the Supreme Court where

- (a) the time for appealing to the board under section 76 has expired and no such appeal has been filed with the board, or
- (b) an appeal to the board under section 76 has been finally disposed of, with or without a further appeal to the court as provided in that section.

(5) A certificate filed under subsection (4) shall be accompanied by

- (a) a copy of the original certificate setting out the date on which notice of its issuance was served on the employer,
- (b) a statement to the effect that wages in a stated amount are due and unpaid by the employer after 30 days from the date on which the original certificate was filed, and
- (c) a list of the directors of the corporation who, in the opinion of the director, are liable under subsection (1) for the unpaid wages of the employee named in the certificate.

(6) Subsections 75(7) and (8), sections 76 and 77, and sections 79 to 84 apply, with the necessary changes, to supplementary certificate filed under subsection (2).

(7) Where a director pays a debt referred to in subsection (1) to an employee,

- (a) he is entitled to the same preference that the employee is entitled to under this Act for purposes of recovering the amount of the debt from the corporation, and

- (b) he is entitled to an assignment of any judgment in the Supreme Court in favour of the employee in respect of the debt.

Payment to director

79. Where a certificate has been filed under section 75 the amount of wages shown in the certificate in respect of the employees named therein shall be paid by the employer to the director and the receipt of the director for any money paid to him pursuant to this section is a good and sufficient discharge of the liability of the employer making the payment to the extent of the amount shown in the receipt.

Attachment of debts

80.(1) Where the director has reason to believe that any person, including the Government of the Yukon and its agencies, is or is about to become indebted to an employer named in a certificate made under section 75, the director may serve a demand in writing on that person requiring that the money otherwise payable by him to that employer be paid to the director to the extent of the liability of that employer pursuant to the certificate.

(2) Where a demand is made under subsection (1), the person to whom the demand is made

- (a) shall pay the amount of money demanded by the director or the amount due from the person to the employer, whichever is the lesser amount, to the director, and
- (b) shall not, except with the written consent of the director, pay the money demanded to any person other than the director.

(3) The director shall deposit any amount received under subsection (2) in the Yukon Employment Standards Act Suspense Account referred to in subsection 64(2), and he has the same powers and duties in relation thereto as prescribed in subsections 64(2) and (3).

(4) The receipt of the director for money paid under subsection (1) constitutes a good and sufficient discharge of the liability of the person to the employer named in the certificate to the extent of the amount referred to in the receipt.

(5) Where a demand made on a person pursuant to subsection (1) is not honoured and the director is satisfied the person is indebted to the employer named in the certificate, the director may enforce recovery of the amount as if it were unpaid wages and may issue a certificate showing the amount that in his opinion is owed by the person to the employer.

(6) A certificate issued pursuant to subsection (5) may be filed in the office of the clerk of the Supreme Court pursuant to subsection 75(6) and the other provisions of that section and this section and sections 77, 79, 82, 83 and 84 apply in respect of the certificate.

(7) Where a person upon whom a demand is made pursuant to subsection (1) denies being indebted to the employer named in the certificate, the director may require that person to produce such information as the director considers necessary to establish that there is no indebtedness.

Payment of attached money

81.(1) Where the director has received money pursuant to section 80, he shall forthwith send by certified mail to the employer and the employee named in the certificate a notice stating

- (a) the date of receipt of the money,
- (b) the amount received,
- (c) the amount payable to the employees under the certificate, and
- (d) that unless the employer notifies the director within 14 days of the date of the notice that he disputes the amount payable to the employee, the director will pay the amount paid to him pursuant to section 80 or the amount claimed by the employee, whichever is the lesser amount, to the employee after the expiry of the 14 day period.

(2) Unless the employer upon whom a notice is served pursuant to subsection (1) notifies the director within the period mentioned in that subsection that he disputes the amount payable to the employee, the director shall, upon the expiry of the 14 day period, pay the amount paid in pursuant to section 80 or the amount claimed by the employee, whichever is the lesser amount, to the employee.

(3) Where an employer notifies the director that he disputes the amount payable to the employee, the director shall decide the dispute.

Priority of wage claims

82. Subject to section 83 and notwithstanding the provisions of any other Act and except upon a distribution made by a trustee under the Bankruptcy Act, wages shall have priority over the claims or rights, and be paid in priority to the claims or rights, including the claims or rights of the Government of the Yukon, of all preferred, ordinary or general creditors of the employer.

Certificate is a lien on employer's property

83.(1) Unpaid wages set out in a certificate as being due from an employer to an employee constitute a lien, charge and secured debt in favour of the employee against all the real and personal property of the employer including money due or accruing due to the employer from any source.

(2) Notwithstanding any other Act, the amount of a lien, charge and secured debt referred to in subsection (1) is payable and enforceable in priority over all liens, judgments, charges or any other claims or rights including those of the Government of the Yukon

- (a) of all preferred, ordinary or general creditors of the employer whether made or created before or after the date the wages were earned or the date a payment for the benefit of an employee became due, and
- (b) of all secured creditors of the employer where the security was made or created after the date the wages were earned or the date a payment for the benefit of an employee became due.

(3) Notwithstanding subsection (2), the lien, charge and secured debt referred to in subsection (1) does not have a priority over a mortgage of land or a debenture charging land that was registered in a land title office before the filing of the certificate pursuant to subsection 75(6), except with respect to money advanced under the mortgage or debenture after the certificate was filed.

Order to prevent removal of property from the Yukon

84.(1) Where in the opinion of the director an employer is indebted or is likely to become indebted to an employee for wages, and there are reasonable and probable grounds to believe that the employer intends to remove all or part of his assets from the Yukon, the director may apply without notice to any party to the Supreme Court for an order prohibiting the employer from removing any of his assets from the Yukon until the employer pays to the employee all wages that are due to the employee or provides adequate security for the payment of the wages.

(2) Where the Supreme Court makes an order pursuant to subsection (1), the employer affected thereby may, with notice to the director, apply to the Supreme Court to review or rescind the order.

(3) An application by an employer to the Supreme Court pursuant to subsection (2) to review or rescind an order does not operate as a stay of the order.

PART 12

EMPLOYMENT STANDARDS BOARD

Establishment of the board

85.(1) There is established a board to be called the Employment Standards Board.

(2) The board shall be composed of five members appointed by the Executive Council Member consisting of

- (a) a chairperson,
- (b) two members who are representative of employers, and
- (c) two members who are representative of employees.

(3) The term of the members of the board shall be three years, or such lesser term as the Executive Council Member may specify at the time of the appointment, and members are eligible for re-appointment.

(4) A member of the board may be paid transportation, accommodation, and living expenses incurred in connection with the performance of his duties as a member of the board away from his ordinary place of residence but, except as otherwise provided by the regulations, the payment of such expenses shall conform as nearly as possible in all respects to the payment of such expenses for members of the public service of the Yukon.

(5) A member of the board may be paid such remuneration as may be prescribed by the Commissioner in Executive Council.

(6) The Executive Council Member may appoint one or more vice-chairpersons from among the members of the board, who may act in the place of the chairperson during his absence.

Panels of the board

86.(1) The chairperson of the board may from time to time establish a panel consisting of one or more members of the board.

(2) Where the chairperson of the board refers a matter to a panel the panel has all the power and authority of the board in respect of that matter.

Quorum

87. A quorum of the board or of a panel is a majority of its members.

Split decisions

88. Where there is no majority decision of the members of the board or a panel, the decision of the presiding chairperson is the decision of the board or panel.

Powers, privileges and protection of members

89. For the purposes of this Act, the board and each of its members has the protection, privileges and powers of a board appointed under the Public Inquiries Act.

Board procedure

90.(1) Where a matter comes before the board under or pursuant to this Act, the board shall begin its inquiry into the matter with 14 days.

(2) The board shall give full opportunity to the parties to a proceeding to present evidence and to make submissions to it and, where the board considers it necessary, it may hold a hearing.

(3) In a proceeding before the board, the parties shall be

- (a) the person alleged to have contravened this Act,
- (b) the complainant, if any,
- (c) the director or his authorized representative, and
- (d) any other person specified by the board.

(4) The board may order the payment by a party of such costs or expenses to another party referred to in paragraph (3)(a), (b) or (d), including compensation for wage loss resulting from attending a hearing, that it considers appropriate.

Termination of membership on the board

91. Where a member of the board resigns or his appointment terminates, he may, in relation to a proceeding in which he participated as a member of the board and until the proceeding is completed, carry out and complete the duties or responsibilities and continue to exercise the powers that he would have had if he had not ceased to be a member.

Reconsideration of board decisions

92. The board may on its own motion reconsider a decision, order, authorization, direction, declaration or ruling made by it or a panel within 14 days after making it, and may vary or revoke the decision, order, authorization, direction, declaration or ruling.

Finality of board decisions

93. Subject to subsection 76(5), an order or decision of the board or a panel is final and binding.

Declaratory opinions

94. The board may on application or on its own motion give a declaratory opinion on a matter arising under this Act.

Advisory function of the board

95. In addition to the functions and duties conferred on it by this Act, the board shall advise the Executive Council Member with respect to any matter that he wishes to refer to it.

PART 13 GENERAL

Wage rate for public works

96.(1) Where an employer has a contract for the performance of a public work of the Yukon, he shall pay his employees who are engaged on or in connection with that public work not less than the prevailing wage rate applicable to the work performed by his employees as that rate is set out in an applicable schedule of wage rates established by the board with the approval of the Commissioner in Executive Council.

(2) The schedule of wage rates may contain rates payable to apprentices by reference to the Apprentice Training Act and regulations, or otherwise.

(3) This section applies to the following public works:

- (a) building construction;
- (b) heavy construction;
- (c) road, sewer and watermain construction.

(4) In this section,

“building construction” means the construction, remodelling and repair of buildings;

“heavy construction” means such work as, but not limited to, site preparation, excavation, electric transmission lines, marine works, bridges, viaducts, tunnels and dams;

“road, sewer and watermain construction” means clearing and preparing a right of way, excavation and subgrading, laying a granular base, grading and asphalt and concrete paving and includes

- (a) the operation of on-site plants to service such construction,
- (b) the installation of drainage,
- (c) landscaping,
- (d) the demolition of structures within or affected by a right of way, and

- (e) all other work involved in
 - (i) the construction, reconstruction and maintenance of roads, highways, streets, sidewalks, curbs, parking lots, driveways, airport runways, airport taxi strips and aircraft parking aprons, and
 - (ii) the installation, reinstallation and maintenance of sewers and watermains.

Termination of employees at remote sites

97. Where an employer terminates the employment of an employee or lays off an employee who has been employed by the employer at a remote site, the employer shall provide transportation for the employee without cost to the employee to the nearest point at which regularly scheduled transportation services are available.

Reciprocal enforcement of certificates

98.(1) Where the Commissioner in Executive Council is satisfied that reciprocal provisions will be made by a province for the enforcement of certificates issued under this Act, he may declare the province to be a reciprocating province and may designate the enforcement authority of that province for the purpose of this section.

(2) Where an order, judgment or certificate for the payment of wages has been obtained by a designated enforcement authority of a reciprocating province, the authority may apply to the director to enforce the order, judgment or certificate for the payment of wages.

(3) On receipt of a copy of an order, judgment or certificate for the payment of wages

- (a) certified by the court in which the order, judgment or certificate is registered, or
- (b) where there is no provision in the reciprocating province for registration in a court of the order, judgment or certificate, certified to be a true copy by the designated enforcement authority,

and on being satisfied that the wages are still owing, the director shall issue a certificate showing the amount owing and file it in the office of the clerk of the Supreme Court.

(4) Upon being filed under subsection (3), the certificate shall be deemed to be a judgment of the Supreme Court in favour of an employee named therein and may be enforced as a judgment of the court by the employee or by the director on behalf of the employee for the amount shown in the certificate.

Offence and penalty

99.(1) A person who

- (a) contravenes any provision of this Act or the regulations, or any order made thereunder, or
- (b) discharges or threatens to discharge or otherwise discriminates against a person because that person
 - (i) has testified or is about to testify in any proceeding had or taken under this Act, or
 - (ii) has given any information to the director, an employment standards officer or the board regarding the wages, hours of work, annual vacation or conditions of employment of any employee,

commits an offence and is liable on summary conviction to a fine not exceeding \$1000.

(2) Where an offence under this Act committed by a corporation is committed with the consent or connivance of any director, manager, secretary or official of the corporation in charge or apparently in charge of a project he, as well as the corporation, commits an offence and he is liable on summary conviction to a sentence not exceeding three months or to a fine not exceeding \$1000, or to both fine and imprisonment.

(3) Where a complaint is laid against a person who is a corporation a summons may be issued requiring an officer, director, secretary or partner named therein to appear to answer the charge on behalf of the corporation and to attend from day to day until the trial or hearing has been completed.

(4) Any person who fails to obey a summons issued pursuant to subsection (3) commits an offence and is liable on summary conviction to a sentence not exceeding three months or a fine not exceeding \$1000, or to both fine and imprisonment.

(5) Where a person is convicted of an offence under this Act the presiding judge may, on the application of the director, order such person to furnish to the director security, either in the form of a bond together with one or more sureties as the presiding judge thinks fit or otherwise satisfactory to the presiding judge in an amount and form and conditioned for the payment of all wages.

(6) Where the employer furnishes a bond or other security under subsection (5) the director may, by giving written notice to the employer either by certified mail or by service of the notice on that employer, apply the proceeds of the bond or security in whole or in part to any wages that the director ascertains the employer subsequently owes to any employee.

(7) Where the employer fails to furnish the bond or security under subsection (5) the Supreme Court, upon an application made by the director, may restrain the employer from employing people in the industry or business specified in the order until the bond or security is furnished and the costs of the application are paid.

Multiple offences and limitation period

100.(1) A complaint or information under this Act may relate to one or more offences by one employer in respect of one or more of his employees.

(2) Proceedings in respect of an offence under this Act may be instituted at any time within one year after the time when the subject matter of the proceedings arose.

Orders in addition to penalties

101.(1) Where an employer has been convicted of an offence under this Act in respect of any employee, the presiding judge shall, in addition to any other penalty, order the employer to pay to the employee any wages to which the employee is entitled under this Act the non-payment or insufficient payment of which constituted the offence for which the employer was convicted.

(2) Where an employer has been convicted of an offence under this Act in respect of the discharge of an employee, the presiding judge may, in addition to any other penalty, order the employer

- (a) to pay compensation for loss of employment to the employee not exceeding such sum as in the opinion of the presiding judge is equivalent to the wage that would have accrued to the employee up to the date of conviction but for such discharge, and
- (b) to reinstate the employee in his employment at such date as in the opinion of the presiding judge is just and proper in the circumstances and in the position that the employee would have held but for such discharge.

(3) An employer who refuses or neglects to comply with an order of a presiding judge made under this section commits an offence and is liable on summary conviction to a fine not exceeding \$50 for each day during which such refusal or failure continues.

(4) In determining the amount of wages for the purposes of subsection (1), if the presiding judge finds that the employer has not kept accurate records of hours worked by the employee, the employee affected shall be conclusively presumed to have been employed for 10 hours in each day and 60 hours in each week, or the number of hours deposed to by the employee, whichever is the less, and to be entitled to full wages therefor.

Other remedies

102. Subject to subsection 68(2) and section 77, nothing in this Act or the regulations affects the right of a person to commence and maintain an action which, but for this Act, he would have had the right to commence and maintain.

General and special orders

103. Where, by this Act or the regulations, the director or the board is authorized to make any order in respect of any matter, the order may be made to apply generally or in particular cases, or to classes of employees or employers.

Service of documents

104. Any application, appeal, demand, notice, statutory declaration or other document required to be served by this Act shall be served personally or sent by certified mail to the person to be served and, when sent by certified mail, shall be deemed to have been served on the person to whom it was sent on the seventh day after it was mailed.

Regulations

105. The Commissioner in Executive Council may make such regulations as he deems necessary for carrying out the provisions of this Act and, without restricting the generality of the foregoing, may make regulations

- (a) requiring employers to keep records of wages, vacations, holidays and hours of work of employees and of other particulars relevant to the purposes of this Act or any part thereof, in such form as may be required;
- (b) governing the production and inspection of records required to be kept by employers;

- (c) for calculating and determining wages received by an employee in respect of his employment, including the monetary value of remuneration other than money and the regular rate of wages of employees who are not paid solely on a basis of time;
 - (d) prescribing custodial work and essential services for the purposes of section 34;
 - (e) for any other matter or purpose that under this Act is required or permitted to be prescribed by regulation;
 - (f) to exempt any person or class of persons from some or all of the provisions of this Act.
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CHAPTER 55

ENERGY CONSERVATION ASSISTANCE ACT

Saving Energy Action Loans

1.(1) The Executive Council Member may make loans to the eligible owners of residential premises so as to help those owners improve the thermal efficiency of their residential premises.

(2) The amount of a loan made under subsection (1) may not exceed the maximum prescribed by the Commissioner in Executive Council.

(3) A loan under subsection (1) shall be made subject to such conditions as are prescribed by the Commissioner in Executive Council.

Eligibility for loans for residential premises

2. A person is eligible to receive a loan under subsection 1(1) where

- (a) he owns the residential premises in respect of which the loan is made,
- (b) he has already been granted whatever financial assistance he may be eligible for in respect of the thermal efficiency of those premises under any program of the Government of Canada, and
- (c) those premises are
 - (i) the owner's principal place of residence, or
 - (ii) continuously occupied as a residence, or continuously available for residential occupancy by a tenant of the owner.

Loans for commercial or institutional premises

3.(1) The Executive Council Member may make loans to the eligible owners of commercial or institutional premises so as to help those owners improve the thermal efficiency of those premises.

(2) The amount of a loan made under subsection (1) may not exceed the maximum prescribed by the Commissioner in Executive Council.

(3) A loan under subsection (1) shall be made subject to such conditions as are prescribed by the Commissioner in Executive Council.

Regulations respecting saving energy action loans

4. The Commissioner in Executive Council may make regulations prescribing

- (a) the maximum amount of a loan that may be made under subsection 1(1) or section 3;
- (b) the maximum number of units of residential premises for which a person may receive a loan under subsection 1(1);

- (c) conditions that a loan shall be made subject to;
- (d) materials, services and labour in respect of which a loan may be made;
- (e) the procedure for applying for a loan and the information that must be supplied in support of an application.

Eligibility for loans for commercial or institutional premises

5. A person is eligible to receive a loan under section 3 where

- (a) the person owns the commercial or institutional premises in respect of which the loan is made,
- (b) the person has already been granted whatever financial assistance may be available in respect of the thermal efficiency of those premises under any program of the Government of Canada, and
- (c) those premises are continuously occupied for the purpose of conducting business, or continuously available for occupancy by a tenant of the owner.

Yukon Energy Alternatives Program

6.(1) The Executive Council Member may make grants and loans to persons to assist in discovering, developing or demonstrating the practicality of alternative energy sources, methods of energy use, or energy conservation.

(2) The amount of grants and loans made under subsection (1) may not exceed in respect of the same project the maximum prescribed by the Commissioner in Executive Council.

(3) A grant or loan under subsection (1) shall be made subject to such conditions as are prescribed by the Commissioner in Executive Council.

Regulations respecting energy alternatives program

7. The Commissioner in Executive Council may make regulations prescribing

- (a) the procedure for applying for a grant or loan under subsection 6(1) and the information that must be supplied in support of an application;
 - (b) conditions that a grant or loan shall be made subject to including conditions about copyright or patent rights arising from the project in respect of which the grant or loan is made and conditions about reporting the results and public access to the reported results of the project;
 - (c) the materials, services or labour for which the grant or loan may be used;
 - (d) criteria by which projects will be chosen to receive a grant or loan.
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CHAPTER 56

ENGINEERING PROFESSION ACT

Interpretation

1. In this Act,

“association” means the Association of Professional Engineers of the Yukon Territory;

“council” means the council of the association;

“licensee” means the holder of a temporary licence;

“practice of professional engineering” means the carrying on of any branch of chemical, civil, electrical, forestry, mechanical, mining, geological, metallurgical, structural or any other form of engineering, any professional service or creative work requiring engineering education, training and experience, or the application of special knowledge of any of the mathematical or physical sciences to such professional services or creative work as consultation, investigation, evaluation, planning, designing and engineering supervision of construction or operations in connection with any public or private utilities, structures, machines, equipment, processes, works or projects;

“president” means the president of the association;

“professional engineer” means a person who is registered or duly licensed under this Act;

“register” means the register kept by the registrar under this Act;

“registrar” means the registrar of the association;

“temporary licence” means a licence issued pursuant to subsection 11(2).

Exemptions

2.(1) Nothing in this Act shall be so construed as to prevent a person registered as an architect under any Act of the provinces relating to the practice of architecture from practising the profession of architecture or to require him to be registered under this Act where the practice of such person is confined to architecture; and nothing in this Act shall apply to a Canada land surveyor practising his profession, except that such surveyor shall not style himself nor hold himself out as a professional engineer unless he is registered or licensed under this Act.

(2) This Act does not apply to any member of the armed forces of Canada or of a visiting force as defined in the Visiting Forces Act (Canada), while actually employed on duty with such forces.

(3) Nothing in this Act shall be construed as preventing the carrying on by any person on his own property of any work for the sole use of himself and his domestic establishment, or the designing, constructing or installing by any individual for his own use of appliances, works or plants where such work does not involve the safety of the general public or of the property of others.

(4) Nothing in this Act shall be so construed as to prevent any person from assisting in the execution of any professional service or creative work of the kind described in the definition of “practice of professional engineering” in section 1 where a professional engineer directly supervises and assumes full responsibility for such service or work.

Incorporation of association

3.(1) The Association of Professional Engineers of the Yukon Territory is hereby constituted a body corporate.

(2) The head office of the association shall be situated in the City of Whitehorse in the Yukon.

Powers of association with respect to property

4. The association shall have power to acquire and hold real and personal property and to alienate, mortgage, lease or otherwise charge, deal with or dispose of the same or any part thereof as occasion may require.

Membership

5. The membership of the association shall consist of all members of the association who are in good standing under the provisions of this Act and all persons admitted to membership by the council under this Act and the bylaws of the association as long as they remain on the register.

Council

6.(1) The powers conferred on the association shall be exercised by the council.

(2) Subject to this Act and the bylaws of the association, the council shall govern, control and administer the affairs of the association and shall exercise all rights and powers vested in it by this Act or by the bylaws, and may pass resolutions necessary for those purposes.

(3) The council shall consist of a president, vice-president, the immediate past-president and one councillor, chosen from the members of the association in the manner provided by the bylaws issued under the authority of this Act.

(4) Members of the council shall hold office until their successors are elected or appointed.

(5) The president shall be elected annually by the members of the association, and shall hold office until his successor is elected.

(6) The president if present shall act as presiding officer at the meetings of the council and of the association, voting only when votes are evenly divided unless he requests the meeting to appoint some other person to preside.

(7) The vice-president shall be elected by the members of the association, and shall have all the powers and rights of the president during the absence of the president.

(8) In the case of the incapacity, resignation or death of a member of the council, the other members of the council shall appoint a member of the association to fill the vacancy.

Appointment of registrar and secretary-treasurer

7.(1) The council shall appoint from the membership of the association a registrar and a secretary-treasurer who shall hold office during the pleasure of the council.

(2) The office of registrar and of secretary-treasurer may, where the council so directs, be held by one person.

(3) The registrar shall keep a register containing the roll of members and shall perform such duties as are prescribed by this Act and the bylaws of the association.

(4) The secretary-treasurer shall perform such duties as are prescribed by the bylaws of the association.

Powers of council exercisable by bylaw

8. The council may pass, alter and amend bylaws not inconsistent with this Act providing for

- (a) the election of the council,
- (b) the government, discipline and honour of the members of the association, including the prescribing of a code of ethics by which such members shall be bound,
- (c) the management and maintenance of the association and its property, both real and personal, the investment of its funds, banking, the borrowing of money, the appointment of staff and their remuneration and generally for the carrying on of the general business of the association,
- (d) the fixing of an annual fee not in excess of \$50 and other fees, including fees on admission,
- (e) the levying, payment, remission and collecting of annual and other fees,
- (f) the establishment and regulation of standards of admission to membership and the enrolment and qualifications of candidates for admission to membership,
- (g) the designation of the different grades of membership in the association and limitation of the rights of members within the different grades,
- (h) the resignation and temporary withdrawal of members,
- (i) the calling and conduct of meetings of the association and of the council, the necessary quorums, voting, the appointment of committees and their powers, the method of balloting and other matters in connection therewith,
- (j) the assistance, pecuniary or otherwise, to individuals and organizations where, in the opinion of the council, such assistance will be of benefit to the public, the association or its members, and
- (k) all other purposes reasonably necessary for the management, regulation and well-being of the association.

Bylaw procedure

9.(1) Subject to subsection (2), no bylaw passed by the council shall come into force

- (a) until the expiration of 30 days from the date of passage of such bylaw, and

- (b) unless a true copy of such bylaw duly certified by the seal of the association has been filed with the Executive Council Member.

(2) Where, within 30 days of the passage of a bylaw of the council, a written request by at least four members of the association has been received by the council to have a vote taken among the membership to ratify the bylaw, the council shall take a vote of the members of the association by letter ballot in the manner provided by the bylaws of the association, and a vote so taken shall have the same force as if the vote had been taken at a general meeting of the association.

(3) All bylaws passed by the association shall be tabled by the Executive Council Member at the next session of the Legislative Assembly which may, by resolution, disallow any bylaw so tabled.

Meetings of association

10.(1) An annual meeting of the association shall be held at such time and place as the council shall appoint, at least once in every calendar year, and not more than 15 months after the holding of the last preceding annual meeting.

(2) If default is made in holding any annual meeting, the Executive Council Member or a judge on the application of a member of the association may call or direct the calling of an annual meeting of the association.

(3) The council, at any time of its own motion, may call a general meeting of the association.

(4) Council shall give notice of the time and place for holding a meeting of the association by sending notice to each member of the association by prepaid mail not less than 21 days before the date of the meeting, to his last recorded address.

Admission to membership and temporary licence

11.(1) The council shall admit a person to membership in the association who

- (a) applies for membership in the association in the form prescribed by the council,
- (b) has attained the age of 23 years,
- (c) has produced evidence to the council that he is of good character and repute,
- (d) establishes to the satisfaction of the council
 - (i) that he is a duly registered member in good standing of an association or corporation of professional engineers of any province, or
 - (ii) that he is fully qualified for admission to membership in one of the associations or corporations referred to in clause (i) in accordance with the relevant laws governing admission to such membership,
- (e) has had at least two years actual experience in engineering work of a nature satisfactory to the council, and
- (f) pays all fees prescribed by the council.

(2) The council may, subject to such terms and conditions as it may impose, issue a temporary licence to engage in the practice of professional engineering in the Yukon to any person who

- (a) is qualified for membership in the association pursuant to subsection (1),
- (b) applies for a temporary licence in the form prescribed by the council, and
- (c) pays all fees prescribed by the council.

(3) A temporary licence shall specify

- (a) the purposes for which it is issued, and
- (b) the period during which it shall remain in force.

(4) No corporation or partnership shall

- (a) be admitted as a member in the association, or
- (b) be issued a temporary licence.

(5) Where professional engineers are employed by corporations or are members of partnerships, they individually shall assume the functions of and be held responsible as professional engineers.

Council to examine credentials

12. The council shall examine all degrees, diplomas, certificates and other credentials presented or given in evidence for the purpose of obtaining membership in the association or of obtaining a temporary licence, and may require the holder of such credentials to attest by oath or by statutory declaration any matter involved in his application.

Registration of members

13.(1) Every person who has become a member of the association is entitled to be entered in the register upon payment to the registrar of such fee as is prescribed by the bylaws of the council.

(2) The registrar shall enter in the register the full name and address and the date of registration of every person who becomes entitled to registration, and he shall also cause a list of all members of the association to be published in one issue of the Yukon Gazette during March in each year.

(3) As long as a member remains on the register, he shall be deemed to be a member of the association with all the rights and privileges but subject to all the terms and provisions of this Act.

Certificate of registration

14.(1) The registrar shall issue a certificate of registration to every member of the association upon his becoming registered, which certificate shall remain the property of the association.

(2) Every certificate shall be signed by the president and by the registrar and bear the seal of the association and shall constitute evidence of registration as at the date of issue, and upon receipt of the annual fee in each subsequent year the registrar shall furnish the member with evidence of the renewal thereof.

(3) Upon receipt of such certificate of registration, a member shall be entitled to use the title of "professional engineer" or such abbreviation thereof as may be approved by the council and may procure a seal or stamp, the impression of which shall contain the member's name and the words "Professional Engineer, Yukon", and any other designation that may be provided for in the bylaws, with which he shall seal or stamp all official estimates, specifications, reports, documents and plans that he, in his capacity as a professional engineer, has prepared or had prepared under his direct supervision.

(4) A certificate issued under subsection (1) shall be at all times prominently displayed by the member in his office or other place of business.

Annual fee

15.(1) Every member of the association shall pay in advance to the secretary-treasurer, or any person deputed by the council to receive it, such annual fee as is fixed by the bylaws, which fee shall be deemed to be a debt due by him to the association and in addition to any other remedy shall be recoverable with costs by the association in any court of competent jurisdiction.

(2) If a member of the association omits to pay the prescribed annual fee before March 1 in any year, he shall be liable to have his name struck off the register and if he is still in default three months after notice in writing has been sent by registered mail to him at his last recorded address demanding payment, the registrar, on direction of the council, shall remove his name from the register without further notification, whereupon he shall cease to be registered and he shall not be registered again except at the discretion of the council and upon payment of such arrears of fees as the council directs.

Practising without being registered or licensed

16.(1) Except as otherwise provided in this Act, no person shall engage in the practice of professional engineering within the Yukon or use the title "professional engineer" or any abbreviation thereof unless

- (a) he is a member of the association and holds a certificate of registration issued pursuant to this Act, or
- (b) he is a licensee.

(2) Except as otherwise provided in this Act, any person who, without being registered or licensed,

- (a) engages in the practice of professional engineering,
- (b) usurps the function of a professional engineer,
- (c) assumes, verbally or otherwise, the title of professional engineer, or advertises, uses or permits to be advertised or used in any manner whatsoever, in connection with his name or otherwise, any word, name, title or designation mentioned in the definition of professional engineering, or any combination or abbreviation thereof, or any other word, name, title, designation, descriptive term or statement implying, or calculated to lead any other person to believe, that he is a professional engineer, or is ready or entitled to engage in or is engaged in the practice of professional engineering,
- (d) acts in such manner as to lead any other person to believe that he is authorized to fill the office of or act as a professional engineer, or

- (e) advertises, uses or displays any sign, card, letterhead or other device representing to the public that he is a professional engineer, or a person entitled to engage in the practice of professional engineering, or holds himself out to the public to be a professional engineer,

commits an offence and is liable on summary conviction to a penalty not exceeding \$100 for the first offence, and a penalty not exceeding \$500 for every subsequent offence.

Partnerships, associations and corporations

17. A partnership, an association of persons or a corporation may engage in the practice of professional engineering in its own name and use the title "professional engineers" if the practice is carried on under the supervision of

- (a) a member of the partnership or association or a director of the corporation, or
- (b) a full time permanent employee of the partnership, association or corporation,

who is

- (c) a member of the association and holds a certificate of registration issued pursuant to this Act, or
- (d) a licensee.

Offence and penalty for holding out as engineer

18. Any person who advertises or uses in any manner in connection with a person who is not a member of the association or who is not a licensee the title of professional engineer or any word, name, title or designation mentioned in the definition of professional engineering, or any combination or abbreviation thereof or any other word, name, title, designation, descriptive term or statement implying or calculated to lead any other person to believe that such person is a professional engineer or is ready or entitled to engage in or is engaged in the practice of professional engineering commits an offence and is liable on summary conviction to a penalty not exceeding \$100 for the first offence, and a penalty not exceeding \$500 for every subsequent offence.

Injunction

19. In the event of any breach or threatened breach by any person of any provision of this Act, the association shall be entitled in an action brought for such purpose to an injunction to restrain such person from continuing or committing such breach; and pending the trial of any such action and adjudication thereon, the Supreme Court or a judge thereof, on being satisfied that there is reason to believe that such person has committed or is likely to commit a breach of this Act, shall grant an interim injunction.

Recovery of fees and municipal works

20.(1) No person shall be entitled to recover any fee or remuneration in any court of law in the Yukon for any work or service comprised in the practice of professional engineering unless at the time such work or service was performed,

- (a) he was a member of the association and held a certificate of registration issued pursuant to this Act, or
- (b) he was a licensee.

(2) No plans or specifications for any works or buildings or for any alteration thereto involving the safety of the public or costing over the sum of \$20,000 shall be passed, approved or accepted by any municipality or by any official or employee thereof, unless the said plans or specifications have been duly signed and sealed by a professional engineer or a person registered as an architect under any Act of the provinces relating to the practice of architecture.

Falsification of register

21. Where the registrar makes or causes to be made any wilful falsification of any matters relating to the register, he commits an offence and is liable on summary conviction to a penalty not exceeding \$500.

Fraudulent representation

22. Where a person wilfully procures or attempts to procure himself to be registered or licensed under this Act by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing, he, and every person knowingly aiding and assisting him therein, commits an offence and is liable on summary conviction to a penalty not exceeding \$500.

Proof of single act

23. In any prosecution under this Act it shall be sufficient proof of the offence alleged if it is proved that the accused has done or committed a single act of the kind complained of.

Limitation of time for prosecution

24. No prosecution shall be commenced for any offence under this Act after two years from the date on which it is alleged that the offence was committed.

Inquiry by council

25.(1) The council, after giving written notice to any person affected, may, and upon application of any three members of the association shall, cause inquiry to be made into matters respecting any fraudulent or incorrect entry in the register, unprofessional conduct, negligence or misconduct of or relating to any member or a person licensed under this Act, or any violation of the Act or the bylaws by any such member or such licensee.

(2) Any person to whom notice is given is entitled to be heard and to submit evidence at the inquiry.

(3) After the inquiry the council may in its discretion order the removal or correction of any entry in the register or roll or the cancellation of any licence, and may reprimand, censure, suspend or expel from the association any person found guilty.

(4) Where a member of the association is suspended from practice, the registration of such member shall be deemed to be cancelled during the term of his suspension and he shall not be deemed to be a member of the association or entitled to any of the rights or privileges thereof so long as the suspension continues.

(5) Where, as a result of any inquiry under this Act a member of the association is suspended, or the name of any such person is removed from the register or roll, the council may direct that the costs of and incidental to the inquiry, including fees payable to the solicitors,

counsel and witnesses, or any part of such costs, shall be paid by such person, and any costs as aforesaid may be determined and recovered as in this section provided.

(6) Where, as a result of a further inquiry, the name of the person whose name has been removed from the register or roll is restored thereto, or if such person is acquitted of any charge made against him, the council may direct that the costs of and incidental to the inquiry, including the fees payable to solicitors, counsel or witnesses, or any part thereof, shall be borne and paid by the association.

Legal assistance

26. The council, for the purpose of carrying out its duties under this Act, may employ at the expense of the association such legal counsel or assistance as the council may think necessary or proper; and a person whose status or conduct is the subject of inquiry shall also have the right to be represented by counsel.

Procedure upon inquiry

27.(1) At least seven clear days before the first meeting of the council to be held for taking evidence or otherwise ascertaining facts a written notice shall be personally served upon the person whose status or conduct is the subject of inquiry, or failing personal service, by leaving same at, or by mailing the same by registered mail to his latest known address.

(2) The notice mentioned in subsection (1) shall embody a copy of the charges made against him or a statement of the subject matter of the inquiry, and shall also specify the time and place of the meeting.

(3) The testimony of witnesses shall be taken under oath, which the presiding member of the council is authorized to administer, and there shall be full right to cross-examine all witnesses called, and to call evidence in defence and reply.

(4) In the event of non-attendance of the person whose status or conduct is the subject of inquiry, the council, upon proof of the service upon him of the notice required by subsection (1), which proof may be made by statutory declaration, may proceed with the subject matter of the inquiry in his absence, and make its finding of the facts and its decision thereon without further notice to him.

Subpoena of witness

28. The council, or any person interested in the proceedings on any such inquiry, may make application to a judge for the issue of a writ of subpoena for the attendance of any witness, and for the production of books, papers and documents at the inquiry similar in form and effect to writs of that nature issued pursuant to the Rules of Court, and the fees payable to the Crown therefor and the procedure with regard thereto shall be governed by those rules and the appendices thereto as nearly as the same are applicable.

Appeal

29.(1) Any person whose application for membership in the association has been refused under paragraph 11(1)(c), may appeal from the said order or the said refusal of the application for membership, to a judge at any time within three months from the date of the order or the refusal as the case may be.

(2) The appellant shall appeal by filing with the clerk of the Supreme Court a notice of appeal setting out the ground on which the appeal is based.

(3) With the notice of appeal the appellant shall also file a copy of the proceedings, the evidence taken, the order of the council in the matter and the reasons therefor, if any, certified by the registrar.

(4) The appellant shall cause to be served upon the registrar of the association a copy of the notice of appeal.

(5) The notice of appeal shall state a place and time not less than seven clear days after the service thereof on which the appeal shall be heard.

(6) Upon the hearing of the appeal the Supreme Court may sustain, reverse, alter or amend the order, or remit the matter to the council for rehearing, or may make such other order as to costs or otherwise in the premises as to the Supreme Court seems right.

(7) Every appeal made in accordance with subsection (1) shall be heard and determined upon its merits and shall not be defeated by reason of any technical defect in the proceedings.

(8) The registrar, upon the request of any person desiring to appeal, shall furnish him with a certified copy of all proceedings, reports, orders, reasons and the papers upon which the council had acted in making the order complained of.

Evidence

30. In any proceedings or prosecution under this Act in which proof is required that any person is or is not a member of the association or a licensee, a certificate purporting to be signed by the registrar and under the seal of the association that such person is or is not a member of the association or a licensee, as the case may be, shall be prima facie evidence of the fact so certified, without any proof of the signature or of the seal or of the person signing being in fact the registrar.

Protection against action

31. No action shall lie against the council, any member of the association or a licensee for any proceedings bona fide taken or enforced or attempted under a bylaw of the association or for anything done bona fide and pursuant to this Act.

CHAPTER 57

EVIDENCE ACT

Interpretation

1. In this Act,

- “action” includes any civil proceeding, inquiry or arbitration, a prosecution for an offence committed against an Act of the Legislature or against a bylaw or regulation made under the authority of any such Act, and any other prosecution or proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the laws of the Yukon;
- “bank” means a bank to which the Bank Act (Canada) applies, and includes a branch, agency and office of a bank;
- “country” includes kingdom, empire, republic, commonwealth, state, province, territory, colony, possession or protectorate and, where parts of a country are under both a central and a local legislature, includes all parts under the central legislature and each part under a local legislature;
- “country of the British Commonwealth” means Australia, Ceylon, India, New Zealand, Pakistan and the Union of South Africa, and all colonies, dependencies or territories of any of such countries or of the United Kingdom or of Canada;
- “court” includes an arbitrator, umpire, commissioner, judge of the Territorial Court, judge of the Supreme Court, justice of the peace or other officer or person having by law or by consent of parties authority to hear, receive and examine evidence;
- “document” includes book, map, plan, drawing or photograph;
- “federal” as applied to state documents, means of or pertaining to Canada;
- “foreign state” includes every country other than the United Kingdom, Canada and a country of the British Commonwealth;
- “Imperial” as applied to state documents, means of or pertaining to the United Kingdom, and includes any kingdom that included England, whether known as the United Kingdom of Great Britain and Ireland or otherwise;
- “Imperial Parliament” means the Parliament of the United Kingdom and includes the Parliament of any kingdom that included England, whether known as the United Kingdom of Great Britain and Ireland or otherwise;
- “legislature” includes any legislative body or authority competent to make laws for a country;
- “Queen’s printer” includes government printer or other official printer;
- “state document” includes
- (a) any Act or ordinance enacted or made or purporting to have been enacted or made by a legislature,
 - (b) any order, regulation, notice, appointment, warrant, licence, certificate, letters patent, official record, rule of court or other instrument issued or made or purporting to have been issued or made under the authority of any Act or ordinance so enacted or made, and
 - (c) any official gazette, journal, proclamation, treaty or other public document or act of state issued or made or purporting to have been issued or made;

“statement” includes any representation of fact, whether made in words or otherwise;

“statutory declaration” or “solemn declaration” means a solemn declaration in the form and manner provided in the Canada Evidence Act.

WITNESSES AND PRIVILEGES

Not incompetent from interest or crime

2. A person is not incompetent to give evidence by reason of crime or interest.

Evidence of parties

3.(1) Except as provided in this Act, the parties to an action and the persons on whose behalf an action is brought, instituted, opposed or defended, and their spouses are competent and compellable to give evidence on behalf of themselves or of any parties.

(2) Every person charged with an offence shall be a competent but not compellable witness at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person, except as follows:

- (a) a person so charged shall not be called as a witness except upon his own application;
- (b) the failure of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution or court;
- (c) a person charged and called as a witness shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character unless
 - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged,
 - (ii) he has personally or by his counsel asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution, or
 - (iii) he has given evidence against any other person charged with the same offence.

Husband and wife

4. Without limiting the generality of section 3, a husband or wife may, in an action, give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time or within any period of time before or during the marriage.

Evidence as to adultery

5. No witness in an action, whether a party thereto or not, is liable to be asked or is bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same action in disproof of the alleged adultery.

Communication made during marriage

6. A husband is not compellable to disclose a communication made to him by his wife during marriage, nor is a wife compellable to disclose a communication made to her by her husband during marriage.

Incriminating questions

7.(1) In this section, “witness” includes a person who in the course of an action is examined *viva voce* on discovery, who is cross-examined upon an affidavit made by him, or who answers any interrogatories or makes an affidavit as to documents.

(2) A witness shall not be excused from answering a question or producing a document upon the ground that the answer to the question or the production of the document may tend to criminate him, or may tend to establish his liability to an action at the instance of the Crown or of any person.

Attendance of witness

8. No person is obliged to attend or give evidence in an action unless he is tendered his proper witness fees and necessary travelling expenses.

Expert evidence

9. Where it is intended by any party to an action to examine as witnesses professional or other experts entitled according to law or practice to give opinion evidence, not more than three such witnesses may be called by either side to give opinion evidence on any issue in the action without the leave of the court.

Use of a written report as evidence

10.(1) A written report or finding of facts prepared by an expert not being a party to the action, an employee of a party except for the purpose of making such report or finding, or financially interested in the result of the controversy, and containing the conclusions resulting wholly or partly from written information furnished by the cooperation of several persons acting for a common purpose is, insofar as the same may be relevant, admissible when testified to by the person or one of the persons making such report or finding, without calling as witnesses the persons furnishing the information and without producing the books or other writings on which the report or finding is based if, in the opinion of the court, no substantial injustice will be done the opposite party.

(2) Notwithstanding subsection (1), a report or finding that purports to have been prepared and signed in a professional capacity by

- (a) a medical practitioner,
- (b) a dentist, or
- (c) a chiropractor,

licensed to practise in any part of Canada is, with leave of the court, admissible without testimony and without proof of his signature, qualifications or license.

(3) Where a medical practitioner, dentist or chiropractor has testified in an action and the court is of the opinion that all or part of his evidence could have been produced as effectively by way of a written report or finding under subsection (2), the court may order the party who required his production as a witness to pay as costs therefor such sum as the court deems appropriate.

Cross-examination of person making a report

11. A person who has furnished information on which a report or finding referred to in section 10 is based may be cross-examined by the adverse party, but the fact that his testimony is not obtainable does not render the report or finding inadmissible unless the court finds that substantial injustice would be done to the adverse party by its admission.

Notice requirement for reports

12.(1) Except as provided in subsection (2), a report or finding referred to in section 10 is not admissible unless the party offering it gives notice to the adverse party a reasonable time before trial of his intention to offer it, together with a copy of the report or finding or so much thereof as may relate to the controversy, and also affords him a reasonable opportunity to inspect and copy any records or other documents in the offering party's possession or control on which the report or finding was based and also the names of all persons furnishing facts upon which the report or finding was based.

(2) The report or finding may be admitted if the court finds that no substantial injustice would result from the failure to give the notice referred to in subsection (1).

CORROBORATIVE EVIDENCE

Breach of promise of marriage

13. The plaintiff in an action for breach of promise of marriage shall not obtain a verdict or judgment unless his or her testimony is corroborated by some other material evidence in support of the promise.

Action by or against representatives of a deceased person

14. In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not on his own evidence obtain a verdict, judgment or decision in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence.

Action by or against a mentally disordered person

15. In an action by or against a mentally disordered person so found, an inmate of an institution for mentally disordered persons, or a person who from unsoundness of mind is incapable of giving evidence, an opposite or interested party shall not obtain a verdict, judgment or decision on his own evidence, unless such evidence is corroborated by some other material evidence.

Evidence of a child

16. No action shall be decided upon the evidence of a child of tender years given under the authority of section 22 unless such evidence is corroborated by some other material evidence.

OATHS AND AFFIRMATIONS

Administration of oaths and affirmations

17.(1) Every court has power to administer or cause to be administered an oath or affirmation to every witness who is called to give evidence before the court.

(2) Where an oath, affirmation or declaration is directed to be made before a person he has full power and authority to administer it and to certify to its having been made.

Manner of administering oath

18. An oath may be administered to any person

- (a) while such person holds in his hand a copy of the Old or New Testament, without requiring him to kiss the same, or
- (b) in such manner and form and with such ceremonies as he declares to be binding on his conscience.

Form of oath

19.(1) Where a person is about to give evidence, the oath may be in the following form: "I swear that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth. So help me God."

(2) Where a person is about to swear an affidavit or deposition, the oath may be in the following form: "I swear that the contents of this affidavit or deposition are true. So help me God."

Affirmations

20.(1) Where a person called or desiring to give evidence objects on grounds of conscientious scruples to take an oath, or is objected to as incompetent to take an oath, the person may make the following affirmation: "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth."

(2) Where a person makes an affirmation, his evidence shall be taken and have the same effect as if taken under oath.

(3) Where a person required or desiring to make an affidavit or deposition in an action or on an occasion where or touching a matter respecting which an oath is required or is lawful, whether on the taking of office or otherwise, refuses or is unwilling on grounds of conscientious scruples to be sworn, the court or other officer or person qualified to take affidavits or depositions shall permit the person, instead of being sworn, to make his affirmation in the words, "I solemnly affirm", which affirmation is of the same force and effect as if the person had taken an oath in the usual form.

Validity of oath

21. Where an oath has been administered and taken, the fact that the person to whom it was administered and by whom it was taken did not at the time of taking the oath believe in the binding effect of the oath does not, for any purpose, affect the validity of the oath.

Evidence of child of tender years

22. In any action where a child of tender years is tendered as a witness and the child does not, in the opinion of the court, understand the nature of an oath, the evidence of the child may be received though not given upon oath if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

EXAMINATION AND EVIDENCE OF WITNESSES**Evidence of mutes**

23. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible.

Proof of contradictory written statements

24. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the matter in question, without the writing being shown to him; but if it is intended to contradict him by the writing, his attention shall, before the contradictory proof is given, be called to those parts of the writing that are to be used for the purpose of so contradicting him, and the court may require the production of the writing for the court's inspection and may thereupon make such use of it for the purposes of the trial or proceeding as the court may think fit.

Proof of contradictory oral statements

25. Where a witness, upon cross-examination as to a former statement made by him relative to the matter in question, and inconsistent with his previous evidence, does not distinctly admit that he did make the statement, proof may be given that he did in fact make it; but before the proof is given the circumstances of the supposed statement sufficient to designate the particular occasion shall be mentioned to the witness, and he shall be asked whether or not he did make the statement.

Proof of previous conviction of a witness

26.(1) A witness may be asked whether he has been convicted of any offence, and upon being so asked, if he either denies the fact or refuses to answer, the conviction may be proved.

(2) A certificate containing the substance and effect only, omitting the formal part, of the charge and of the conviction, purporting to be signed by the officer having the custody of the records of the court in which the offender was convicted or by the deputy of the officer is, upon proof of the identity of the witness as the offender, sufficient evidence of the conviction without proof of the signature or of the official character of the person appearing to have signed the certificate.

Discrediting one's own witness

27. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may contradict him by other evidence, or if the witness in the opinion of the court proves adverse, the party may by leave of the court cross-examine him and may prove that the witness made at some other time a statement inconsistent with his present testimony; before such proof is given the circumstances of the statement sufficient to designate the particular occasion shall be mentioned to the witness and he shall be asked whether or not he did make the statement.

PROOF OF STATUTES, DOCUMENTS AND RECORDS**Judicial notice of statutes**

28. Judicial notice shall be taken of

- (a) Acts of the Imperial Parliament,
- (b) Acts of the Parliament of Canada,
- (c) ordinances made by the Governor in Council of Canada,
- (d) Acts of the legislature of, or other legislative body or authority competent to make laws for, any province, and
- (e) Acts and ordinances of the legislature of, or other legislative body or authority competent to make laws for, any country of the British Commonwealth including the date of coming into force of any such Act or ordinance.

Proof of state documents

29.(1) The existence and the whole or any part of the contents of any Imperial state document may be proved

- (a) in the same manner as the same may from time to time be provable in any court in England,
- (b) by the production of a copy of the Canada Gazette or a volume of the Acts of the Parliament of Canada purporting to contain a copy of or an extract from the same or a notice thereof,
- (c) by the production of a copy thereof or an extract therefrom purporting to be printed by or for or by authority of the Queen's printer for Canada or for any province,
- (d) by the production of a copy thereof or an extract therefrom purporting to be certified as a true copy or extract by the minister or head or by the deputy minister or deputy head of any department of the Imperial Government, or
- (e) by the production of a copy thereof or an extract therefrom purporting to be certified as a true copy or extract by the custodian of the original document or the public records from which the copy or extract purports to be made.

(2) The existence and the whole or any part of the contents of any federal or provincial state document may be proved

- (a) by the production of a copy of the Canada Gazette or of the official gazette of any province or of a volume of the Acts of the Parliament of Canada or of the legislature of any province purporting to contain a copy of the state document or an extract therefrom or a notice thereof,
- (b) by the production of a copy thereof or an extract therefrom purporting to be printed by or for or by authority of the Queen's printer for Canada or for any province, or
- (c) by the production of a copy thereof or an extract therefrom, whether printed or not, purporting to be certified as a true copy or extract by the minister or head, or the deputy minister or deputy head, of any department of government of Canada or of any province, or by the custodian of the original document or the public records from which the copy or extract purports to be made.

(3) The existence and the whole or any part of the contents of any state document of a country of the British Commonwealth or foreign state may be proved

- (a) by the production of a copy thereof or an extract therefrom, purporting to be printed by or by the authority of the legislature, government, Queen's printer, government printer or other official printer of the country of the British Commonwealth or of the foreign state, or
- (b) by the production of a copy thereof or an extract therefrom, whether printed or not, purporting to be certified as a true copy or extract by the minister or head, or the deputy minister or deputy head, of any department of the government of the country of the British Commonwealth or of the foreign state, or by the custodian of the original document or the public records from which the copy or extract purports to be made, or purporting to be an exemplification of the state document under the great seal or other state seal of the country of the British Commonwealth or of the foreign state.

(4) It is not necessary to prove the signature or official position of the person by whom any copy or extract that is tendered in evidence under this section purports to be certified, or to prove that the original document or the public records from which the copy or extract purports to be made were deposited or kept in the custody of the person so certifying; and where a copy or extract that is tendered in evidence under this section purports to be printed by or for or under the authority of a legislature or government, or of a Queen's printer, government printer or other official printer, it is not necessary to prove the authority, status or official position of the legislature or government or of the Queen's printer, government printer or other official printer.

Copies of public books and documents

30. Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other Act exists that renders its contents provable by means of a copy, a copy thereof or extract therefrom is admissible in evidence if it is proved that it is a copy or extract or if it purports to be certified to be a true copy or extract by the officer to whose custody the original has been entrusted, without any proof of the signature or of the official character of the person appearing to have signed the same and without further proof thereof.

Copies of public documents

31. Where an original document, bylaw, rule, regulation or proceeding, or any entry in any register or other book of any corporation created by charter or by or under any statute of Canada or of any province is of so public a nature as to be admissible in evidence, a copy of the document, bylaw, rule, regulation or proceeding, or of the entry, purporting to be certified under the seal of the corporation and the hand of the presiding officer, clerk or secretary thereof, is admissible in evidence without proof of the seal of the corporation or of the signature or of the official character of the person appearing to have signed the same, and without further proof thereof.

Proof of order of Governor General

32. An order in writing signed by the Secretary of State of Canada, and purporting to be written by command of the Governor General is admissible in evidence as the order of the Governor General, without any proof that the person signing the same is the Secretary of State of Canada or of the signature of such person, and without proof thereof.

Proof of order of Lieutenant Governor of a province

33. An order in writing signed by a provincial secretary or other corresponding officer of a province and purporting to be written by command of the Lieutenant Governor or other person in whom the executive powers are vested is admissible in evidence as the order of the Lieutenant Governor or such other person without any proof of the official position of the person signing the same or of the signature of such person, and without further proof thereof.

Copies in Canada Gazette

34. All copies of official and other notices, advertisements and documents printed in the Canada Gazette or the official gazette of a province are prima facie evidence of the originals and of the contents thereof.

Entries in departmental books

35. A copy of an entry or a statement of the absence thereof in any document belonging to or deposited or kept in any office or department of the Government of Canada or of a province or in the office of any commission, board or other branch of the public service of Canada or of a province is admissible as evidence of the entry, and of the matters, transactions and accounts therein recorded, or of the absence thereof respectively, if it is proved by the oath or affidavit of an officer of the office or department or of the commission, board or other branch of any such public service that

- (a) the document was at the time of the making of the entry, or during the time covered by the statement, one of the ordinary documents kept in such office or department, commission, board or other branch of any such public service,
- (b) the entry was made, or in the case of its absence would have been made, in the usual and ordinary course of business of such office or department, commission, board or branch, and
- (c) such copy is a true copy thereof or that such statement of absence is a true statement.

Privilege in case of official documents

36. Where a document is in the official possession, custody or power of a member of the Executive Council of a province or of the head of a department of the public service of Canada or of a province, if the deputy head or other officer of the department or an officer in the public service of Canada or the province has the record, document, plan, book or paper in his personal possession and is called as a witness, he is entitled, acting herein by the direction and on behalf of the member of the Executive Council or head of the department, to object to produce the record, document, plan, book or paper on the ground that it is privileged; and the objection may be taken by him in the same manner, and shall have the same effect, as if the member of the Executive Council or head of the department were personally present and made the objection.

Proof of business records

37.(1) In this section, “business” includes every kind of business, profession, occupation or calling whether carried on for profit or not.

(2) A record in any business of an act, condition or event is, insofar as relevant, admissible in evidence if the custodian of the record or other qualified person testifies to its identity and the mode of its preparation, and to its having been made in the usual and ordinary course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the source of information, method and time of preparation were such as to justify its admission.

Proof by means of photographic prints

38.(1) In this section,

“person” includes

- (a) the government of Canada or of any province and any department, commission, board or branch of any such government,
- (b) a corporation, and
- (c) the heirs, executors, administrators or other legal representatives of a person;

“photographic film” includes any photographic plate, microphotographic film and photostatic negative.

(2) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement, document, plan or a record or book or entry therein kept or held by any person

- (a) is photographed in the course of an established practice of such person of photographing objects of the same or a similar class in order to keep a permanent record thereof, and
- (b) is destroyed by or in the presence of the person or of one or more of his employees or delivered to another person in the ordinary course of business or lost,

a print from the photographic film is admissible in evidence in all cases and for all purposes for which the object photographed would have been admissible.

(3) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement or other executed or signed document was so destroyed before the expiration of six years from

- (a) the date when in the ordinary course of business either the object or the matter to which it related ceased to be treated as current by the person having custody or control of the object, or
- (b) the date of receipt by the person having custody or control of the object of notice in writing of any claim in respect of the object or matter prior to the destruction of the object,

whichever is the later date, the court may refuse to admit in evidence under this section a print from a photographic film of the object.

(4) Where the photographic print is tendered by a government or the Bank of Canada, subsection (3) does not apply.

(5) Proof of compliance with the conditions prescribed by this section may be given by any person having knowledge of the facts either orally or by affidavit sworn before a notary public or a commissioner for oaths, and unless the court otherwise orders a notarial copy of any such affidavit is admissible in evidence in lieu of the original affidavit.

Evidence of judicial proceedings

39.(1) In this section, “justice” means justice of the peace, a judge of the Territorial Court and a judge of the Supreme Court.

(2) Evidence of any proceeding or record in, of or before any court of record in the United Kingdom, the Supreme Court of Canada, the Federal Court of Canada, any court of record, any justice or coroner in a province or in any country of the British Commonwealth or any court of record of any foreign state may be made in any action by an exemplification or certified copy thereof, purporting to be under the seal of the court or under the hand and seal of the justice or coroner as the case may be, without any proof of the authenticity of the seal or of the signature of the justice or coroner, or other proof; and if the court, justice or coroner has no seal, and so certifies, then the evidence may be made by a copy purporting to be certified under the signature of a judge or presiding justice of the court, or of the justice or coroner, without any proof of the authenticity of the signature or other proof.

(3) A document purporting to bear the signature of a judge of the Territorial Court, the Supreme Court, or the Court of Appeal, either in his capacity as such or as a *persona designata*, is admissible in evidence without proof of his signature, authority or official capacity.

Notarial documents of Quebec

40.(1) A copy of a notarial act or instrument in writing made in the Province of Quebec, before a notary and filed, enrolled or enregistered by the notary, certified by a notary or prothonotary to be a true copy of the original thereby certified to be in his possession as such notary or prothonotary, is admissible in evidence in the place and stead of the original, and has the same force and effect as the original would have if produced and proved.

(2) The proof by the certified copy may be rebutted or set aside by proof that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may, by the law of the Province of Quebec, be taken before a notary, or be filed, enrolled or enregistered by a notary.

(3) No copy of a notarial act or instrument as provided in this section shall be received in evidence upon any trial unless the party intending to produce the same has, before the trial, given to the party against whom it is intended to be produced reasonable notice of such intention, and the reasonableness of the notice shall be determined by the court, but the notice shall not in any case be less than ten days.

Protests of bills and notes

41. The production in any court of any protest, wherever made, under the hand or seal of one or more notaries public, of a bill of exchange or promissory note, is *prima facie* evidence of the making of such protest and of the statements therein contained.

Proof of notice of non-acceptance of bills and notes

42. Any note, memorandum or certificate made by a notary or firm of notaries in Canada, in the handwriting of the notary or a member of the firm, signed by the notary or firm at the foot of or embodied in any protest or in a regular register of official acts kept by such notary or firm, is prima facie evidence of the fact of notice of non-acceptance of a bill of exchange or promissory note having been sent or delivered at the time, and in the manner stated in such note, certificate or memorandum.

Use of bank books and records as evidence

43.(1) Subject to this section, a copy of an entry in any book or record kept in a bank is in all actions to which the bank is not a party prima facie evidence of the entry and of the matters, transactions and accounts therein recorded.

(2) A copy of an entry in such book or record shall not be received in evidence under this section unless it is first proved that the book or record was, at the time of the making of the entry, one of the ordinary books or records of the bank, that the entry was made in the usual and ordinary course of business, that the book or record is in the custody or control of the bank or its successor and that the copy is a true copy, and such proof may be given by the manager or accountant or a former manager or accountant of the bank or its successor, and may be given orally or by affidavit.

(3) A bank or officer of a bank is not, in any action to which the bank is not a party, compellable to produce any book or record the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court made for special cause.

(4) On the application of any party to any action the court may order that the party be at liberty to inspect and take copies of any entries in the books or records of the bank for the purposes of the action; the person whose account is to be inspected shall be notified of the application at least two clear days before the hearing thereof and, if it is shown to the satisfaction of the court that the person cannot be notified personally, the notice may be given by addressing the same to the bank.

(5) The costs of an application to a court under or for the purpose of this section, and the costs of anything done or to be done under an order of a court made under or for the purposes of this section, are in the discretion of the court; the court may order the costs or any part thereof to be paid to any party by the bank where they have been occasioned by any act or omission of the bank; and any such order against a bank may be enforced as if the bank were a party to the action.

Proof of wills

44.(1) Letters probate of a will or letters of administration with a will annexed, or a copy thereof certified under the seal of the court of the province in which the probate or letters of administration were granted, are admissible as evidence of the original will and of the death of the testator without any proof of the authenticity of the seal of the court or of the signature of the officer of the court purporting to certify the same, but the court may upon due cause shown upon affidavit, order the original will to be produced in evidence or may direct such other proof

of the original will as under the circumstances appears necessary or reasonable for testing the authenticity of the alleged original will, its unaltered condition and the correctness of the prepared copy.

(2) Letters probate of a will or letters of administration with a will annexed, or a copy thereof certified as provided in subsection (1), shall not be received in evidence upon any trial without the leave of the court unless the party intending to produce the same has, at least ten days before the trial, given to the party against whom it is intended to be produced notice of such intention.

(3) This section applies to letters probate of a will or letters of administration with a will annexed where the will is proved elsewhere than in the Yukon, if the original will has been deposited and the letters probate or letters of administration with will annexed were granted in a court having jurisdiction over the proof of wills and administration of the estates or intestates or the custody of wills.

Proof of registered instruments

45.(1) In an action where it would be necessary to produce and prove an original document that has been deposited, filed, kept or registered in any land titles office, a court registry, or any public office or court in the Yukon, in order to establish the document and the contents thereof, the party intending to prove the original document may give notice to the opposite party, ten days at least before the trial or other proceeding in which the proof is intended to be adduced, that he intends at the trial or other proceeding to give in evidence as proof of the original document a copy thereof certified by the registrar of the office where the same is so deposited, filed, kept or registered, under his hand and seal of office.

(2) A copy certified pursuant to this section is sufficient evidence of the original document and of its validity and contents without proof that the document was so deposited, filed, kept or registered, unless the party receiving the notice, within four days after its receipt, gives notice that he disputes the validity or contents of the original document.

(3) The cost attending any production or proof of the original document is in the discretion of the court.

Original documents

46.(1) Where a public officer produces upon a subpoena an original document it shall not be deposited in court unless otherwise ordered, but if a copy thereof or a part thereof is needed for subsequent reference or use, the copy certified under the hand of the officer producing the document or otherwise proved, shall be filed as an exhibit in the place of the original and the officer shall be entitled to receive in addition to his ordinary fees, the fees for any certified copy, to be paid to him before it is delivered or filed.

(2) Where an order is made that the original be retained, the order shall be delivered to the public officer, and the exhibit shall be retained in court and filed.

Proof of mercantile documents and telegrams

47.(1) A party desiring to give in evidence a telegram, letter, shipping bill, shipping bill of lading, delivery order, receipt, account or other written instrument used in business or other transactions may give notice to the opposite party, ten days at least before the trial or other proceeding in which the proof is intended to be adduced, that he intends to give in evidence as proof of the contents a writing purporting to be a copy thereof and in the notice shall name some convenient time and place for the inspection thereof.

(2) The copy referred to in subsection (1) may, after the giving of the notice referred to in that subsection, be inspected by the opposite party, and shall without further proof be accepted and taken in lieu of the original as proof of the contents of the original unless the party receiving the notice within four days after the time mentioned for such inspection gives notice that he intends to dispute the correctness or genuineness of the copy at the trial or proceeding and to require proof of the original, and the cost attending any production or proof of the original are in the discretion of the court.

Proof of newspaper notices

48. The production of a printed copy of a newspaper in any action is prima facie evidence that any notice or advertisement contained therein was inserted, advertised and published in that newspaper by the person by whom, in whose behalf or in whose name, the notice or advertisement purports or appears to be inserted, advertised or published.

Attestation

49. It is not necessary to prove, by the attesting witness, an instrument to the validity of which attestation is not requisite.

Comparison of disputed writing with genuine

50. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by a witness; and the writing and the evidence of witnesses respecting the same may be submitted to the court or jury as evidence of the genuineness or otherwise of the writing in dispute.

Impoundment of documents

51. Where a document is received in evidence, the court admitting the same may direct that it be impounded and kept in such custody for such period and subject to such conditions as may seem proper or until the further order of the court.

Proof of documents under other laws

52. The provisions of this Act shall be deemed to be in addition to and not in derogation of any power of proving documents given by any other law.

Hearsay evidence contained in documents

53.(1) Subject to subsection (2), in an action where direct oral evidence of a fact would be admissible, a statement made by a person in a document and tending to establish that fact is, on production of the original document, admissible as evidence of that fact if both of the following conditions are satisfied:

- (a) the maker of the statement either
 - (i) had personal knowledge of the matters dealt with by the statement, or
 - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement, insofar as the matters dealt with thereby are not within his personal knowledge, in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters;
- (b) the maker of the statement is called as a witness in the action.

(2) The condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead or unfit by reason of his bodily or mental condition to attend as a witness, if it is not reasonably practicable to secure his attendance or if all reasonable efforts to find him have been made without success.

(3) In an action, the court may at any stage of the action, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that the statement mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence

- (a) notwithstanding that the maker of the statement is available but is not called as a witness, and
- (b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(4) Nothing in this section renders admissible as evidence a statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact that the statement might tend to establish.

(5) For the purpose of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible.

(6) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained or from any other circumstances, and may in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a medical practitioner; and where the action is with a jury, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

(7) Nothing in this section shall be construed to

- (a) prejudice the admissibility of any evidence that would apart from the provisions of this section be admissible, or

- (b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this section had not been passed,

Weight to be attached to documentary hearsay

54.(1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by section 53, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by section 53 shall not be treated as corroboration of evidence given by the maker of the statement.

Proof of document where attestation required

55. In any action, an instrument to the validity of which attestation is required may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive; but nothing in this section applies to the proof of wills or other testamentary documents.

Presumptions respecting old documents

56. In any action there shall, in the case of a document proved or purporting to be not less than 20 years old, be made any presumption that immediately before April 2, 1955, would have been made in the case of a document of like character proved or purporting to be not less than 30 years old.

AFFIDAVITS AND DECLARATIONS

Within the Yukon

57. An oath, affidavit, affirmation or statutory declaration for use in the Yukon may be administered, sworn, affirmed or made within the Yukon before

- (a) a judge of the Supreme Court, a judge of the Territorial Court or a justice of the peace,
- (b) the clerk and deputy clerk of the Supreme Court,
- (c) a commissioner for taking oaths within the Yukon,
- (d) a notary public appointed for the Yukon,
- (e) a lawyer,
- (f) a postmaster of any post office appointed under the Post Office Act (Canada),
- (g) the sheriff or deputy sheriff, or
- (h) a member of the Royal Canadian Mounted Police,

and every such officer shall designate his office below his signature to the jurat on an affidavit, affirmation or statutory declaration administered, sworn, affirmed or made before him.

Authority of commissioned officers

58.(1) An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made within or outside the Yukon before a person who holds a commission as an officer in the Canadian Armed Forces and is on full-time service is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made within the Yukon before a commissioner for taking affidavits within the Yukon.

(2) A document that purports to be signed by a person mentioned in subsection (1) in testimony of an oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made before him and on which his rank and unit are shown below his signature is admissible in evidence without proof of his signature, of his rank or unit or that he is on full-time service.

Outside the Yukon

59.(1) An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made outside the Yukon before

- (a) a judge,
- (b) a magistrate,
- (c) an officer of a court of justice,
- (d) a commissioner for taking affidavits or other competent authority of the like nature,
- (e) a notary public,
- (f) the head of a city, town, village, township or other municipality,
- (g) an officer of any of Her Majesty's diplomatic or consular services, including an ambassador, envoy, minister, charge d'affaires, counsellor, secretary, attache, consul-general, consul, vice-consul, pro-consul, consular agent, acting consul-general, acting consul, acting vice-consul and acting consular agent,
- (h) an officer of the Canadian diplomatic, consular or representative services, including, in addition to the diplomatic and consular officers mentioned in paragraph (g), a high commissioner, permanent delegate, acting high commissioner, acting permanent delegate, counsellor and secretary, or
- (i) a Canadian Government Trade Commissioner or an Assistant Canadian Government Trade Commissioner,

exercising his functions or having jurisdiction or authority as such in the place in which it is administered, sworn, affirmed or made, is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made within the Yukon before a commissioner for taking affidavits within the Yukon.

(2) An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made outside the Yukon before a notary public appointed for the Yukon or before a commissioner for taking affidavits within the Yukon is as valid and effectual to all intents and purposes as if it had been duly administered, sworn, affirmed or made within the Yukon before a commissioner for taking affidavits within the Yukon.

(3) A document that purports to be signed by a person mentioned in subsection (1) or (2) in testimony of an oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made before him, and on which his office is shown below his signature, and

- (a) in the case of a notary public, that purports to have impressed thereon or attached thereto his official seal,
- (b) in the case of a person mentioned in paragraph (1)(f), that purports to have impressed thereon or attached thereto the seal of the municipality, or
- (c) in the case of a person mentioned in paragraph (1)(g), (h) or (i), that purports to have impressed thereon or attached thereto his seal or the seal or stamp of his office or of the office to which he is attached,

is admissible in evidence without proof of his signature, of his office or official character, or of the seal or stamp, and without proof that he was exercising his functions or had jurisdiction or authority in the place in which the oath, affidavit, affirmation or statutory declaration was administered, sworn, affirmed or made.

Formal defects

60. No defect by misdescription of parties or otherwise in the title or jurat of any affidavit, and no other irregularity in the form of any affidavit, affirmation or statutory declaration, is an objection to its reception in evidence if the court before or to whom it is tendered thinks proper to receive it; and the court may direct a memorandum to be made on the document that it has been so received.

Authority for the purposes of other laws

61. Where under any law evidence under oath is authorized or required to be taken, or an oath is authorized or directed to be made, taken or administered, the oath may be administered and a certificate of its having been made, taken or administered may be given by anyone authorized by such law to take the evidence or by anyone authorized to take affidavits under this Act having authority or jurisdiction within the place where the oath is administered.

MISCELLANEOUS

Proof of death of persons in the Canadian Armed Forces

62. The production of a certificate in writing signed or purporting to be signed, by an officer of the Canadian Armed Forces authorized so to sign stating that the person named in the certificate was a member of the Canadian Armed Forces, and that he has been officially reported as dead or presumed to be dead, if it appears on the face of the certificate that the person signing is qualified, is sufficient proof of the death of such person and of all facts stated in the certificate for any purpose to which the legislative authority of the Legislature extends and also the office, authority and signature of the person giving or making the certificate, without any proof of his appointment, authority or signature.

Powers under foreign commissions

63.(1) Where, upon application by motion for this purpose it is made to appear to a court that any court or tribunal of competent jurisdiction in any province or in the United Kingdom or in any British country, or in a foreign state has duly authorized, by commission, order or other

process, the obtaining of testimony in or in relation to any action pending in or before the foreign court or tribunal, of any witness out of the jurisdiction thereof, and within the jurisdiction of the court so applied to, the court may

- (a) order the examination of the witness accordingly, and in a manner and form directed by the commission, order or other process,
- (b) by the same order or a subsequent order, command the attendance of any person named therein for the purpose of being examined, or the production of any writings or other documents mentioned in the order, and
- (c) give all such directions as to the time, place and manner of the examination and all other matters connected therewith as may appear reasonable and just;

and the order may be enforced, and any disobedience thereof punished, in like manner as in case of an order made by the same court in an action pending in the court.

(2) Every person whose attendance is ordered pursuant to this section is entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in the court.

(3) Every person examined under a commission, order or other process under this section has the like right to refuse to answer questions that, in an action pending in the court by which the order for examination was made, the witness would be entitled to refuse to answer; and no person shall be compelled to produce at the examination any writing or document that he would not be compellable to produce at the trial of such an action.

(4) Where the commission, order or other process directs, or the instructions of the court accompanying the same direct that the persons to be examined shall be sworn or shall affirm before the commissioner or other person, the commissioner or other person has authority to administer an oath or affirmation to the person to be examined.

CHAPTER 58

EXECUTIONS ACT

Interpretation

1. In this Act,

- “company” includes a bank and any corporation established for the purpose of trade or profit, for the construction of any work or for the acquisition of gain;
- “execution creditor” includes a person who is deemed to be an execution creditor under section 17 of the Creditors Relief Act;
- “land” has the same meaning as in the Land Titles Act (Canada);
- “personal property” means goods, chattels and effects that are situated in the Yukon, but does not include land or property that could not in law or in equity be sold by the execution debtor without the assent of another person immediately before it is bound by the writ;
- “property” means personal property and land;
- “sale” means sale under a writ of execution and, in the case of a sale of land, includes a sale under any other writ within the meaning of section 125 of the Land Titles Act (Canada);
- “seizure” means seizure under a writ of execution;
- “sheriff” has the same meaning as in the Creditors Relief Act;
- “writ of execution” includes a writ of seizure and sale, a writ of sequestration, a certificate under section 16 of the Creditors Relief Act, and any writ that may be issued subsequently for giving effect to a writ of execution.

Other Acts prevail

2.(1) The provisions of this Act are subject to the provisions of the Land Titles Act (Canada).

(2) The provisions of this Act are subject to the provisions of the Creditors Relief Act and the Small Claims Court Act.

(3) Except as provided by subsection 6(2), the provisions of this Act are subject to the provisions of the Exemptions Act.

Seizable property and prohibited seizures

3.(1) All of the property of an execution debtor is liable to seizure and sale.

(2) No person other than the sheriff shall effect a seizure or sale of property.

Inquiries by sheriff and provision of security

4.(1) The sheriff is not required to make any inquiry as to the existence or location of property that might be liable to seizure or sale.

(2) The sheriff is not required to do any act to effect the seizure or sale of property, or to do any act in relation to the seizure or sale of property, unless the execution creditor, where required by the sheriff to do so, has provided reasonable security

- (a) indemnifying the sheriff against all damages, costs and expenses, including the costs and expenses of interpleader proceedings, that the sheriff may incur or to which he may become liable by doing the act, and
- (b) indemnifying any person who has an interest in the property against any damages, costs or expenses that the person may suffer by reason of the doing of the act.

(3) Where a difference occurs as to the security required to be provided pursuant to subsection (2),

- (a) the execution creditor may apply at his own cost to a judge for an order determining the security to be provided, and
- (b) the sheriff is not required to do any act to which subsection (2) applies until the security has been provided pursuant to the order.

(4) Except in the case of a writ of execution issued upon a judgment for an amount within the jurisdiction of Small Claims Court, the costs of providing security under this section, including the costs of an application under subsection (3), may be added to the costs of the execution creditor that may be included in the amount required to be levied by the writ.

Effect of writ of execution

5.(1) A writ of execution binds the personal property of the execution debtor from the receipt of the writ by the sheriff, but the writ does not affect an interest in any of that property acquired by a person for valuable consideration before he receives notice that the writ has been received by the sheriff.

(2) Where a writ of execution that has not been satisfied remains in the hands of the sheriff and he receives another writ of execution, the property of the execution debtor shall be deemed to have been bound by the later writ from the date from which the property was bound by the earlier writ.

SEIZURE OF PERSONAL PROPERTY

Instructions to sheriff and seizure of exempt property

6.(1) Before he seizes any personal property, the sheriff may require written instructions from the execution creditor instructing him to effect the seizure, and the sheriff may require that the instructions contain a description of the property that will enable him to identify and seize it.

(2) Notwithstanding any provision of the Exemptions Act, where the sheriff deems it impracticable to distinguish between personal property that is exempt from seizure and personal property that is not exempt, he may seize exempt property along with property that is not exempt, but the seizure of the exempt property shall be released as soon as the sheriff can ascertain which of the seized property is exempt.

Seizure of shares

7.(1) In addition to any other method of seizure that may be applicable, the sheriff may effect the seizure of personal property that consists of or relates to shares in a company by delivering a copy of the writ of execution to the registered office of the company in the Yukon.

(2) A seizure of an execution debtor's interest in personal property under subsection (1) shall be deemed to take place upon the receipt of the writ at the registered office of the company.

(3) Subsection (1) does not apply in relation to shares in respect of which a share warrant to bearer has been issued but has not been surrendered.

(4) Where a seizure has been effected under subsection (1) or by any other method, no transfer of the shares or of any interest in the shares by the execution debtor is valid unless the seizure has been released.

(5) From the receipt of a copy of a writ of execution at the registered office of a company, all dividends, premiums, bonuses or other pecuniary profits in the shares that would otherwise be paid by the company to the execution debtor shall be paid by the company to the sheriff, until the seizure is released.

(6) Personal property seized under this section shall be deemed to be personal property found by the sheriff at the registered office of the company.

Seizure of mobile homes

8.(1) Except as provided by subsection (2), where personal property that is a mobile home is occupied, the sheriff shall not take possession of the property without demanding and receiving the permission of the occupant to do so.

(2) Where the occupant of personal property that is a mobile home refuses to deliver up possession of the mobile home upon demand by the sheriff, or where no response is made to the demand, the execution creditor may apply to a judge for an order directing the occupant to deliver up possession of the property to the sheriff.

(3) A demand under this section may be made by affixing a notice in the prescribed form to the mobile home.

Notice of seizure

9.(1) Where the sheriff seizes personal property and does not cause such possession to be taken of the property as would be reasonable notice to others of the seizure, he shall, at the time of the seizure, affix a notice in the prescribed form to the property or to a conspicuous place upon the premises where the property is located at the time of the seizure.

(2) Where the sheriff has affixed a notice as provided by subsection (1) and he believes that the notice may become lost or obliterated, he shall also cause the notice to be published in a newspaper circulating in the Yukon.

(3) No person shall remove or deface a notice affixed by the sheriff under this section.

Records of notices

10. The sheriff shall keep a record of all notices affixed or published by him under section 9 and the record shall be open for inspection by any person at the prescribed times, upon payment of the prescribed fee.

Constructive notice

11.(1) Where a notice is affixed or published under section 9, every person who has not previously received notice of the receipt of the writ of execution by the sheriff shall be deemed to have received such notice upon the affixation of the notice.

(2) Notice that property has been seized by the sheriff shall be deemed to be notice of the receipt of the writ of execution by the sheriff.

Failure to give notice and defective notices

12. A seizure is not affected by the failure of the sheriff to affix or publish a notice as provided by section 9 or by any defect in a notice affixed or published under section 9.

Removal of property

13.(1) Where the sheriff believes that, for the security of personal property seized by him, it should be removed from the premises upon which it is situated at the time of the seizure, he may remove the property by such means, at such times and to such places as he deems proper.

(2) The sheriff shall deliver an inventory of personal property that has been seized

- (a) to the execution debtor, upon request, and
- (b) to a person, other than the execution debtor, in possession of the property at the time of the seizure, upon request made before the property is removed from the premises upon which it is situated at the time of the seizure.

(3) Where a request under subsection (2) is made before the property is removed from the premises upon which it is situated at the time of the seizure, the sheriff shall not remove it from the premises until he has delivered the inventory to the person making the request.

(4) Where the sheriff has seized personal property, he may appoint the execution debtor or any other person to be his agent to hold the property on behalf of the sheriff, but no such appointment is effective unless it is accepted in writing by the appointee.

Release of seizure

14.(1) A seizure of personal property shall be deemed to be a continuing seizure until the seizure is released.

(2) Except as otherwise provided in this Act, a seizure of personal property is released

- (a) by the sale of the property, or
- (b) by the issuance of a notice of release of the seizure in the prescribed form by the sheriff.

Release and continuation of seizure

15.(1) Where a period of six months has elapsed from the date upon which a seizure was effected, the sheriff may give, to any execution creditor, 60 days notice of his intention to release the seizure.

(2) A notice of the sheriff’s intention to release a seizure under subsection (1) shall be in the prescribed form and it shall be served upon the person to whom it is directed or mailed to him by registered or certified mail.

(3) A person who receives a notice of intention under subsection (1) may, within the 60 day period, apply to a judge for an order continuing the seizure.

(4) An application under subsection (3) may be made ex parte or upon such notice as a judge may direct.

(5) A judge, upon hearing an application, may make an order providing for the release or continuation of the seizure upon such terms as he considers proper.

(6) Where a person who has been given notice under subsection (1) does not apply for an order under subsection (3) and the sheriff releases the seizure after the expiration of the 60 day period, no action arising out of the release of the seizure is maintainable by that person against the sheriff.

SALE OF PERSONAL PROPERTY

Instructions for sale

16. Before the sheriff sells personal property that has been seized, he may require the written instructions of the execution creditor to sell the property, and he may require that the instructions set forth the execution creditor’s instructions as to the terms and conditions of the sale.

Sale procedure, notices and objections

17.(1) Except as otherwise provided by this Act, or unless a judge otherwise orders, a sale of personal property that has been seized shall be held by way of public auction or public tender.

(2) At least 20 days before personal property is offered for sale under subsection (1), the sheriff shall

- (a) serve notice of the offer in the prescribed form on the execution creditor and the execution debtor, or send it to them by registered or certified mail, and
- (b) cause public notice of the sale in the prescribed form to be published in a newspaper circulating in the Yukon.

(3) A notice of objection in the prescribed form shall be served upon or mailed to the execution debtor with the notice of the offer for sale served or mailed under paragraph (2)(a).

Sale of shares

18.(1) Where personal property that has been seized consists of shares in a private company, the property shall be offered for sale at a reasonable price to the other shareholders of the company or any one of them.

(2) For the purposes of subsection (1), an offer of sale shall be made by mailing an offer of sale in the prescribed form by registered or certified mail to the registered office of the company, and the offer shall be deemed to have been made when the offer of sale is received.

(3) At least ten days before an offer of sale is made under this section, the sheriff shall serve notice of the offer in the prescribed form on the execution creditor and the execution debtor, or send it to them by registered or certified mail.

(4) Where a dispute arises between the execution creditor or the debtor and a shareholder as to the price to be paid for shares offered for sale under subsection (1), the shares shall not be sold under subsection (1).

(5) Where no sale of personal property that consists of shares in a private company is made under subsection (1) within 30 days of the making of the offer, they shall be sold as if subsection (1) did not apply, but

- (a) a person who is not a shareholder of the company is not entitled to purchase any share or shares if a shareholder makes a bid for the share or shares that is equal to or greater than the bid of the person who is not a shareholder, and
- (b) a shareholder is not entitled to purchase any share or shares if the bid of the shareholder for the share or shares is less than the bid of any other shareholder for the share or shares.

Perishable property

19. Where personal property that has been seized is of a perishable nature, the sheriff, in his discretion, may sell the property forthwith, in such manner and upon such notice as he deems proper, and the proceeds of the sale shall take the place of and be dealt with as if they were the property that was seized.

Time for sale and delay of sale

20.(1) Except as provided by section 19 or subsection (5) a sale of personal property that has been seized shall not be held

- (a) within 14 days after the seizure of the property,
- (b) after an application has been made to a judge under subsection (2), or
- (c) after the sheriff has received notice of objection under subsection (3).

(2) An execution debtor or any other person who claims an interest in personal property that has been seized may, at any time before the property is sold, apply to a judge for an order restraining the sale of the property.

(3) An execution debtor may object to the sale of personal property that has been seized by returning the notice of objection to the sheriff.

(4) Where the sheriff receives a notice of objection under subsection (3), he shall notify the execution creditor forthwith, and the execution creditor may apply to a judge for an order for the sale of all or part of the property.

(5) Upon the hearing of an application under subsection (2) or (4), the judge may

- (a) order the sheriff to sell all or part of the property,
- (b) order the sheriff to release the seizure of all or part of the property,
- (c) postpone the sale or release of the seizure pending the payment of the debt upon such terms and conditions as the judge may deem advisable, and
- (d) make such order as to the payment of the costs of the application or the costs incurred by the sheriff by reason of the application, including the costs resulting from the cancellation or postponement of a sale, as the judge deems advisable.

Adjournment of sale and private sale

21.(1) Where personal property is offered for sale and no bids that are adequate in the opinion of the sheriff are made for the property, or for a part of the property, the sheriff may adjourn the sale as to all or part of the property, and a sale held upon an adjournment is subject to all of the provisions of this Act as if the previous sale had not been held.

(2) Where personal property that has been seized remains unsold after having been offered for sale upon an adjournment, the sheriff, without a writ of venditioni exponas, may sell the property by private sale

- (a) to the execution creditor for a price not less than the fair value of the property, or
- (b) to any person, other than the execution creditor, for any price.

SALE OF LAND

Instructions for sale

22. The sheriff shall not deliver a copy of a writ to the registrar under section 125 of the Land Titles Act (Canada) unless he is instructed in writing to do so by the execution creditor and the prescribed fees are paid.

Form of sale

23.(1) A sale of land shall be held by way of public auction or public tender.

(2) Land shall not be offered for sale until

- (a) a writ of execution against the personal property of the execution debtor has been returned unsatisfied in whole or in part, and
- (b) a period of one year has elapsed after the receipt of a copy of the writ by the registrar under the Land Titles Act (Canada) or, if more than one writ is received, after the receipt of the first writ.

(3) Land shall not be offered for sale if a copy of the writ has not been received by the registrar under the Land Titles Act (Canada).

Notice to registered interests

24.(1) At least 30 days before land is offered for sale, the sheriff shall serve a notice of the offer in the prescribed form on, or mail it by registered or certified mail to,

- (a) the execution debtor,
- (b) the registered owner of the land to be sold, if he is not the execution debtor,

- (c) the execution creditor, and
- (d) every person who appears by the records of the land titles office to have an interest in the land acquired after the receipt of the writ by the registrar under the Land Titles Act (Canada), or after the receipt of the first writ if more than one writ has been received.

(2) Before land is offered for sale, the sheriff shall cause public notice of the sale in the prescribed form to be published at least once a week, for four consecutive weeks, in a newspaper circulating in the Yukon, the last of such notices to be published at least ten days before the date of the sale.

Notice to others

25.(1) Where it appears to the sheriff that any person who has an interest in the land to be offered for sale may be affected by the sale, he shall serve notice in the prescribed form on that person, or mail it to him by registered or certified mail, at least 30 days before the land is offered for sale.

(2) Where the sheriff is unable to identify or find a person to whom he may be required to give notice under subsection (1), the sheriff may apply to a judge for an order for substituted service.

(3) Upon an application by the sheriff under subsection (2), the judge may in his discretion direct the publication of such advertisements at such times and in such manner as the judge thinks fit, calling upon all persons claiming to be interested in the land to come in to establish their claims before the court within the time specified in the advertisements.

(4) After the expiration of the time specified in an advertisement published under subsection (3), all persons who have not come in to establish their claims before the court, whether or not they are within the Yukon, including persons under disability, are absolutely debarred from all right, title and interest in and to the land to the extent that such right, title or interest would otherwise prevail over the interest acquired by a purchaser at the sale of the land.

(5) This section does not apply to a person mentioned in paragraphs 24(1)(a), (b) or (c) or to an interest in the land appearing by the records of the land titles office to have been registered before the receipt of the writ by the registrar under the Land Titles Act (Canada).

Adjournment of sale

26.(1) Where land is offered for sale and no bids that are adequate in the opinion of the sheriff are made for the land the sheriff may adjourn the sale, and a sale held upon an adjournment is subject to all of the provisions of this Act as if the previous sale had not been held.

(2) Where land remains unsold after having been offered for sale upon an adjournment, a writ of venditioni exponas may be issued, and on delivery thereof to the sheriff he shall sell the land for the highest bid made the next time the land is offered for sale.

(3) A sale of land under a writ of venditioni exponas is subject to the provisions of section 24 relating to the giving of notices.

GENERAL

Warranty and effect of sale

27.(1) Every sale of property shall be without warranty as to title.

(2) A sale of property transfers to the purchaser the same estate, right, title or interest as the execution debtor possessed,

- (a) in the case of personal property, at the time as of which the property was bound by the receipt of the writ by the sheriff as provided by section 5, or
- (b) in the case of land, at the time when the writ was received by the registrar under section 125 of the Land Titles Act (Canada).

Obligations and rights of third parties

28.(1) Where property that is sold consists of or is subject to a contract between the execution debtor and another person, the purchaser is not entitled to the benefit of the contract as against the other person until he has given notice of the purchase to that person.

(2) The purchaser of property that consists of, or is subject to, contractual rights of the execution debtor against the purchaser shall deliver to the execution debtor upon demand an appropriate release of the execution debtor's liability under the contract.

Seizure of security for money

29.(1) Where property that has been seized or that is bound by writ under section 125 of the Land Titles Act (Canada), consists of a security for the payment of money, whether or not it also secures the performance of any other obligation,

- (a) the sheriff may hold the property as security for the satisfaction of the writ,
- (b) from the delivery of notice in the prescribed form to the person liable to pay the money until the release of the writ, that person shall pay to the sheriff all money payable and, as it becomes due, all money that may become payable in respect of the property, and
- (c) the sheriff may sue in his own name for money payable in respect of the property.

(2) Without limiting the generality of subsection 28(1), where property to which this section applies is sold, a person liable to pay money in respect of the property is not required to make any payment to the purchaser until the purchaser has given him notice of the purchase.

(3) A payment of money to the sheriff under paragraph (1)(b) discharges the person liable to make the payment from his liability to do so to the extent of the payment made.

(4) A payment of money in contravention of subsection 7(5) or paragraph (1)(b) is of no effect as against the sheriff or a purchaser of the property.

Seizure of money or bank notes

30. Where personal property that has been seized consists of money or bank notes, it may be applied directly to the satisfaction of the writ.

Payment of charge

31. An execution debtor is entitled to recover from the purchaser of property that is sold any amount paid by the execution debtor, in respect of the period between the date when the writ was received by the sheriff or by the registrar under the Land Titles Act (Canada), as the case may be, and the date of the sale, pursuant to a pecuniary charge on the property that has priority over the execution under which the sale is held.

Assignment of security

32.(1) Where personal property that has been seized consists of a cheque, bill of exchange, promissory note, bond, specialty or other security for the payment of money that does not secure also the performance of any other obligation, the sheriff may assign the property to the execution creditor at the sum actually due on and secured by the property if the execution creditor will accept the property as money collected.

(2) At least ten days before an assignment is offered to be made under subsection (1), the sheriff shall serve notice of the offer in the prescribed form on the execution debtor or send it to him by registered or certified mail.

(3) The authority conferred on the sheriff in this section is in addition to any authority conferred on him by this Act or otherwise possessed by him at law.

(4) An assignment by the sheriff to the execution creditor of any personal property mentioned in subsection (1) discharges the sheriff to the extent of the amount due on and secured by the property.

(5) An execution creditor to whom an assignment is made under this section shall be deemed to be a purchaser at a sale of the property to which subsections 28(1) and 29(2) apply.

Directions by judge

33.(1) The sheriff may apply to a judge at any time for directions as to the exercise by the sheriff of any authority or responsibility in relation to the seizure or sale of property.

(2) No action is maintainable against a sheriff for anything done by him in compliance with an order or directions of a judge.

Wrongful seizure

34.(1) Where a claim is made to or in respect of property that has been seized or that has been bound by a writ under section 125 of the Land Titles Act (Canada), and the execution creditor notifies the sheriff in writing that he admits the claim, the sheriff may

- (a) release the seizure or transmit a certificate to the registrar under section 127 of the Land Titles Act (Canada), as the case may be, and
- (b) apply to a judge for an order protecting the sheriff from any action in respect of the seizure or binding of the property.

(2) The claimant shall be given notice of the application made by the sheriff under paragraph (1)(b), and he is entitled to be heard at the hearing of the application.

(3) Upon hearing the application, whether or not the claimant has attended, the judge may make such order as he deems just, including an order as to costs.

(4) For the purposes of subsection (1), a claim to or in respect of the proceeds or value of such property shall be deemed to be a claim to or in respect of the property.

Court procedure

35.(1) Upon any application to a judge under this Act, the judge may

- (a) direct that the application be dealt with in a summary way or by the trial of an issue,
- (b) require such notice to be given to such parties as the judge thinks proper, and
- (c) hear evidence either viva voce or by affidavit.

(2) Where, upon the hearing of an application under this Act, it appears to the judge that the disposition of the application may involve the determination of a dispute as to the authority or responsibility of the sheriff, or as to the interests of any person in any property, the judge in his discretion may proceed to hear and determine the matter.

Ancillary powers of judge

36. Where a judge is authorized to make an order under this Act, he may also refuse to make the order or he may make the order subject to such terms and conditions as he deems appropriate, and he may make such further or other orders as are necessary to give full effect to the order he is specifically authorized to make under this Act.

Powers of Territorial Court

37.(1) For the purposes of this Act, a judge of the Small Claims Court has all the powers of a judge of the Supreme Court in relation to personal property to deal with any application in respect of a writ of execution issued upon the judgment of a judge of the Small Claims Court.

(2) This section does not empower a judge of the Territorial Court to deal with an application where the amount in issue exceeds \$1,500.

Effect of breach of Act

38. A breach of any of the provisions of this Act does not affect the title to property acquired by a purchaser by way of sale, notwithstanding any knowledge he may have of the breach, unless he is a party to the breach.

Other remedies of creditor

39. Nothing in this Act deprives an execution creditor of any other remedy otherwise available to him.

Mailing of notices

40.(1) Where any notice is authorized to be mailed to a person under this Act, the notice may be mailed to that person at his post office address last known to the person mailing the notice.

(2) Proof of the mailing of a notice under this Act may be made by affidavit.

(3) A notice mailed under this Act shall be deemed to have been received ten days after the date on which it was mailed.

Liability for costs

41.(1) An execution debtor is not liable for any costs or expenses incurred in respect of a writ of execution that is released under section 15 or 34.

(2) The execution creditor is liable for the payment of costs or expenses incurred by the sheriff under the instructions of the execution creditor where

- (a) the amount levied by the sheriff against the execution debtor is not sufficient to pay the costs or expenses, or
- (b) the writ of execution in respect of which the costs or expenses are incurred is released under section 15 or 34.

(3) Except as provided by subsections (1) and (2), the costs of execution proceedings are in the discretion of the court.

Regulations

42. The Commissioner in Executive Council may make regulations

- (a) prescribing the forms necessary for the purposes of this Act;
 - (b) prescribing the fees to be charged by the sheriff under this Act;
 - (c) requiring the payment of fees to the sheriff for the doing of any act under a writ of execution or under this Act;
 - (d) governing the practice to be followed on applications under this Act to a judge;
 - (e) prescribing the times when the record kept under section 10 shall be open for inspection;
 - (f) governing the requirement or provision of security to the sheriff under subsection 4(2);
 - (g) governing the requirement or provision of instructions to the sheriff under subsection 6(1), or section 16 or 22;
 - (h) requiring the sheriff to keep records, and governing the inspection of those records;
 - (i) generally, for carrying the purposes and provisions of this Act into effect.
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CHAPTER 59

EXEMPTIONS ACT

Interpretation

1. In this Act,

“creditor” means a party or person who is entitled to receive payment or to enforce a judgment or order;

“debtor” means a party or person to make payment under any judgment or order or against whom the same may be enforced;

“writ of execution” includes a writ of fieri facias and every subsequent writ for giving effect thereto issued according to the provisions of the Judicature Act.

Chattels exempt from seizure

2. The following real and personal property is exempt from seizure under any writ of execution:

- (a) the household furniture, utensils and equipment that are contained in and form part of the permanent home of a debtor, but not including furniture, utensils or equipment purchased for defeating the claims of creditors, except that under a writ of execution issued upon a judgment given upon a claim for clothing, food, fuel or shelter supplied for the debtor or his family the exemption under this paragraph is limited to household furniture, utensils and equipment not exceeding in value \$200;
- (b) the necessary and ordinary wearing apparel of the debtor and his family;
- (c) the food, fuel and other necessaries of life required by the debtor and his family for the next ensuing 12 months;
- (d) live-stock, fowl, bees, books, tools and implements and other chattels necessary to and actually in use by the debtor in his business, profession or calling to the extent of \$600;
- (e) the house and buildings occupied by the debtor and the lot on which they are situated to the extent of \$3,000.

Debtor’s rights where implements sold

3. The debtor may, in lieu of the chattels referred to in paragraph 2(d), elect to receive the proceeds of the sale thereof up to \$600, in which case the officer executing the writ of execution shall pay to the debtor the net proceeds of the sale if they do not exceed \$600, or if they do exceed \$600, shall pay \$600 to the debtor in satisfaction of his right to exemption under paragraph 2(d).

Money derived from sale of exempted goods

4. The sum to which the debtor is entitled under paragraph 2(d) or under section 3 is exempt from attachment or seizure at the instance of a creditor.

No exemption where debt is for chattel seized

5. Nothing in this Act exempts any article including fuel, except beds, bedding and bedsteads including cradles in ordinary use by the debtor and his family and except necessary and ordinary wearing apparel of the debtor and his family, from seizure to satisfy a debt contracted for such article.

Deceased debtor

6. Chattels of a debtor exempt from seizure are exempt from the claims of his creditors after his death, and his spouse is entitled to retain them for the benefit of herself or himself and his family, or, if there is no spouse, the family of the debtor is entitled to them.

Right of selection

7. The debtor, his surviving spouse or family, or in the case of infants, their guardian, may select out of any larger number the chattels exempt from seizure.

Application of exemptions

8. Section 2 does not apply

- (a) to cases where a debtor has absconded or is about to abscond from the Yukon leaving no spouse or family behind, or
 - (b) to writs of execution issued upon judgment or orders for the payment of alimony or judgments founded upon separation agreements.
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CHAPTER 60

EXPROPRIATION ACT

Interpretation

1. In this Act,

“expropriation” means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers;

“expropriating authority” means any person empowered to acquire land by expropriation;

“land” includes any estate, term, easement, right or interest in, to, over or affecting land;

“owner” includes a mortgagee, lessee, tenant, occupant, execution creditor, a person entitled to a limited estate or interest in land, the public administrator or the trustees of the estate of an insane person or of a person incapable of managing his affairs, and a guardian, executor, administrator or trustee in whom land is vested;

“registered owner” means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the proper registry, Land Titles or Sheriff’s Office, and includes a person shown as a tenant of land on the last revised assessment roll;

“serve” means to serve personally or by registered letter addressed to the person to be served at his last known address, or, if that person is unknown, or if his address is unknown, by publication once a week for four weeks in a newspaper having general circulation in the locality in which the land concerned is situated.

Executive Council Member may expropriate

2.(1) Subject to this Act, the Executive Council Member may, without the consent of the owner, enter upon and expropriate any land that he deems necessary for the public purposes of the Yukon or at the request of any municipality for the public purposes of any municipality.

(2) Compensation for disturbance, injurious affection of land or expropriation of land shall be assessed and paid in the manner provided in this Act.

Application of the Act

3.(1) Where land is expropriated or is injuriously affected by an expropriating authority in the exercise of its statutory powers, this Act applies.

(2) Where there is conflict between a provision of this Act and a provision of any other Act, this Act prevails.

Crown bound

4. This Act binds the Crown.

Vesting of title

5.(1) Where an expropriating authority has exercised its statutory powers to expropriate land, it shall register without undue delay in the land titles office a plan of the land signed by the expropriating authority and by a Canada Land Surveyor, and thereupon, but not otherwise, the land vests in the expropriating authority.

(2) Where the land is required for a limited time only or only a limited estate, right or interest therein is required, the plan registered under this section shall indicate by appropriate words thereon that the land is taken for such limited time only or that only such limited estate, right or interest therein is taken, and, by the registration in such case, the land for such limited time or such limited estate, right or interest therein vests in the expropriating authority.

(3) In the case of an omission, misstatement, or erroneous description in a plan registered under this section, the expropriating authority may register in the land titles office a plan replacing or amending the original plan and signed by the expropriating authority and by a Canada Land Surveyor, and a plan registered under this subsection shall be marked to show the nature of the replacement or amendment and is of the same force and effect as, and is in substitution for, the original plan to the extent that such plan is replaced or amended thereby.

(4) Where a plan 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 tribunal determining compensation under this Act.

(5) Where a limited estate, right or interest in land is being taken for an electrical transmission or distribution line carried on single poles, the expropriating authority may, before registering a plan under subsection (1), register in the land titles office, a preliminary plan, to be known as and marked "Preliminary Plan" and being a plan with or without local description, signed by the expropriating authority and illustrating the location of the proposed line and indicating by appropriate words thereon the nature of the estate, right or interest being taken, and such preliminary plan when registered has the same force and effect as a plan registered under subsection (1), but a plan in accordance with subsection (1) shall be registered within two years after the registration of the preliminary plan in substitution for the preliminary plan.

Notice of expropriation

6.(1) Where a plan has been registered under section 5, and no agreement as to compensation has been made with the owner, the expropriating authority may serve the owner, and shall serve the registered owner, within 60 days after the date of registration of the plan, with a notice of expropriation of his land in the prescribed form, but failure to serve the notice does not invalidate the expropriation.

(2) Where a plan has been registered under section 5 and a notice of expropriation has not been served in accordance with subsection (1), the registered owner may elect, by notice in writing served upon the expropriation authority

- (a) to have the compensation to which he is entitled assessed as of the date of the registration of the plan under section 5, or
- (b) to have the compensation to which he is entitled assessed as of the date on which he was served with the notice of expropriation.

Right to compensation

7.(1) Where land is expropriated or is injuriously affected by an expropriating authority in the exercise of its statutory powers, the expropriating authority shall make due compensation to the owner of the land for the land expropriated or for any damage necessarily resulting from

the exercise of such powers, as the case may be, beyond any advantage that the owner may derive from any work for which the land was expropriated or injuriously affected.

(2) Where land is expropriated or is injuriously affected by an expropriating authority in the exercise of its statutory powers, the expropriating authority may, for the purpose of benefiting the owner, before the compensation is agreed upon or determined, undertake to make alterations or additions or to construct additional work or to abandon part of the land expropriated or to grant other lands or easements, in which case the compensation shall be determined having regard to such undertakings, and, if the undertaking has not already been carried out, the tribunal determining compensation shall 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 part of the land abandoned or such grant made to him.

Compensation assessed

8. Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:

- (a) the value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller to a willing buyer might be expected to realize;
- (b) an allowance may be made on account of the acquisition being compulsory;
- (c) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirement of any authority possessing compulsory purchase powers;
- (d) where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account;
- (e) where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;
- (f) the provisions of paragraph (a) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land;
- (g) no account shall be taken of any change or anticipated change in the value of land attributable to the carrying out or the prospect of carrying out a development for the purpose of which the land is being acquired.

Application to home

9.(1) The provisions of this section shall apply to the expropriation of any home.

(2) A home is a house which is and has been for a reasonable time the home of a person with the land immediately appurtenant thereto not exceeding one and one-half acres and any immediately appurtenant outbuildings.

(3) In the case of any such expropriation, the principle of assessment shall be that the owner of the home shall receive such compensation as will at current costs and prices put him in a position to acquire by purchase or construction a home reasonably equivalent to that which is being expropriated.

Claim for compensation for injurious affection

10.(1) Subject to subsection (2), a claim for compensation for injuriously affected land caused by an expropriating authority where no land was expropriated shall be made by the owner of the land in writing with particulars of the claim within one year after the damage was sustained or after it became known to the owner, and, if not so made, the right to compensation is forever barred.

(2) Where the owner of land that is injuriously affected is an infant, an insane person or a person incapable of managing his affairs, his claim for compensation 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.

Offer of compensation for land expropriated

11.(1) Where land has been expropriated from an owner and a plan has been registered under section 5 and no agreement as to compensation has been made with the owner, the expropriating authority shall within six months after the date of registration of the plan and before taking possession of the land, serve upon the registered owner and offer in full payment of the compensation for all interests in the land, but failure to serve the offer does not invalidate the expropriation.

(2) The expropriating authority may, within the six month period mentioned in subsection (1) and before taking possession of the land, upon giving at least seven days notice to the registered owner, apply to a judge for an order extending the time for serving the offer under subsection (1).

(3) If the offer required to be served under subsection (1) is not served within the time limited by subsection (1) or by an order of a judge under subsection (2), interest at bank rate upon any compensation payable to the registered owner shall be calculated from the date of registration of the plan.

Choice of proceedings, negotiation or arbitration

12. Where the expropriating authority and the owner have failed to agree upon the compensation payable, either party may serve notice of negotiation upon the other and upon a board of negotiation stating that it requires the compensation to be negotiated under section 13, or, where the parties are in agreement on the matter, they may have the compensation determined by arbitration.

Board of negotiation

13.(1) A board of negotiation shall be established consisting of two or more members appointed by the Executive Council Member, one of whom may be designated as chairperson.

(2) Any two of the members of the board of negotiation constitute a quorum and are sufficient to perform all the functions of the board on behalf of the board.

(3) In any case in which a notice of negotiation is served, the board of negotiation shall, upon reasonable notice to the expropriating 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.

(4) Before or during the negotiation proceedings, the board of negotiation may inspect the land that has been expropriated or injuriously affected.

(5) If the negotiation proceedings do not result in a settlement, the expropriating authority or the owner may serve notice of arbitration upon the other requiring the compensation to be determined by arbitration as though the negotiation proceedings had not taken place, in which case the claim shall be determined by a judge of the Supreme Court and the provisions of the Arbitration Act as to procedure shall apply.

Appeals

14.(1) The expropriating authority or the owner may appeal to the Court of Appeal from any determination or order of a judge under subsection 13(5).

(2) The practice and procedure as to the appeal and proceedings incidental thereto are the same mutatis mutandis as upon an appeal from the Supreme Court, except that the appeal may be taken at any time within six weeks from the day the determination or order was sent by registered mail to the parties, and the determination or order shall be deemed to have been received on the seventh day following its mailing.

Date for fixing compensation

15. Subject to subsection 6(2), where land has been expropriated, the compensation therefor shall be determined as of the date of registration of the plan under subsection 5(1) or 5(5).

Costs

16. The tribunal determining compensation under this Act may award costs, but, in determining the amount of costs shall have regard to the reasonableness of the costs and expenses incurred in relation to the difference between the amount of the offer made by the expropriating authority and the amount of compensation determined by the tribunal.

Interest

17.(1) Subject to subsection 11(3), the tribunal determining compensation may allow interest at bank rate on the amount of compensation from the date fixed by the tribunal.

(2) Where the tribunal determining compensation 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 a rate less than bank rate that appears reasonable.

(3) Notwithstanding subsection (1), where the expropriating authority has offered to the registered owner, under section 11, a sum equal to or greater than the compensation determined, the registered owner shall not be allowed any interest after the date of the offer or any costs, unless the tribunal determining the compensation otherwise orders.

Character of compensation

18. Where land has been expropriated, the compensation stands in the stead of the land, and any claim to or encumbrance on the land is, as respects the expropriating authority, converted into a claim to or upon the compensation and no longer affects the land.

Representative

19. Where an owner of the land is unknown, is under disability or for any other reason is not represented, a judge may, after due notice to the persons interested, appoint a person to represent such owner for any of the purposes of this Act, and any action of a person so appointed is binding on the person he represents.

Payment into court

20.(1) In any case where the expropriating authority deems it advisable, it may, without an order, pay the compensation agreed upon or determined into the office of the clerk of the Supreme Court together with a sum equal to the interest thereon at bank rate for six months.

(2) Upon an application for payment out of court of compensation paid into court, a judge may direct that such notice of the application be given by publication or otherwise as he deems proper and may direct the trial of an issue or make such order with respect to the payment out of court of compensation and as to costs as he deems reasonable.

(3) Where an order is obtained under subsection (2) in less than six months after the payment of the compensation into court, the judge making the order may direct that a proportionate part of the interest be returned to the expropriating authority.

(4) Where unborn issue or an unascertained person or class is interested in compensation paid into court, a judge may appoint such person as he deems proper to represent them, and any order made under this section is binding on them.

Payment before possession

21. Where land has been expropriated and the compensation has not been agreed upon or determined, the expropriating authority, before taking possession of the land, shall offer to the registered owner the amount to which he may be entitled as estimated by the expropriating authority.

Possession of expropriated land

22.(1) Where land that has been expropriated is vested in an expropriating authority and the expropriating authority has served the registered owner with a notice that it requires

possession of the land on the date specified therein, the expropriating authority, if no application is made under subsection (3), is entitled to enter upon and take possession of the land on the date specified in the notice.

(2) The date for possession shall be at least ten days after the date of the serving of the notice of possession.

(3) A registered owner or an expropriating authority may, upon such notice as the judge directs, apply to a judge for an adjustment of the date for possession specified in the notice of possession, and the judge, if he considers that under all the circumstances the application should be granted, may fix the date for possession.

Warrant to put the expropriating authority into possession

23.(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 to a judge for a warrant directing the sheriff to put the expropriating authority into possession.

(2) The judge shall, in writing, appoint a time and place for the hearing of the application and in his appointment may direct that it shall be served upon such persons as he prescribes.

(3) On proof of the resistance or opposition, the judge may issue a warrant in the prescribed form.

(4) The sheriff shall forthwith execute the warrant and make a return to the judge of the execution thereof.

Abandonment of expropriated land

24.(1) Where, at any time before the date specified in the notice of possession served under section 22, the land or any part thereof is found to be unnecessary for the purposes of the expropriating authority or if it is found that a more limited estate or interest therein only is required, the expropriating authority may, by an instrument signed by it and registered in the land titles office and served on the owner who was served with notice of expropriation, 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 the instrument, and thereupon

- (a) the land declared to be abandoned reverts in the owner from whom it was expropriated and those entitled to claim under him, or
- (b) in the event of a limited estate or interest only being retained by the expropriating authority, the land so reverts subject to such limited estate or interest.

(2) Where only part of the land or all of it except 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 expropriated and all the other circumstances of the case shall be taken into account in determining the compensation for the part or the limited estate or interest that is not abandoned.

(3) Where the whole of the land is abandoned, the owner from whom it was expropriated is entitled to compensation for all damages sustained and all costs incurred by him in consequence of the expropriation and abandonment, and the amount of the compensation, if not agreed upon by the parties, shall be determined under this Act.

Regulations

25. The Commissioner in Executive Council may make regulations respecting any matter he deems necessary or advisable to carry out effectively the intent and purpose of this Act.

CHAPTER 61

FACTORS ACT

Interpretation

1.(1) In this Act,

“document of title” includes any bill of lading, dock warrant, warehouse keeper’s certificate or warrant or order for the delivery of goods and any other documents used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by endorsement or delivery the possessor of the document to transfer or receive goods thereby represented;

“goods” includes wares and merchandise;

“mercantile agent” means a mercantile agent having in the customary course of his business as such agent, authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods;

“pledge” includes a contract pledging or giving a lien or security on goods whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.

(2) A person is deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or in his behalf.

Powers of mercantile agents respecting disposition of goods

2.(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent is, subject to this Act, as valid as if he were expressly authorized by the owner of the goods to make the same, if the person taking under the disposition acts in good faith and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge or other disposition that would have been valid if the consent had continued, is valid notwithstanding the termination of the consent, if the person taking under the disposition has not at the time thereof notice that the consent has been terminated.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been with the consent of the owner in possession of the goods represented thereby or by any other documents of title to the goods, his possession of the first mentioned documents is for the purposes of this Act deemed to be with the consent of the owner.

(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

Effect of pledge of documents of title

3. A pledge of the documents of title to goods is deemed to be a pledge of the goods.

Pledge for antecedent debt

4. Where a mercantile agent pledges goods as security for a debt or liability due from the pledger to the pledgee before the time of the pledge, the pledgee acquires no further right to the goods than could have been enforced by the pledger at the time of the pledge.

Rights acquired by exchange of goods or documents

5. The consideration necessary for the validity of a sale, pledge or other disposition of goods pursuant to this Act may be either a payment in cash or the delivery or transfer of other goods or of a document of title to goods or of a negotiable security or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods or of a document of title to goods or of a negotiable security, the pledgee acquires no right or interest in the goods so pledged in excess of the value of the goods, documents or security when so delivered or transferred in exchange.

Agreements through clerks or other persons

6. For the purposes of this Act, an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of sale or pledge on his behalf is deemed to be an agreement with the agent.

Provisions as to consignors and consignees

7.(1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale or has shipped the goods in the name of another person and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee, in respect of advances made to or for the use of such person, has the same lien on the goods as if such person were the owner of the goods and may transfer any such lien to another person.

(2) Nothing in this section limits or affects the validity of a sale, pledge or disposition by a mercantile agent.

Vendor's lien or right of stoppage in transitu

8. Where a document of title to goods has been lawfully transferred to a person as buyer or owner of the goods and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last mentioned transfer has the same effect for defeating any vendor's lien or right of stoppage in transitu as the transfer of a bill of lading has for defeating the right of stoppage in transitu.

Mode of transferring documents

9. For the purposes of this Act the transfer of a document may be by endorsement or where the document is by custom or by its express terms transferable by delivery or makes the goods deliverable to the bearer then by delivery.

Liability of agent and rights of true owner

10.(1) Nothing in this Act authorizes an agent to exceed or depart from his authority as between himself and his principal or exempt him from any liability civil or criminal for so doing.

(2) Nothing in this Act shall be construed to prevent the owner of goods from recovering the goods from an agent or assignee under an assignment for the benefit of creditors at any time before the sale or pledge thereof or to prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof on satisfying the claim for which the goods were pledged and paying to the agent, if required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto or any of them by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

(3) Nothing in this Act shall be construed to prevent the owner of goods sold by an agent recovering from the buyer the price agreed to be paid for the same or any part of that price subject to any right of set-off on the part of the buyer against the agent.

Saving for common law powers of agent

11. The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act.

Liability of agent of non-resident principal

12.(1) Any one acting as an agent or partner, or in some other capacity in any trade, business or calling in the Yukon for or on behalf of any person, partnership, association or company not having his or its principal place of business in the Yukon, or not having a regular place of business in the Yukon, is personally liable upon any contract, transaction or obligation whatsoever which may be entered into, made, or incurred in the Yukon for, or in the course of business, trade or calling of such person, partnership, association or company, unless he or it has previously disclosed the full name and residence of the partners composing the partnership, and if an association or a company, the principal place of business of that association or company, by a declaration registered under this Act with the registrar under the Business Corporations Act.

(2) Where a judgment is obtained against a person who has acted as an agent, partner or in some other capacity for or on behalf of a person, partnership, association or company described in subsection (1) and the judgment is based upon a contract, transaction or obligation entered into, made or incurred for, or on behalf of the person, partnership, association or company, execution may be issued and satisfied out of the assets of the person, partnership, association or company as well as out of the assets of the person who has acted as agent or partner or in some other capacity.

CHAPTER 62

FAIR PRACTICES ACT

Interpretation

1. In this Act,

“employee” means any person who is in receipt of, or entitled to, compensation for labour or services performed for another, but does not include an independent contractor;

“employer” means a person, firm, corporation, agent, manager, representative, contractor, subcontractor or principal, having control or direction of, or responsible, directly or indirectly, for the employment of an employee;

“employers’ organization” means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

“employment agency” includes a person who undertakes, with or without compensation, to procure employment for persons;

“trade union” means any organization of employees formed for the purpose of regulating relations between employees and employers.

Employers and unions not to discriminate

2.(1) No employer shall refuse to employ, or to continue to employ, a person or adversely discriminate in any term or condition of employment of such person, because of the race, religion, religious creed, colour, ancestry, sex, marital status or ethnic or national origin of such person.

(2) No person shall require an applicant for employment to complete a form of application for employment that requires the applicant to give particulars as to his race, religion, religious creed, colour, ancestry, sex, marital status or ethnic or national origin.

(3) No trade union shall exclude any person from full membership, or expel or suspend or otherwise discriminate against any of its members, or discriminate against any person in regard to his employment by any employer, because of the race, religion, religious creed, colour, ancestry, sex, marital status or ethnic or national origin of that person.

(4) No employer or trade union shall discharge, expel or otherwise discriminate against any person because he has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

Discrimination prohibited

3.(1) No person shall, because of the race, religion, religious creed, colour, ancestry, sex, marital status or ethnic or national origin of any person, deny to that person the accommodation, services or facilities available in any place to which the public is customarily admitted.

(2) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

- (a) deny to any person or class of persons occupancy of any apartment in any building that contains more than six self-contained dwelling units, or
- (b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any apartment in any building that contains more than six self-contained dwelling units,

because of the race, religion, religious creed, colour, ancestry, sex, marital status or ethnic or national origin of such person or class of persons.

(3) This section shall not apply where the accommodation, services, facilities or occupancy is restricted to persons who are of the same sex.

Publication of discriminatory signs prohibited

4. No person shall

- (a) publish or display or cause to be published or displayed, or
- (b) permit to be
 - (i) published in a newspaper that he controls, or
 - (ii) displayed on lands or premises that he controls,

any notice, sign, symbol, emblem or other representation indicating discrimination, or an intention to discriminate, against any person or any class of persons in respect of the accommodation, services or facilities to which section 3 applies, or in respect of employment or prospective employment, because of the race, religion, religious creed, colour, ancestry, sex, marital status or ethnic or national origin of that person or class of persons.

Complaints

5.(1) Any person claiming to be aggrieved because of an alleged violation of any provision of this Act may make a complaint in writing to the officer appointed by the Commissioner in Executive Council to inquire into complaints made under this Act.

(2) The Commissioner in Executive Council may appoint an officer to inquire into any complaint made under subsection (1), and such officer shall give full opportunity to all parties to present evidence and make representations and shall endeavour to effect settlement of the matters complained of.

(3) In case a settlement of a complaint is not effected, if the officer finds that the complaint is supported by evidence, he shall recommend to the Executive Council Member the course that ought to be taken with respect to the complaint.

(4) After the officer has made his recommendations, the Executive Council Member may direct him to clarify or amplify his recommendations; and they shall be deemed not to have been received by the Executive Council Member until they have been so clarified or amplified.

(5) Upon receipt of the recommendations of the officer, the Executive Council Member shall furnish a copy thereof to each of the persons affected and shall publish them, if he deems it advisable, in such manner as he sees fit.

(6) The Commissioner in Executive Council may issue whatever order he deems necessary to carry into effect the recommendations of the officer, including ordering reinstatement of an employee with or without compensation for loss of employment and such order shall be personally served upon the persons affected thereby.

Appeal

6.(1) Any person affected by an order of the Commissioner in Executive Council may, at any time within ten days after personal service of the order upon him, appeal against the order to a judge of the Supreme Court by way of originating notice of motion to vary or set aside the order.

(2) The appellant shall, not less than ten days before the date for the hearing of the appeal stated in the originating notice of motion, serve on the complainant and on the Executive Council Member a copy of the originating notice of motion.

(3) The judge may hear the appeal on the day and at the time stated in the originating notice of motion or may adjourn the hearing for such time as he deems fit, and may direct notice thereof to be served on such other persons as he deems advisable; and the hearing thereof shall be a trial de novo and the decision of the judge shall be conclusive and not subject to further appeal.

(4) Every person in respect of whom an order is made pursuant to subsection 5(6) shall comply therewith, unless he appeals therefrom as herein provided; in which event, unless it is set aside, he shall comply with the order as affirmed or as varied on the appeal.

Offence and penalty

7.(1) Every person who violates a provision of this Act commits an offence and is liable on summary conviction

- (a) if an individual, to a fine of \$100 and in default of payment, to imprisonment for a period not exceeding three months, and
- (b) if a corporation, trade union, employers' organization or employment agency, to a fine not exceeding \$500.

(2) Where a fine that is imposed upon a corporation under subsection (1) is not paid as directed, the prosecutor may, by filing the conviction, enter as a judgment the amount of the fine and costs, if any, in the Supreme Court and that judgment is enforceable against the corporation in the same manner as if it were a judgment rendered against the corporation in that court in civil proceedings.

Payment to employee and reinstatement

8.(1) Where an employer is convicted for violation of section 2 by reason of his having suspended, transferred, laid off, or discharged an employee contrary to this Act, the convicting judge, in addition to any other penalty, may order the employer to pay to the employee compensation for loss of employment not exceeding such sum as, in the opinion of the judge, as the case may be, is equivalent to the wages, salary or remuneration that would have accrued to the employee up to the date of conviction but for the suspension, transfer, lay-off or

discharge; and may order the employer to reinstate the employee in his employ at such date as, in the opinion of the judge, is just and proper in the circumstances, in the position the employee would have held but for the suspension, transfer, lay-off or discharge.

(2) In this section, "judge" includes a judge of the Territorial Court.

Prosecution of employers' organization or trade union

9. A prosecution for an offence under this Act may be brought against an employers' organization or trade union; and for the purpose of such a prosecution an employers' organization or trade union shall be deemed to be a person, and any act or thing done or omitted by an officer or agent of an employers' organization or trade union, within the scope of his authority to act on behalf of the organization or trade union, shall be deemed to be an act or thing done or omitted by the employers' organization or trade union.

Injunction proceedings

10.(1) Where a person has been convicted of a violation of this Act, the Executive Council Member may apply, by way of originating notice, to a judge of the Supreme Court for an order enjoining that person from continuing the violation and the judge, in his discretion, may make such an order.

(2) Any order made by a judge pursuant to subsection (1) may be enforced in the same manner as any other order or judgment of the Supreme Court.

Consent to prosecution

11. No prosecution for an offence under this Act shall be instituted without the consent in writing of the Executive Council Member.

Where Act not applicable

12.(1) This Act does not apply to employment of persons

- (a) in domestic service in a private home,
- (b) in any exclusively charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for private profit, or
- (c) in any organization that is operated primarily to foster the welfare of a religious or racial group and that is not operated for private profit.

(2) Nothing in this Act deprives any school or board of trustees thereof of the right to employ persons of any particular religion or religious creed where religious instruction forms or can form the whole or part of the instruction or training provided by such school or board of trustees pursuant to the provisions of the School Act.

(3) Nothing in this Act deprives any employer of the right to employ persons of any particular race, religion, religious creed, colour, ancestry, sex, marital status, or ethnic or national origin in preference to other persons where such preference is based upon a bona fide occupational qualification.

CHAPTER 63

FAMILY PROPERTY AND SUPPORT ACT

Interpretation

1. In this Act,

- “child” means a person who is the child of a parent by birth, whether within or outside marriage, or by virtue of an adoption made or recognized under the Children’s Act, and includes a person whom the parent has demonstrated a settled intention to treat as a child of his family other than under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;
- “cohabit” means to live together in a conjugal relationship, whether within or outside marriage;
- “cohabitation agreement” means a cohabitation agreement entered into under section 58;
- “domestic contract” means a marriage contract, a separation agreement or a cohabitation agreement and includes an agreement to amend a domestic contract;
- “marriage contract” means an agreement between a man and a woman entered into before their marriage, or during their marriage while cohabiting, in which they agree upon their respective rights and obligations under the marriage or upon the breakdown of their marriage, including
- (a) ownership in or division of property,
 - (b) support obligations, and
 - (c) any other matter in the settlement of their affairs;
- “parent” means the father or mother of a child by birth, or by virtue of an adoption order made or recognized under the Children’s Act, and includes a person who has demonstrated a settled intention to treat a child as a child of his family other than under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;
- “property” means real or personal property or any interest therein;
- “separation agreement” means an agreement between persons who cohabited and are living separate and apart in which they agree upon their respective rights and obligations, including
- (a) ownership in or division of property,
 - (b) support obligations, and
 - (c) any other matter in the settlement of their affairs;
- “spouse” means either of a man and a woman
- (a) who are married to each other, or
 - (b) who are married to each other by a form of marriage that is voidable and has not been voided by a judgment of nullity,
- notwithstanding that the marriage is actually or potentially polygamous if the marriage was celebrated in a jurisdiction whose system of law recognizes the marriage as valid, or
- (c) who have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.

Contract prevails

2.(1) Except as otherwise provided by this Act, where a marriage contract or separation agreement makes provision in respect of a matter that is provided for in this Act, the contract prevails.

(2) Any provision in a domestic contract that purports to limit the jurisdiction of a court to determine the extent to which subsection (1) applies in respect of the contract is void.

(3) Notwithstanding any other provision of this Act, any provision in a marriage contract that purports to limit the rights of a spouse under Part 2 is void.

(4) Notwithstanding subsection (1), where a court is satisfied in any proceedings under this Act that a person has, through undue influence, secured the agreement of his spouse or a person with whom he is cohabiting to any provision in a domestic contract, a court may decline to give effect to the provision for the benefit of the person who secured the agreement.

Application of the Act

3. Parts 1 and 2 apply notwithstanding that

- (a) the spouses entered into the marriage before this Act comes into force,
- (b) the property in issue or the family home was acquired before this Act comes into force, or
- (c) a proceeding to determine rights as between the spouses in respect of property or a family home has been commenced or adjudicated before this Act comes into force.

PART 1
FAMILY ASSETS

“Family assets”

4. In this Part, “family assets” means a family home as determined under Part 2 and property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation, or for household, educational, recreational, social or aesthetic purposes, and includes

- (a) money in an account with a chartered bank, savings office or trust company where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes,
- (b) where property owned by a corporation, partnership or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the partnership or trust owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property,
- (c) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in favour of himself, if the property would be a family asset if it were owned by the spouse, and
- (d) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse,

but does not include property that the spouses have agreed by a marriage contract or separation agreement is not to be included in the family assets.

Purpose of this Part

5. The purpose of this Part is to recognize that the law takes insufficient notice of the facts

- (a) that child care, household management and financial provision are the joint responsibilities of the spouses, and
- (b) that inherent in the marital relationship there is joint contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities,

and to rectify this deficiency by entitling each spouse to an equal division of family assets upon marriage breakdown, subject to the equitable considerations set out in sections 13 and 14.

Division of assets

6.(1) Where a marriage breakdown occurs, each spouse is entitled to have the family assets owned at the time of the breakdown by one spouse or both spouses divided in equal shares, notwithstanding the ownership of the assets by the spouses as determinable for other purposes.

(2) A marriage breakdown shall be deemed to occur upon

- (a) the pronouncement of a decree nisi of divorce in respect of the marriage,
- (b) the pronouncement of a declaration that the marriage is a nullity,
- (c) the commencement of the parties to live separate and apart without reasonable prospect of the resumption of cohabitation, or
- (d) the making of an application by one of the spouses under this Act for a division of family assets.

(3) An order made under this Part before the breakdown of the marriage determining any question as between the spouses as to the ownership or right to possession of any particular property does not affect the rights of the spouses in that property under subsection (1) upon the breakdown of the marriage.

Contribution of spouse

7.(1) The contribution by one spouse of work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of property, other than family assets, in which the other spouse has or had an interest, shall be determined and assessed as if they were unmarried persons at all material times.

(2) The rule of law applying a presumption of advancement in questions of the ownership of property as between husband and wife is abolished and in place thereof the rule of law applying a presumption of a resulting trust shall be applied in the same manner as if they were not married, except that,

- (a) the fact that property is placed or taken in the names of the spouses as joint tenants is prima facie proof that each spouse is intended to have on a severance of the joint tenancy a one-half beneficial interest in the property, and

- (b) money on deposit in a chartered bank, savings office or trust company in the name of both spouses shall be deemed to be in the names of the spouses as joint tenants for the purpose of paragraph (a).

(3) This section applies notwithstanding that the contribution or the event giving rise to the presumption, as the case may be, occurred before this section comes into force.

Third party rights

8.(1) Unless otherwise provided, the transfer of an interest in property, under paragraph 12(2)(d), or between spouses under this Act by order of the Supreme Court or otherwise, does not affect the existing rights of other persons.

(2) Where by order of the Supreme Court under this Part a transfer is made of the ownership or possession of property subject to a charge, notwithstanding the terms of any contract,

- (a) the transfer of ownership or possession shall not be treated as a breach of any contract,
- (b) the recipient spouse is entitled, upon giving notice of the transfer to the holder of the charge, to exercise any of the rights of the owning spouse in relation to the property or to the charge, including the right to receive notices,
- (c) upon the release of the charges, the recipient spouse is entitled to receive the entire interest of the owning spouse in the property, subject to the terms of the order, and
- (d) the performance by the holder of the charge of his obligations under the charge in a manner benefitting the recipient spouse is a sufficient discharge of his obligations under the charge to the owning spouse.

Assignment of rights

9. Until judgment is obtained, the rights of a spouse under this Part are not assignable or subject to attachment.

Applications to the Supreme Court

10.(1) Any person may apply to the Supreme Court for the determination as between himself and his spouse or former spouse of any matter in respect of which the Supreme Court may make an order under this Part.

(2) Subject to section 18 the powers of the Supreme Court under this Part may be exercised in a proceeding under this Part or on application under subsection (1).

Powers of the Supreme Court

11. The Supreme Court may determine any matter between spouses respecting

- (a) the division of family assets or other property where a marriage breakdown has occurred,
- (b) the contribution of a spouse within subsection 7(1) in relation to property in which the other spouse has or had an interest,
- (c) the ownership or right to possession of property, or

(d) the enforcement or recognition of rights or obligations under this Part, and the Supreme Court may make such orders as are necessary or reasonable to give effect to its determination.

Property interest of spouse

12.(1) The Supreme Court may declare that a spouse has an interest in property notwithstanding that the spouse has no legal or equitable interest in the property.

(2) The Supreme Court may order

- (a) the transfer of title to property from one spouse to or in trust for the other spouse, whether absolutely, for life or for a fixed term,
- (b) the partition or sale of property,
- (c) the division between spouses of the proceeds of a sale of property,
- (d) the transfer of property to or in trust for a child to whom a spouse owes an obligation to provide support,
- (e) the giving of security for the performance of any obligation imposed by the order, including security for the discharge of a charge on property,
- (f) for the purposes of making a division of property under this Part, the payment of a sum of money by one spouse to the other, whether as a lump sum or by way of periodic payments, whether with or without interest,
- (g) where one spouse has disposed of property, the payment of compensation to the other spouse, and
- (h) where one spouse has made a contribution as set out in subsection 7(1) in relation to property in which the other spouse has or had an interest, the transfer of a share of that interest, or the payment of compensation, appropriate to the contribution.

(3) The Supreme Court may order that property be charged as security for the performance of an obligation under this Act, and the Supreme Court may, upon notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security.

(4) Nothing in this section shall be construed so as to limit the generality of the powers given to the Supreme Court under this Part.

Unequal division

13. The Supreme Court may make a division of family assets resulting in shares that are not equal where the Supreme Court is of the opinion that a division of the family assets in equal shares would be inequitable, having regard to

- (a) any agreement other than a marriage contract or a separation agreement,
- (b) the duration of the period of cohabitation under the marriage,
- (c) the duration of the period during which the spouses have lived separate and apart,
- (d) the date when property was acquired,
- (e) the extent to which property was acquired by one spouse by inheritance or gift,
- (f) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of family assets to be in equal shares.

Non-family assets

14. The Supreme Court may make a division of any property owned by one spouse or both spouses that is not a family asset where

- (a) a spouse has unreasonably impoverished the family assets, or
- (b) the result of a division of the family assets would be inequitable in all the circumstances, having regard to,
 - (i) the considerations set out in paragraphs 13(a) to (f), and
 - (ii) the effect of the assumption by one spouse of any of the responsibilities set out in section 5 on the ability of the other spouse to acquire, manage, maintain, operate or improve property that is not a family asset.

Time for division

15.(1) The powers of the Supreme Court under this Part in relation to the division of family assets or other property under section 6, 13 or 14 are exercisable only where the court is satisfied that a marriage breakdown has occurred.

(2) Except by special leave of the Supreme Court, no application shall be brought under this Part, in relation to the division of family assets or other property under section 6, 13 or 14 by a person against his former spouse after the pronouncement of a decree nisi of divorce in respect of the marriage, or the pronouncement of a declaration that the marriage is a nullity, as the case may be.

Statements of assets and income

16.(1) Where an application is made for the division of property, each party shall file with the Supreme Court and serve upon the other a statement verified by oath or statutory declaration in the manner and form prescribed by the regulations disclosing

- (a) particulars of all property owned by the party at the time of the breakdown of the marriage,
- (b) particulars of each family asset having a replacement cost in excess of \$100 disposed of by the party within the year preceding the marriage breakdown, and
- (c) the amount of his gross income before taxes for the three most recent taxation years preceding the marriage breakdown.

(2) A person is not required to comply with paragraph 16(1)(c) unless his spouse requests in writing that he do so.

Conflict of laws

17.(1) The division of family assets and the ownership as between spouses of movable property wherever situate are governed by the internal law of the place where both spouses had their last common habitual residence or, where there is no place where the spouses had a common habitual residence, by the law of the Yukon.

(2) The ownership of immovable property as between spouses is governed by the internal law of the place where the property is situated, but where the law of the Yukon is applicable respecting the division of family assets, the value of the immovable property may be taken into consideration for the purposes of a division of property between spouses under this Part.

Death of spouse

18. The rights under this Part, except section 7, are personal as between the spouses, but any application commenced under section 10 before the death of a spouse may be continued by or against the estate of the deceased spouse.

**PART 2
FAMILY HOME**

Application of this Part

19. This Part applies to family homes that are situated in the Yukon.

Interpretation

20. In this Part,

“designated” means designated by an instrument under section 24;

“registered” means registered under the Land Titles Act (Canada).

Family home

21.(1) Property in which a person has an interest and that has been occupied by the person and his spouse as their family residence is their family home.

(2) Property formerly occupied by a person and his spouse as their family residence continues to be their family home as long as one of the spouses holds a real, personal or equitable interest in the property entitling one of the spouses to reoccupy the property immediately or later.

(3) A spouse may have more than one family home at the same time.

(4) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to the occupation of a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection (1).

(5) Where property that includes a family home is normally used for a purpose other than its use as a residence, the family home is only such portion of the property as reasonably may be regarded as necessary to the use and enjoyment of the residence.

Right of possession

22.(1) A spouse is equally entitled to any right of possession of the other spouse in a family home.

(2) The right of a spouse granted by subsection (1) ceases upon the expiration of one year after the pronouncement of a decree nisi of divorce in respect of the marriage or a declaration that the marriage is a nullity, but this subsection does not affect a right of possession

(a) that exists apart from subsection (1),

(b) that is contained in a separation agreement made before the expiration of the one year period, or

- (c) subject to subsection 54(3), that is contained in an order of the Supreme Court upon an application made, or in a proceeding commenced, before the expiration of the one year period.

Disposing of home

23.(1) No spouse shall dispose of or encumber any interest in a family home unless

- (a) the other spouse joins in the instrument or consents to the transaction,
- (b) the other spouse has released all rights under this Part by a separation agreement,
- (c) the transaction is authorized by an order of the Supreme Court or an order has been made releasing the property as a family home, or
- (d) the property is not designated as a family home under section 24 and the spouses have an uncancelled designation registered in respect of another property.

(2) Upon the disposition or encumbrance of an interest in a family home in accordance with subsection (1), the property ceases to be a family home to the extent necessary to give effect to the transaction as if the property were not a family home.

(3) Where a spouse disposes of or encumbers an interest in a family home in contravention of subsection (1), the transaction may be set aside on application to the Supreme Court unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without actual notice that the property was at the time of the disposition or encumbrance a family home.

(4) For the purposes of subsection (3), an affidavit of the person making the disposition or encumbrance

- (a) verifying that he is not, or was not a spouse at the time of the disposition or encumbrance,
- (b) verifying that the property has never been occupied by the person and his spouse as their family home,
- (c) verifying that the property has not been occupied by the person and his spouse as their family home since the cancellation of its designation as their family home under section 24 or 25,
- (d) where the property is not designated as a family home under section 24, verifying that an instrument designating another property as a family home of the person and his spouse is registered under section 24, and not cancelled, or
- (e) verifying that the other spouse has released all rights under this Part by a separation agreement

shall, unless the person holding the interest or encumbrance is the person to whom the disposition or encumbrance is made and he had actual notice to the contrary, be deemed to be sufficient proof that the property is not a family home.

(5) This section does not apply to the acquisition of an interest in property by operation of law.

Designation of family home

24.(1) Together both spouses may, by instrument in the form prescribed by the regulations, designate as their family home any property in which either spouse has a registered interest.

(2) No property that is not a family home of the spouses under section 21 may be designated as their family home under subsection (1).

(3) A designation may be registered by or on behalf of the spouses, but no designation shall be registered unless

- (a) it is executed by both spouses,
- (b) it contains the legal description of the designated property,
- (c) one of the spouses has a registered interest in the designated property, and
- (d) title to the designated property is registered.

(4) The registration of a designation under this section, until it is cancelled, shall be deemed to be actual notice to every person that the property is a family home.

(5) Where spouses have registered a designation and it has not been cancelled, no undesignated property is their family home under this Part but, upon there ceasing to be registered any designation of the spouses under subsection (1), section 21 applies according to its terms to the property of the spouses.

(6) A designation is cancelled upon the registration or deposit of

- (a) a cancellation in the prescribed form executed by both spouses,
- (b) a decree absolute of divorce or judgment of nullity,
- (c) an order of the Supreme Court cancelling the designation, or
- (d) proof of the death of one of the spouses.

(7) Upon cancellation of a designation, the property ceases to be a family home unless it is occupied at or after the cancellation by the spouses as their family residence.

(8) Spouses may register designations in respect of more than one family home.

(9) Property that is designated as a family home under subsection (1) may include any property that is contiguous to the family home that is described for that purpose in the instrument.

Caveat on family home

25.(1) Where a person claims that any property the title to which is registered is his family home under section 21, a caveat giving notice of his claim may be registered by him or on his behalf, but no such caveat shall be registered unless it is accompanied by an affidavit setting forth the facts on which the claim is based.

(2) The costs of proceedings for the cancellation of the registration of a caveat registered under subsection (1) shall be borne by the person by whom or on whose behalf the caveat was registered where the Supreme Court is satisfied that the person knew or ought to have known that the property was not his family home under section 21.

Demand for application to the Supreme Court

26.(1) Any person who has a registered interest in any property that is a family home may send to either or both of the spouses a demand in the form prescribed by the regulations demanding that an application be made to the Supreme Court to determine the effect of this Part on the interests of the parties in the property.

(2) A person who receives a demand under this section may apply to the Supreme Court to have his interest determined as between himself and the person who gave him the demand, and the Supreme Court may

- (a) determine the interests in the property of any of the parties to the application,
- (b) where only one spouse receives a demand, determine the interest of the other spouse, and
- (c) to give effect to its determination, make any order it is authorized to make on any other application under this Part.

(3) Where a spouse who receives a demand under this section does not make an application under subsection (2) and register a *lis pendens* within 21 days of his receipt of the demand,

- (a) nothing in this Part shall thereafter be applied for his benefit in respect of the property named in the demand as against the person who gave him the demand,
- (b) a designation registered against the property shall be deemed to be cancelled upon the expiration of the 21 day period, and
- (c) a caveat registered against the property under section 25 shall be deemed to be cancelled upon the expiration of the 21 day period.

(4) A person may give a demand under this section to his spouse.

Powers of the Supreme Court

27.(1) The Supreme Court may, on the application of a spouse or person having an interest in property to which this Part applies,

- (a) determine whether or not property is a family home and, if so, the extent to which it is a family home,
- (b) direct the cancellation of a designation registered under section 24 or a caveat registered under section 25,
- (c) authorize the disposition or encumbrance of an interest in a family home where the Supreme Court finds that the spouse whose consent is required
 - (i) cannot be found or is not available,
 - (ii) is not capable of giving or withholding consent, or
 - (iii) is unreasonably withholding consent,

subject to such terms and conditions including provision of comparable accommodation or payment in place thereof as the Supreme Court considers appropriate,

- (d) dispense with any notice required to be given under section 28, and
- (e) direct the setting aside of any transaction disposing of or encumbering an interest in a family home contrary to subsection 23(1) and the revesting of the interest of any part of the interest upon such terms and subject to such conditions as the Supreme Court considers appropriate.

(2) Notwithstanding the ownership of a family home as between spouses, and notwithstanding section 22, the Supreme Court on application by or on behalf of a spouse may

- (a) direct that one spouse be given exclusive possession of a family home or part thereof for life or for such lesser period as the Supreme Court directs and release any other property that is a family home from the application of this Part,
- (b) direct a spouse to whom exclusive possession of a family home is given to pay periodic payments to the other spouse,
- (c) direct that any or all of the contents of the family home remain in the family home for the use of the person given possession of the family home,
- (d) fix the obligation to repair and maintain the family home or to pay other liabilities arising in respect thereof,
- (e) authorize the disposition or encumbrance of the interest of a spouse in a family home subject to the right to exclusive possession of the other spouse as ordered, and
- (f) where a false affidavit is given under subsection 23(4), direct
 - (i) the person who swore the affidavit, or
 - (ii) any person who knew at the time it was sworn that the affidavit was false and who thereafter conveyed the property,
 to substitute other real property for the family home or direct such person to set aside money or security to stand in place thereof subject to such terms and conditions as the Supreme Court considers appropriate.

(3) An order may be made under subsection (2) for temporary relief or pending the bringing or disposition of another application under this Act.

(4) An order under subsection (2) for exclusive possession of a family home may be made only if, in the opinion of the Supreme Court, other provision for shelter is not adequate in the circumstances or if it is in the best interest of a child to do so.

Right of redemption and to notice

28.(1) Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a family home, the spouse who has a right of possession by virtue of section 22 has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

(2) Where a spouse makes any payment by way of or on account of redemption or relief against forfeiture under the right conferred by subsection (1), the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

(3) Notwithstanding any other Act, where a person who commences a proceeding to realize upon a lien, encumbrance or execution or to exercise a forfeiture does not have sufficient particulars of a spouse entitled under subsection (1) for the purposes of the proceeding, and a notice given to the spouse in accordance with section 57 is not responded to, the proceeding may continue in the absence of the spouse and without regard to the interest of the spouse, and any final order in the proceeding terminates the rights of the spouse under this section.

Registration of order

29.(1) An order made by the Supreme Court under this Part may be registered if it deals with property the title to which is registered.

(2) Property does not cease to be a family asset within the meaning of Part 1 by reason only that it has ceased to be a family home within the meaning of this Part.

**PART 3
SUPPORT**

Interpretation

30.(1) In this Part,

“court” means the Supreme Court or the Territorial Court;

“dependant” means a person to whom another has an obligation to provide support under this Part;

“spouse” means a spouse as defined in section 1 and includes either of a man and a woman between whom an order for support has been made under section 31, or an order for alimony, maintenance or support has been made before this Act comes into force.

(2) Section 2 and Part 4 apply to the Territorial Court in relation to its jurisdiction under this Part.

Support obligation of spouse

31. Every spouse has an obligation to provide support for himself and for the other spouse, in accordance with need, to the extent that he is capable of doing so.

Support obligation of parent

32. Every parent has an obligation to the extent the parent is capable of doing so, to provide support, in accordance with need, for his child who is a minor and unmarried.

Support obligation of child

33. Every child who is not a minor has an obligation to provide support, in accordance with need, for his parent who has cared for or provided support for the child, to the extent that the child is capable of doing so.

Order for support

34.(1) A court may, upon application, order a person to provide support for his dependants and determine the amount thereof.

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant, or under subsection (3).

(3) An application for an order for the support of a dependant who is a spouse or a child may be made by the Executive Council Member if the Executive Council Member is providing a benefit under the Social Assistance Act in respect of the support of the dependant.

(4) A court may set aside a provision for support in a domestic contract and may determine and order support in an application under subsection (1) notwithstanding that the contract contains an express provision excluding the application of this section,

- (a) where the provision for support or the waiver of the right to support results in circumstances that are unconscionable,
- (b) where the provision for support or the waiver of the right to support is in respect of a person who qualifies for an allowance for support out of public money, or
- (c) where there has been default in the payment of support under the contract or agreement,

and where an order is made under this subsection, the order terminates the support provisions in a domestic contract.

(5) In determining the amount, if any, of support in relation to need, the court shall consider all the circumstances of the parties, including

- (a) the assets and means of the dependant and of the respondent and any benefit or loss of benefit under a pension plan or annuity,
- (b) the capacity of the dependant to provide for his own support,
- (c) the capacity of the respondent to provide support,
- (d) the age and the physical and mental health of the dependant and of the respondent,
- (e) the length of time the dependant and respondent cohabited,
- (f) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living while the parties resided together,
- (g) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures,
- (h) the legal obligation of the respondent to provide support for any other person,
- (i) the desirability of the dependant or respondent remaining at home to care for a child,
- (j) the conduct of the dependant and respondent,
- (k) a contribution by the dependant to the realization of the career potential of the respondent,
- (l) where the dependant is a child, his aptitude for and reasonable prospects of obtaining an education,
- (m) where the dependant is a spouse, the effect on his earning capacity of the responsibilities assumed during cohabitation,
- (n) where the dependant is a spouse, whether the dependant has undertaken the care of a child who is of the age of majority and unable by reason of illness, disability or other cause to withdraw from the charge of his parents,
- (o) where the dependant is a spouse, any housekeeping, child care or other domestic service performed by the spouse for the family, and
- (p) any other legal right of the dependant to support other than out of public money.

(6) Where a dependant claims that the obligation of the respondent to provide support arises under section 31, the court may refuse to make an order to provide support where, at the time of the bringing of the application, the dependant has remarried or is cohabiting or has cohabited in a relationship of some permanence with a person other than the respondent.

Common-law relationships

35. Either of a man and a woman who, not being married to each other and not having gone through a form of marriage with each other, have cohabited in a relationship of some permanence, may, during cohabitation or not later than three months after the cohabitation has ceased, apply to a court for an order for support, and where the court is satisfied that an order for support is justified having regard to the need of the applicant for and the ability of the respondent to provide support, the court may determine and order support in accordance with this Act in the same manner and subject to the same considerations as apply in the case of an application under section 34.

Court orders

36.(1) In an application under section 34 or 35, the court may order that

- (a) an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event,
- (b) a lump sum be paid or held in trust,
- (c) any specified property be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years,
- (d) all or any of the money payable under the order be paid into court or to any other appropriate person or agency for the benefit of the dependant,
- (e) the payment of support be made in respect of any period before the date of the order,
- (f) any amount in reimbursement for a benefit or assistance referred to in subsection 34(3), including an amount in reimbursement for such benefit or assistance provided before the date of the order, be paid to the Executive Council Member,
- (g) expenses be paid in respect of the prenatal care and birth of a child,
- (h) the obligation and liability for support continue after the death of the respondent and be a debt of his estate for such period as may be fixed in the order,
- (i) a spouse who has a policy of life insurance as defined in Part 4 of the Insurance Act designate the other spouse or a child as the beneficiary irrevocably, and
- (j) payment be secured under the order by a charge on property or otherwise.

(2) Subject to any order that has been or may be made by the Supreme Court, the Territorial Court may, in an application under section 34,

- (a) notwithstanding the Territorial Court Act, make any order authorized to be made by the Supreme Court under paragraphs 27(2)(a) to (d), where it is in the best interest of a child to do so, or
- (b) make any order authorized to be made by the Supreme Court under section 40.

(3) The Territorial Court shall not make an order under paragraph (1)(c), (i) or (j).

(4) An order under this section that provides that the obligation and liability for support continue after the death of the respondent is subject to any subsequent order for support out of the estate of the deceased respondent made under the Dependents' Relief Act.

(5) Where an application is made under section 34, the court may make such interim orders as the court considers appropriate.

(6) An order for support is assignable to the Executive Council Member.

Dependance discouraged

37. Where practicable, the court shall exercise its jurisdiction under this Part so as to encourage the dependant to achieve financial independence.

Divorce proceedings

38.(1) Where an action for divorce is commenced under the Divorce Act (Canada), any application for support or custody under this Act that has not been determined is stayed except by leave of the Supreme Court.

(2) Where a marriage is terminated by a decree absolute of divorce or judgment of nullity and the question of support was not judicially determined in the divorce or nullity proceedings, an order for support made under this Act continues in force according to its terms.

Absconding respondent

39. Where an application is made under section 34 and a judge is satisfied that the respondent or debtor is about to leave the Yukon and that there are reasonable grounds for believing that the respondent intends to evade his responsibilities under this Part, the judge may issue a warrant in the prescribed form for the arrest of the respondent or debtor.

Restraint of waste

40. In or pending an application under section 34, where an order for support has been made, the Supreme Court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support.

Setting aside contract

41. Any person who is obligated to provide support under a domestic contract may apply to the court to set aside the provision for support in the contract, and where the court is satisfied that

- (a) requiring the person to continue to pay support under the terms of the contract would be unconscionable, or
- (b) the person obligated under the contract qualifies for support out of public money,

the court may set aside the provision for support and determine and order support in accordance with this Act in the same manner and subject to the same considerations as apply in the case of an application made under section 34, and where an order is made under this section the order terminates the support provisions in the contract.

Variation of orders

42.(1) Where an order for support has been made or confirmed and where the court is satisfied that there has been a material change in the circumstances of the dependant or the respondent, that the dependant has not taken reasonable steps to improve self-sufficiency or that evidence has become available that was not available at the previous hearing, the court may, upon the application of the Executive Council Member or any person named in the order,

- (a) discharge, vary or suspend any term of the order, prospectively or retroactively,
- (b) relieve the respondent from the payment of part or all of the arrears or any interest due thereon,
- (c) order that an irrevocable designation of a beneficiary under a policy of life insurance be revoked, or
- (d) make such other order under section 36 as the court considers appropriate in the circumstances referred to in section 34.

(2) An application under subsection (1) shall be made to the court that made the order.

(3) No application under subsection (1) shall be made within six months after the making of the order for support or the disposition of any other application under subsection (1) in respect of the same order, except by leave of the court.

(4) This section applies to orders for maintenance or alimony made before this section comes into force or in a proceeding commenced before this section comes into force.

Financial statement to be filed

43.(1) Where an application is made under section 34, 35, 41 or 42, each party shall file with the court and serve upon the other a financial statement in the prescribed manner and form.

(2) Where the parties consent in writing, the financial statement referred to in subsection (1) need not be filed and served.

Statement by employer to be filed

44.(1) In an application under section 34, 35, 41 or 42, the court may order the employer of a party to the application or of the debtor, as the case may be, to make a written return to the court showing the wages or other remuneration resulting from the employment of the party or debtor over the preceding 12 months.

(2) A return under subsection (1) purporting to be signed by the employer may be received in evidence as prima facie proof of its contents.

(3) This section binds the Government of the Yukon.

Enforcement by lower court

45.(1) Where in an action in the Supreme Court, pursuant to its jurisdiction under the Divorce Act (Canada) or any other law, an order is made in a matrimonial matter, a matter dealing with the custody of a child, or any other matter, and an ancillary order is made for the

payment of money as support for the spouse or a child of the respondent, the ancillary order, to the extent that it provides for the payment of money, is severable from the order made by the Supreme Court and may be enforced to that extent in the Territorial Court.

(2) For the purpose of enforcing an ancillary order as provided under subsection (1), all of the remedies provided in this Act for the enforcement of support orders apply in respect of the ancillary order, but the Territorial Court has no jurisdiction to vary the amount of the order.

Order for sale

46. Where the Supreme Court orders security for the payment of support under this Act or charges property therewith, the Supreme Court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

Restraining order

47.(1) Upon application, a court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate.

(2) Where an application is made under subsection (1), the court may make such interim order as the court considers appropriate.

Pledge of credit

48.(1) During cohabitation, a spouse has authority to render himself and his spouse jointly and severally liable to a third party for necessities of life, except where the spouse has notified the third party that he has withdrawn the authority.

(2) Where a person is entitled to recover against a minor in respect of the provision of necessities for the minor, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor.

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband.

Parties as witnesses

49. In proceedings under this Part, the parties are competent and compellable witnesses against each other.

PART 4 GENERAL

Variation of orders

50.(1) Every order of the Supreme Court under Part 1 or Part 2 is final unless the Supreme Court declares otherwise at the time when the order is made.

(2) Where an order is declared not to be final under subsection (1), any person named in the order may apply to the Supreme Court to have the order changed, and where the Supreme Court is satisfied that there has been a material change of circumstances or that terms and conditions imposed by the order are no longer appropriate, the Supreme Court may discharge, change or suspend the order or any terms or conditions imposed by the order.

Interim orders

51. In or pending an application under Part 1 or Part 2, the Supreme Court may make such interim orders as it considers necessary for restraining the dissipation of property owned by either or both of the spouses, and for the possession, delivering up, safekeeping and preservation of the property.

Appeal

52.(1) An appeal lies from a decision or order of the Territorial Court under this Act to the Supreme Court.

(2) An appeal under subsection (1) shall be taken by notice of appeal given within 30 days from the date on which the decision or order against which the appeal is taken was given.

(3) The Supreme Court may grant an extension of time to appeal under subsection (1).

(4) The procedure for the conduct of an appeal under subsection (1) shall be, with such reasonable modifications directed by the Supreme Court as may be necessary, the same as for an appeal in the Court of Appeal.

(5) Upon hearing an appeal, the Supreme Court may affirm, reverse or modify the order appealed against, and make such other auxiliary order as seems proper.

Punishment by court

53.(1) In addition to its powers in respect of contempt, the Territorial Court may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process or orders under this Act, but the fine shall not in any case exceed \$1,000, nor shall the imprisonment exceed 90 days.

(2) An order for imprisonment under subsection (1) may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

Combining of applications

54.(1) Where in an application under this Act it appears to the court that, for the appropriate determination of the affairs of the spouses, it is necessary or desirable to have other matters first or simultaneously determined, the court may direct that the application stand over until such other applications are brought or determined as the court considers appropriate.

(2) An application under this Act may be made in the manner prescribed by the rules of the court or in another proceeding.

(3) A court may, in relation to any matter within its jurisdiction under this Act, extend any time prescribed under this Act, where the court is satisfied that

- (a) there are prima facie grounds for relief,
- (b) relief is unavailable because of delay that has been incurred in good faith, and
- (c) no substantial prejudice or hardship will result to any person affected by reason of the delay.

(4) Subsection (3) does not empower a court to extend the effect of the definition of “spouse” to include a former spouse or to extend the time limit prescribed by subsection 22(2).

(5) Where in the opinion of the court the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding a hearing in public or allowing publication of documents filed with the court, the court may

- (a) exclude the public from a hearing,
- (b) order that a statement filed under section 16 or 43 be treated as confidential and not form part of the public record,
- (c) order that any matter connected with the application or given in evidence be treated as confidential and not form part of the public record, or
- (d) prohibit the publication of any matter connected with the application or given in evidence.

Access to records of names and addresses

55.(1) Where it appears to the clerk of the court that, for the purpose of bringing an application under this Act, the proposed applicant or person in whose favour the order is made has need to learn or confirm the name and address or the whereabouts of the proposed respondent or person against whom the order is made, the clerk of the court may order any person or public agency to provide the court with such particulars thereof as are contained in the records in his or its custody or control, and the person or agency shall provide to the court such particulars as it is able to provide.

(2) This section prevails over any provision of another Act that prohibits a disclosure, and this section binds the Government of the Yukon.

(3) An order of the clerk of the court under subsection (1) shall be deemed to be an order of the court.

Bona fide purchasers of real property

56. Where an order made under this Act affects real property, the order does not affect the acquisition of an interest in the real property by a person in good faith without notice of the order, unless the order is registered.

Delivery of documents

57.(1) A demand under section 26 or a notice under section 28 shall be delivered personally or sent by registered mail to the usual or last known address of the spouse to whom it is directed, but if the address is not known, the demand or notice may be delivered or sent by registered mail to the address of the property that is the subject of the demand or notice.

(2) A demand or notice delivered or mailed as provided by subsection (1) shall be deemed to have been received upon delivery or 15 days after it was mailed, as the case may be.

DOMESTIC CONTRACTS**Cohabitation agreements**

58.(1) A man and a woman who are cohabiting and not married to each other may enter into a cohabitation agreement in which they agree on their respective rights and obligations during cohabitation, or upon ceasing to cohabit, including ownership in or division of property, support obligations, and any other matter in the settlement of their affairs.

(2) Where the parties to a cohabitation agreement entered into under subsection (1) subsequently marry, the agreement shall be deemed to a marriage contract.

(3) A cohabitation agreement may provide that all or part of the respective rights or obligations of the parties as between themselves shall be governed in whole or in part by the provisions of Part 1 and, notwithstanding subsection 2(2), any such provision may limit the extent to which the Supreme Court shall have jurisdiction in relation to the affairs of the parties thus agreed to be governed by Part 1.

(4) Subject to subsection (3), where a cohabitation agreement makes provision in respect of a matter that is provided for in this Act, the contract prevails except as otherwise provided in this Act.

Form of domestic contract

59.(1) A domestic contract does not affect the rights of a person under this Act unless it is in writing, signed by both parties and witnessed by an independent third person.

(2) A minor who has capacity to contract marriage has capacity to enter into a domestic contract that is approved by the Supreme Court, whether the approval is given before or after the contract is entered into.

(3) The committee of a person who is mentally incompetent or, if the committee is the spouse of such person or if there is no committee, the public administrator may, subject to the approval of the Supreme Court, enter into a domestic contract or give any waiver or consent under this Act on behalf of the mentally incompetent person.

Chastity clauses

60.(1) A provision in a separation agreement or a provision in a marriage contract to take effect on separation whereby any right of a spouse is dependent upon remaining chaste is void, but this subsection shall not be construed to affect a contingency upon remarriage or cohabitation with another.

(2) A provision in a separation agreement made before this section comes into force whereby any right of a spouse is dependent upon remaining chaste shall be given effect as a contingency upon remarriage or cohabitation with another.

Gifts

61. Where a domestic contract provides that specific gifts made to one or both parties are not disposable or encumberable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or amendment of the provision.

Best interests of child

62. In the determination of any matter respecting the support of a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child.

Existing contracts

63. A domestic contract validly made before this Part comes into force shall be deemed to be a domestic contract for the purposes of this Act to the extent that the contract relates to any matter that is provided for in this Act.

Conflict of laws

64. The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that,

- (a) a contract for which the proper law is that of a jurisdiction other than the Yukon is also valid and enforceable in the Yukon if entered into in accordance with the internal law of the Yukon, and
- (b) section 60 applies in the Yukon to contracts for which the proper law is that of a jurisdiction other than the Yukon.

Capacity of minors

65. A minor who is a spouse has capacity to commence, conduct and defend a proceeding under this Act without the intervention of a next friend or guardian ad litem and to give any consent required or authorized to be given by this Act.

Regulations

66. The Commissioner in Executive Council may make regulations for the purpose of carrying out the provisions of this Act.

CHAPTER 64

FATAL ACCIDENTS ACT

Interpretation

1. In this Act,

“child” includes a grand-child, a step-child, and a person to whom the deceased stood in loco parentis;

“deceased” means a person whose death has been caused as mentioned in subsection 2(1);

“parent” includes a grandfather, a grandmother, a step-parent, and a person who stood in loco parentis to the deceased;

“tortfeasor” means a person whose wrongful act, neglect or default has caused the death, or contributed to the cause of the death of the deceased and who, if death had not ensued, would have been liable to him for damages, and includes a person who would have been liable vicariously or otherwise for such damages.

Damages for death

2.(1) Where the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the deceased to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, is liable for damages, notwithstanding the death of the deceased, even if the death was caused in circumstances amounting in law to culpable homicide.

(2) Subject to subsection (5), the liability for damages under this section arises upon the death of the deceased.

(3) No settlement made, release given or judgment recovered in an action brought by the deceased within a period of three months after the commission or occurrence of the wrongful act, neglect or default causing his death, is a bar to a claim made under this Act or is a discharge of liability arising under this Act, but any payment made thereunder shall be taken into account in assessing damages in any action brought under this Act.

(4) Unless it is set aside, a settlement made or release given or a judgment recovered in an action brought by the deceased after the expiration of the period mentioned in subsection (3) is a discharge of liability under this Act.

(5) If, at the time of the death of the deceased, the tortfeasor is himself dead, the liability arising under this Act shall be conclusively deemed to have been subsisting against the tortfeasor before his death.

(6) Where the tortfeasor dies at the same time as the deceased, or in circumstances rendering it uncertain which of them survived the other, or after the death of the deceased, the liability and cause of action arising under this Act shall be conclusively deemed to lie upon and continue against the executor or administrator of the tortfeasor as if the executor or administrator were the tortfeasor in life.

Persons who may benefit

3.(1) Every action under this Act shall be for the benefit of the spouse, parent or child of the deceased, or any of them, and except as hereinafter provided, shall be brought by and in the name of the executor or administrator.

(2) Subject to subsection (3), in every action under this Act such damages as are proportional to the pecuniary loss resulting from the death shall be awarded to the persons respectively for whose benefit the action is brought.

(3) Where an action has been brought under this Act there may be included in the damages awarded an amount sufficient to cover the reasonable expenses of the funeral and the disposal of the body of the deceased if those expenses were incurred by any of the persons by whom or for whose benefit the action is brought.

Contributory negligence

4.(1) Where a person for whose benefit alone or with others an action may be brought under this Act is a tortfeasor, the damages that would otherwise be awarded for his benefit shall be reduced in proportion to the degree in which the court finds that his wrongful act, neglect or default contributed to the cause of the death of the deceased.

(2) Where the wrongful act, neglect or default of the deceased contributed to the cause of his death, the damages that would otherwise be awarded under this Act shall be reduced in proportion to the degree in which the court finds that his wrongful act, neglect or default contributed to the cause of his death.

Special administrator

5.(1) Where, within three months after the death of the tortfeasor,

- (a) no executor of his will or administrator of his estate has been appointed in the Yukon, and
- (b) no letters probate of his will or letters of administration have been re-sealed in the Yukon,

any person intending to bring or continue an action under this Act may apply to a judge of the court in which the action is to be, or has been, brought to appoint an administrator of the estate of the tortfeasor to act for all purposes of the intended or pending action and as defendant therein; and the judge, on such notice as he may direct, given either specially or generally by public advertisement and to such persons as he may designate, may appoint such an administrator.

(2) The administrator appointed under subsection (1) is an administrator against whom an action under this Act may be brought or continued and by whom such action may be defended, and the administrator may bring any action or take any proceedings in respect of the action that the tortfeasor could have brought or taken if he were alive.

(3) Any judgment obtained by or against the administrator so appointed has the same effect as a judgment in favour of or against the tortfeasor or the executor of his will or the administrator of his estate.

(4) No application shall be made under subsection (1) after the expiration of the period of one year mentioned in subsection 8(4), but where such an application is made not earlier than three months before the expiration of that period, the judge may, in his discretion and if he thinks it just to do so, extend for a period not exceeding one month the time within which action may be brought as provided in subsection 8(4).

Action by beneficiaries

6.(1) Where there is no executor or administrator of the estate of the deceased or, there being an executor or administrator, no action is brought by him, within six months after the death of the deceased, an action may be brought by and in the name or names of any one or more of the persons for whose benefit the action would have been brought if it had been brought by the executor or administrator.

(2) Every action so brought shall be for the benefit of the same persons as if it were brought by the executor or administrator.

Assessment of damages

7. In assessing damages in an action brought under this Act there shall not be taken into account,

- (a) any sum paid or payable on the death of the deceased under any contract of insurance or assurance, whether made before or after the coming into force of this Act,
- (b) any premium that would have been payable in future under any contract of insurance or assurance if the deceased had survived,
- (c) any benefit or right to benefits, resulting from the death of the deceased under the Workers Compensation Act, the Social Assistance Act, or the Children's Act, or under any other Act that is enacted by any legislature, parliament or other legislative authority and that is of similar import or effect,
- (d) any pension, annuity or other periodical allowance accruing payable by reason of the death of the deceased, and
- (e) any amount that may be recovered under any statutory provision creating a special right to bring an action for the benefit of persons for whose benefit an action may be brought under this Act.

Effect and limitation of the Act

8.(1) Only one action lies under this Act in respect of the death of the deceased.

(2) Except where it is expressly declared in another Act that it operates notwithstanding this Act, it is not necessary that any notice of claim or intended claim, or notice of action or intended action, or any other notice, or any other document, be given or served, as provided in any such other Act, or otherwise, before bringing an action under this Act.

(3) If the deceased, at the time of his death, could not have brought an action against the tortfeasor by reason of lapse of time or failure to comply with any statutory or contractual condition, a person entitled to bring action under this Act is not, solely by reason of that fact, barred from so doing.

(4) Except where it is expressly declared in another Act that it operates notwithstanding this Act, an action, including an action to which subsection 2(5) or (6) applies, may be brought under this Act within one year after the death of the deceased, but, subject to subsection 5(4), no such action shall be brought thereafter.

(5) This section has effect notwithstanding any contract.

Payment into court

9. The defendant may pay into court one sum of money as compensation for his wrongful act, neglect or default to all persons entitled to damages under this Act, without specifying the shares into which, or the parties among whom it is to be divided under this Act.

Particulars of beneficiaries

10.(1) In every action brought under this Act,

- (a) the statement of claim shall contain, or the plaintiff shall deliver therewith, full particulars of the names, addresses and occupations of the persons for whose benefit the action is brought, and
- (b) the plaintiff shall file with the statement of claim an affidavit in which he shall state that to the best of his knowledge, information and belief, the persons on whose behalf the action is brought as set forth in the statement of claim or in the particulars delivered therewith are the only persons entitled, or who claim to be entitled, to the benefit of the action.

(2) Where the plaintiff fails to comply with subsection (1), the court, on application, may order the plaintiff to give such particulars or so much thereof as he is able to give, and the action shall not be tried until he complies with the order, but the failure of the plaintiff to comply with subsection (1) or with an order made under this subsection is not a ground of defence to the action, or a ground for its dismissal.

(3) A judge of the court in which the action is brought may dispense with the filing of the affidavit, as required in subsection (1), if he is satisfied that there is sufficient reason for doing so.

Apportionment by judge

11. Where the amount recovered has not been otherwise apportioned, a judge in chambers may apportion it among the persons entitled thereto.

Questions between beneficiaries

12. Where an action is brought under this Act, a judge of the court in which the action is pending may make such order as he may deem just for the determination of all questions as to the persons entitled under this Act to share in the amount, if any, that may be recovered.

Crown

13. The Crown is bound by this Act.

Settlements by infants

14.(1) Where an action is maintainable under this Act and some or all of the persons for whose benefit the action is maintainable are infants, and where the executor or administrator of the person deceased has agreed, either before or after the commencement of an action, on a settlement of the claim or action, either the executor or administrator or the person against whom the claim or action is made or brought may, on ten days notice to the opposite party, apply to a judge for an order confirming the settlement.

(2) The judge may on the application confirm or disallow the settlement but, if the settlement is confirmed by him, the party against whom the claim is made or action brought shall be discharged from all further claims.

(3) The judge may also on the application order the money or a portion thereof to be paid into court or otherwise apportioned and distributed as he may deem best in the interests of those entitled thereto.

CHAPTER 65

FINANCIAL ADMINISTRATION ACT

Interpretation

1.(1) In this Act,

- “appropriation Act” means an Act, entitled as an appropriation Act, authorizing payments to be made from the Consolidated Revenue Fund in respect only of a fiscal year specified in the Act, and only for the purposes specified in the Act;
- “consolidated revenue fund” means the Yukon Consolidated Revenue Fund established by the Yukon Act (Canada);
- “contract” means any agreement or undertaking providing for the expenditure of public money in exchange for goods or services, and includes purchase orders, service contracts, construction contracts, employment contracts, and any agreement or undertaking providing for the payment of money by the government;
- “court” means the Court of Appeal, the Supreme Court, the Territorial Court or the Justice of the Peace Court;
- “department” means any department or agency of the government and includes any corporation, board, commission or committee established under any Act;
- “deputy head” means a person who is a deputy head within the meaning of the Public Service Commission Act;
- “fiscal year” means the fiscal year of the government under subsection (2);
- “fund” means a fund within the consolidated revenue fund, and includes a trust fund, special fund, revolving fund, pension fund, sinking fund, or any other fund called by any other name;
- “government” means the Government of the Yukon and includes every department of the government;
- “management board” means the management board established by this Act;
- “money in court” means money paid to or held by a court or its registry otherwise than as payment of a fee or as payment of a fine, costs or other penalty imposed in respect of an offence under an Act of Parliament or the Legislature, or a bylaw of a municipality, and includes such money paid to the treasurer or held in a trust fund;
- “negotiable instrument” includes any cheque, draft, traveller’s cheque, bill of exchange, postal note, money order, postal remittance or other similar instrument;
- “public money” means all money and negotiable instruments received, held or collected by, for or on behalf of the government, and includes
- (a) revenues of the government including interest on investments,
 - (b) money in funds designated as special funds under this Act or by the Commissioner in Executive Council,
 - (c) money borrowed by the government or received through the issue and sale of securities,
 - (d) money in sinking funds,
 - (e) money paid to or held by a court or its registry as payment of a fee or as payment of a fine, costs or other penalty imposed in respect of an offence under an Act of Parliament or the Legislature, or a bylaw of a municipality,

(f) money in revolving funds, and

(g) money in trust funds;

“public officer” means a person who is an employee, casual employee or part-time employee within the meaning of the Public Service Commission Act, and includes a person who is a member of the Executive Council, a teacher within the meaning of the School Act or an employee under a contract;

“public property” means all property, other than public money, belonging to the government;

“securities” means bonds, debentures, deposit certificates, promissory notes, treasury bills or other evidences of indebtedness, shares and stocks, and includes any documents commonly known as securities;

“treasurer” means the deputy head of the Department of Finance;

“trust fund” means a fund established for trust money under section 11 or by any other Act;

“trust money” means

(a) money held in trust by the government or a public officer,

(b) money in pension funds maintained by the government,

(c) money paid to the government as a deposit to ensure the doing of any act or thing,

(d) money in court, and

(e) money that is paid to the government or a public officer under an agreement or other undertaking, or by way of a gift or bequest, and that is to be paid to another person specified in the agreement or undertaking or by the donor of the gift or bequest, except money received as reimbursement for or as a contribution or grant towards expenditures made or to be made by the government;

“vote” means that part of an appropriation Act identified as a vote and authorizing the payment of a specified amount from the consolidated revenue fund for specified purposes.

(2) The fiscal year of the government shall be the period from April 1 in one year to March 31 in the next year.

Application of the Act

2.(1) If there is a conflict between this Act and any other Act of the Legislature enacted before or after this section comes into force, this Act prevails unless the other Act contains an express provision that it, or the relevant provision of it, applies notwithstanding the Financial Administration Act.

(2) This Act does not affect the jurisdiction of a court to make an order appointing a person other than a judge or public officer as a trustee, and money held by such a trustee pursuant to an order of a court is not “trust money” for the purposes of this Act.

PART 1 ORGANIZATION

Management board

3.(1) There shall be a committee of the Executive Council called the management board which shall consist of the Executive Council Member as chairperson and two other members of the Executive Council appointed by the Commissioner in Executive Council.

(2) The Commissioner in Executive Council may appoint members of the Executive Council as alternate members of the management board who may serve as such only in the absence of the member or members whose alternate they are designated to be.

(3) The treasurer shall be the secretary of the management board

(4) Subject to this Act and the direction of the Executive Council, the management board may determine its rules and methods of procedure.

Functions of the management board

4.(1) The management board shall act as a committee of the Executive Council in matters relating to

- (a) accounting policies and practices of the government, including the form and content of the public accounts,
- (b) government management practices and systems,
- (c) government financial management and control of revenue, disbursements and assets,
- (d) evaluation of government programs as to economy, efficiency and effectiveness,
- (e) the management, control and direction of the public service, including organization and staff establishments,
- (f) internal audit, and
- (g) other matters referred to it by the Executive Council.

(2) The estimates of revenue and expenditure for the government for each fiscal year shall be prepared in a form directed by the management board for presentation to the Legislative Assembly by the Executive Council Member.

(3) The management board may, for the performance of its powers and duties under this or any other Act, issue directives.

Department of Finance

5.(1) There shall be a department of the government called the Department of Finance.

(2) The Executive Council Member shall preside over the Department of Finance and be responsible to the Commissioner in Executive Council for its direction.

(3) The Commissioner in Executive Council may authorize a seal for the department which shall be known as the seal of the Department of Finance.

(4) The seal of the Department of Finance may be reproduced on securities issued by the government by engraving, lithographing, printing or any other method of reproduction, and when reproduced on them has the same effect as the seal of the Yukon.

Executive Council Member

6.(1) The Executive Council Member is responsible for

- (a) the management and administration of the consolidated revenue fund,
- (b) the supervision of the revenues and expenditures of the government,

- (c) all matters relating to the fiscal policy of the government, and
- (d) the direction of the financial affairs of the government that are not assigned by this or any other Act to the Commissioner in Executive Council, the management board or any other person.

(2) Each member of the Executive Council is responsible for the management of the financial affairs of his department under the general direction of the Executive Council Member and the management board.

Treasurer

7.(1) Subject to the direction of the Executive Council Member, the treasurer shall

- (a) ensure the proper collection, receipt, recording and disposition of public money and ensure that proper authority exists for disbursements of public money,
- (b) establish the method by which the accounts of the government are to be kept and the method by which any public officer or other person shall account for public money which comes into his hands,
- (c) maintain the accounts of the government,
- (d) evaluate accounting and financial management systems throughout the government and recommend improvements he considers necessary to the Executive Council Member.
- (e) prepare any financial statements and reports required by the Executive Council Member, and
- (f) perform other duties given to him by the Executive Council Member and any other Act.

(2) Notwithstanding any other Act, the treasurer shall at all times have access to all departments and to their records and may

- (a) require from any public officer information and explanations necessary for the performance of the duties of the treasurer, and
- (b) on the direction of the management board, require from any person who receives or is responsible for public money such information and explanations as may be necessary to enable the treasurer to determine whether money paid from the consolidated revenue fund has been or is being
 - (i) applied for the purpose for which it was authorized to be paid and applied, and
 - (ii) paid or dealt with in accordance with this or any other Act.

(3) Every person who receives information under subsection (2) from a person whose right to disclose that information is restricted by law, holds that information under the same restrictions respecting disclosure as govern the person from whom the information is obtained.

Public accounts

8.(1) A report called the public accounts shall be prepared by the treasurer for each fiscal year.

(2) On or before October 31 in each year, the Executive Council Member shall lay the public accounts for the immediately preceding fiscal year before the Legislative Assembly or distribute them to the members of the Assembly.

(3) Where the public accounts are distributed to the members of the Legislative Assembly under subsection (2) on or before October 31 in any year, they shall be laid before the Legislative Assembly with 15 days thereafter, if the Assembly is sitting or, if not, within 15 days after the commencement of the next sitting.

(4) The public accounts for each fiscal year shall be prepared by the treasurer in accordance with the government's accounting policies as established by the management board, and shall contain

- (a) statements of assets and liabilities showing the government's financial position at the end of the fiscal year,
- (b) statements of the revenues and expenditures of the government showing the results of operations for the fiscal year,
- (c) statements of changes in the financial position of the government for the fiscal year,
- (d) statements of payments made from the consolidated revenue fund under sections 19 and 58, and paragraph 34(c),
- (e) The auditor general's report on his examination of the government's accounts and financial transactions, and
- (f) such other information as may be necessary to show the financial position of the government respecting the fiscal year.

(5) In the public accounts, no money except money received or receivable for a fiscal year or a previous fiscal year shall be included in the annual revenues of a fiscal year.

Internal audit

9.(1) The Commissioner in Executive Council shall appoint a person to be the internal auditor.

(2) The internal auditor has the authority to audit

- (a) public money, trust money and public property that are the responsibility of any department or public officer,
- (b) the accounts and financial transactions of any department,
- (c) securities belonging to the government,
- (d) systems of financial management, control and reporting in the government,
- (e) the organization, management and operations of any department, and
- (f) the compliance of any department with legislation and the directives of the management board.

(3) The internal auditor shall report to the management board in such manner and at such times as the management board directs.

PART 2 REVENUE

Public money

10.(1) Every person who collects or receives public money shall pay or give all public money coming into his hands to the treasurer or deposit it to the credit of the consolidated revenue fund in a bank account authorized by the Commissioner in Executive Council.

(2) The treasurer shall deposit all public money he receives to the credit of the consolidated revenue fund.

(3) Every person who collects or receives public money shall keep a record thereof in such form and manner as the treasurer directs.

(4) The Commissioner in Executive Council may make regulations establishing

- (a) rates for the payment of fees or commissions to persons collecting, managing or accounting for public money as remuneration for all services performed, and
- (b) the methods by which fees or commissions may be paid.

Trust money

11.(1) Trust money shall be paid into and shall be maintained in trust funds established by the treasurer within the consolidated revenue fund.

(2) Where money in court is paid or received for payment into a trust fund under subsection (1), a receipt shall be issued setting out the amount received and the cause or matter in respect of which it is received.

(3) A receipt purporting to be issued in compliance with subsection (2) and purporting to be signed by or on behalf of the treasurer is

- (a) evidence of the facts stated in it without proof of the appointment, authority or signature of the person signing it, and
- (b) binding on the government.

(4) Where trust money under subsection (1) consists of money in court,

- (a) the treasurer shall, as soon as practicable after the receipt of the request of a judge of the appropriate court, make a statement as to the amount of money paid into a trust fund in respect of the cause or matter for which the request is made, together with any income attributable to the money under paragraph 39(9)(c), and
- (b) subject to subsection 18(3), the treasurer is not otherwise subject to the supervision or direction of a court respecting the money.

Collection and deposit of money

12.(1) No person shall open or close a bank account for the receipt, deposit or transfer of public money or trust money except as authorized by the Commissioner in Executive Council.

(2) The Commissioner in Executive Council may make regulations respecting the collection, receipt or deposit of public money or trust money.

Refunds

13.(1) Money that is received by the government under a mistake as to the entitlement of the government to receive or collect it, and money that is received by the government for any purpose that is not fulfilled shall be refunded from the consolidated revenue fund in part or in full as circumstances require.

(2) The management board may by directive authorize specified persons to make refunds under subsection (1).

Write-off of uncollectable debts

14.(1) The management board may by directive

- (a) write off all or part of a debt or an obligation that it considers to be unrealizable or uncollectable, and
- (b) authorize specified persons to write off all or part of a debt or obligation that is due and owing to the government and that the authorized person considers to be uncollectable.

(2) The write-off of all or part of a debt or obligation under this section does not extinguish the right of the government to collect the debt or obligation written off.

(3) This section does not apply to a forfeiture, fine, pecuniary penalty, tax, royalty, fee or other sum imposed or authorized to be imposed by any Act.

(4) Every account written off shall be reported in the public accounts for the fiscal year in which the account is written off.

Remissions

15.(1) Where the Commissioner in Executive Council considers it in the public interest to do so in a case or class of cases where great public inconvenience, great injustice or great hardship to a person has occurred or is likely to occur, he may authorize the remission of

- (a) any tax, royalty, fee or other sum that is paid or payable to the government and that is imposed or authorized to be imposed by any Act, or
- (b) any forfeiture, fine or pecuniary penalty imposed or authorized to be imposed by any Act.

(2) A remission authorized under subsection (1) may be total or partial, conditional or unconditional.

(3) A remission of an item referred to in paragraph (1)(a) may be granted before, during or after any proceeding for the recovery of the money, and either before or after any payment of it has been made or has been enforced by process or execution.

(4) Where a condition of a remission authorized under subsection (1) is not performed, the authorization of the remission has no effect and all proceedings may be taken as if the remission had not been authorized.

(5) No tax on any goods shall be remitted by reason only that after the payment of the tax the goods were lost or destroyed.

(6) Money required to be paid by the government under this section may be paid from the consolidated revenue fund.

(7) Where an amount of not more than \$1 is owed to the government, the debtor is entitled to a remission under this section.

(8) Every remission, other than under subsection (7), shall be reported in the public accounts for the fiscal year in which the remission is made.

(9) Subject to the regulations, no provision of any other Act authorizes a remission of public money.

Interest on overdue accounts

16.(1) The Commissioner in Executive Council may make regulations requiring persons who owe or are liable to pay money to the government to pay interest on the money at a rate prescribed in the regulations.

(2) A rate prescribed under subsection (1) may be general or specific, and the interest is recoverable as a debt due to the government.

(3) Regulations made under this section do not apply where another Act requires or authorizes the imposition of interest on money owed to the government.

**PART 3
EXPENDITURE**

Statutory authority

17.(1) No payment shall be made at any time from the consolidated revenue fund for any purpose unless a provision of this or another Act authorizes the payment to be made for that purpose at that time.

(2) A vote does not authorize any payment to be made

- (a) in excess of the amount specified in the vote,
- (b) for any purpose not within the general purposes of the vote, or
- (c) except as provided by sections 25 and 37, after the end of the fiscal year to which the vote applies.

Trust Funds

18.(1) Subject to any other Act, money may be paid from a trust fund if the payment is made in accordance with both

- (a) the provisions of this Act, and
- (b) the provisions of the Act, trust, instrument or other authority under which the money is held in trust.

(2) Notwithstanding subsection (1), money received by the government as a deposit to ensure the doing of anything shall be held or disposed of in accordance with the contract or agreement pursuant to which the deposit is held, but if there is no contract or agreement, or if the contract or agreement contains no provision or insufficient provision for the disposition of the deposit, it shall be disposed of in accordance with this Act and the directives of the management board.

(3) Where money in a trust fund consists of money in court, the treasurer shall, as soon as practicable after receipt of an order of the appropriate court,

- (a) in accordance with the order, pay money from the fund or income attributable to the money under paragraph 39(9)(c), and
- (b) if insufficient money has been received to enable compliance with the order, advise the court accordingly.

Special warrants

19.(1) Money may be paid from the consolidated revenue fund under the authority of a special warrant under this section.

(2) The Commissioner in Executive Council may order a special warrant to be prepared for the signature of the Commissioner where

- (a) a report is received from the management board that no provision of an Act authorizes a payment from the consolidated revenue fund that is urgently and immediately required for the public good, and
- (b) the Legislative Assembly is dissolved, prorogued, adjourned indefinitely, or adjourned with more than seven days remaining in its period of adjournment.

(3) A special warrant shall be signed by the Commissioner, and it shall set out

- (a) the amount that may be paid from the consolidated revenue fund under the authority of the warrant,
- (b) the purpose for which payments may be made, and
- (c) the fiscal year in which payments may be made.

(4) The amount paid from the consolidated revenue fund under the authority of a special warrant shall be submitted to the Legislative Assembly as part of an appropriation bill at the next sitting of the Assembly, and the amount shall be identified as such in the bill.

(5) A special warrant shall be deemed to be a vote for the purposes of all of the provisions of this Act except subsections 1(1) and 39(6).

Contributions and grants

20.(1) Except as provided by subsection (2), where money is payable to or received by the government under any Act or agreement for the purposes of or as a contribution toward expenditures to be made by the government, the management board may by directive authorize the payment of money from the consolidated revenue fund for those expenditures in an amount not exceeding the amount payable to or received by the government.

(2) Where money is received or receivable by the government from the government of Canada or a province under any Act, agreement or undertaking for the purposes of or as a

contribution toward expenditures to be made by the government, the management board may by directive authorize the payment of money from the consolidated revenue fund for those expenditures in an amount not exceeding the amount received or receivable by the government.

(3) This section does not apply to money received or receivable under the Federal-Territorial Financial Agreement.

(4) The amount paid from the consolidated revenue fund under the authority of this section shall be submitted to the Legislative Assembly as part of an appropriation bill at the next sitting of the Assembly, and the amount shall be identified as such in the bill.

Regulation of expenditure

21.(1) The management board may by directive control or limit payments from votes, and for that purpose it may by directive

- (a) identify allotments, programs or projects within a vote, and distribute money among programs and projects,
- (b) transfer money between allotments, programs or projects within a vote,
- (c) distribute money among activities within a program or project, or authorize a public officer to do so, and
- (d) transfer money between activities within a program or project, or authorize a public officer to do so.

(2) The management board may issue directives

- (a) regulating the charging of expenditures to votes, funds, allotments, programs, projects and activities, and
- (b) assigning responsibility for a vote or fund to a public officer.

Interest

22.(1) Subject to any other Act, the Commissioner in Executive Council may make regulations providing for the payment of interest on such debt obligations of the government, at such rate and subject to such conditions as he may specify in the order.

(2) Where a regulation under subsection (1) provides for the payment of interest on a debt obligation of the government, the payment of interest shall be deemed to be authorized by the vote or other authority under which payment of the principal amount of the debt may be paid.

Contracts

23.(1) The management board may, by directive, authorize public officers to enter into contracts subject to such terms and conditions as the management board considers necessary.

(2) Where the management board has authorized a public officer to enter into contracts, it may by directive authorize him to delegate all or part of his authority to another public officer, subject to such terms and conditions as the management board considers necessary.

(3) Notwithstanding any other Act, a contract shall not be entered into, and is not enforceable against the government, unless entered into by a public officer authorized to do so under subsection (1) or (2).

Certification prerequisites for contracts

24.(1) A contract shall not be entered into by a public officer, and is not enforceable against the government, unless the responsible deputy head or a public officer designated in writing by the deputy head has certified that

- (a) every payment out of the consolidated revenue fund contemplated by the contract in the then current fiscal year is authorized by this or another Act, and
- (b) there is sufficient money in the vote or fund from which the payments are to be made.

(2) It is a term of every contract that money that becomes due under the contract is not payable unless a provision of this or another Act authorizes the payment to be made in the fiscal year when the payment falls due.

(3) The Commissioner in Executive Council may make regulations establishing terms and conditions that shall apply to contracts, or any class of contracts specified in the regulations.

Holdbacks

25.(1) Where a payment under a contract is withheld, the payment may, subject to this Act and the directives of the management board, be credited to a special fund established by the treasurer in the consolidated revenue fund for payments withheld under the contract to be dealt with in accordance with the contract.

(2) Money credited to a special fund under subsection (1) shall remain available for the purposes of the contract after the end of the fiscal year in which it is credited.

Assignments

26.(1) Except as provided by the regulations, a debt obligation of the government is not assignable, and no transaction purporting to be an assignment confers on any person a right or remedy in respect of a debt obligation of the government.

(2) The Commissioner in Executive Council may make regulations prescribing classes of debt obligations of the government and the conditions under which each class of debt obligation may be assigned.

(3) An assignment of a debt obligation of the government is subject to all the claims that are entitled to priority over the right of the assignee, and is subject to all the terms and conditions that relate to the original debt.

(4) This section does not apply to securities or negotiable instruments, or to telegraphic or electronic transfers of money.

Advances

27. Subject to directives of the management board, the regulations and any other Act, an advance may be made from the consolidated revenue fund to any person to enable that person to pay expenses that are authorized to be paid by this or any other Act.

Records of commitments

28.(1) Every public officer shall keep records of commitments for the expenditures chargeable to each vote or fund for which he has been assigned responsibility under paragraph 21(2)(b).

(2) The management board may direct the form and manner in which records of commitments under subsection (1) shall be kept.

Certificates of performance

29.(1) Notwithstanding any other Act, no payment shall be made from the consolidated revenue fund unless a certificate as to the information required under subsection (2) is signed in accordance with this section by a public officer authorized to do so under this section.

(2) A certificate shall contain such of the following statements as may be applicable:

- (a) in the case of a payment for goods that have been supplied, or services that have been performed, under a contract, a statement to that effect and a statement that the proposed payment is in accordance with the contract;
- (b) in the case of a payment for goods that have yet to be supplied or services that have yet to be performed, a statement to that effect and a statement that the proposed payment is in accordance with a contract;
- (c) in the case of a payment not provided for in paragraph (a) or (b), a statement as to the purpose of the proposed payment, and a statement that all conditions precedent to the making of the payment have been met;
- (d) in any case, such further statements as the management board, by directive, may require.

(3) The management board may by directive authorize public officers to sign certificates, subject to such terms and conditions as the management board considers necessary.

(4) Where the management board has authorized a public officer to sign certificates, it may by directive authorize him to delegate all or part of his authority to another public officer subject to such terms and conditions as the management board considers necessary.

(5) The authority of a public officer to sign certificates extends only to payments to be made from a vote or fund for which he or the public officer delegating authority to him has been assigned responsibility under paragraph 21(2)(b).

Requisitions for payment

30.(1) Notwithstanding any other Act, no payment shall be made from the consolidated revenue fund unless a requisition for payment containing the statements required by subsection (2)

- (a) is signed in accordance with this section by a public officer authorized to do so under this section, and
- (b) is accepted by the treasurer or a person authorized by him.

(2) A requisition for payment shall contain the following statements respecting the proposed payment and the vote or fund from which the payment is to be made:

- (a) a statement that the payment lawfully may be made from the vote or fund;

- (b) a statement that the making of the payment does not contravene any directive of the management board;
- (c) a statement that there is sufficient money in the vote or fund to make the payment;
- (d) a statement that the making of the payment will not reduce the balance of the vote or fund so that it would not be sufficient to meet commitments recorded under section 28 for other payments to be made from the vote or fund.

(3) The management board may by directive authorize public officers to sign requisitions for payment subject to such terms and conditions as the management board considers necessary.

(4) Where the management board has authorized a public officer to sign requisitions for payment, it may by directive authorize him to delegate all or part of his authority to another public officer, subject to such terms and conditions as the management board considers necessary.

(5) The authority of a public officer to sign requisitions for payment extends only to payments to be made from a vote or fund for which he or the public officer delegating authority to him has been assigned responsibility under paragraph 21(2)(b).

Rejection of requisitions

31.(1) The treasurer shall reject a requisition for payment where he is of the opinion that the requirements of any Act have not been complied with.

(2) Where the treasurer rejects a requisition, he shall, at the request of the deputy head responsible for the relevant vote or fund, state his reasons in writing to the deputy head.

(3) The management board may, on the written request of the responsible deputy head, confirm the treasurer's decision under subsection (1) or, on the certificate of the Executive Council Member responsible for the Department of Justice that the requisition for payment would not contravene any enactment of Parliament or the Legislature, order that the payment be made subject to any conditions that the management board may specify.

Accounting for public money

32. Every person authorized to spend public money shall account for it in the manner provided under this Act or the regulations, and the Act authorizing the expenditure.

Treasurer's statement of irregular payments

33.(1) The treasurer shall, by September 30 next following the end of each fiscal year, deliver to the management board a statement listing details of every case during the fiscal year in which a payment has been made that, in his opinion, is irregular or unlawful in any way.

(2) The treasurer shall supply to a deputy head a copy of the part of the statement referred to in subsection (1) that refers to payments from funds within the responsibility of the deputy head.

Money not applied

34. Where a person has received money from the government to be applied to any purpose and has not applied it to that purpose within the time or in the manner required,

- (a) the Executive Council Member may demand repayment under section 67,
- (b) the money may be recovered from the person as a debt due to the government, and
- (c) an equal sum may in the meantime be applied to the purpose to which the money ought to have been applied.

Set-off of amounts owed

35.(1) The management board may by directive authorize the treasurer to retain money in specified circumstances by way of set-off from any money due or payable to a person from the consolidated revenue fund where

- (a) the person owes money to the government,
- (b) an overpayment has been made by the government to the person, or
- (c) an advance made to the person under section 27 has not been repaid or accounted for.

(2) Notwithstanding subsection (1), the treasurer may recover any overpayment made from the consolidated revenue fund on account of salary, wages, pay or allowances out of any sum of money that may be due and payable by the government to the person to whom the overpayment was made.

(3) No money shall be retained under this section by way of set-off from an amount due or payable as or on account of compensation under the Workers Compensation Act.

Expenditure refunds, repayments and recoveries

36.(1) Money received by the government as a refund or repayment of an expenditure or advance shall be included in the unexpended balance of the vote or fund from which it was paid.

(2) Money received or receivable under any Act or agreement as the recovery of a sum authorized to be paid by any Act shall be reported in the public accounts for a fiscal year as an expenditure recovery of the year in respect of which the money was authorized to be paid.

Payments after a fiscal year end

37.(1) Subject to subsection (2), the balance of a vote that remains unexpended at the end of a fiscal year shall lapse.

(2) Where debt obligations have been incurred by the government for goods supplied, or services performed, prior to the end of a fiscal year under a contract, payment of the obligations shall be made from a vote for that fiscal year.

(3) Every deputy head shall at the end of each fiscal year send to the treasurer a list of the payments to be made after the end of the fiscal year under this section from votes for which he is responsible together with the certificates required by section 29.

Payments

38.(1) The management board may issue directives respecting payments made from the consolidated revenue fund providing for the form in which payments shall be made, the way in which payments shall be authenticated, and the places from which payments shall be issued.

(2) The Commissioner in Executive Council may make regulations respecting the verification of debt obligations of the government prior to their payment.

PART 4 ASSETS

Power to invest

39.(1) Where money in the consolidated revenue fund, other than money in a trust fund, is not immediately required for payments, it may be invested in any of the following:

- (a) securities that are obligations of or guaranteed by Canada or a province;
- (b) fixed deposits, notes, certificates and other short term paper of or guaranteed by a bank including swapped deposit transactions in currency of the United States of America;
- (c) commercial paper issued by a company incorporated under the laws of Canada or a province, the securities of which are rated in the highest rating category by at least two recognized security rating institutions.

(2) Subject to any other Act, where money in a trust fund is not immediately required for payments, it may be invested in accordance with the Act or the trust, instrument or other authority by which the money is held in trust, in any investment permitted by the Trustee Act.

(3) Where an Act authorizes the Commissioner in Executive Council to guarantee a debenture or other security, he may guarantee a debenture or other security issued to or held by the government, and a debenture or other security so guaranteed is eligible as an investment under this section.

(4) An investment held under this section may be disposed of, or exchanged or traded for another investment authorized under this section.

(5) Subject to any other Act, where money from a trust fund or money from a fund designated as a special fund by the Commissioner in Executive Council is invested, interest earnings or proceeds from an exchange, trade or disposition in respect of the trust fund or the special fund may, subject to the regulations, be paid into the appropriate trust fund or special fund.

(6) Any net income resulting in any fiscal year from the purchase, holding or sale of securities pursuant to this section shall be credited to revenues of that fiscal year and any net loss resulting in any fiscal year from such purchase, holding or sale shall be charged to a vote established for that purpose.

(7) For the purposes of subsection (6), the net income or loss in any fiscal year shall be determined by taking into account realized profits and losses on securities sold in the fiscal year, the amortization applicable to the fiscal year of premiums and discounts on securities, and accrued interest applicable to the fiscal year.

(8) The Commissioner in Executive Council may, on the recommendation of the Executive Council Member, appoint a committee to provide advice on the exercise of the power of investment and on other matters related to investments.

(9) Notwithstanding any other provision of this section, where money in a trust fund consists of money in court,

- (a) the Executive Council Member may invest the money in any investment permitted by the Trustee Act,
- (b) where any net loss results from an investment under paragraph (a), any amount required to make up the deficiency shall be paid from the consolidated revenue fund so that payment out of the amount received may be made pursuant to subsection 18(3),
- (c) there shall be attributed to the money in the fund income at such rate as may be prescribed, and
- (d) reasonable costs of making or managing the investments may be charged only against the net income or profits of the investments.

Loans, advances and equity investments

40.(1) No loan of public money shall be made without the authority of an Act.

(2) Notwithstanding any other Act, the power to make loans, advances or direct equity investments from the consolidated revenue fund shall not be exercised except in accordance with the regulations.

Public property

41.(1) No disposition or loan of public property shall be made to any person without authorization under this or another Act.

(2) Subject to this Act, the management board may issue directives governing

- (a) the acquisition of property by the government,
- (b) the custody and control of public property, including the maintenance of inventories,
- (c) the sale of public property, and
- (d) the deletion of public property from inventory.

(3) The Commissioner in Executive Council may make regulations respecting the recovery of loss of or damage to public property caused by the negligence or wilful misconduct of a public officer who is responsible for the operation, care or custody of the public property.

Provision of services or use of public property

42.(1) Subject to any other Act, where a service or the use of public property is provided by the government to any person, the Commissioner in Executive Council may make regulations

- (a) establishing fees for the provision of the service or the use of the public property,
- (b) establishing terms and conditions subject to which the service or the use of the public property may be provided, or
- (c) authorizing the management board or a public officer to enter into agreements respecting the provision of the service or use of public property.

(2) Subject to the regulations, the management board may by directive authorize public officers to provide to any person a service or the use of public property, subject to such fees, terms and conditions as the management board may specify by directive.

Establishment and operation of revolving funds

43.(1) No revolving fund shall be established by the government unless authorized by an Act.

(2) Money may be paid from a revolving fund if the payment is made in accordance with both

- (a) the provisions of this Act, and
- (b) the provisions of the Act authorizing the establishment of the revolving fund.

(3) Revenues shall not be credited to, and expenditures shall not be charged against, a revolving fund

- (a) beyond the limits set out in the Act authorizing the establishment of the fund, or
- (b) in respect of a transaction outside the purposes for which the fund is authorized to be established.

(4) Where a revolving fund is established for the maintenance of inventory, the inventory shall not exceed the limit established for the fund under subsection 44(1) or any other Act under which the fund may be established.

(5) Where the establishment of a revolving fund is authorized, the management board may issue directives respecting

- (a) the accounts to be kept,
- (b) the method of charging and crediting the fund,
- (c) the method of valuing the inventory of the fund, and
- (d) any other matter it considers necessary governing the operation of the fund.

(6) For each revolving fund there shall be included in the public accounts a statement for the year showing

- (a) the assets and liabilities of the fund, and
- (b) a summary of the transactions of the fund.

Specific revolving funds

44.(1) The following revolving funds shall be established within the consolidated revenue fund with the following purposes and limits:

- (a) road equipment replacement fund, to be used for the replacement of road equipment, with a limit of \$3,000,000;

- (b) central stores fund, to be used for the maintenance of the central stores inventories, with a limit of \$750,000;
- (c) garage parts and fuel inventory fund, to be used for the maintenance of garage parts and fuel inventories, with a limit of \$800,000;
- (d) highway materials fund, to be used for the maintenance of highway materials inventories, with a limit of \$2,850,000.

(2) Notwithstanding subsection 43(2), expenditures from the road equipment replacement fund shall not exceed the accumulated revenues in the fund at the time of the expenditure.

(3) Subsection 43(4) does not apply to the road equipment replacement fund.

PART 5 LIABILITIES

Authority to Borrow

45. No money shall be borrowed or security issued by the government without the authority of this or another Act.

Borrowing Money

46. Where this or another Act confers on the government authority to borrow money, the Commissioner in Executive Council may, subject to the Act that confers the borrowing authority, make regulations authorizing the borrowing of money by the issue and sale of securities in a form, in an amount, payable in a currency or unit of monetary value, at a rate of interest and on other terms or conditions the Commissioner in Executive Council approves.

Borrowings for redemption

47. Subject to the Act that confers the borrowing authority, the Commissioner in Executive Council may authorize the borrowing of sums of money that are required for the repayment of any securities issued by the government that are maturing or that have been called for redemption.

Temporary borrowings

48. Where it appears to the Commissioner in Executive Council that the consolidated revenue fund will be insufficient to meet the disbursements lawfully authorized to be made from it, the Commissioner in Executive Council may authorize the borrowing, for a period not exceeding 365 days, of an amount that is considered necessary to ensure that the consolidated revenue fund will be sufficient to meet those disbursements.

Overdrafts, notes and treasury bills

49.(1) The Commissioner in Executive Council may make regulations, for the efficient operation of the consolidated revenue fund,

- (a) authorizing arrangements with a bank for money overdrafts, or
- (b) authorizing the borrowing of money by the issue and sale of notes or treasury bills in a form, in an amount, at a rate of interest, if any, on terms and conditions and executed in a way he determines.

(2) To secure overdrafts under paragraph (1)(a), the Commissioner in Executive Council may authorize the issuance to a bank of a security in a form, in an amount, on terms and conditions, and executed in a way he determines.

Borrowing in foreign currencies

50.(1) Where any Act confers authority on the government to borrow a specific or maximum amount of money, the authority shall be deemed to authorize the borrowing of an equivalent amount in the currency of any other country.

(2) For the purposes of this section the equivalent amount of the currency of another country shall be calculated in accordance with the nominal rate of exchange between the Canadian dollar and the currency concerned as quoted by any chartered bank in Canada as of any time in the last business day before the date on which the Commissioner in Executive Council authorizes the borrowing.

Changes in the form of the public debt

51.(1) The Commissioner in Executive Council may authorize changes in the form of any part of the debt obligations of the government by substituting one security for another, but no substitution shall be made if the effect is to increase the principal amount of the debt obligations of the government.

(2) A substitution under this section may be made by the sale of a new security and the purchase or redemption of an existing security from the proceeds.

(3) A substitution under this section shall not be made unless

- (a) the holder of the security for which another security is substituted consents, or
- (b) the terms and conditions of the issue of the security allow for the early redemption or substitution of the security.

Provisions for redemption

52.(1) The Commissioner in Executive Council may by regulation provide

- (a) for the creation, management and application of sinking funds with respect to securities issued by the government,
- (b) for other means of ensuring the repayment of securities issued by the government, and
- (c) in the case of securities issued subject to redemption in advance of maturity, for the redemption by call of securities issued by the government.

(2) Any securities of the government acquired with money from a sinking fund established with respect to the securities may be cancelled, but if they are cancelled no others shall be issued in substitution for them and the aggregate amount of that issue of securities shall be reduced accordingly.

(3) Interest earned on a sinking fund shall be applied for the benefit of the sinking fund and the redemption of the securities secured by it until the Executive Council Member is satisfied that enough money has been accumulated in the sinking fund to repay the debt with respect to which it was established, taking into account expected interest earnings.

Effect of declaration concerning issue of securities

53. In an order of the Commissioner in Executive Council made under this or any other Act authorizing the issue and sale of securities by the government, a declaration to the effect that the amount of the issue is necessary to realize the net sum required to be raised by way of loan is conclusive evidence of that fact.

Execution of government securities

54.(1) Securities issued by the government shall be signed by the Executive Council Member and the securities shall be countersigned by the treasurer or another public officer designed by the Commissioner in Executive Council.

(2) The engraved, lithographed or printed signature of a person required to execute a security under this section is for all purposes the signature of that person and is binding on the government notwithstanding that the person whose signature is reproduced may not have held office at the date of the securities or at the date of the delivery of them.

Fiscal agents and registrars

55.(1) The Executive Council Member is the fiscal agent of the government for the purpose of negotiating borrowing by the government under this or any other Act, and as fiscal agent he may arrange all details and do, transact and execute all deeds, matters and things required during the negotiations for the borrowing.

(2) The Commissioner in Executive Council may appoint other persons recommended by the Executive Council Member to act as fiscal agents for the purposes referred to in subsection (1) under the direction of the Executive Council Member.

(3) The Executive Council Member may appoint one or more registrars to perform under his direction services in respect of the registration of securities, and he may fix their remuneration or compensation.

(4) Every fiscal agent and registrar shall, as often as required by the Executive Council Member, give to the Executive Council Member an accounting, in a form and containing information specified by the Executive Council Member, of all his transactions as fiscal agent or registrar.

Immunity of persons dealing with securities

56. A person employed in the inscription, registration, transfer, management or redemption of securities issued by the government, or in the payment of any dividend or interest on them, is not bound to see to the execution of a trust, express or implied, to which the securities are subject, and is not liable for anything done by him in accordance with this Act or the regulations.

Protection for holders of securities

57. Nothing in this Part impairs or prejudicially affects the rights of the holder of securities issued by the government before or after this Part comes into force.

Expenses of the public debt

58. Money required for the following purposes shall be paid out of the consolidated revenue fund:

- (a) to pay interest on securities issued by the government;
- (b) to provide and maintain a sinking fund or other means of ensuring the repayment of securities issued by the government;
- (c) to redeem or repay the principal amount of securities issued by the government;
- (d) to pay a premium in connection with redemption or repayment of securities issued by the government.

Records and statement of the public debt

59.(1) The treasurer shall maintain a system of books and records

- (a) showing all money authorized to be borrowed by the government under this or any other Act,
- (b) containing a description and record of all money borrowed, and all securities issued, by the government,
- (c) showing all amounts paid in respect of the principal of, premium on and interest on all money borrowed by the government,
- (d) showing all money borrowed by the government by way of temporary loans, overdrafts, notes or treasury bills, and
- (e) showing the status of all sinking funds and other means of ensuring the repayment of money borrowed by the government.

(2) A statement of the debt obligations of the government outstanding at the end of the fiscal year and of each borrowing transaction during the fiscal year under this Part shall be included in the public accounts for that fiscal year.

Regulations respecting government securities

60.(1) The Commissioner in Executive Council may make regulations for the management of the debt obligations of the government.

(2) Without limiting subsection (1), the Commissioner in Executive Council may make regulations

- (a) for the inscription, registration, transfer, management and redemption of securities,
- (b) for the surrender of securities and the substitution for them of securities of a like total amount and class, but of a different denomination or form,
- (c) for converting securities of one class into securities of another class,
- (d) for reissuing, reinstating or otherwise dealing with lost, stolen, destroyed, damaged, defaced or mutilated securities or interest coupons, and for the payment of them,
- (e) for examining, cancelling or destroying debentures or other government securities and interest coupons that have been redeemed, and
- (f) for the custody and protection of securities and of materials used in their production.

Guarantees and indemnities

61.(1) Without the authority of an Act, no guarantee of a debt or other obligation shall be given by or on behalf of the government, and no undertaking shall be given by or on behalf of the government

- (a) to perform an obligation of a person under an agreement on the default of that person, or
- (b) to hold harmless a party to an agreement from a loss suffered as a result of the default of another party to the agreement, or as a result of a provision of the agreement.

(2) The Commissioner in Executive Council may make regulations respecting terms and conditions under which guarantees and undertakings referred to in subsection (1) may be given by or on behalf of the government under any Act.

(3) The government is not liable under guarantee or undertaking referred to in subsection (1) given after this section comes into force unless it is given in accordance with this Act.

(4) Nothing in this section affects the rights of any person under a guarantee or undertaking given before this section comes into force.

Effect of and power to guarantee

62. Where the government has guaranteed or is empowered to guarantee the principal and interest of a security or other obligation, the guarantee is a guarantee of, and the power includes the power to guarantee the performance of, any obligation for the payment of money, including any premium, pursuant to the security or other obligation.

PART 6 ENFORCEMENT

Payment of and accounting for public money

63.(1) Where the Executive Council Member has reason to believe that a person has received public money for the government and has not paid it to the government, the Executive Council Member may cause a written notice to be served on the person showing the amount of money not paid, and requiring the person to pay it to the government within the time stated in the notice.

(2) Where the Executive Council Member has reason to believe that a person has received public money for which he is accountable to the government and has not accounted for it, the Executive Council Member may cause a written notice to be served on the person showing the amount of money not accounted for, and requiring the person to account for it to the government within the time stated in the notice.

(3) Where the Executive Council Member has reason to believe that a person has received public money that is applicable to a purpose to which it has not been applied, he may cause a written notice to be served on the person showing the amount of money not applied, and requiring the person, within the time stated in the notice, to apply it to its purpose and to furnish evidence that he has done so to the Executive Council Member.

Statement of account

64.(1) A notice under section 63 may be served by delivering it to the person or by mailing it to him by registered or certified mail addressed to any address for the person of which the government has received written notice from the person, subject to any written change of address received from that person before the notice from the Executive Council Member is served.

(2) If a person fails to comply with a notice served on him under subsection (1) within the time stated in the notice, the Executive Council Member may state an account between that person and the government, showing the amount of money not duly paid over, accounted for or applied, and charging interest on the whole or any part of it at a rate and from a date established by the Commissioner in Executive Council.

(3) In a proceeding for the recovery of public money, a copy of the account under subsection (2) certified by the Executive Council Member is evidence that the amount stated in it, with interest, is due and payable to the government without proof of the appointment or signature of the Executive Council Member, and the amount and interest, at the rate established under subsection (2) to the date of recovery, may be recovered as a debt due to the government.

Loss through misconduct

65.(1) Where public money is lost or is not collected through the misconduct, neglect of duty or negligence of a person responsible for handling public money, the person is liable for the money and it may be recovered from him as a debt due to the government.

(2) The Commissioner in Executive Council may make regulations providing for the recovery from a public officer of the amount of any award or reasonable settlement in respect of damages for death, injury or private property damage as a result of the negligence or wilful misconduct of the public officer in the performance of his duties or in the operation, care or custody of public property.

(3) No liability shall be imposed on an employee under subsection 41(3) or 65(1) in excess of the amount for which the employee would have been liable if those provisions had not been enacted.

Evidence

66. An affidavit deposing to the facts and sworn by a person having knowledge of them shall be admissible in a court as prima facie proof of the facts stated in it in a proceeding for the recovery of public money from a person responsible for the collection, management or disbursement of public money where it appears from the following documents or things that he has received money belonging to the government and has refused or neglected to pay the money to the proper persons at the proper times:

- (a) books or accounts kept by him or in his office;
- (b) an accounting by him;
- (c) a written acknowledgment or confession by him.

Failure to deliver money or documents

67.(1) Where a person refuses or neglects to deliver money or an account, statement, return or proper voucher to the public officer to whom the person is required under this or any other Act to deliver it, the Executive Council Member may direct the person to deliver it within a stated time, not less than 14 days after the date of service of the direction on him.

(2) A direction referred to in subsection (1) may be served by delivering it to the person to whom it is addressed or by mailing it by registered or certified mail addressed to any address for the person of which the government has received written notice from the person, subject to any written change of address received from that person before the direction is served.

(3) A person who does not comply with a direction under this section commits an offence.

Other remedies

68. Nothing in this Act affects or abrogates the right of the government or any other person to institute any civil or criminal proceeding against a person contravening this Act, against his sureties, or against any other person.

Records respecting public money

69.(1) All records respecting public money that are kept or used by, or received or taken into the possession of person who is or has been responsible for the collection, management or disbursement of public money or the accounting for it, and all money, securities or things of value received or taken into his possession by reason of his responsibility for public money, belong to the government.

(2) The Commissioner in Executive Council may make regulations authorizing the destruction of records respecting public money.

(3) Any person who destroys records respecting public money, except as authorized by the regulations, commits an offence.

Recovery of penalties and forfeitures

70. The Executive Council Member may sue for and recover on behalf of the government a penalty or enforce a forfeiture imposed by any law relating to public money.

Defences to action for recovery of public money

71.(1) Where money is paid to a person by the government in excess of the authority conferred by an Act, without the authority of an Act, or contrary to an Act, and a right is asserted by the government to recover the payment or part of it, or to retain other money in full or partial satisfaction of a claim arising out of the payment, the person against whom the right is asserted may, subject to subsection (2), rely on any matter of fact or law, including estoppel, which would constitute a defence in a proceeding brought to recover the payment as if it had been made under a mistake.

(2) Subsection (1) does not enable a person to rely on a defence that a payment made by the government was made under a mistake of law, and the right of the government to recover the money paid by it is not impaired by reason only that the payment was made under a mistake of law.

PART 7 MISCELLANEOUS

Standing appropriations

72.(1) This Act authorizes the following payments to be made at any time without the authority of another Act or special warrant:

- (a) payments of refunds under subsection 13(1);
- (b) payments of remissions under subsection 15(6);
- (c) payments based on contributions or grants under subsection 20(1) or (2);
- (d) payments pending recovery of money not applied to its purpose under section 34;
- (e) payments to make good losses on the investment of money in court under paragraph 39(9)(b);
- (f) payment of the expenses of the public debt under section 58;
- (g) payments required to make good losses on investments made on behalf of
 - (i) the Workers Compensation Board, under subsections 66(2) and (3) of the Workers Compensation Act,
 - (ii) the Yukon Housing Corporation, under section 16 of the Housing Corporation Act,
 - (iii) the public administrator, under subsections 46(3) and (4) of the Judicature Act, and
 - (iv) the Yukon Development Corporation, under section 17 of the Yukon Development Corporation Act.

(2) Subject to subsection (3), paragraphs (1)(a) to (f) and clauses (1)(g)(i) to (iii) shall be deemed to be votes for all the purposes of this Act, except subsections 1(1), 37(1) and 39(6), and paragraphs 17(2)(a) and (c).

(3) Instead of the statements required by paragraphs 30(2)(c) and (d), a requisition for payment under paragraphs (1)(d) to (f), or clauses (1)(g)(i) to (iii), of this section shall contain a statement that the payment is to be made under the authority of a standing appropriation.

Offences

73. A public officer commits an offence who

- (a) in connection with the performance of his duties respecting public money, wilfully makes or signs a false entry, certificate, requisition, return or other document, or
- (b) having knowledge or information of the violation of any Act that provides for the expenditure or collection of public money, or of fraud committed by any person against the government, fails to report such knowledge or information in writing to the treasurer.

Penalty

74. A person who commits an offence under this Act is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding six months, or both.

Directives

75.(1) A directive is not an enactment within the meaning of section 3 of the Summary Convictions Act.

(2) A directive under this Act is not a regulation within the meaning of the Regulations Act.

Regulations

76. In addition to the regulations authorized to be made by any other provision of this Act, the Commissioner in Executive Council may make regulations for carrying out the purposes and provisions of this Act.

Exemptions

77. The Commissioner in Executive Council, on the recommendation of the Executive Council Member, may by regulation exempt a department or public officer from this Act to the extent prescribed in the regulation.

CHAPTER 66

FINE OPTION ACT

Interpretation

1. In this Act,

“enactment” has the same meaning as in the Interpretation Act;

“fine option program” means a program established under subsection 2(1);

“fine option supervisor” means a person designated as such by the Executive Council Member.

Fine option program

2.(1) The Commissioner in Executive Council shall establish a program for the purpose of enabling offenders, other than corporations or other bodies corporate, against whom a fine is imposed in respect of an offence may discharge the fine in whole or in part by earning credits for work performed.

(2) The Commissioner in Executive Council shall, upon the establishment of the fine option program, determine the rate at which credits are earned and may provide for the manner of crediting any amounts earned against the fine and any other matters necessary for or incidental to the carrying-out of the program.

Purposes of the program

3.(1) The fine option program established under this Act shall be deemed to have been established for the purposes of section 646.1 of the Criminal Code (Canada) as well as for purposes relating to fines imposed in respect of offences against enactments.

(2) Credits earned for work performed as provided by this Act shall, for the purposes of all enactments, be deemed to be payment of a fine.

Fine option supervisors

4. The Executive Council Member may designate persons to be fine option supervisors for the purposes of this Act to perform such functions and exercise such authority in respect of the fine option program as may be provided by the Commissioner in Executive Council.

Termination of participation in the program

5. Where a person upon whom a fine has been imposed under an enactment or under an Act of Canada elects to participate in the fine option program and fails or refuses to observe the terms and conditions of the program, the person's participation in the program may be terminated by a fine option supervisor.

Effect of participation in the program

6. Where a person is participating in the fine option program,

(a) the Employment Standards Act does not apply to the person, and

- (b) the person's compensation and other benefits, if any, for work performed shall consist exclusively of whatever the fine option program provides.

Agreements with Canada

7. The Commissioner in Executive Council may, on behalf of the Government of the Yukon, enter into agreements with the Government of Canada in respect of any matter he or she considers advisable relating to the purposes and provisions of this Act.

Regulations

8. The Commissioner in Executive Council may make regulations

- (a) prescribing guidelines, terms and conditions for the fine option program;
 - (b) concerning the amount or rate of credits to be applied against fines;
 - (c) concerning any liability insurance coverage;
 - (d) concerning provisions for dealing with convicted persons who, because of physical or mental handicap, are unable to participate normally in the fine option program;
 - (e) providing for the participation of community agencies, band councils, service clubs, church groups, inmate self-help organizations, municipal councils and other groups in the carrying-out of the fine option program;
 - (f) providing for any other matter that may be necessary for carrying the purposes and provisions of this Act into effect.
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CHAPTER 67

FIRE PREVENTION ACT

Interpretation

1. In this Act,

“deputy fire marshal” means a person appointed deputy fire marshal pursuant to section 2;

“fire marshal” means the person appointed fire marshal pursuant to section 2;

“fire extinguisher” means any first aid fire appliance, container or apparatus holding any fire extinguishing liquid, material or agent and designed for the specific purpose of extinguishing fire in its incipient stage;

“inspector” means a person appointed to be an inspector pursuant to section 2;

“local assistant” means a person described in section 6;

“structure” means any structure of any kind erected or placed on, in, over or under any area of land or water.

Appointment of fire marshal

2. The Commissioner in Executive Council may appoint a fire marshal, deputy fire marshals and inspectors, for the purpose of this Act.

Duties of fire marshal

3. The fire marshal shall

- (a) keep a record of fires reported to him,
- (b) review plans and specifications for the construction, alteration or repair of structures with a view to determining that proper precautions are taken against fire and the spread of fire,
- (c) submit to the Executive Council Member within three months following the end of each year a report for the year, setting forth particulars of fires, fatalities or injuries by fire, investigations and inquiries into fires, prosecutions for arson or attempted arson and a summary of the administration and the fire prevention and fire protection activity of the office of the fire marshal, together with such other information as the Commissioner in Executive Council prescribes,
- (d) advise and make recommendations to the Executive Council Member with respect to
 - (i) the establishment of fire brigades and the necessary organization and equipment of such brigades,
 - (ii) the provision of adequate water supply for fire fighting purposes,
 - (iii) the installation and maintenance of fire alarm systems and fire extinguishing equipment,
 - (iv) the storage, use, sale or disposal of combustibles, explosives or other inflammable material,
 - (v) the construction and maintenance of fire escapes and other exit facilities for use in the event of fire or the alarm of fire,

- (vi) the types and adequacy of fire alarms in communities and in or upon any building or property,
 - (vii) fire prevention precautions in the construction or major alteration of or addition to any structure or property,
 - (viii) the enactment and enforcement by municipalities of bylaws for the prevention and suppression of fire and the safeguarding of persons and property in the event of fire or the alarm of fire,
 - (ix) the co-ordination of the work of fire brigades in the Yukon, and
 - (x) the organization of fire brigades in the Yukon for the purposes of civil defence, and
- (e) disseminate to the public information concerning the prevention of fire and the protection of persons and property from fire.

Deputy fire marshal

4. Where the fire marshal is absent or unable to act, or where the office of the fire marshal is vacant, the deputy fire marshal who has held office for the longest period of time shall act in place of the fire marshal.

Duties of deputy fire marshals and inspectors

5. A deputy fire marshal and an inspector shall have all the powers of a local assistant and shall perform such other duties as may be assigned to them by the fire marshal.

Local assistants

6.(1) Subject to subsection (2), the chief or acting chief of the fire brigade of every municipality or settlement in which a fire brigade has been established, and the municipal clerk of every municipality in which no fire brigade has been established is, by virtue of his office, a local assistant to the fire marshal and is subject to the directions of the fire marshal in carrying out the provisions of this Act within the boundaries of the municipality or settlement.

(2) The council of a municipality in which no fire brigade has been established may appoint a person to act as local assistant in place of the municipal clerk, and upon such appointment being made the municipal clerk shall no longer be a local assistant.

(3) The council making an appointment pursuant to subsection (2) shall notify the fire marshal of the name, address and occupation of the appointee.

(4) The Commissioner in Executive Council may appoint local assistants in areas not included in subsection (1).

(5) A member of the Royal Canadian Mounted Police while on duty in the Yukon shall have all the powers of a local assistant.

Investigation of fires

7.(1) A local assistant shall investigate the cause, origin and circumstances of every fire occurring within his jurisdiction that has destroyed or damaged property.

(2) Any investigation carried out pursuant to subsection (1) shall commence within 72 hours of the time the condition of the structure first permits an investigation.

(3) A local assistant may make an order prohibiting the entering of premises in which a fire has occurred until he has completed his investigation.

(4) The local assistant shall immediately upon completion of the investigation furnish to the fire marshal a report of all the facts that can be ascertained relating to the cause and origin of the fire and such further information as may be required by the fire marshal.

Inquiry by fire marshal or other person

8.(1) In addition to any investigation made by a local assistant under section 7, the fire marshal or any other person authorized by the Executive Council Member may make an inquiry into the cause, origin and circumstances of any fire that has destroyed or damaged property.

(2) The person conducting an inquiry pursuant to subsection (1) may

- (a) summon witnesses to appear before him and require them to give evidence upon oath and to produce such documents and things as he deems necessary to the full investigation of the matter under inquiry,
- (b) for the purpose of obtaining further evidence adjourn the inquiry from time to time, but no such adjournment shall be for more than 30 days, and
- (c) impose a fine not exceeding \$100 upon any witness who refuses to answer any question put to him in the course of the inquiry.

Suspicion of arson

9. If the fire marshal, upon receiving the report made by a local assistant under section 7, or the person making the inquiry under section 8 has reason to believe that arson or attempted arson may have been committed, the fire marshal or the person making the inquiry, as the case may be, shall immediately give all the information in his possession to the nearest detachment of the Royal Canadian Mounted Police.

Reports by insurers and adjusters

10.(1) Every fire insurance company carrying on business in the Yukon shall forward to the fire marshal within 15 days of the end of each month a statement showing the claims, if any, that have been made during the preceding month in respect of policies of fire insurance issued by it, the name and address of the insured, the location and value of the insured property, the amount of the insurance carried, the amount of loss sustained and the name and address of the person adjusting the claim.

(2) Every person adjusting a claim against an insurer in respect of a loss of property by fire, whether that person represents the insurer or the insured, shall forward a report in writing to the fire marshal showing the date of the fire, the name and address of the owner and of the occupier of the property where the fire occurred, the location of the property, the name and address of the insured and each insurer, the value of the property insured, the amount of insurance placed with each insurer, the amount of loss which each insurer is to bear and such other particulars as the fire marshal may require.

(3) Where an adjuster referred to in subsection (2) believes that, in respect of a claim he is adjusting, arson or attempted arson may have been committed, he shall immediately give all information in his possession to the nearest detachment of the Royal Canadian Mounted Police.

Report by occupant where fatality or injury caused

11. The occupant of any property upon which any fatality or injury has been caused by fire shall forthwith report such fatality or injury to the fire marshal giving the name, age and sex of each person sustaining such fatality or injury, the cause of the fire, if known, and such other information as the fire marshal requires.

Inspection of premises where fire has occurred

12. The fire marshal, a deputy fire marshal, an inspector or a local assistant may enter and inspect any structure or premises in which a fire has occurred or is in progress, or any structure or premises immediately adjoining a structure or premises in which a fire has occurred or is in progress, if he believes on reasonable and probable grounds that this Act or the regulations made hereunder have been contravened or that an offence under section 389, 390 or 392 of the Criminal Code (Canada) has been committed or attempted.

Fire hazards

13.(1) The fire marshal or a local assistant may from time to time inspect any structure or premises, and where it is found that

- (a) the structure for want of proper repair or by reason of age or dilapidated condition or for any other cause is a fire hazard and is so situated as to endanger other structures or property,
- (b) the structure is so used or occupied that any fire occurring therein would be likely to cause such structure to become a hazard to life or property,
- (c) an inflammable or potentially explosive substance or hazardous condition is present, or
- (d) the structure is lacking adequate provision for the safe evacuation of persons in case of fire or an alarm of fire,

the fire marshal or the local assistant may in writing order the owner, lessee or occupant of the building or premises,

- (e) in any case mentioned in paragraph (a), to repair, remove or destroy the structure,
- (f) in any case mentioned in paragraph (b), to alter the use or occupancy of the structure,
- (g) in any case mentioned in paragraph (c), to remove the inflammable or potentially explosive substance or to remedy the hazardous conditions, and
- (h) in any case mentioned in paragraph (d), to install safeguards by way of fire extinguishers, fire alarms, exit signs and other equipment and devices, and such fire escapes and exit doors as may be deemed necessary for safe evacuation in the event of fire or an alarm of fire.

(2) Every order made pursuant to subsection (1) shall specify the date within which the order shall be complied with and shall be served upon the person to whom it is directed either personally or by registered mail.

(3) The fire marshal or local assistant when making an order pursuant to paragraph (1)(g) may also order the owner of the inflammable or potentially explosive substance to remove that substance from the structure or premises.

(4) Where any of the conditions described in paragraphs (1)(a) to (d) or in section 14, in the opinion of the fire marshal or a local assistant, constitute a danger to the safety of the public, the fire marshal or the local assistant may order the structure or premises closed to the public until the condition has been remedied and the premises inspected and approved by the fire marshal or the local assistant.

Fire hazards from heating appliances

14. Where an appliance or apparatus is used or intended to be used for supplying fire or heat and in the opinion of the fire marshal or a local assistant the use of the appliance or apparatus for that purpose is likely to be dangerous to persons or property, the fire marshal or the local assistant may order in writing that a fire not be lighted or maintained in the appliance or apparatus until the dangerous condition has been remedied and the appliance or apparatus has been inspected and approved by the fire marshal or the local assistant.

Appeal to fire marshal

15.(1) The owner, lessee or occupant of a structure or premises or the owner of an inflammable or potentially explosive substance or material against whom an order is made pursuant to section 13 or 14 by a local assistant may within seven days from the date on which a copy of the order is served on him appeal the order in writing to the fire marshal.

(2) The fire marshal shall forthwith consider the order and either affirm, modify or revoke the same and cause a copy of his decision to be served on the person appealing either personally or by registered mail.

(3) Unless the fire marshal otherwise orders, the operation of an order referred to in subsection (1) is suspended until a copy of the fire marshal's decision has been served on the person appealing.

Appeal to a judge

16.(1) The person appealing an order of a local assistant under section 15 may within seven days from the date a copy of the fire marshal's order is served on him appeal to a judge by serving a notice of appeal on the fire marshal and filing a copy with the clerk of the Supreme Court.

(2) The owner, lessee or occupant of a structure or premises or the owner of an inflammable or potentially explosive substance against whom an order is made pursuant to section 13 or 14 by the fire marshal may appeal to a judge in the manner set out in subsection (1).

(3) Unless a judge otherwise orders, the operation of an order referred to in subsection (2) is suspended until a copy of the judge's decision has been served on the person appealing either personally or by registered mail.

Failure to comply with order

17.(1) Where an owner, lessee or occupant of a structure or premises fails to comply with an order made pursuant to section 13 and has not within the prescribed time appealed from the order, or has appealed from the order and a decision has been rendered against him,

- (a) if the structure or premises is located within a municipality, the council of the municipality may take the necessary steps to perform the work required by the order, or
- (b) if the structure is located outside of a municipality, the Executive Council Member may take the necessary steps to perform the work required by the order.

(2) Subject to subsection (3), the cost of performing the work pursuant to subsection (1) may be added to and shall form part of the taxes on the property on which the work was done.

(3) No amount shall be added to such taxes in any one year in excess of five percent of the assessed value of the property or \$250, whichever is greater.

Location of owner, lessee or occupant unknown

18.(1) Where an order is made under subsection 13(1) and

- (a) the whereabouts of the owner are unknown to the fire marshal, and
- (b) there is no lessee or occupant of the structure, or the whereabouts of the lessee or occupant are unknown

the fire marshal or any person authorized in writing by him, upon obtaining leave under subsection (2) and upon compliance with any conditions attached thereto, may enter into or upon the structure or premises and carry out the order.

(2) Upon ex parte application by the fire marshal for leave to proceed to carry out the order, the judge may grant such leave, upon such conditions with respect to notice of intention to do so and upon such other conditions as the judge deems fit.

(3) Where the carrying out of an order pursuant to subsection (1) results in any saleable material being obtained, the fire marshal may cause such material to be sold at such a price and in such manner as he directs.

(4) The fire marshal shall apply the proceeds from any sale under subsection (3) against the expense of complying with any conditions prescribed by the judge and the expense actually and necessarily incurred in carrying out the order, and shall pay the surplus, if any, to the Executive Council Member.

(5) The Executive Council Member shall pay the money so received, or any part thereof, to any person entitled thereto, to the municipality in which the structure or premises is situated, or to the Yukon Consolidated Revenue Fund.

Doors and fences of public buildings

19.(1) The outside doors and the main inside doors of every structure used as a theatre, dance hall or skating rink and of every structure used as a church, school or place of public resort or amusement having seating capacity for more than 50 persons, shall be so hung as to open freely outwards and when the public is using the structure

- (a) the doors shall be kept open by proper fastening, or

- (b) the doors may be closed but not locked otherwise than by latches which release when pressure not exceeding 6.5 kilograms is applied to a releasing device located on the inner side of the door which consists of bars or panels not less than two-thirds of the width of the door and placed at a height suitable for the service required but not less than 75 centimetres and not more than 110 centimetres above the floor.

(2) Any fences connected with any structure referred to in subsection (1) shall have gates that are at least as wide as the outside doors of the structure and are so hung as to open freely outwards or are kept open by proper fastenings during the time the public is using the structure.

(3) Every person who violates subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$200 and in default of payment to imprisonment for a period not exceeding three months.

Sale of extinguishers, alarms and heating appliances

20.(1) No person shall sell or offer for sale

- (a) a fire extinguisher,
- (b) a fire alarm device, or
- (c) a heating appliance that
 - (i) uses electrical energy to produce heat, or
 - (ii) produces heat by the burning of natural gas or oil, manufactured gas, or a mixture of liquified material which is composed predominantly of propane, propylene, butane or butylene, or of a combination thereof,

unless the extinguisher, device or appliance has been listed and labelled by

- (d) the Canadian Standards Association,
- (e) the Canadian Gas Association,
- (f) Underwriters' Laboratories of Canada,
- (g) Underwriters' Laboratories Incorporated,
- (h) Associated Factory Mutual Fire Insurance Companies, or
- (i) a person or government department specified by the Legislature.

(2) Any person selling or offering for sale the equipment listed under subsection (1) which has not been listed and labelled or approved as provided for may in writing request the Executive Council Member to appoint an evaluator who shall examine and make such tests as he thinks fit of the equipment for which approval is sought, and the evaluator shall if he approves the equipment list and label it for sale or mark it as rejected as the case may be and report the result of his examination to the Executive Council Member.

(3) If the equipment is approved by the evaluator the person offering it for sale shall be permitted to sell it during the ensuing 12 months and not thereafter.

Offences and penalties

21. Every person who

- (a) hinders or obstructs the fire marshal, a deputy fire marshal, a local assistant or an inspector in the performance of his powers or the execution of his duties, or

(b) violates any of the provisions of this Act or the regulations, for which violation no other penalty is provided
commits an offence and is liable on summary conviction to a fine not exceeding \$200.

Offences and penalties

22. Any owner, lessee or occupant of any structure or premises who fails to comply with an order of the fire marshal or a local assistant duly made under the authority of this Act, commits an offence and is liable on summary conviction to a fine not exceeding \$25 for each day's neglect or failure to comply therewith.

Regulations

23. The Commissioner in Executive Council may make regulations

- (a) respecting the establishment and operation of any plant and equipment used in the business of dry cleaning, dry dyeing, cleaning and pressing or any similar business in which inflammable liquid or other light petroleum or coal tar product or volatile liquid is used;
 - (b) respecting the sale, distribution, installation and maintenance of fire fighting and fire prevention equipment, apparatus, material and supplies, including fire alarm systems, and for the licensing and control of manufacturers, agents and jobbers, wholesale and retail vendors and installers of such equipment, apparatus, material or supplies;
 - (c) respecting the licensing and control of manufacturers, agents and jobbers, wholesale and retail vendors and installers of oil burners and appliances using inflammable liquids as fuel;
 - (d) respecting the storage, sale and use of inflammable liquids;
 - (e) respecting the prevention and extinguishing of fires, the provision and installation of safety devices and means of exits in hotels, boarding houses, apartment blocks and other places of public accommodation;
 - (f) respecting the prevention and extinguishing of fires, the provision and installation of safety devices and means of exit in churches, schools and institutions;
 - (g) establishing minimum building standards for fire prevention purposes and designating the areas within the Yukon to which such minimum standards shall apply;
 - (h) prescribing the fees and allowances to be paid to witnesses appearing to give evidence at an inquiry described in section 8;
 - (i) generally, for carrying into effect the purposes of this Act.
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CHAPTER 68

FLAG ACT

Flag for the Yukon

1.(1) The flag described in the Schedule is hereby adopted as the flag of the Yukon.

(2) A sample of the flag of the Yukon, in coloured textile material, is on deposit in the offices of the Executive Council Member; in any manufacture or representation of the flag of the Yukon the colours used shall so far as is practicable match the colours shown in the sample.

SCHEDULE

The flag consists of three vertical panels, the centre panel being one and one-half times the width of each of the other two panels. The panel adjacent to the mast is coloured green (503-115), the centre panel is coloured white and has the Yukon Crest disposed above a symbolic representation of the floral emblem of the Yukon, *epilobium angustifolium*, and the panel on the fly is coloured blue (502-204). The stem and leaves of the floral emblem are coloured green (503-115), and the flowers thereof are coloured red (509-103). The Yukon Crest is coloured red (509-103), and blue (502-204), with the Malamute dog coloured black. (Code numbers are references to the Canadian Government Specifications Board publication known as the Standard Paint Colours, Part I, and numbered 1-GP-12c, 1965.)

CHAPTER 69

FLORAL EMBLEM ACT

Adoption of floral emblem

1. The flower known botanically as *epilobium angustifolium* and popularly known as “fireweed” is adopted and shall be deemed to be the floral emblem of the Yukon.

CHAPTER 70

FOREIGN ARBITRAL AWARDS ACT

Interpretation

1. In this Act, “convention” means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards set out in the schedule.

Effective date of convention

2. On the coming into force of the convention in the Yukon, the convention applies in the Yukon in accordance with article 12 of the convention.

Application of this Act

3. This Act applies only to the recognition and enforcement of awards made in another State respecting differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the law of the Yukon.

Supreme Court jurisdiction

4. For the purpose of seeking recognition of a foreign arbitral award pursuant to this Act, applications shall be made to the Supreme Court.

Conflict with other Acts

5. Where there is conflict between this Act and any other enactment, this Act prevails.

SCHEDULE

CONVENTION ON THE RECOGNITION AND ENFORCEMENT

OF FOREIGN ARBITRAL AWARDS

Article 1

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article 10 hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the Recognition and Enforcement of Awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article 2

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article 3

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article 4

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

- a) the duly authenticated original award or a duly certified copy thereof;
- b) the original agreement referred to in article 2 or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article 5

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- a) the parties to the agreement referred to in article 2 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

- d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

- a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- b) the recognition or enforcement of the award would be contrary to the public policy of that country.

Article 6

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article 5(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article 7

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article 8

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 9

1. This Convention shall be open for accession to all States referred to in article 8.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 10

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 11

In the case of a federal or non-unitary State, the following provisions shall apply:

- a) with respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
- b) with respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;
- c) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article 12

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article 13

1. Any contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article 10 may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article 14

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article 15

The Secretary-General of the United Nations shall notify the States contemplated in article 8 of the following:

- a) signatures and ratifications in accordance with article 8;
- b) accessions in accordance with article 9;
- c) declarations and notifications under articles 1, 10 and 11;
- d) the date upon which this Convention enters into force in accordance with article 12;
- e) denunciations and notifications in accordance with article 13.

Article 16

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article 8.

CHAPTER 71

FOREST PROTECTION ACT

Interpretation

1. In this Act,

“closed area” means an area in respect of which an order under section 14 is in effect;

“fire season” means the period during which the setting out, starting or kindling of fires is restricted under this Act;

“engine” means any railway locomotive, traction engine, logging, stationary or portable engine or other power producing plant or similar device;

“forest area” means any uncultivated land that by reason of the existence of trees, grass or other vegetation thereon, possesses economic, recreational, wildlife or other value, and includes any ditch, flume, highway, road or trail, or right of way for a telephone, telegraph, power or pipe line running on or adjacent to the uncultivated land;

“forest officer” means

(a) a person appointed to be a forest officer under section 3, or

(b) a member of the Royal Canadian Mounted Police;

“inflammable material” includes trees, timber, brush, slash, grass, vegetation, garbage, debris and things of a similar nature;

“owner” when used with respect to land includes any person having any right, title or interest in or to the land whether by use, occupation, registration or otherwise;

“permit” means a valid and subsisting permit issued under section 15;

“prescribed” means prescribed by the regulations.

Application of the Act

2. The provisions of this Act shall apply to every municipality, but the provisions of this Act shall be deemed not to repeal, abrogate or derogate from any municipal bylaw.

Appointment, powers and duties of officers

3. The Commissioner in Executive Council may appoint a forest supervisor and forest officers to carry out the provisions of this Act.

Oath of office

4. A forest officer appointed under section 3 shall, before entering upon the performance of his duties, take and subscribe to the following oath: “I,, a forest officer appointed under the Forest Protection Act, do solemnly swear that to the best of my ability and judgment I will faithfully, honestly and impartially perform my duties as forest officer according to the true intent and meaning of the Forest Protection Act and the regulations made at any time thereunder. So help me God.”

Rights of supervisor

5. The forest supervisor has all the rights and powers of a forest officer.

Duties and powers of forest supervisor

6. Where any person fails to comply with any direction, notice, demand or order made under this Act, the forest supervisor may cause it to be carried out by such other person as he may direct.

Right of officers to enter property and arrest summarily

7. A forest officer may, in carrying out his duties,

- (a) enter upon or into any lands or premises other than a dwelling house at any time of the day or night, and
- (b) arrest without warrant any person whom he finds in the act of violating this Act and take him before a judge of the Territorial Court.

Leaving fires

8. Except with the written permission of a forest officer, no person shall leave the vicinity of a fire that he has set out, started or kindled, other than a fire kindled in a stove, furnace or other device suitably designed and capable of confining it, until he has totally extinguished it.

Fire season

9. There shall be a fire season in each year beginning on April 1 and ending on September 30, except that the fire season may be extended, shortened or designated for one or more additional periods as the Commissioner in Executive Council may prescribe.

No fires during closed season without a permit

10. Subject to section 12 no person shall during the fire season set out, start or kindle any fire for the purpose of clearing land, cooking or preparing food, obtaining warmth or burning any inflammable material, or for any industrial purpose, except pursuant to a permit issued under section 15.

Sites for open fires

11. During the fire season a person who sets out, starts or kindles a fire pursuant to a permit shall select a site for the fire as free from inflammable material as possible and exercise every precaution to prevent the fire from spreading.

Fires started in stoves

12. No person acts in contravention of sections 10 and 11 by reason only of his starting or kindling and leaving a fire in any stove, furnace or other device designed to confine the fire and suitable for that purpose.

Extinguishment of fires

13.(1) A person who, during the fire season, in or within one kilometre from a forest area,

- (a) uses any explosives, or
- (b) throws or drops a burning match, ashes of a pipe, lighted cigarette or cigar or other burning substance,

shall totally extinguish the fire of the explosive, match, ashes, cigarette, cigar or other burning substance and any fire caused thereby before leaving the vicinity of the fire.

- (2) No person shall, during the fire season, in or within one kilometre from a forest area,
- (a) operate an engine unless it is equipped with a prescribed fire prevention device for arresting sparks and for preventing the escape of fire or live coals from ashpans and fire boxes,
 - (b) operate a steamboat on any water in the Yukon unless it is equipped with a prescribed fire prevention device for arresting sparks,
 - (c) burn any wood-waste in any burner or destructor unless it is equipped with a prescribed fire prevention device for arresting sparks, or
 - (d) use or operate any engine, steamboat, burner or destructor or conduct any logging or other industrial operations unless he has available and in good operating condition such tools, pumps, hoses and other fire-fighting equipment as the forest supervisor may prescribe.

Closed areas

14.(1) When the forest supervisor considers that the safety of life or property in any area of the Yukon is endangered by the hazardous condition of the forest cover or by fire, he may, by order in writing signed by him, declare the area a closed area and prohibit anything therein that he considers likely to cause or spread fire.

(2) A forest officer may take such emergency action in a closed area as he considers necessary to control and extinguish fire and safeguard life and property.

(3) Subject to subsection (4), no person shall

- (a) enter or remain in a closed area for the purpose of travelling, camping, fishing or hunting or for any similar purpose, or
- (b) do anything prohibited by an order under subsection (1) in or within one kilometre from a forest area in a closed area,

except pursuant to a permit therefor issued under section 15.

(4) Subsection (3) does not apply to

- (a) miners or prospectors while actively engaged in mining or prospecting,
- (b) permanent residents living within a closed district, or
- (c) land owners or persons doing anything not prohibited in an order under subsection (1),

and such persons are entitled to free access to and egress from their property or operation in a closed area without securing a permit therefor.

(5) When, with respect to a closed area established under subsection (1), the forest supervisor considers the danger to have abated, he shall, by order in writing signed by him, cancel the order establishing the closed area.

Permits

15.(1) The Executive Council Member, the forest supervisor or a person authorized in writing by the forest supervisor may issue permits authorizing, subject to orders and regulations,

- (a) the use of fire during the fire season for the purpose of clearing land, cooking or preparing food or obtaining warmth,

- (b) the burning of inflammable material during the fire season,
- (c) the use of fire during the fire season for any industrial purpose, and
- (d) the entry of a closed area and the doing of anything prohibited by an order under subsection 14(1),

for such periods of time and upon such terms and conditions as the Executive Council Member or the forest supervisor may specify in the permit.

(2) Notwithstanding anything contained in this Act, the Commissioner in Executive Council, the forest supervisor or a forest officer may, for any cause that he deems sufficient, suspend or cancel any permit.

(3) Where a permit has been suspended or cancelled, the holder shall forthwith surrender it to the person who made the order of suspension or cancellation.

Operations in forest areas

16.(1) A person carrying on an operation for the cutting or removal of trees or timber shall, on demand of the forest supervisor and in a manner satisfactory to him, dispose of all inflammable material occasioned by or accumulated in the operation.

(2) A person who, in or within one kilometre from a forest area, carries on any lumbering or other operation that occasions or accumulates inflammable material, or the owner of the land on which the inflammable material exists, shall, on demand of the forest supervisor, cut down all dead trees and stubs within the area where the inflammable material exists and establish a fire guard, satisfactory to the forest supervisor, around the area.

(3) The owner of every camp, mine, sawmill or engine that is situated within one kilometre from a forest area shall establish a fire guard, satisfactory to the forest supervisor, around the camp, mine, sawmill or engine.

(4) Every person clearing a right of way for any trail, telephone, telegraph, power or pipeline, road, highway, ditch or flume shall, if directed to do so by the forest supervisor, pile, burn or otherwise dispose of all inflammable material on the right of way to the satisfaction of the forest supervisor, as rapidly as the clearing progresses and the weather conditions permit, or at such other time as the forest supervisor orders.

(5) No person clearing any land or carrying on any lumbering operation shall fell or permit to be felled any trees or brush in such a manner that the trees or brush fall and remain on land of which he is not the owner.

(6) Subject to sections 9 and 14, every person who causes an accumulation of inflammable material within 100 metres of the right of way of any railway shall immediately pile and burn the inflammable material.

Public nuisance

17. Where the forest supervisor considers any inflammable material so dangerous to life or property as to be a public nuisance, he shall so notify in writing the owner of the land on which the inflammable material exists and the owner shall immediately abate the nuisance to the satisfaction of the forest supervisor.

Duty to extinguish and report fire

18. A person who finds that fire exists in or within one kilometre from a forest area shall do his utmost to prevent the fire from spreading and to extinguish it and, if someone has not already done so, shall report the fire to the nearest forest officer by the speediest means practicable.

Duty to assist in preventing fire

19.(1) Where a fire is burning on land on which a person is conducting land clearing, lumbering, industrial, engineering or construction operations, or that he is otherwise occupying, he shall do his utmost to prevent the fire from spreading and to extinguish it, and at his own expense, shall place his services and the services of his employees at the disposal of any forest officer for that purpose.

(2) No person shall, without the written consent of a forest officer, continue or resume any land clearing, lumbering, industrial, engineering or construction operations on land while a fire is burning thereon.

Assistance may be summoned

20.(1) Where the forest supervisor, forest officer or judge of the Territorial Court considers it necessary, he may employ or summon orally or in writing the assistance of any person who

- (a) is not less than 18 and not more than 60 years of age, and
- (b) is not physically unfit for the purpose, a medical practitioner or a person whose absence would disturb the operation of a railway or an essential transportation, public utility or communication service,

for the purpose of controlling or extinguishing fires.

(2) Any person who refuses or neglects to obey a summons given under subsection (1) commits a separate offence for each day that he continues to refuse or neglect to obey the summons during the continuance of the fire and is liable for each offence on summary conviction to a fine not exceeding \$50 or to imprisonment for a term not exceeding seven days or to both fine and imprisonment.

Right to enter upon lands or premises

21. Every person employed in connection with a fire patrol or a forest protection force maintained under this Act may, in carrying out his duties, enter upon or into any lands or premises other than a dwelling house at any time of the day or night.

Obstruction of persons carrying out duties

22. No person shall hinder, obstruct or impede the forest supervisor or any forest officer or other person in carrying out his duties under this Act, and every person shall upon request give any forest officer information as to his name, address, routes to be followed, locations of camps and other information pertaining to the protection of the forest from fire.

No compensation for fire fighting

23. Persons who assist at fire fighting for the protection of the settlement in which they live or their place of residence, mine, mill or other real or personal property is located, shall do so without recompense.

Injurious insects and diseases

24.(1) Where any trees, timber, slash, brush or debris on any land are found to be infested with any species of injurious insect or plant disease, in circumstances that the forest supervisor considers constitute a menace to adjacent timber or a dangerous source for the spread of the insect or plant disease, the forest supervisor shall give a written notice over his signature to the owner of such land requiring him to dispose of the infested trees, timber, slash, brush or debris and directing him how to do so.

(2) An owner of land shall immediately comply with a notice given to him under subsection (1).

Removal of notices

25. No person other than the forest supervisor or a forest officer shall mark, remove or destroy any notice that is posted by the forest supervisor or a forest officer,

- (a) as a fire warning,
- (b) respecting the ownership of property, or
- (c) for any purpose of this Act.

Service of notice

26. Any notice or order that is required under this Act to be given to a person in writing is properly given when a copy thereof is personally served on the person to whom it is addressed, or sent by registered mail to the last known address of that person, and posted up in two conspicuous places on any lands affected by it.

Regulations

27.(1) The Commissioner in Executive Council may make regulations for carrying out the purposes and provisions of this Act, and without limiting the generality of the foregoing may make regulations,

- (a) respecting the issue of permits under section 15;
- (b) prohibiting the setting out, starting, kindling or spreading of fires in any area of the Yukon for such time as he considers necessary, whether in the fire season or otherwise;
- (c) extending, shortening or designating other periods as part of the fire season if he considers there is an unusual danger of forest fire;
- (d) prescribing the fire prevention devices and the fire-fighting equipment required for any engine, steamboat, burner or destructor and any logging or other industrial operations.

(2) All regulations made under the authority of this section shall be tabled at the session of Legislative Assembly next following their enactment.

General penalty

28. A person who violates any provision of this Act or the regulations for which violation no further fine or imprisonment is provided in this Act, commits an offence and is liable on summary conviction to a fine not exceeding \$1000 or to imprisonment for a term not exceeding two years, or to both fine and imprisonment.

Where information laid operations may be suspended

29. Where an information is laid with respect to any violation of subsection 13(2), a judge of the Territorial Court may prohibit logging or other operations or the further use of the engine, steamboat, burner or destructor involved pending the outcome of the proceedings or until it is equipped with fire prevention devices and fire-fighting equipment satisfactory to the forest supervisor.

Crown may recover expenses caused by an offence

30. In addition to any penalty that may be imposed upon a person on his conviction for an offence under this Act, Her Majesty may, in any court of competent jurisdiction, take proceedings to recover from such person, all expenses incurred by Her Majesty in controlling and extinguishing any fire that originated or resulted by reason of the offence.

Recovery where person fails to carry out duty

31. Where any person fails to comply with any direction, notice, demand or order made under this Act and the forest supervisor has the direction, notice, demand or order carried out by another person, Her Majesty may, in any court of competent jurisdiction, take proceedings to recover from the person in default all expenses incurred by Her Majesty by reason of such default.

Limitation of time for prosecution

32. No prosecution for an offence under this Act or the regulations shall be commenced after one year from the date when the offence is alleged to have been committed.

Civil remedies preserved

33. Nothing in this Act limits or interferes with the right of any person to bring and maintain a civil action for damages occasioned by fire.

CHAPTER 72

FRAUDULENT PREFERENCES AND CONVEYANCES ACT

Interpretation

1.(1) In this Act,

“related group” means a group of persons each member of which is related to every other member of the group;

“unrelated group” means a group of persons that is not a related group.

(2) For the purposes of this Act, persons are related to each other and are “related persons” if they are

- (a) individuals connected by blood relationship, marriage or adoption,
- (b) a corporation and
 - (i) a person who controls the corporation, if it is controlled by one person,
 - (ii) a person who is a member of a related group that controls the corporation, or
 - (iii) any person connected in the manner set out in paragraph (a) to a person described in clause (i) or (ii), or
- (c) two corporations
 - (i) controlled by the same person or group of persons,
 - (ii) each of which is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,
 - (iii) one of which is controlled by one person and that person is related to any member of a related group that controls the other corporation,
 - (iv) one of which is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,
 - (v) one of which is controlled by a related group a member of which is related to each member of an unrelated group that controls the other corporation, or
 - (vi) one of which is controlled by an unrelated group each member of which is related to at least one member of an unrelated group that controls the other corporation.

(3) For the purposes of this section,

- (a) where two corporations are related to the same corporation within the meaning of subsection (2), they shall be deemed to be related to each other,

- (b) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by whom the corporation is in fact controlled,
- (c) a person who has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares in a corporation, or to control the voting rights of shares in a corporation, shall, except where the contract provides that the right is not exercisable until the death of an individual designated therein, be deemed to have the same position in relation to the control of the corporation as if he owned the shares,
- (d) where a person owns shares in two or more corporations, he shall, as shareholder of one of the corporations, be deemed to be related to himself as shareholder of each of the other corporations,
- (e) persons are connected by blood relationship if one is the child or other descendant of the other or one is the sibling of the other,
- (f) persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other, and
- (g) persons are connected by adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is connected by blood relationship (otherwise than as a sibling) to the other.

Transfers injurious to creditors void

2. Subject to sections 7, 8, 9 and 10 every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in a bank, company or corporation, or of any other property real or personal, made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice his creditors or any one or more of them, is void as against the creditor or creditors injured, delayed or prejudiced.

Transfers with intent to give creditors preference void

3. Subject to sections 7, 8, 9 and 10 every gift, conveyance, assignment of transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in a bank, company or corporation, or of any other property real or personal, made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency to or for a creditor, with intent to give that creditor preference over his other creditors or over any one or more of them, is void as against the creditor or creditors injured, delayed, prejudiced or postponed.

Transfers to creditors

4. Subject to sections 7, 8, 9 and 10 every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in a bank, company or corporation, or of any other property real or personal, made to or for a creditor by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency, and which has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, is void, in and with respect to any action or proceeding that within three months, or in the case of a transaction between related persons as defined in

this Act, within 12 months thereafter is brought, had or taken to impeach or set aside that transaction, as against the creditor or creditors injured, delayed, prejudiced or postponed.

Transactions deemed to give creditors preference

5.(1) A transaction shall be deemed to be one that has the effect of giving a creditor a preference over other creditors, within the meaning of section 4, if by that transaction a creditor is given or realizes or is placed in a position to realize payment, satisfaction or security for the debtor's indebtedness to him or a portion thereof greater proportionately than could be realized by or for the unsecured creditors generally of the debtor or for the unsecured portion of his liabilities out of the assets of the debtor left available and subject to judgment, execution, attachment, or other process; and such effect shall not be deemed dependent upon the intent or motive of the debtor or upon the transaction being entered into voluntarily or under pressure.

(2) No pressure by a creditor or want of notice to the creditor alleged to have been preferred of the debtor's circumstances, inability or knowledge, or of the effect of the transaction, shall avail to protect the transaction except as provided by sections 7 and 10, but independently of the intent with which the transaction was entered into the preferential effect or result of the transaction impeached shall govern.

"Creditor" may include surety and endorser

6. In sections 3, 4 and 5 "creditor" and "creditors" shall be deemed to include a surety and the endorser of a promissory note or bill of exchange who would, upon payment by him of the debt, promissory note or bill of exchange in respect of which such suretyship was entered into or such endorsement was given, become a creditor of the person giving the preference within the meaning of the said sections, and the said words shall also include a cestui qui trust or other person to whom liability is equitable only.

Bona fide transfers protected

7. Nothing in sections 2, 3, 4, 5 and 6 applies to a bona fide sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties, nor to a payment of money to a creditor, nor to a bona fide conveyance, assignment, transfer or delivery over of any goods, securities or property of any kind as above mentioned that is made in consideration of a present actual bona fide payment in money or by way of security for a present actual bona fide advance of money, or that is made in consideration of a present actual bona fide sale or delivery of goods or other property, provided that the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

Transfer to creditor of consideration for sale invalid

8. In case of a valid sale of goods, securities or property and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor under circumstances that would render void the payment or transfer to the debtor personally and directly, the payment or transfer though valid as respects the purchaser, is void as respect the creditor to whom it is made.

Return of security

9. If a payment has been made that is void under this Act and a valuable security has been given up in consideration of the payment, the creditor shall be entitled to have the security restored or its value made good to him before or as a condition of the return of the payment.

Exchange of securities protected

10. Nothing in this Act shall affect any payment of money to a creditor who by reason or on account of the payment has lost or been deprived of or has in good faith given up a valid security that he held for the payment of the debt so paid, unless the value of the security is restored to the creditor, or the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not thereby lessened in value to the other creditors, nor shall anything in this Act invalidate a security given to a creditor for a pre-existing debt where by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor in the bona fide belief that the advance will enable the debtor to continue his trade or business and pay his debts in full.

Suit for rescission of void transactions

11.(1) One or more creditors may, for the benefit of creditors generally or for the benefit of such creditors as have been injured, delayed, prejudiced or postponed by the impeached transaction, sue for the rescission of or to have declared void agreements, deeds, instruments or other transactions made or entered into in fraud of creditors or in violation of this Act or thereby declared void, and if an amendment of the statement of claim is made the amendment shall relate back to the commencement of the action for the purpose of the time limited by section 4.

(2) In an action under this section the court may direct delivery of any property in question to a sheriff or a receiver and may order a sale thereof and such distribution of the proceeds as seems equitable through a sheriff or receiver or otherwise as seems proper.

(3) In case of a transaction void under this Act by reason of having been entered into with intent to give a preference or having the effect of giving a preference, the subject matter shall not be seizable or attachable or liable to sale for the satisfaction, according to priorities otherwise prevailing, of judgments, executions, attachments or other process, but the court shall have and exercise jurisdiction to realize the same for the benefit of all the creditors and to distribute the proceeds among them rateably and proportionately.

Following proceeds of property fraudulently transferred

12.(1) In the case of a gift, conveyance, assignment or transfer of property real or personal that in law is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made has sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds or the amount thereof, whether further disposed of or not, may be seized or recovered in an action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, and the right to seize and recover shall exist in favour of all creditors of such debtors.

(2) Where the proceeds are of a character seizable under execution they may be seized under the execution of any creditor and shall be distributable among creditors under the Creditors Relief Act.

(3) Whether the proceeds are or are not of a character seizable under execution, an action may be brought therefor or to recover the amount thereof by a creditor, whether a judgment creditor or not, on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the proceeds or the amount thereof available for the general benefit of the creditors.

(4) This section does not apply as against innocent purchasers of such property.

Applications to be by originating notice

13. Applications to set aside a transaction alleged to be with intent to defeat a creditor or preferential, or having the effect of preference and thereby void as against a creditor or creditors, shall be made by originating notice.

Lis pendens

14. Any originating notice for an order under this Act may contain a description of any land in question and upon the filing of the notice of motion in the Supreme Court a certificate of lis pendens may be issued for registration against the lands; and in case the motion is refused in whole or in part a certificate for registration of the order may be issued.

Costs

15. The costs of and incidental to all proceedings authorized in this Act shall be in the discretion of the Supreme Court.

Regulations

16. The Commissioner in Executive Council may make such regulations and prescribe such forms as he deems necessary for carrying out the purposes and provisions of this Act.

CHAPTER 73

FRUSTRATED CONTRACTS ACT

Application of Act

- 1.(1) Subject to subsection (2), this Act applies to every contract
 - (a) from which the parties thereto are discharged by reason of the application of the doctrine of frustration, or
 - (b) that is avoided under sections 7 or 8 of the Sale of Goods Act.
- (2) This Act does not apply
 - (a) to a charterparty or a contract for the carriage of goods by sea, except a time charterparty or a charterparty by demise,
 - (b) to a contract of insurance, or
 - (c) to a contract entered into before the date of coming into force of this Act.

Contract prevails

2. This Act applies to a contract referred to in subsection 1(1) only to the extent that, upon its true construction, it contains no provision for the consequences of frustration or avoidance.

Crown

3. The Crown is bound by this Act.

Partial performance

4. Where a part of a contract to which this Act applies is
 - (a) wholly performed before the parties are discharged, or
 - (b) wholly performed except for the payment in respect of that part of the contract of sums that are or can be ascertained under the contract,

and that part may be severed from the remainder of the contract, that part shall, for the purposes of this Act be treated as a separate contract that has not been frustrated or avoided, and this Act, excepting this section, is applicable only to the remainder of the contract.

Restitution and relief of obligations

5.(1) Subject to section 6, every party to a contract to which this Act applies is entitled to restitution from the other party or parties to the contract for benefits created by his performance or part performance of the contract.

(2) Every party to a contract to which this Act applies is relieved from fulfilling obligations under the contract that were required to be performed prior to the frustration or avoidance but were not performed except in so far as some other party to the contract has become entitled to damages for consequential loss as a result of the failure to fulfil those obligations.

(3) Where the circumstances giving rise to the frustration or avoidance cause a total or partial loss in value of a benefit to a party required to make restitution under subsection (1), that loss shall be apportioned equally between the party required to make restitution and the party to whom such restitution is required to be made.

(4) In this section, a “benefit” means something done in the fulfilment of contractual obligations whether or not the person for whose benefit it was done received the benefit.

No restitution

6.(1) A person who has performed or partly performed a contractual obligation is not entitled to restitution under section 5 in respect of a loss in value, caused by the circumstances giving rise to the frustration or avoidance, of a benefit within the meaning of section 5, if there is

- (a) a course of dealing between the parties to the contract,
- (b) a custom or a common understanding in the trade, business, or profession of the party so performing, or
- (c) an implied term of the contract,

to the effect that the party so performing should bear the risk of such loss in value.

(2) The fact that the party performing such an obligation has in respect of previous similar contracts between the parties effected insurance against the kind of event that caused the loss in value is evidence of a course of dealing under subsection (1).

(3) The fact that persons in the same trade, business, or profession as the party performing such obligations generally effect insurance against the kind of event that caused the loss in value, or enter into similar contracts, is evidence of a custom or common understanding under subsection (1).

Amount of restitution

7. Where restitution is claimed for the performance or part performance of an obligation under the contract other than an obligation to pay money,

- (a) in so far as the claim is based on expenditures incurred in performing the contract, the amount recoverable shall include only reasonable expenditures, and
- (b) if performance consisted of or included delivery of property that could be and is returned to the performer within a reasonable time after the frustration or avoidance, the amount of the claim shall be reduced by the value of the property returned.

Determination of amount

8. In determining the amount to which a party is entitled by way of restitution or appointment under section 5,

- (a) no account shall be taken of
 - (i) loss of profits, or
 - (ii) insurance money that becomes payable by reason of the circumstances that give rise to the frustration or avoidance, but
- (b) account shall be taken of any benefits which remain in the hands of the party claiming restitution.

Limitation period

9.(1) No action or proceeding under this Act shall be commenced after the period determined under subsection (2).

(2) For the purposes of subsection (1), a claim under this Act shall be deemed to be a claim for a breach of the contract arising at the time of frustration or avoidance, and the limitation period applicable to that contract applies.

CHAPTER 74

FUEL OIL TAX ACT

Interpretation

1. In this Act,

- “coloured diesel fuel” means diesel fuel to which a dye or chemical marker has been added in accordance with this Act;
- “coloured gasoline” means gasoline to which a dye or chemical marker has been added in accordance with this Act;
- “coloured heating oil” means heating oil to which a dye or chemical marker has been added in accordance with this Act;
- “distributor” means a person who imports into the Yukon, manufactures or sells fuel oil to a vendor for resale;
- “fuel oil” means the liquid derived from petroleum or natural gas and any other liquid by whatever name known or sold, containing any derivative of coal, petroleum or natural gas, and any other fuel as may be included in this definition by regulation of the Commissioner in Executive Council;
- “generator” means a generator of electricity which is permanently located on land or in a building and intended to so remain located and does not include a generator used for temporary service work or temporary supply of electricity;
- “inter-provincial carrier” means a motor vehicle, ship, boat or aircraft which travels from one province to another and is used to transport freight or is capable of carrying a minimum of 15 passengers;
- “person” includes a corporation, partnership, Her Majesty in right of Canada, a province and a municipality;
- “place” includes any land, building, tent or vehicle;
- “province” for purposes of this Act, includes the State of Alaska;
- “purchaser” means a person who buys fuel oil from a vendor;
- “registrar” means the registrar of motor vehicles as appointed by the Commissioner in Executive Council to so act;
- “tax” means the tax imposed by this Act;
- “through carrier” means a commercial transportation vehicle which travels through the Yukon without loading or unloading any cargo or passengers, and is used to transport freight or capable of carrying a minimum of 15 passengers;
- “vehicle” includes any camper, trailer, motor home, aircraft or watercraft;
- “vendor” means a person who sells fuel oil to a purchaser.

Payment of tax

- 2. Subject to section 4, every person who purchases any fuel oil in the Yukon shall pay to the Executive Council Member a tax in respect of that fuel oil as provided in this Act.

Collection and remission of tax

3.(1) Subject to section 4, every vendor and every distributor shall pursuant to this Act collect and remit tax

- (a) in respect of fuel oil for use in residential, commercial or industrial cooling, at the rate of two-tenths of one cent per litre,
- (b) in respect of fuel oil for use to propel an aircraft, at the rate of seven-tenths of one cent per litre,
- (c) in respect of diesel oil, at the rate of five and two-tenths cents per litre, and
- (d) in respect of all fuel oil other than those oils referred to in paragraphs (a), (b) and (c) and section 4, at the rate of four and two-tenths cents per litre.

(2) Subject to section 4, every person, other than a vendor or distributor, who brings into the Yukon a quantity of fuel oil greater than 230 litres shall, within ten days thereof, remit to the Executive Council Member the tax thereon together with such documents as may be prescribed.

Exemptions

4.(1) No tax under this Act is payable on fuel oil purchased for use, and subsequently consumed, as follows:

- (a) for lubricating;
- (b) for laying or sprinkling on roads or streets;
- (c) as cleaning fluids or solvents;
- (d) for pharmaceutical or medical purposes;
- (e) for cooking;
- (f) for space heating of buildings.

(2) No tax under this Act is payable on liquified petroleum gas used for any purpose.

(3) No tax is payable in respect of fuel oil purchased and used for heating ore as a part of a mineral extraction process in respect of which a valid and subsisting permit has been issued by the Executive Council Member providing for the purchase of such fuel without payment of tax.

(4) No tax is payable on fuel oil sold or delivered to

- (a) the Government of Canada, or
- (b) a visiting force as defined in the Visiting Forces Act (Canada),

if the person who receives delivery of the fuel oil has been so authorized by such government or force and furnishes to the supplier a certificate to that effect.

(5) No tax is payable under this Act on uncoloured or coloured diesel fuel or uncoloured or coloured gasoline purchased for use and subsequently consumed by the holder of a permit issued under section 6 for the purpose for which the permit was issued.

Colouring of fuel oil

5.(1) The Commissioner in Executive Council may make regulations providing for the colouring of gasoline, diesel fuel or heating oil for the purposes of this Act by means of the addition of a dye or chemical marker.

(2) Unless authorized by the regulations, no person shall colour gasoline, diesel fuel or heating oil any colour that has been prescribed for the purposes of this Act under subsection (1).

Permits

6.(1) The Executive Council Member may issue permits to persons authorizing them to possess and use uncoloured or coloured diesel fuel or uncoloured or coloured gasoline for stationary generators of electricity.

(2) The Executive Council Member may issue permits to persons authorizing them to possess and use uncoloured or coloured diesel fuel or uncoloured or coloured gasoline for the following commercial purposes otherwise than on roads maintained entirely with public money by the Government of Canada, the Government of the Yukon or a municipality:

- (a) fishing;
- (b) logging;
- (c) hunting or outfitting;
- (d) trapping;
- (e) mining, including mining exploration and development;
- (f) farming.

(3) A permit may be issued under subsection (2) only in respect of activities conducted with the intention of earning income in accordance with such laws of Canada or the Yukon as may be applicable.

Taxation of coloured fuel oil

7.(1) Coloured diesel fuel and coloured gasoline used by a person to whom a permit has not been issued, or used for a purpose in respect of which a permit is not issuable under section 6, remain taxable under the other provisions of this Act.

(2) Coloured heating oil used by a person for a purpose other than the space heating of buildings remains taxable under the other provisions of this Act.

Possession and use of coloured fuel oil

8.(1) No person shall possess coloured diesel fuel or coloured gasoline unless

- (a) the person is the holder of a permit issued under section 6, or
- (b) the person is a vendor or distributor and the diesel fuel or gasoline is in the possession of the person for the purpose of resale by the person.

(2) No person shall use coloured heating oil for a purpose other than the space heating of buildings.

Certificate of analysis

9. In every prosecution under this Act, a certificate of analysis purporting to be furnished by the person in charge of a laboratory maintained by a university, by the Government of the Yukon, by the Government of Canada or by the government of another province, or signed by the person acting in the place of the person so in charge, is admissible in evidence as prima facie proof of the facts stated in it and is conclusive proof of the authority of the person signing the statement without proof of his or her appointment or signature.

Tax in arrears

10. Where fuel oil is obtained for a purpose and is used for another purpose, tax shall be paid by the purchaser at the rate applicable to the purpose for which the fuel oil is used, not later than the tenth day of the month next following the month in which the use took place, in the manner and form prescribed.

Limit on tax exempt purposes

11.(1) No purchaser may purchase an amount of fuel oil which is tax exempt or in respect of which tax is payable pursuant to paragraph 3(1)(a), exceeding in any period one-seventh of his total fuel oil purchases for that period if any part of the fuel oil so purchased is intended for any use other than exempt purposes.

(2) Nothing in subsection (1) shall be deemed to prevent the Executive Council Member making a full or partial refund where the purchaser satisfied the Executive Council Member that he has used the fuel oil for a tax exempt purpose or a purpose mentioned in paragraph 3(1)(a).

Distributor licence

12.(1) Every distributor who imports into the Yukon, manufactures, keeps for sale or sells fuel oil to a vendor in the Yukon shall apply for and hold a valid fuel oil distributor licence issued pursuant to this section in respect of each place of business at which fuel oil is so kept for sale or sold by him.

(2) Every vendor who purchases fuel oil from a licenced distributor for sale to a purchaser shall apply for and hold a valid vendors licence issued pursuant to this section in respect of each place of business at which fuel oil is so kept for sale or sold by him.

(3) Every person who does not hold a subsisting distributor licence, and who keeps or has in his possession or under his control, or brings into, or receives in the Yukon for use any fuel oil on which no tax has been paid under this Act shall pay, in the manner and at the times prescribed, tax at the applicable rates on all fuel oil so kept, possessed, controlled, imported or received by him.

Duty of vendor

13.(1) A vendor shall, in every account or invoice furnished with respect to any sale of fuel oil made by him under the provisions of paragraphs 3(1)(a) or (b) or section 4, state the date of the sale, the number of litres of fuel oil sold, the price per litre and the purpose for which the fuel is purchased.

(2) A vendor shall submit to his distributors, in addition to the remittance under subsection 14(1), a monthly return of sales in the prescribed form.

Monthly payments

14.(1) Subject to this Act and the regulations, a vendor shall pay to his distributors fuel oil tax as specified in subsection 3(1) in respect of all fuel oil purchased by the vendor.

(2) Notwithstanding subsection (1), where a distributor is also a vendor, he shall remit all tax levied in respect of all fuel oil sold to a purchaser in accordance with section 15.

Duty of distributor

15. Subject to this Act and the regulations, a distributor shall

- (a) remit to the Executive Council Member, not later than the 25th day of each month, all tax received by such distributor in respect of the next preceding month,
- (b) furnish the Executive Council Member with returns in the prescribed form not later than the 25th day of each month, and
- (c) furnish the Executive Council Member with such invoices and other documents and such copies thereof as the Executive Council Member by regulation may require.

Fuel oil user emblem

16.(1) The operator of an inter-provincial carrier or through carrier shall be issued a permit upon application and issuance of the operating licence by the registrar and shall apply for an annual renewable fuel oil user emblem for each licensed commercial vehicle or aircraft intended to be operated as an interprovincial or through carrier.

(2) The operator of an inter-provincial carrier or through carrier holding a non-resident commercial motor vehicle permit shall be issued a temporary fuel oil emblem or a prepaid single trip fuel oil emblem and shall deposit by way of cash or other security acceptable to the Executive Council Member, a tax deposit in an amount or amounts as prescribed.

Travel out of the Yukon

17. The operator of an inter-provincial carrier who makes infrequent trips not exceeding one per calendar month outside the Yukon may, in lieu of obtaining a permit, make a declaration at the time of re-entry into the Yukon, showing the amount of fuel oil consumed outside the Yukon, the amount of fuel oil purchased outside the Yukon, and with the declaration, remit tax pursuant to the rates of tax per litre as shown in subsection 3(1).

Inter-provincial carrier exclusions

18.(1) Notwithstanding any other provisions in this Act to the contrary, operators of commercial transportation vehicles making journeys from one point in the Yukon to another shall not be deemed to be inter-provincial carriers as defined in this Act by reason only of the fact that a portion of the journey passes through a neighbouring province.

(2) Operators of commercial vehicles on journeys to or from the Town of Cassiar, British Columbia, or the Town of Atlin, British Columbia, shall not be deemed to be inter-provincial carriers as defined in this Act solely by reason of such journeys.

(3) Tax paid on fuel oil purchased in the Yukon and consumed by such vehicles on journeys between the southern border of the Yukon and the destinations listed in subsection (2) may be refunded upon submission of evidence that tax has been paid to the appropriate authorities in the jurisdiction where the fuel oil was so consumed.

Bond deposit

19.(1) The Executive Council Member may require any person subject to tax under this Act to deposit a bond or other security satisfactory to the Executive Council Member.

(2) The amount of the bond shall be determined by the Executive Council Member but shall not be less than twice nor greater than six times the estimated amount of the monthly tax determined in such manner as the Executive Council Member may deem proper.

Books and records

20. Every distributor and vendor shall

- (a) maintain books and records in respect of his fuel oil transactions in sufficient detail to permit examination and calculation of the tax, and
- (b) preserve such books and records until such time as the Executive Council Member grants permission to destroy.

Inspectors

21.(1) The Commissioner in Executive Council may appoint inspectors for the purposes of this Act.

(2) Every inspector has the authority to enforce the provisions of this Act.

Inspection

22.(1) An inspector may enter at any reasonable time the business premises occupied by any person, or the premises where records and documents are kept, to determine whether this Act and any regulations thereunder are being and have been complied with, to inspect, audit and examine books of account, records or documents, or to ascertain the quantities of fuel oil purchased, imported or otherwise acquired by him, sold or used by him, and shall produce such books of account, records or documents as may be required.

(2) Where it appears from the inspection, audit or examination of books of account, records or documents that this Act or the regulations have not been complied with, the inspector shall calculate or estimate the tax due, if any, in such manner and form and by such procedure as the Executive Council Member may deem adequate and expedient, and the Executive Council Member shall assess the person for the amount of the tax so calculated.

Fuel Inspections

23. Notwithstanding subsection 24(2), an inspector may search the fuel system and engine of any vehicle to determine if it contains any fuel oil in contravention of this Act.

Other inspections

24.(1) Subject to subsection (2), an inspector may search any place where he or she has reasonable and probable grounds to believe and does believe there to be

- (a) any fuel oil in respect of which any tax under this Act has not been collected or paid, or
- (b) any evidence of the commission of an offence under this Act.

(2) An inspector shall not search any place unless, immediately before the search, the inspector obtains the permission of a lawful occupant to do so, or unless the inspector obtains a search warrant authorizing the search.

(3) A search warrant may be issued by a justice of the peace where he or she is satisfied by information upon oath that there are reasonable and probable grounds for believing there to be in the place

- (a) any fuel oil in respect of which any tax under this Act has not been collected or paid, or
- (b) any evidence of the commission of an offence under this Act.

Powers and duties of inspectors

25.(1) In the carrying-out of a search under section 23 or 24, an inspector may use all force that is necessary in the circumstances, including the breaking of any lock or fastening, but if a person entitled to possession of the place or vehicle is not present at the time of the search, the inspector shall

- (a) ensure that the place or vehicle is left as secure after the search as it was at the commencement of the search, and
- (b) make a reasonable effort as soon as practicable after the search to give notice of any action under this subsection to an owner or other person entitled to possession of the place or vehicle.

(2) Where no person entitled to the possession of a dwelling house is present at the time of a search under this section, an inspector shall not exercise any of the powers under subsection (1) unless

- (a) the inspector is accompanied by a member of the Royal Canadian Mounted Police, and
- (b) the inspector has made a reasonable effort to give advance notice of the search to a person entitled to the possession of the dwelling house.

(3) An inspector who is carrying out a search under this Act may be accompanied by any person who may be of assistance to the inspector in carrying out the search.

(4) A search warrant issued under this section shall be executed by day unless the justice, by the warrant, authorizes execution of it by night.

Seizure

26.(1) Where an inspector finds any fuel oil being used in contravention of this Act or any other substance or thing that the inspector reasonably believes may be evidence of the commission of an offence under this Act, the inspector may seize it.

(2) Upon the seizure of any fuel oil or other substance or thing under subsection (1), a receipt reasonably descriptive of it shall be issued to a person entitled to possession of the place or vehicle from which it was seized, but if there is no such person present

- (a) the receipt shall be left in a prominent place at the place of the seizure or on the vehicle, as the case may be, and
- (b) if the seizure is made on public property, notice of the seizure shall be given by newspaper advertisement or such other means as reasonably might bring the seizure to the attention of interested persons.

(3) The Executive Council Member may release from seizure any substance or thing seized under this section.

(4) No liability attaches to the Crown, the Executive Council Member or an inspector, or to any person assisting the Executive Council Member or an inspector at his or her request, for loss or damage arising from the seizure of anything under this section.

Offences

27.(1) Every person who

- (a) makes a false statement in any return, report certificate or form used under this Act,
- (b) obtains or attempts to obtain or knowingly induces, assists or attempts to assist another person to obtain an unwarranted exemption from or reduction of tax,
- (c) knowingly gives false information respecting any fuel oil transaction,
- (d) refuses or neglects to pay or remit tax where required to do so by this Act or to execute prescribed returns, certificates, reports or forms in connection with exemption or reduction in tax where required to do so by this Act,
- (e) refuses to produce records or documents respecting fuel oil transactions, or any container used for holding fuel oil that is in his possession or control, or
- (f) violates any other provisions of this Act or the regulations,

commits an offence against this Act and is liable, upon summary conviction, to a fine not exceeding \$1000 or to imprisonment for a term not exceeding one year or to both fine and imprisonment, and each day's continuance of the act or default out of which the offence arises shall constitute a separate offence; but nothing contained in this section nor the enforcement of any penalty thereunder shall suspend or affect any remedy for the recovery of any tax.

(2) In addition to the fine or term of imprisonment imposed under subsection (1), the offender shall be ordered by the court to pay the amount of the tax that is owing, on or before such date as shall be fixed by the court.

Burden of proof

28. In any prosecution for an offence under this Act or in any action or other proceeding brought for the recovery of tax, the burden of proving that he has paid or remitted tax or that he is exempt under this Act from liability to pay tax or remit tax, is on the accused or the defendant.

Limitation

29. No prosecution for an offence under this Act shall be commenced after three years from the date of the commission of the offence.

Penalty and interest

30. The Executive Council Member may, in addition to any other penalty or action, assess a penalty equal to ten percent of the amount due, and may assess interest on the amount due at ten percent per annum against any person who fails to pay any tax which he is required to pay under this Act or fails to file returns on due dates as required by this Act.

Cancellation

31. The Executive Council Member may for cause

- (a) cancel any fuel oil user permit and annual renewable fuel oil user emblem issued pursuant to this Act, and may during the period of 12 months next succeeding the cancellation of that permit and emblem refuse to issue any

new permit and emblem to the person if the permit and emblem holder is convicted of any offence against this Act, but the cancellation does not preclude the person from purchasing prepaid single trip permits and emblems, and

- (b) cancel any distributors or vendors licence issued pursuant to this Act if the licensee is convicted of any offence against this Act, and may during the period of 12 months next succeeding the cancellation of that licence refuse to issue any new licence to the person so convicted.

Refund

32.(1) Applications for refund of fuel oil tax paid must be submitted before August 1 in the year next following the year of purchase of the fuel oil.

(2) Applications for refund of fuel oil tax in respect of fuel oil purchased within the Yukon for use outside the Yukon must be accompanied by proof satisfactory to the Executive Council Member that tax has been paid at the applicable rates in the jurisdiction in which the fuel was used.

Regulations

33. For the purpose of carrying into effect the provisions of this Act, the Commissioner in Executive Council may make such regulations and prescribe such forms as are considered necessary or advisable.

CHAPTER 75

FUNERAL DIRECTORS ACT

Interpretation

1. In this Act,

“embalming” means the preservation of the dead human body, entire or in part, by any means including the use of chemical substances, fluids or gases ordinarily used, prepared or intended for such purpose, either by the outward application of such chemical substances, fluids or gases on the body or by introduction thereof into the body by vascular or hypodermic injection, or by direct application into the organs or cavities;

“funeral director” means a person who is registered under this Act as a funeral director;

“funeral services” means the services usually provided by a funeral director;

“funeral services establishment” means premises established or maintained for the purpose of providing funeral services or funeral supplies to the public;

“registrar” means the registrar designated pursuant to section 3.

Prohibitions

2.(1) No person shall engage in or hold himself or herself out as engaging in the provision of funeral services or funeral supplies to the public for a fee or other reward, or in hope or expectation thereof, unless the person is a funeral director.

(2) No person other than a funeral director shall perform embalming.

(3) In a prosecution or any other proceeding under this Act, if it is proved that a person has provided funeral services or funeral supplies to the public for fee or other reward, or in hope or expectation thereof, or that the person has performed embalming, the burden of establishing a subsisting registration or licence under this Act rests on the person who alleges its existence.

(4) Subsections (1) and (2) do not apply to a student within a training program who is working under the supervision of a funeral director who is physically present.

Registrar

3.(1) The Executive Council Member shall designate a member of the public service to function as registrar of funeral directors.

(2) The registrar shall keep a register of funeral directors in which shall be entered the name of any person who applies for registration and is qualified under section 4 to be registered.

Qualifications for registration

4. Any person who has, with the prescribed standard of performance, completed a course of studies and training approved by the Commissioner in Executive Council, is qualified to be registered as a funeral director.

Fees

5.(1) A funeral director shall pay to the registrar such annual or other periodic fees as may be prescribed.

(2) A funeral director may not enforce against any person a contract in respect of the performance of any funeral services or the provision of any funeral supplies if the contract is made or the work is performed during a period in respect of which the funeral director has failed to pay the fee required by subsection (1), but such a contract is enforceable against the funeral director.

Enforcement

6.(1) The registrar may apply to a judge of the Supreme Court for, and the judge may grant, an injunction enjoining any person from continuing conduct that is in contravention of this Act or the regulations.

(2) Breach of an order under subsection (1) may be dealt with as a contempt of court.

(3) Where a funeral director has acted with professional incompetence or has contravened any provision of this Act or the regulations, a judge of the Supreme Court may, upon application of the registrar,

- (a) cancel the registration of the funeral director for such specified period of time as the judge thinks fit, or
- (b) impose, for such specified period of time as the judge thinks fit, reasonable restrictions on the right of the funeral director to provide funeral services or funeral supplies to the public.

(4) Breach of an order made under subsection (3) may be dealt with as a contempt of court.

(5) Where an order is made under subsection (3) by reason of the professional incompetence of the funeral director,

- (a) the purpose of the order shall be the protection of existing and prospective clients rather than the punishment of the funeral director,
- (b) the judge may include in the order reasonable stipulations about conditions or qualifications which, if met or achieved, will entitle the funeral director to an abridgement of the period of time for the cancellation or restriction, and
- (c) where no stipulations as described in paragraph (b) are included in the order, the judge may, at any time subsequent to making the order and upon the application of the funeral director, abridge the period of time for the cancellation or restriction if the judge is satisfied that there has been a material change in the competence of the funeral director.

(6) In this section, “professional incompetence” means unfitness to continue to provide funeral services or funeral supplies to the public by reason of having displayed a lack of the knowledge, skill or judgment in providing funeral services or funeral supplies to the public that it is reasonable to expect of a funeral director.

Offence and penalty

7. Any person who contravenes a provision of this Act commits an offence and is liable on summary conviction to a fine of up to \$2,000 or to imprisonment for as long as six months, or both.

Regulations

8. The Commissioner in Executive Council may make regulations

- (a) prescribing courses of study and training which, if successfully completed with the required standard of performance, qualify a person for registration as a funeral director;
 - (b) prescribing the required standard of performance for successful completion of the courses of study and training referred to in paragraph (a);
 - (c) prohibiting or governing the sale of pre-arranged funeral plans and pre-paid funeral services;
 - (d) providing for any other matter necessary to carry into effect the purposes and provisions of this Act.
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CHAPTER 76

GAOLS ACT

Gaols

1. Every building and other enclosure on the land described as follows is designated as a prison, gaol or lock-up for the confinement of persons charged with the commission of any offence under a statute or other law in force in the Yukon or sentenced thereunder to a term of imprisonment not exceeding two years less one day: the whole of lot 509 in group 804 in the Yukon according to a plan of survey registered in the land titles office under number 53002.

CHAPTER 77

GARAGE KEEPERS LIEN ACT

Interpretation

1. In this Act,

“garage” means any building or part of a building in or in connection with which services are rendered upon motor vehicles in the ordinary course of business;

“garage keeper” means any person who, in the ordinary course of business and as his principal employment or one of his principal employments, renders services upon motor vehicles in a garage for a charge, price or consideration;

“motor vehicle” means a vehicle propelled by any power other than muscular power, but does not include an aircraft or a vehicle that runs only on tracks or rails;

“services” means repairs to a motor vehicle by labour or by supplying parts thereof or accessories thereto.

Creation, effect and registration of lien

2.(1) In addition to any other remedy that a garage keeper has for recovering money for services rendered by him, he has a lien on every motor vehicle and on any part, accessory or equipment pertaining thereto for services for the amount of the charge, price or consideration therefor.

(2) Subject to section 3, actual and continued possession of the motor vehicle or part, accessory or equipment is essential to the existence of a lien under this Act.

(3) Section 30 of the Mechanics Lien Act does not apply to a lienholder under this Act.

Garage keeper may file lien

3.(1) In lieu of remaining in actual and continued possession as provided by subsection 2(2), a garage keeper may, by himself or his agent, within 15 days of the day on which the service for which a lien exists was completed, register a financing statement under the Personal Property Security Act containing the prescribed information.

(2) Where a financing statement is registered pursuant to subsection (1) within 15 days after the date upon which the services were completed, the garage keeper has a lien for services on the motor vehicle for a period of 180 days from the date of filing; on the expiration of that period the lien ceases to exist unless within that period proceedings have been commenced under this Act to enforce it.

Priorities

4.(1) Where a garage keeper has lost his lien under section 2 because the motor vehicle in respect of which he has the lien has gone out of his possession and before he registers a financing statement under section 3 another person in good faith and without notice acquires an interest in, or a security interest in the motor vehicle, the lien is subordinate to the interest or security interest.

(2) Where more than one person has a lien under this Act upon the same motor vehicle, the lien of the person whose claim of lien is filed earlier in time has priority over that of a person whose claim of lien is filed later in time.

Seizure of vehicle

5.(1) At any time during the continuance of a lien on a motor vehicle created by section 3, the garage keeper may authorize the sheriff in writing to seize the motor vehicle and return it to the garage keeper.

(2) After receiving the authorization mentioned in subsection (1), the sheriff shall seize or cause to be seized the motor vehicle, if he finds it within 180 days, and deliver it to the garage keeper or his agent upon receiving the amount of the fees payable in respect of the authorization and seizure.

(3) A judge may prescribe fees that may be charged in respect of an authorization under this section and any seizure thereunder or any matter or thing incidental thereto.

(4) Where one of several lienholders under this Act causes a seizure to be made of a motor vehicle, he shall be deemed to have made the seizure on behalf of all persons who have a subsisting lien on the motor vehicle.

Rights of garage keeper on delivery after seizure

6. Upon a motor vehicle being delivered to him after seizure pursuant to section 5, a garage keeper has the same rights and remedies for enforcing his lien against the motor vehicle as if he then had a possessory lien for the same amount, and may enforce the lien in the manner provided in this Act.

Sale of vehicle

7. Where the amount payable to the garage keeper for services on a motor vehicle has not been paid

- (a) upon the expiration of 180 days from the date upon which the services were completed where the garage keeper retains possession of the motor vehicle, or
- (b) upon the expiration of the period of 180 days mentioned in subsection 3(2) or on the expiration of 60 days from the date of delivery of the motor vehicle to the garage keeper under section 5, whichever is later,

the garage keeper may sell the motor vehicle or any part thereof at public auction.

Notice of sale

8. Before the sale is held under section 7, a garage keeper shall publish in the Yukon Gazette and post and keep posted during a period of at least two weeks, on the outside of a front door of his garage a notice of such intended sale that sets out

- (a) the name so far as known of the owner of the motor vehicle to be sold,
- (b) a general description of the motor vehicle, including its engine number and serial number,
- (c) the time and place of sale, and
- (d) the name of the auctioneer.

Application of proceeds

9.(1) The proceeds of a sale under section 7 shall be applied in payment of the following charges in the order set out:

- (a) the costs of the seizure of the vehicle;
- (b) the costs of advertising the sale, the auctioneer's fees and other reasonable costs of the sale;
- (c) interests or security interests that, under this Act, have priority over the lien;
- (d) the amount payable to the garage keeper for services;
- (e) the claim of any other lienholder;

and the surplus, if any, shall be paid on application to the person entitled thereto.

(2) If a person entitled to the surplus of a sale under section 7 does not apply for it within one month of the day of the sale, such surplus shall be paid to the Executive Council Member who shall keep it in a special trust account for one year, after which, if such person does not claim it, it shall be paid into and form part of the Yukon Consolidated Revenue Fund.

Offence and penalty

10.(1) Subject to subsection (2), no garage keeper shall operate, or permit to be operated, outside his premises, any motor vehicle, or use, or permit to be used, any part of a motor vehicle left with him for service or held by him.

(2) Notwithstanding subsection (1), a motor vehicle left with a garage keeper for the performance of services thereon or held by him pursuant to this Act may be operated for the purpose of testing it after repairs have been made or parts supplied, or for the purpose of transferring it to the place where it is to be sold pursuant to this Act.

(3) A garage keeper who violates subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$100.

Garage keeper to post copy of Act

11. Every garage keeper shall keep a copy of this Act conspicuously posted in his office and in at least two other conspicuous places in his garage, and unless he complies with this section he is not entitled to the benefits of this Act.

CHAPTER 78

GARNISHEE ACT

Interpretation

1.(1) In this Act,

“court” means,

- (a) in the case of a judgment or action in the Supreme Court, the Supreme Court, and
- (b) in the case of a judgment or action in the Territorial Court, the Territorial Court;

“creditor” means,

- (a) in the case of a writ of garnishment issued or sought to be issued before judgment, the plaintiff in the action, and
- (b) in the case of a writ of garnishment issued after judgment, the judgment creditor;

“debt” means a debt, obligation or liability to pay money arising out of a contract, trust, court order, statute, claim for restitution, or quasi-contractual claim, and includes wages;

“debtor” means,

- (a) in the case of a writ of garnishment issued or sought to be issued before judgment, the defendant in the action, and
- (b) in the case of a writ of garnishment issued after judgment, the judgment debtor;

“due” means owing, payable, due or accruing due;

“garnishee” means a person upon whom a writ of garnishment is served under this Act;

“judgment” includes any order of a court for the payment of money;

“term of the writ” means the term during which debts are bound by the service of a writ of continuing or temporary garnishment as provided by subsection 10(2) or section 11, and includes a term as reduced or extended under section 12;

“wages” means wages, salary, commissions, fees and any money payable by an employer to a debtor in respect of work done or services performed in the course of the employment of the debtor;

“writ of garnishment” means a writ of immediate garnishment, a writ of continuing garnishment or a writ of temporary garnishment, as the case may be, issued under this Act.

(2) A debt shall be deemed to be due from the garnishee to the debtor if the debtor has a cause of action against the garnishee in respect thereof.

ISSUANCE OF WRIT

Immediate garnishment

2. Subject to section 6, a writ of immediate garnishment shall be issued by the clerk of the court upon request of a creditor.

Continuing garnishment

3.(1) Subject to section 6, a writ of continuing garnishment shall be issued by the clerk of the court upon request of a creditor, but a creditor shall not make such a request unless

- (a) a writ of immediate garnishment would not be adequate, having regard to the nature of the debt sought to be attached, and
- (b) the creditor has knowledge of facts or circumstances, including the relationship between the debtor and the garnishee, amounting to reasonable grounds for his belief that a debt may become due from the garnishee to the debtor.

(2) A writ of continuing garnishment that has been issued in contravention of subsection (1) or section 6 may be set aside by the court upon application made by the debtor or the garnishee at any time during the term of the writ.

(3) Upon the hearing of an application under subsection (2) an order shall be granted for the setting aside of the writ unless the creditor satisfies the court that subsection (1) and section 6 were complied with.

(4) Nothing in this section limits the power of the court to set aside a writ of garnishment under section 5.

Amount of writ

4. A writ of garnishment issued under section 2 or 3 after judgment shall specify the amount sought to be attached by the writ, but the specified amount shall not exceed the total of

- (a) the amount owing on the judgment on the date when the writ is issued,
- (b) an amount in respect of the garnishee's costs, and
- (c) an amount in respect of the creditor's costs relating to the writ.

Writ before judgment

5.(1) A writ of garnishment shall be issued before judgment by the clerk of the court, upon the request of the plaintiff in an action, where the plaintiff's claim against the defendant is for a liquidated demand.

(2) A writ issued under subsection (1) shall specify the amount sought to be attached by the writ, but the amount shall not exceed the amount of the plaintiff's claim against the debtor in the action.

(3) A writ of garnishment issued under subsection (1) before judgment shall be set aside by the court upon application made by the debtor at any time before judgment unless the court is satisfied that

- (a) the creditor's claim against the debtor is for a liquidated demand,
- (b) there are reasonable grounds for believing that, if the judgment is obtained by the creditor, it may not be satisfied if the writ is set aside,
- (c) having regard to the potential hardship and inconvenience to the debtor and to the potential benefit to the creditor, the writ will achieve a result that is equitable in the circumstances,
- (d) the creditor has demonstrated sufficiently the merits of his claim against the debtor, and
- (e) the creditor has established that the issuance of the writ did not contravene subsection (1) or section 6.

(4) Nothing in this section limits the power of a court to set aside a writ of garnishment under section 3.

Issuance and effect of writ before judgment

6.(1) A writ of garnishment shall not be issued before judgment except as provided by section 5 or 7, but a writ of garnishment issued before judgment otherwise is subject to all of the provisions of this Act, including section 3, that apply to writs of garnishment issued after judgment.

(2) No writ of garnishment shall be issued before judgment for the attachment of a debt that is or may become due to a debtor for salary or wages.

Issuance before judgment with leave

7.(1) A writ of garnishment shall be issued before judgment by the clerk of the court upon the request of the plaintiff in an action for a money judgment to which section 5 does not apply where the plaintiff has applied for and obtained the leave of the court for the issuance of the writ before judgment.

(2) An application for the leave of the court for the issuance of a writ of garnishment before judgment shall specify the amount sought to be attached by the writ.

(3) Leave shall not be given for the issuance of a writ of garnishment before judgment unless the court is satisfied that

- (a) there are reasonable grounds for believing that, if a judgment is obtained by the creditor, it may not be satisfied if the writ is not issued,
- (b) having regard to the potential hardship and inconvenience to the debtor and the potential benefit to the creditor, the issuance of the writ will achieve a result that is equitable in the circumstances,
- (c) the creditor had demonstrated sufficiently the merits of his claim against the debtor,
- (d) the issuance of the writ will not contravene the provisions of section 6,
- (e) the debtor has been given two days notice of the application, and
- (f) the creditor, if successful, is likely to recover a judgment in the action for an amount not less than the sum of the amount specified in the application and the proceeds of any previous garnishment in respect of the action.

(4) An order granting leave for the issuance of a writ of garnishment before judgment shall specify the amount that may be attached by the writ, and the amount specified in the order shall not exceed, but it may be less than, the amount specified under subsection (2) in the application for leave.

(5) The specification in an application under subsection (2) of an amount sought to be attached shall be deemed not to be an admission by the plaintiff as to the amount of his claim against the defendant.

Demonstration of merits

8.(1) For the purposes of subsections 5(3) and 7(3), the merits of a creditor's claim against a debtor are demonstrated sufficiently if

- (a) there appears to be no defence that has a reasonable prospect of defeating the claim, other than a defence that to succeed depends on a finding, favourable to the debtor, on a fact that is in dispute, and
- (b) one or more affidavits filed on behalf of the creditor set out and verify the facts on which the creditor's claim is based and, where a defence is made, deny the facts on which the defence is based, or set out and verify additional facts that rebut the defence.

(2) In an application to the court under subsection 5(3) or 7(1), it may be presumed in favour of the creditor that, unless the debtor gives evidence to the contrary,

- (a) there are reasonable grounds for believing that, if a judgment is obtained by the creditor, it will not be satisfied if the writ is not issued,
- (b) having regard to the potential hardship and inconvenience to the debtor and to the potential benefit to the creditor, issuance of the writ will achieve a result that is equitable in the circumstances, and
- (c) the creditor is likely to recover a judgment in the action for an amount not less than the sum of the amount specified in the application and the proceeds of any previous garnishment in respect of the action.

Temporary garnishment

9. Where an application has been made to the court for leave for the issuance of a writ of garnishment before judgment under section 7, the clerk of the court shall issue a writ of temporary garnishment upon the request of the creditor.

ATTACHMENT OF DEBTS

Immediate and continuing garnishment

10.(1) Service of a writ of immediate garnishment upon the garnishee attaches, up to the amount specified in the writ, every debt that is due from the garnishee to the debtor at the time of service.

(2) Service of a writ of continuing garnishment upon the garnishee attaches, up to the amount specified in the writ, every debt that is due from the garnishee to the debtor at the time of service or that becomes due from the garnishee to the debtor within one year from the date on which the writ was issued.

Temporary garnishment

11.(1) Service of a writ of temporary garnishment upon the garnishee attaches every debt due from the garnishee to the debtor at the time of service or that becomes due from the garnishee to the debtor at any time thereafter until the earlier of

- (a) the dismissal of the application,
- (b) the expiration of 15 days after leave is granted for the issuance of the writ of garnishment before judgment, or
- (c) the service on the garnishee of a writ of immediate or continuing garnishment based on the application.

- (2) Where a writ of temporary garnishment has been served upon the garnishee,
- (a) service of a writ of garnishment based on the application attaches every debt attached by the writ of temporary garnishment, except as otherwise provided in the order granting leave, and
 - (b) a copy of the order granting or refusing the application shall be delivered to the garnishee within seven days of the date when the order is entered.

(3) A debtor is entitled upon application to the court as provided by subsection 38(2) to recover from the creditor compensation for any direct loss or damage actually suffered by the debtor as a result of the wilful or negligent failure of the creditor to comply with paragraph (2)(b).

Change of term of continuing writ

12.(1) The term during which debts are attached by a writ of continuing garnishment may be reduced upon application made to the court by the garnishee or the debtor at any time during the term of the writ.

(2) Notwithstanding subsection 10(2), upon application made to the court by the creditor at any time during the initial term during which debts are attached by a writ of continuing garnishment, the term may be extended for one additional term not exceeding one year from the date on which the application for the extension is granted.

(3) Until a copy of an order extending the term of a writ of continuing garnishment has been served on the garnishee the order does not attach any debt that becomes due from the garnishee to the debtor after the expiration of the initial term during which debts are attached by the writ.

OTHER ATTACHABLE RIGHTS

Funds in court or held by sheriff

13.(1) Where a proceeding has been commenced under which funds have been or may be paid into court, a writ of garnishment may be served upon the clerk of the court, and the service of the writ attaches any funds held by the court that are payable to the debtor at the time of service, and if the writ is a writ of continuing or temporary garnishment, it attaches also any funds that may be held thereafter by the court and become payable to the debtor during the term of the writ.

(2) Where a proceeding has been commenced under which funds have been or may be held by the sheriff, a writ of garnishment may be served on the sheriff, and the service of the writ attaches any funds held by the sheriff that are payable to the debtor at the time of service, and if the writ is a writ of continuing or temporary garnishment, it attaches also any funds that may be held thereafter by the sheriff during the term of the writ.

(3) A writ of garnishment served upon the clerk under subsection (1), or upon the sheriff under subsection (2), does not attach any funds that may be held by the court or the sheriff unless it contains a statement identifying the proceedings in respect of which the funds have been or may be held by the court or the sheriff, by specifying the action number, the style of cause, or both, as the practice of the court may require.

(4) The clerk of the court or the sheriff, as the case may be, shall be named as the garnishee in a writ to which this section applies.

Joint debts

14.(1) Subject to section 36, a debt that is due or that may become due from the garnishee to the debtor and one or more other persons jointly may be attached by a writ of garnishment as if the entire debt was due, or would become due, to the debtor alone.

(2) Notwithstanding subsection (1), a debt owing to a partnership in which the debtor is a partner is not attachable under a writ of garnishment except on a judgment sought or obtained against the partnership.

Insured debts

15.(1) Where a writ of garnishment is served upon a garnishee and the garnishee is insured with respect to a debt that may be attached by the service of the writ on the garnishee, a copy of the writ may be served upon the insurer.

(2) Service of a copy of a writ of immediate garnishment upon an insurer attaches any insurance proceeds that are due at the time of service from the insurer to the garnishee in respect of any debt attached by the service of the writ on the garnishee.

(3) Service of a copy of a writ of continuing or temporary garnishment upon an insurer attaches any insurance proceeds that are due from the insurer to the garnishee at the time of service, or that become due from the insurer to the garnishee during the term of the writ, in respect of any debt attached by the service of the writ on the garnishee.

(4) Where a copy of a writ of garnishment is served upon an insurer under this section, he shall be deemed to be a garnishee for the purposes of this Act, and this Act applies as if the insurer were liable directly to the debtor under the writ.

(5) The payment of insurance proceeds by an insurer to a debtor in contravention of this section is not, as between the creditor and the garnishee, a failure to comply with the writ of garnishment, and it does not render the garnishee liable to the creditor under section 32.

Equitable execution

16. A claim or demand against the garnishee available to the debtor under equitable execution is attachable under a writ of garnishment.

Debts of government

17. Debts that are payable, or that may become payable, out of public funds of the Government of the Yukon may be attached by the service of a writ of garnishment upon the Executive Council Member.

EXCEPTIONS AND EXEMPTIONS

Negotiable instruments, chattel paper, security interests

18.(1) Service of a writ of garnishment does not attach a debt in payment of which, at the time of service, a negotiable instrument has been drawn by the garnishee if, at the time of service,

- (a) the instrument is not in the possession of the garnishee or his agent, and
- (b) the instrument has not been dishonoured.

(2) Service of a writ of garnishment does not attach a debt that is covered by a writing that evidences both the debt and a security interest in, or a lease or hire of, specific goods.

(3) Where a garnishee has pledged collateral as security for a debt, the service of a writ of garnishment on him does not attach the debt until

- (a) the collateral is returned to him, or
- (b) the creditor gives to the garnishee satisfactory security for the return of the collateral.

Contracts outside the Yukon

19. Service of a writ of garnishment does not attach a debt arising out of a contract that contemplates performance of the contract wholly outside the Yukon.

Money on deposit

20. Where a debt that is sought to be attached is money on deposit in a savings institution having more than one branch, the service of a writ of garnishment upon one branch does not attach money that may be on deposit any time at another branch of the savings institution.

Certain other debts

21. A debt that does not arise out of a trust or contract is not attachable under a writ of garnishment unless judgment has been recovered thereon against the garnishee.

Wage exemption

22.(1) Except as otherwise provided in this Act, 70 percent of the wages payable from time to time by an employer to a debtor is not attachable under a writ of garnishment, but in no case shall the monthly amount that is exempt from attachment under this subsection be less than,

- (a) in the case of a debtor supporting at least one dependant, \$1000 and, where he supports at least four dependants, an additional \$150 for the fourth dependant and for each additional dependant after the fourth dependant, and
- (b) in the case of a debtor who supports no dependants, \$600.

(2) The amount of a debtor's exemption under subsection (1) may be reduced by the court upon application made by the creditor where

- (a) the judgment obtained by the creditor against the debtor was for a debt owing for board or lodging, or
- (b) the creditor establishes to the satisfaction of the court that the exemption is excessive in view of the debtor's financial resources and commitments, and the provisions that may be made for the support and maintenance of the debtor and his dependants.

(3) Notwithstanding paragraph (2)(a), the amount of a debtor's exemption under subsection (1) may be confirmed or increased by the court upon application made by the debtor or the Executive Council Member where

- (a) the court is of the opinion that the exemption, or the increase in the exemption, would be equitable in the circumstances, or

- (b) the exemption, or the increase in the exemption, is necessary to prevent the debtor or his dependants from needing assistance or welfare services within the meaning of section 7 of the Social Assistance Act.

(4) Where the wages of an employee are paid more frequently than once per month, his exemption shall be pro-rated accordingly.

Statutory deductions

23. Any part of the wages of a debtor that are required to be withheld or deducted by his employer under an Act of Canada or a province,

- (a) is not attachable, and
- (b) shall be deemed not to be part of the wages of the debtor for the purposes of calculating his exemption under section 22.

COMPLIANCE BY GARNISHEE

Notice of response and demand for response

24.(1) Service of a writ of garnishment, or a demand under subsection (3), upon the garnishee is not effective unless the garnishee is served also with three copies of a notice of response appropriate to the writ of garnishment or demand being served.

- (2) Copies of a notice of response served under subsection (1) shall be completed to show
 - (a) the style of cause and court registry number of the writ of garnishment,
 - (b) the address of the court, and
 - (c) the address of the creditor.
- (3) The creditor may, at any time during the term of a writ of continuing garnishment,
 - (a) serve a demand for a further response on the garnishee, and
 - (b) file a copy of the demand with the clerk of the court within seven days of the date of service.

(4) More than one demand under subsection (1) may be served and filed during the term of a writ.

Response by garnishee

25.(1) A garnishee shall, within 14 days of the date on which he is served with a writ of garnishment, or a demand under subsection 24(3),

- (a) file a copy of the notice of response with the court, and
- (b) deliver a copy of the notice of response to the creditor.

(2) The copies of a notice of response under subsection (1) shall contain a statement by the garnishee that, as of the date of the notice of response,

- (a) he acknowledges his liability to pay into court the amount set out in the writ, or
- (b) he disputes his liability to pay in the court all or part of the amount set out in the writ,

and where the garnishee pays any money into court in compliance with the writ, he shall specify the amount of the payment in his notice of response.

- (3) A garnishee may deliver a copy of a notice of response to the creditor personally, or
- (a) by returning it at the time of service to the person who serves the garnishee with the writ, or
 - (b) by mailing it to the creditor by registered or certified mail addressed to the address set out in the notice of response as required by paragraph 24(2)(c).

(4) A notice of response may be filed with the court by mailing it by registered or certified mail to the address of the court set out in the notice of response as required by paragraph 24(2)(b).

Payment into court

26.(1) Except as provided by subsection 28(3), where a garnishee does not dispute his liability under the writ in whole or in part, he shall pay into court the amount attached by the writ when he files his notice of response.

(2) No debt that is attached by a writ of temporary garnishment is required to be paid into court until it is attached by a writ of garnishment issued before judgment as provided by section 11.

(3) Where a garnishee disputes his liability, he shall pay any amount not in dispute into court when he files his notice of response, and he may refuse to pay the amount in dispute into court, or he may pay it into court.

Other rules of law

27.(1) The service of a writ of garnishment does not affect the right of a garnishee or an insurer to interplead or to pay money into court under any applicable rule of law.

(2) Where a garnishee who has been served with a writ of garnishment, or an insurer who has been served with a copy of a writ of garnishment, pays money sought to be attached by the writ into court otherwise than in compliance with the writ, he shall deliver forthwith to the creditor a notice that he has done so.

Set-off

28.(1) Where a writ of garnishment is served upon the garnishee, the garnishee is not entitled to set off against the amount due from the garnishee to the debtor any claim against the debtor by the garnishee arising after the service of the writ unless the garnishee establishes that

- (a) the claim arose pursuant to a binding commitment entered into before the service of the writ, or
- (b) the garnishee has behaved reasonably and with good faith in the circumstances, and it would be inequitable to deny his claim to a right of set-off.

(2) In this section, a right of set-off includes a right that could be raised by way of counterclaim or otherwise by a garnishee to resist, or that could be raised in reduction of, a claim brought by the debtor on a debt attached, or sought to be attached, by a writ of garnishment.

(3) Notwithstanding subsections (1) and (2), where a garnishee pays an amount into court under a writ of garnishment, he is entitled to deduct from the amount attached his costs as between lawyer and client relating to the payment of the money into court, and the deductions may be for the minimum amounts set out in section 44.

Dispute by garnishee

29.(1) A garnishee may dispute his liability under a writ of garnishment

- (a) by filing a notice of response under subsection 25(1) indicating that he disputes his liability in whole or in part, or
- (b) by applying to the court for an order determining his liability under the writ.

(2) Where a garnishee files a notice of response indicating that he disputes his liability,

- (a) the creditor may apply to the court for an order determining the liability of the garnishee under the writ, and
- (b) if the creditor does not apply to the court for an order under paragraph (a) within two months of the date when the notice of response was filed, the garnishee may apply for an order to set aside the writ of garnishment.

(3) Where the garnishee does not pay into court the full amount set out in the writ and he does not file and serve a notice of response within the time limited by subsection 25(1), the creditor may apply to the court for an order determining the garnishee's liability under the writ.

(4) Upon an application by the garnishee under paragraph (1)(b) or by the creditor under paragraph (2)(a) or subsection (3), the court may

- (a) fix a time for summarily determining the liability of the garnishee, or
- (b) order the trial of an issue to determine the liability of the garnishee.

(5) The court may direct who shall be the parties to the determination of the liability of the garnishee under this section, and where the garnishee does not appear the court may, if it thinks fit, determine his liability *ex parte* either summarily or by the trial of an issue.

Order for payment

30.(1) The court may order the garnishee to pay an amount into court,

- (a) where the garnishee does not dispute his liability and does not appear to contest an application made by the creditor under section 29, without determining the liability of the garnishee under the writ, or
- (b) where it is determined by the court upon proceedings under section 29 that the garnishee is liable to pay an amount of money into court under the writ.

(2) An order under subsection (1) may be enforced by the creditor as a judgment against the garnishee.

(3) The court may refuse to make an order under subsection (1) where it appears to the court that the garnishee has made reasonable efforts to comply with the writ of garnishment and, in all the circumstances, it would be inequitable to make the order.

(4) Money paid into court pursuant to an order made under subsection (1) shall be held in court as if paid in by the garnishee in compliance with the original writ of garnishment.

Liability of garnishee and debtor

31.(1) The liabilities of a garnishee to a debtor are discharged by

- (a) the payment of an amount into court under a writ of garnishment,
- (b) the satisfaction of an order of the court for the payment of money into court under a writ of garnishment, and
- (c) the deduction of an amount for costs under subsection 28(3),

to the extent of the payment or satisfaction made, even though any proceedings in relation to the garnishment may be set aside, or the judgment reversed.

(2) The liabilities of an insurer to a garnishee are discharged by

- (a) the payment of an amount into court under a copy of a writ of garnishment served upon him under section 15,
- (b) the satisfaction of an order of the court for the payment of money into court under the writ of garnishment, and
- (c) the deduction of an amount for costs under subsection 28(3),

to the extent of the payment or satisfaction made, even though any proceedings in relation to the garnishment may be set aside, or the judgment reversed.

Effect of payments as against creditor

32.(1) Except as provided in subsection 15(5), no payment of a debt attached under a writ of garnishment, other than a payment authorized by this Act, is effective as against the creditor.

(2) No payment of a debt attached by a writ of temporary garnishment, other than a payment authorized by this Act, is effective as against the creditor if the debt is attached before or after the payment by a writ of garnishment issued before judgment as provided by subsection 11(2).

MONEY IN COURT**Notice to debtor**

33.(1) Where any money is paid into court under a writ of garnishment, the creditor shall deliver to the debtor within ten days of the date on which the creditor learns of the payment into court

- (a) a notice of the payment or,
- (b) a copy of the garnishee's notice of response, or the order of the court pursuant to which the payment was made, as the case may be.

(2) Where a writ of continuing garnishment is issued, the creditor shall deliver a copy of the writ to the debtor within 14 days of the date on which it is served upon the garnishee.

Payment out of court

34.(1) Money paid into court under a writ of garnishment may be paid out of court to the creditor without an order of the court where

- (a) judgment has been entered in the action in respect of which the writ of garnishment was issued, and
- (b) no application is pending to set aside or otherwise to dispute the garnishment, and

- (c) an affidavit is filed by the creditor verifying that
 - (i) the documents required to be delivered to the debtor under section 33 have been delivered, and
 - (ii) the creditor knows of no person other than the creditor, the debtor and the garnishee who is interested in, or entitled to, the money paid into court, and
- (d) the clerk of the court has received no notice that any person other than the creditor, debtor and the garnishee may be interested in or entitled to the money paid into court, and
- (e) 30 days have elapsed since the later of
 - (i) the payment of the money into court,
 - (ii) the entry of judgment as required by paragraph (a), and
 - (iii) the filing of an affidavit as required by paragraph (c).

(2) Upon application made at any time by the creditor or the debtor, the court may order that money paid into court under a writ of garnishment be paid out to the creditor or the debtor, notwithstanding any of the provisions of subsection (1).

(3) Notwithstanding subsections (1) and (2), money paid into court under a writ of garnishment may be paid out to the creditor at any time with the consent of the debtor.

Action not successful or writ set aside

35.(1) Where an amount has been paid into court under a writ of garnishment issued before judgment and the creditor does not recover judgment against the debtor for the full amount paid into court, the full amount, or the balance to which the creditor is not entitled, as the case may be, shall be paid out of court to the debtor upon request.

(2) Where an amount has been paid into court under a writ of garnishment that is set aside, the amount shall be paid out of court to the debtor upon request.

Interests of others

36.(1) Notwithstanding section 34 or 35, money shall not be paid out of court otherwise than under this section if the clerk of the court has received notice that another person is interested in, or entitled to, the money.

(2) A creditor, a debtor, or any person claiming a beneficial interest in money that has been or may be paid into court under a writ of garnishment that has been issued, may apply to the court for an order determining the extent of the debtor's beneficial interest, if any, in the money and limiting the effect of the attachment to the debtor's beneficial interest in the debt.

(3) Where an order is made under subsection (2) in respect of money that has been paid into court, the court may give directions for the restoration, to persons other than the creditor and debtor, of beneficial interests and for the payment of the debtor's beneficial interest out of court to the creditor or the debtor.

(4) Where it is suggested in a notice of response filed by a garnishee, or where it otherwise appears to the court, that a person other than the creditor, debtor or garnishee may be interested beneficially in money that has been paid into court under a writ of garnishment, the clerk of the court shall notify that person of his right to make an application under subsection (2).

(5) An order made under subsection (2) may bar the claim of a person to whom notice has been given under subsection (4) if he does not appear in the proceedings or make an application under subsection (2) before the order is made under subsection (2).

(6) For the purpose of determining a person's beneficial interest or entitlement where there are excess joint funds,

- (a) the excess joint funds are allocated first to beneficial interest or entitlement of the joint obligee or obligees, and the debtor's beneficial interest in, or entitlement to, the excess joint funds is correspondingly reduced, and
- (b) the money paid into court is allocated first to the beneficial interest or entitlement of the debtor and the beneficial interest or entitlement of any joint obligee in the money is correspondingly reduced.

(7) Subsection (6) applies only

- (a) if the garnishee is a savings institution, or
- (b) if no joint obligee is prejudiced thereby.

(8) In this section "excess joint funds" means an amount equal to the difference between the total amount payable under a joint monetary obligation and the amount of that obligation attached by garnishment process.

Payment to garnishee

37. The court may, on the application of a garnishee, order that money paid into court under a mistake of fact or law relating to his liability to do so be paid out to the garnishee.

Compensation for wrongful or excessive garnishment

38.(1) Where an amount of money is paid into court under a writ of garnishment and all or part of that money is paid out of court to the debtor under section 35, the debtor is entitled to be compensated by the creditor for any direct loss or damage actually caused by the wrongful or excessive garnishment, whether or not any matter in relation to the garnishment proceedings was done pursuant to an order of the court.

(2) An application may be made by the debtor to the court for an order assessing and directing the payment of compensation under subsection (1) or subsection 11(3) in the action in respect of which the writ of garnishment was issued or otherwise, and the court may dispose of the matter summarily or direct the trial of an issue.

Order for payment by instalments

39.(1) Where money has been paid into court in compliance with a writ of garnishment and the creditor has entered a judgment against the debtor, the debtor may apply to the court for an order that

- (a) the money attached be paid out to the debtor, and
- (b) the judgment be payable by instalments.

(2) Where, under subsection (1), the court considers it just in all the circumstances, it may make an order releasing the money in whole or in part and fixing the amounts and terms of the payments.

(3) Where an order respecting instalments has been made under subsection (2) and the debtor is not in default under the order,

- (a) no further writ of garnishment shall be issued in respect of the judgment debt, and
- (b) if the money was paid into court in compliance with a writ of continuing garnishment, no further money shall be paid into court pursuant to the writ.

(4) Forthwith after the making of an order under subsection (2), the clerk of the court shall deliver a copy of the order to the creditor and the garnishee.

(5) Where an order is made under this section for the payment of a judgment by instalments, the order shall be terminated

- (a) by the default of the debtor in paying any of the instalments so ordered for more than five days, or
- (b) by the issuance of a writ of garnishment against the debtor in a proceeding other than that in respect of which the installment payments were ordered.

Substitution of security

40.(1) Where an amount is paid into court under a writ of garnishment issued before judgment and no application to set aside the writ or to pay the money out of court is outstanding,

- (a) the creditor or debtor may apply to the court for an order empowering the applicant to substitute for the amount paid into court an interest-bearing security satisfactory to the court,
- (b) the creditor or debtor may apply to the court for an order that the money paid into court be used to purchase an interest-bearing security, or
- (c) the debtor may apply to the court for an order empowering him to have the amount paid out to him upon the provision to the court of such security over the debtor's property as, in the opinion of the court, is adequate to secure the amount sought to be paid out to the debtor.

(2) Security provided under subsection (1) takes the place of and shall be dealt with as if it were the amount paid into court under the writ of garnishment, and for that purpose the security may be managed, assigned, liquidated, discharged or otherwise dealt with as the court may direct from time to time.

(3) The provision of security under this section, or the failure of a creditor or debtor to make an application under this section, may be taken into account for the purpose of an assessment under subsection 38(2).

COSTS

Discretion of court

41. Except as otherwise provided in this Act, where any application is made or any issue is tried in relation to a writ of garnishment, the costs of the proceedings are in the discretion of the court.

Liability in costs for non-compliance with the Act

42. Where a person fails to comply with an obligation imposed upon him by this Act as to the delivery of a document or as to the information to be contained in a document he is obliged to deliver, the court may, upon the application of any person affected by the failure, order him to reimburse the person affected, on a lawyer and client basis, for the costs incurred by the person affected as a result of the failure including the costs of the application.

Liability of garnishee

43.(1) Subject to section 42 and subsection (2), a garnishee is not liable for the costs of any proceedings under this Act.

(2) A garnishee may be held liable for the costs of proceedings under this Act to the extent that the costs are incurred as a result of the setting-up of a dispute by the garnishee based upon grounds that, in the opinion of the court, he knew or ought to have known to be untenable.

(3) Subject to section 42, a garnishee is entitled to be reimbursed by the creditor on a lawyer and client basis for any costs incurred by the garnishee in a dispute as to the garnishee's liability under a writ of garnishment to the extent that the garnishee is successful in the dispute.

Garnishee's costs

44.(1) A garnishee who responds to a writ of garnishment served upon him is entitled to be compensated for the costs incurred by him in making his first response to the writ in an amount equal to \$25, or such greater amount as may be prescribed.

(2) Where a garnishee is required under a writ of continuing garnishment to make more than one response, or more than one payment into court, he is entitled to be compensated for the costs incurred by him in making each such additional response or payment in an amount equal to \$5, or such greater amount as may be prescribed.

Creditor's costs

45.(1) Subject to section 42, where a writ of garnishment attaches a debt and the creditor obtains a judgment against the debtor, the creditor is entitled to be compensated by the debtor for all of the costs incurred by the creditor in relation to the writ of garnishment, other than the costs of any application under this Act, in an amount equal to \$25, or such greater sum as may be prescribed.

(2) The creditor is liable for the payment of the garnishee's costs under section 44, but if the writ of garnishment attaches a debt and the creditor obtains judgment against the debtor, an amount equal to those costs may be added to the judgment debt.

Liability of debtor

46. A debtor is not liable for any costs or disbursements incurred by the creditor or the garnishee in relation to

- (a) a writ of garnishment that does not attach a debt, or
- (b) an application under this Act, to the extent that the applicant, if he is the creditor or the garnishee, is unsuccessful.

Setting aside writ

47. Where a writ of garnishment is ordered to be set aside under section 3 or 5, the court may award to the applicant costs in an amount not exceeding three times the costs to which he would have been entitled without this subsection.

Restoration of interest

48. A person to whom a beneficial interest is restored under subsection 36(3) is entitled to be reimbursed by the creditor, on a lawyer and client basis, for the costs incurred by him in securing the determination of the debtor's beneficial interest and the restoration of his own beneficial interest.

Excessive claim

49. Where an amount ordered to be paid into court by a garnishee under subsection 30(1) is less than the amount sought to be attached as set out in the writ of garnishment, or where no amount is ordered to be paid, the court may award to the garnishee his costs in an amount not exceeding three times the costs to which he would have been entitled without this subsection.

Failure to give notice

50. Where a creditor fails to comply with subsection 33(1) or (2), he is not entitled to receive from the debtor any of the costs incurred by the creditor in connection with the garnishment proceedings, unless the creditor upon application to the court satisfies the court that he made a reasonable attempt to ensure that subsections 33(1) and (2) were complied with.

Costs of small claims

51.(1) Subject to subsection (2) and notwithstanding any other provision of this Act, no costs other than those provided for in section 44 and 45 are recoverable in respect of proceedings that are within the jurisdiction of a small claims official.

(2) Sections 42, 47 and 49 apply in respect of proceedings within the jurisdiction of a small claims official, but the costs payable under those sections shall be one-third of the amount that would be payable if the proceedings were not within the jurisdiction of a small claims official.

GENERAL**Application to court and procedure**

52.(1) Where any difference of opinion arises as to the rights or obligations of any person under this Act and no other provision is made for the determination of the issue, any person interested in the matter may apply to the court, and the court may make such order, not inconsistent with this Act, as the court may deem appropriate.

(2) The procedure upon any application under this Act shall be regulated by the Rules of Court, except insofar as provision is made for the procedure in this Act.

Discretion of court

53.(1) Subject only to subsection 12(2), the court has a discretion to order that, to achieve a result that is just in all the circumstances,

- (a) a writ of garnishment be varied

- (b) a writ of garnishment be set aside, or
- (c) terms and conditions be imposed with respect to a writ of garnishment.

(2) The generality of subsection (1) is not limited by any other provision of this Act that authorizes the court to order that a writ of garnishment be varied or set aside.

Service and delivery of documents

54.(1) A writ of garnishment, an order under subsection 12(3) or a demand under subsection 24(3), may be served in any way that a writ of summons may be served.

(2) Any document required to be delivered under this Act may be delivered by serving it personally upon the person to whom it is to be delivered, or by mailing it to him by registered or certified mail addressed to his last address known to the person delivering the document.

(3) A document mailed as provided in subsection (2) shall be deemed to have been delivered ten days after the day on which it was mailed.

(4) A document may be served on, or delivered to, a branch of a savings institution by serving it on, or delivering it to, the manager or other person in charge of the branch.

Proceedings in the Small Claims Court

55. Subject to the provisions of the Small Claims Court Act, the provisions of this Act apply to proceedings in the Small Claims Court with such changes in the title of the court, the style of the officers, the form of process and other matters as are necessary to make this Act applicable to the proceedings.

Money due to Her Majesty

56. Where any money is due to Her Majesty by order of a justice of the peace, a judge of the Territorial Court, or a judge of the Supreme Court under any Act of Canada or under this Act, then for the purposes of this Act

- (a) an order of a justice of the peace or a judge of the Territorial Court shall be deemed to be a judgment of the Territorial Court, and an order of a judge of the Supreme Court shall be deemed to be a judgment of the Supreme Court,
- (b) Her Majesty shall be deemed to be a judgment creditor, and
- (c) the person liable to pay the money shall be deemed to be a judgment debtor.

Protection of employees

57.(1) No employer shall dismiss or demote a debtor, or terminate a contract of employment of a debtor, by reason of the service of a writ of garnishment on the employer in respect of the debtor.

(2) An employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$1000, or to imprisonment for a period of 6 months, or both.

(3) On application made within 30 days of the contravention by or on behalf of the debtor, an employer who contravenes subsection (1) may be ordered by the court,

- (a) to reinstate the debtor in his employment on the terms and conditions that were in effect before the employer contravened subsection (1), and

- (b) to pay to the debtor the wages and employment benefits of the debtor from the date of the contravention to the date on which he is reinstated in his employment.

(4) Where an employer is convicted of an offence under subsection (2) and the information is sworn within 30 days of the day on which the offence was committed, the employer shall forthwith

- (a) reinstate the debtor in his employment on the terms and conditions that were in effect before the offence was committed, and
- (b) pay to the debtor the wages, and give to him the employment benefits, that would have been paid and given to the debtor in the ordinary course of his employment, from the date of the offence to the date of his reinstatement, as if the offence had not been committed.

Regulations

58. The Commissioner in Executive Council may make regulations

- (a) prescribing the forms necessary for the purposes of this Act;
 - (b) prescribing the costs payable to garnishees and creditors under this Act;
 - (c) requiring the payment of fees to the clerk of the court for the issuance of writs of garnishment, and prescribing the amounts of the fees;
 - (d) generally, for carrying the purposes and provisions of this Act into effect.
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CHAPTER 79

GASOLINE HANDLING ACT

Interpretation

1. In this Act,

- “associated product” means any product of petroleum other than gasoline, wax, and asphalt;
- “bulk plant” means one or more storage tanks, including the appurtenances thereof, where gasoline or an associated product is received by pipeline, tank vessel, tank car, or tank vehicle and is stored in bulk for subsequent transmission by pipeline or transportation or distribution by tank vessel, tank car, or tank vehicle;
- “consumer outlet” means any premises at which gasoline or an associated product of the operator of the outlet is put into the fuel tanks of motor vehicles used by the operator of the outlet or into portable containers used by the operator of the outlet;
- “equipment” means equipment used or to be used in the handling of gasoline or an associated product;
- “fire resistance” means the property of a material or assembly to withstand fire or give protection from it, as applied to elements of buildings, being characterized by the ability to confine a fire or to continue to perform a given structural function or both;
- “flash point” means the lowest temperature, determined by using a Tagliabue closed-cup tester, at which the vapour of a product of petroleum forms a flammable mixture in air;
- “gasoline” means a product of petroleum that has a flash point below 22.77 degrees Celsius and is designed for use in an internal combustion engine;
- “handling” means the storing, transmitting, transporting or distribution of gasoline or an associated product, and includes putting gasoline or an associated product into the fuel tank of a motor vehicle, motor boat or other water craft, or aircraft, or into a container;
- “inspector” means an inspector authorized to enforce this Act;
- “marina” means any premises at which gasoline or an associated product is sold and is put into the fuel tanks of motor boats and other water craft, or aircraft, or into portable containers;
- “portable container” means a container that has a capacity of ten gallons or less that is designed, manufactured, and used, or to be used, for the storage or conveyance of gasoline or an associated product;
- “repair garage” means a building, or part thereof, where facilities are provided for the repair or servicing of motor vehicles;
- “safety certificate” means the certificate issued by the Executive Council Member after inspection of the place or equipment;
- “service station” means a building or place where petroleum products, anti-freeze, and other sundry products for maintaining automobiles, are stored or kept for sale or where motor vehicles may be oiled, greased, or washed;
- “storage garage” means a building, or part thereof, intended for the storage or parking of motor vehicles and which contains no provision for the repair or servicing of such vehicles;
- “transport” means to convey in or on a vehicle, gasoline or an associated product, exclusive of the fuel carried for use in the vehicle.

Gasoline handling equipment must be approved

2. No person shall

- (a) offer for sale or sell,
- (b) install, or
- (c) use in a service station, consumer outlet, marina, or bulk plant,

any equipment that is not approved pursuant to the regulations.

Containers must be approved

3. In a service station, consumer outlet, marina, or bulk plant, no person shall put gasoline or an associated product having a flash point below 22.77 degrees Celsius into any container of a type that is not approved pursuant to the regulations.

Approval of specifications for equipment

4. The Commissioner in Executive Council may establish or approve specifications or test reports for equipment and designate organizations to test equipment in accordance with such requirements.

Installation, testing and operation of equipment

5. All equipment shall be installed, tested, operated or used in accordance with the regulations.

Safety certificates

6.(1) No person shall operate a service station, marina, bulk plant or transport gasoline or an associated product, unless he has been issued a safety certificate by the inspector.

(2) The inspector may refuse to issue a safety certificate under this Act to any person, and may cancel or suspend any safety certificate issued under this Act where the person to whom a safety certificate has been issued, has contravened or failed to comply with any provision of this Act or the regulations.

Duty of employer

7. Every person who employs another person in the handling of gasoline or an associated product or in the installing of equipment shall take every precaution that is reasonable in the circumstances to ensure that his employees comply with this Act and the regulations.

Powers of inspector

8.(1) Every inspector may, for the purposes of this Act and the regulations,

- (a) enter any premises where he has reason to believe there has been, are, or may be, hazardous conditions relative to gasoline or an associated product,
- (b) make such inspections, tests, and inquiries as are necessary to ascertain whether this Act and regulations are being complied with,
- (c) take samples of any liquid that he has reason to believe is, or may contain, gasoline or an associated product, and
- (d) require the production of any safety certificate or other prescribed document, and examine and copy it.

(2) An inspector may give instructions orally or in writing pertaining to any matter in order to bring about compliance with this Act and the regulations and may require that his instructions be carried out within such time as he specifies.

(3) Where an inspector has given oral instructions, he shall provide a written report forthwith.

(4) The occupant of any premises and his servants, agents, and employees shall give reasonable assistance to an inspector in the exercise of his powers under this Act.

(5) No inspector is personally liable for anything done by him in the exercise of his powers under this Act.

Regulations

9. The Commissioner in Executive Council may make regulations

- (a) appointing such persons or class of persons as may be necessary to assist in the enforcement of this Act and the regulations;
- (b) exempting any person or class of persons from this Act or the regulations or any of the provisions thereof for a prescribed period of time;
- (c) exempting any equipment or any class of equipment from this Act or the regulations or any of the provisions thereof for a prescribed period of time;
- (d) respecting the term, issue, renewal and posting of safety certificates and prescribing the fees thereof;
- (e) designating organizations to test equipment to specifications established or approved by the Commissioner in Executive Council and, where the equipment conforms to the specifications, to place their label thereon;
- (f) prescribing procedures for installing, testing, operating and using equipment;
- (g) respecting the approval of equipment or any type thereof;
- (h) prescribing grades of gasoline and associated products, and providing for the identification thereof;
- (i) prescribing forms and providing for their use;
- (j) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Offences and penalties

10. Every person who

- (a) contravenes or fails to comply with any provision of this Act or the regulations,
- (b) knowingly makes a false statement in any document prescribed by the regulations, or
- (c) fails to carry out the instructions of an inspector,

is guilty of an offence and on summary conviction is liable to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

CHAPTER 80

GOVERNMENT EMPLOYEE HOUSING PLAN ACT

Interpretation

1. In this Act,

“employee” means a person employed in the public service of the Yukon appointed pursuant to the Public Service Commission Act or the School Act, but does not include

- (a) a casual employee,
- (b) a person appointed to a part-time position,
- (c) a temporary employee,
- (d) a person seconded to the Government of the Yukon,
- (e) a person employed under contract, or
- (f) a person appointed for a term of less than two years;

“corporation” means the Yukon Housing Corporation;

“plan” means the Government Employee Housing Plan established by this Act.

Eligibility

2.(1) Every employee who has at least two years continuous service and owns a housing unit that qualifies under section 6 becomes eligible for the benefits of the plan when

- (a) he resigns from the public service,
- (b) he proceeds to pension,
- (c) he is laid off or discharged by his employer,
- (d) he is retired for ill health by his employer, or
- (e) he is transferred by the Government of the Yukon away from the community in which his housing unit is located.

(2) Where an eligible employee dies, his widow or widower or such other person as may be entitled to the housing unit, on the death of the eligible employee is eligible for the benefits of the plan.

Application for benefits

3. No eligible employee is entitled to the benefit of the plan unless

- (a) he makes application to the corporation within 60 days of becoming eligible for the benefit of the plan, and
- (b) the housing unit has been under offer for sale to the public at a price not greater than the amount that is five percent greater than the mean of the two appraisals under section 5 for not less than 60 days during the period commencing 61 days prior to the day on which he becomes an eligible employee and ending 61 days after he makes his application for the benefit of the plan.

Purchase

4.(1) The corporation may purchase, pursuant to the plan, a qualified housing unit from any employee who is entitled under the plan.

(2) Where an employee is entitled to and applies for the benefit of the plan in respect of a qualified housing unit that is deemed to be owned by the employee under subsection 6(3), the corporation may, pursuant to the plan, purchase the housing unit from the employee and his spouse.

Price

5.(1) The price to be paid by the corporation under section 4 for a housing unit shall not exceed the lesser of

- (a) \$68,400, and
- (b) 93 percent of the mean of two appraisals, one of which shall be made by an appraiser appointed by the corporation, and the other by an appraiser appointed by the employee.

(2) A person shall not be appointed as an appraiser under this section unless he is able to demonstrate that he is experienced in the making of appraisals of real property for others, for other purposes, for gain or reward.

(3) A person shall be deemed to have satisfied the requirements of subsection (2) if

- (a) he is the holder of a certificate from the Appraisal Institute of Canada qualifying him to appraise the housing unit, or
- (b) he has been paid by a bank to which the Bank Act (Canada) applies for making appraisals of property in the Yukon similar to the housing unit within a period of one year immediately before the application is made under paragraph 3(a).

(4) An appraisal under this section shall be based on the cost approach or on the market approach as recognized by the Appraisal Institute of Canada.

(5) Where the appraisals made under subsection (1) differ by an amount greater than 15 percent of the lesser of the appraisals, the corporation and the employee shall appoint new appraisers for the purpose of obtaining new appraisals for determining the price to be paid under paragraph (1)(b).

(6) Where the new appraisals under subsection (5) differ by an amount greater than 15 percent of the lesser of the two new appraisals, the corporation and the employee together shall appoint one appraiser for the purpose of obtaining a final appraisal for determining the price to be paid under paragraph (1)(b).

Qualification of unit

6.(1) A housing unit qualifies under the plan where

- (a) it is owned by the employee and occupied by him as his principal place of residence on the date on which he becomes eligible for the benefits of the plan under subsection 2(1) or, in a case where subsection 2(2) applies, on the date on which he dies, and

(b) it qualifies for a mortgage loan under the National Housing Act (Canada).

(2) Notwithstanding subsection (1), where an employee resigns or proceeds to pension, a housing unit does not qualify under the plan if it has not been owned by the employee and occupied by him as his principal residence for the period of two years immediately preceding the day on which he resigns or proceeds to pension, as the case may be.

(3) For the purposes of this section, a housing unit shall be deemed to be owned by an employee where it is wholly owned by the employee and his spouse as tenants in common or joint tenants.

Inspection

7.(1) The corporation shall inspect every housing unit within 30 days of the day on which an application is made under paragraph 3(a) in respect of the housing unit.

(2) The corporation shall advise the employee whether or not the housing unit qualifies pursuant to the plan.

Fees

8. It shall be a condition of a purchase pursuant to this Act that the employee pay all costs and fees incurred in the transaction.

Transfer required

9. No amount shall be paid by the corporation for the purchase of a housing unit under this Act until title to the property has been transferred to the corporation.

Disposal of housing units

10. The corporation shall dispose of or utilize housing units acquired pursuant to this Act

- (a) by resale to employees at the market price,
- (b) by renting the housing units to employees at the market rent,
- (c) by resale to the public at the market price, or
- (d) by renting the units to the public at the market rent.

Revolving fund

11. A revolving fund of \$1,500,000 is hereby established for the purpose of acquiring and maintaining housing units in accordance with this Act.

Administration of the plan

12.(1) The corporation may undertake and administer the plan pursuant to this Act and the Housing Corporation Act.

(2) The costs of the corporation for administration of the plan under subsection (1), including operation and maintenance costs for housing units under the plan, shall be charged to the revolving fund established under section 11.

Annual report

13.(1) The corporation shall annually after the end of the fiscal year prepare and submit a report to the Executive Council Member respecting the administration of this Act not later than June 1 in each year.

(2) The annual report made by the corporation under this section shall be laid before the Legislative Assembly by the Executive Council Member within 15 days after the opening of the next regular session thereof or within five days if the Legislative Assembly is in session.

Regulations

14.(1) The Commissioner in Executive Council may make such regulations as may be necessary for the carrying out of this Act.

(2) Notwithstanding the generality of subsection (1), the Commissioner in Executive Council may by regulation

- (a) define the expression ‘‘community’’;
 - (b) decide who shall be entitled to the benefits of the plan on the death of an employee.
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CHAPTER 81

HEALTH CARE INSURANCE PLAN ACT

Interpretation

1. In this Act,

- “director” means the director of the Yukon Health Care Insurance Plan, appointed pursuant to section 4;
- “certificate of registration” means
- (a) a certificate of registration issued under this Act, or
 - (b) any other document prescribed by the regulations as being a certificate of registration for the purposes of this Act;
- “dentist” means a person lawfully entitled to practice dentistry in the place in which the practice is carried on by that person;
- “dependant” means a dependant of an insured person as defined in the regulations;
- “federal Act” means the Canada Health Act (Canada);
- “health care practitioner” means a person lawfully entitled to provide health services in the Yukon;
- “health services” means any service that is required for the preservation or restoration of health;
- “inspector” means a person appointed pursuant to subsection 4(2), or paragraph 5(k);
- “insured health services” means such physician services, surgical-dental services and other health services, including the supply of drugs, medical and dental supplies, prostheses, orthotics, appliances and similar devices, as may be prescribed, that are provided to insured persons, but does not include any service that a person is entitled to or eligible for under any other Act, under any law of a province that relates to workers’ compensation or under any Act of the Parliament of Canada other than the Canada Health Act (Canada);
- “insured person” means a person eligible for and entitled to insured health services;
- “medical practitioner” means a person lawfully entitled to practice medicine in the place in which such practice is carried on by him, and includes any person who performs insured health services;
- “physician services” means any medically required services rendered by a medical practitioner;
- “plan” means the Yukon Health Care Insurance Plan;
- “resident” means a person lawfully entitled to be or to remain in Canada, who makes his home and is ordinarily present in the Yukon, but does not include a tourist, transient or visitor to the Yukon;
- “surgical-dental services” means any medically or dentally required surgical-dental service that is performed by a dentist in a hospital, where a hospital is required for the proper performance of the procedure;
- “Yukon Health Care Insurance Plan” means the plan established by this Act and the regulations for providing insured health services to insured persons.

Insured health services

2. Subject to the provisions of this Act and the regulations, every resident is eligible for and entitled to insured health services.

Payments out of Y.C.R.F.

3.(1) Subject to the provisions of this Act and the regulations, amounts may be advanced out of the Yukon Consolidated Revenue Fund and paid in respect of insured health services, and for that purpose the Executive Council Member may

- (a) arrange for payment to insured persons in respect of insured health services received by them,
- (b) arrange for payment of remuneration to medical practitioners, dentists, health care practitioners and other persons, and to government agencies and unincorporated organizations, in respect of insured health services rendered or delivered to insured persons,
- (c) make agreements with medical practitioners, dentists, health care practitioners and other persons, and with government agencies and unincorporated organizations, for the performance or supply of insured health services to insured persons,
- (d) make agreements with the Government of Canada under which Canada will contribute to payment of amounts paid pursuant to this Act, and
- (e) make agreements with the Government of Canada or the government of a province in respect of the administration of the Yukon Health Care Insurance Plan.

(2) The Executive Council Member is empowered to do every Act and exercise every power for the purpose of implementing every obligation assumed by the Government of the Yukon under any agreement made pursuant to subsection (1).

Officers and employees of the plan

4.(1) The Executive Council Member shall designate a member of the public service to be the director of the Yukon Health Care Insurance Plan.

(2) The officers and employees necessary for the administration of the plan shall be appointed under the Public Service Commission Act.

Powers of director

5. Subject to this Act and the regulations, the director may

- (a) administer the plan as the chief executive officer of the plan,
- (b) determine eligibility for entitlement to insured health services,
- (c) register persons in the plan,
- (d) collect premiums,
- (e) make payments under the plan, including the determination of eligibility and amounts,
- (f) determine the amounts payable for insured health services outside the Yukon,
- (g) establish advisory committees and appoint individuals to advise or assist in the operation of the plan,
- (h) conduct actions and negotiate settlements in the exercise of the Government of the Yukon's right of subrogation under this Act to the rights of insured persons,
- (i) conduct surveys and research programs and obtain statistics for such purposes,

- (j) establish what information is required to be provided to him under this Act and the form such information must take,
- (k) appoint inspectors and auditors to examine and obtain information from medical records, reports and accounts, and
- (l) perform such other functions and discharge such other duties as are assigned to him by the Executive Council Member under this Act.

Annual report

6. The director shall make an annual report to the Executive Council Member respecting the administration of the plan.

Liability of director

7. Neither the Government of the Yukon nor the director nor any officer or employee of the Government of the Yukon has any liability for the acts or omissions of any medical practitioner, dentist, other health care practitioner or any other person in connection with the performance or supply of insured health services.

Regulations

8.(1) The Commissioner in Executive Council may make regulations

- (a) establishing and operating a Health Care Insurance Plan for furnishing insured health services;
- (b) respecting any matter that is within the function and power of the director to do;
- (c) to administer and define the persons lawfully entitled to render insured health services;
- (d) specifying what services are insured health services for the purpose of the plan, prescribing which persons may render such services, under what conditions such services are insured health services, and prescribing the amount of payment for such services;
- (e) prescribing the forms and records necessary to carry out the purposes and provisions of this Act;
- (f) specifying for the purpose of "insured health services", the statutes or laws referred to therein;
- (g) prescribing the prerequisites and conditions under which a person is eligible for or entitled to insured health services or payment in respect of insured health services, including requirements in respect of registration;
- (h) prescribing services that shall be deemed not to be insured health services for the purposes of this Act and the conditions under which costs of any class of insured health services are payable and limiting the payments commensurate with the circumstances of the performed services;
- (i) providing for the making of claims for payment of the cost of insured health services and prescribing the information which shall be furnished in respect of claims.

(2) For the purpose of carrying into effect the provisions of this Act, the Commissioner in Executive Council may make such regulations not inconsistent with the spirit of this Act as are considered necessary or advisable, and for that purpose, may provide for any proceeding, matter, or thing for which express provision has not been made in this Act or for which only partial provision has been made.

Government subrogated

9. Upon the provision of insured health services to an insured person in respect of an injury resulting from a wrongful act or omission of another person, the Government of the Yukon shall be subrogated to all rights of the insured person for the purpose of recovering the cost of such insured health services, and may bring an action either in its own name or in the name of the insured person for the recovery of the amount thereof and effect a settlement of such claim.

Suit by insured person

10.(1) Notwithstanding section 9, an insured person who, as a result of a wrongful act or omission of another person, suffers an injury for which he has received insured health services, may recover the amount of the cost of providing these services to him from the person guilty of the wrongful act or omission in the same manner as though he himself had been required to pay for those services.

(2) Every insured person described in subsection (1) who commences an action for the recovery of damages for personal injuries shall include therein a claim on behalf of the Government of the Yukon for the cost of any insured health services provided to the insured person.

(3) Where an insured person receives an amount in respect of insured health services received by him either in an action to receive damages for personal injuries or by other means, he shall forthwith pay the amount so recovered to the Executive Council Member.

Joining of action commenced by government

11. Where the Government of the Yukon has commenced action in the name of an insured person for the recovery of insured health services provided to him, the insured person may

- (a) at any time prior to the trial of the action, and
- (b) upon such conditions as to costs or otherwise as to the court seems just,

join in that action any other claims he may have arising out of the same occurrence.

Defences

12.(1) It shall not be a defence to an action brought by the Government of the Yukon that the action has been adjudicated upon unless it included a claim for the amount paid for insured health services.

(2) It shall not be a defence to an action to recover damages for personal injuries by a person who has received insured health services that an action taken by the Government of the Yukon for the recovery of insured health services has been adjudicated upon.

Release or settlement

13. No release or settlement of a claim or judgment in an action to recover damages for personal injuries where the insured person has received insured health services shall bind the Government of the Yukon unless the Executive Council Member or his authorized officer has approved the release or settlement in writing.

Insurance contracts

14.(1) No person shall make, renew or make payment under a contract, under which an insured person is to be provided with or to be reimbursed or indemnified for the cost of insured health services either in whole or in part.

(2) An insured person shall not accept or receive any benefits under any contract or agreement whereby he may be provided with or reimbursed or indemnified for the cost of insured health services either in whole or in part.

(3) No medical practitioner, dentist, health care practitioner or other person to whom amounts in respect of insured health services may be paid shall accept or receive any payment under any contract or agreement whereby an insured person may be provided with or reimbursed or indemnified for the cost of insured health services either in whole or in part.

Offences and penalties

15.(1) No person shall knowingly obtain or receive insurance services to which he is not entitled under this Act or the regulations.

(2) No person shall knowingly aid or abet another person to obtain or receive insured health services to which such other person is not entitled under this Act or the regulations.

(3) No person shall obstruct or hinder an inspector or auditor in carrying out his duties or functions under this Act or the regulations.

(4) Every person who violates any of the provisions of this Act or the regulations commits an offence and is liable on summary conviction to a fine not exceeding \$1000 or to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

Registration

16. Every resident other than a dependant or a person exempted by the regulations from so doing, shall register himself and his dependants with the director, at the place and in the manner and form and at the times prescribed by the regulations.

Offences respecting certificates of registration

17. Every person who produces to a person who renders insured health services or a member of his staff, a certificate of registration under this Act

- (a) knowing that the person named therein is not at the time of production thereof a resident of the Yukon, or
- (b) knowing that the person on behalf of whom and to facilitate whose treatment it is produced, is not the person named therein or a dependant of that person,

commits an offence.

Secrecy of information

18.(1) Every person employed in the administration of the plan or the Act shall preserve secrecy with respect to all matters that come to his knowledge in the course of employment, and which pertain to insured health services rendered and benefits paid therefor, and shall not communicate any such matters to any other person except as otherwise provided in this section.

(2) A person referred to in subsection (1) may furnish information pertaining to the date on which insured health services were provided, the name and address of the person who provided the service, the benefits paid and the person to whom they were paid, but the information shall be furnished only

- (a) in connection with the administration of this Act or any other Act or the federal Act,
- (b) in proceedings under this Act or any other Act or the federal Act, and
- (c) to the person who provided or received the service or the lawyer, personal representative or guardian, committee of estate, trustee in bankruptcy or other legal representative of the person.

(3) Information in the hands of the director may be published by the Government of the Yukon in statistical form if the individual names of persons are not thereby revealed or made identifiable.

(4) In compliance with an order of a court or with the consent of the director, information of the kind referred to in subsection (2) and any other information pertaining to the nature of insured health services provided and any diagnosis given by the person who provided the services, may be disclosed or communicated to the appropriate person or persons for the purpose of investigating a complaint against a medical practitioner, dentist, health care practitioner or other person to whom amounts in respect of insured health services may be paid, or for use in disciplinary or court proceedings against that person.

(5) A person who contravenes the provisions of this section commits an offence.

Protection of action

19. No action lies against a person who renders insured health services or a member of his staff in respect to information furnished to the director in respect of insured health services rendered by such person.

Rights to benefits not assignable

20. Except as provided by the regulations, the right of any person to receive payment of benefits is not assignable and no sum owing by the director is liable to be charged or to be attached in any proceeding.

Limitation period

21. A prosecution for an offence under this Act may be instituted at any time not exceeding two years from the date of the offence.

Resident to pay premium

22. Every resident who is not a dependant, shall be liable to pay to the director the premium fixed pursuant to section 25.

Deduction by employer

23. Every employer shall deduct from the remuneration of each of his employees the premium required under this Act and remit such premiums to the director in the manner and at the times prescribed in the regulations.

Saving for collective agreement

24. Nothing in this Act shall interfere with any collective agreement, agreement or arrangement between an employer and his employees regarding the proportion or percentage sharing by the employer and his employee of the gross premium, nor with any arrangement for the collection and remittance of the premium by payroll deduction.

Amount of premium

25. The premiums payable by insured persons shall be those prescribed from time to time by the Commissioner in Executive Council.

All residents entitled to services

26. Notwithstanding any provision of this Act or the regulations, any resident shall be entitled to any insured health services provided in accordance with this Act, whether or not the premium in respect of such person has been paid.

Waiver of premiums

27. The Commissioner in Executive Council shall have the power to waive the payment of premiums by any class of persons he may prescribe.

Inspection

28.(1) An inspector may, for the purpose of enforcing this Act or the regulations,

- (a) inspect and examine all books, payrolls and other records of an employer that in any way relate to the remittance of premiums by the employer to the director,
- (b) inspect, examine and audit books, accounts, reports and medical records of medical practitioners, dentists, health care practitioners and other persons to whom amounts in respect of health services may be paid, respecting the performance or supply of insured health services,
- (c) take extracts from or make copies of any entry in the books, payrolls and other records mentioned in paragraphs (a) and (b),
- (d) require any employer to make or supply full and correct statements, either orally or in writing in the required form, respecting the collection and remittance of premiums, and
- (e) at any reasonable time, enter upon any place used in connection with any business establishment for the purpose of making an inspection under this section.

(2) The inspector shall be supplied by the Executive Council Member with a certificate of his authority and on entering any place shall, if so required, produce the certificate to the person in charge thereof.

(3) The person in charge of any business establishment and every person employed therein or in connection therewith, shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties under this Act and the regulations.

Administering oaths

29. An inspector may administer all oaths and take and receive all affidavits and statutory declarations required under subsection 28(1) and may certify them.

Where underpayment found on inspection

30. Where an inspector finds that an employer has failed to remit premiums in respect of any employee, the inspector may determine the amount not remitted and the employer shall, within five days of notification by the director pay the amount to the director.

Information and returns

31.(1) Every employer shall keep records and supply any information relating to the collection and remittance of premiums, and make any returns thereon from time to time as the Executive Council Member may require.

(2) The Executive Council Member may require an employer to supply information referred to in subsection (1) by a notice to that effect served personally or sent by registered mail addressed to the last known address of the employer for whom the notice is intended and the employer shall supply the information within the time specified in the notice.

CHAPTER 82

HIGHWAYS ACT

Interpretation

1. In this Act,

- “construction” means the construction or reconstruction of a highway and the doing of any other work necessary to put a highway in a condition for use by vehicles, but does not include maintenance;
- “controlled access highway” means a highway
- (a) onto which persons have a right to enter from abutting land, and
 - (b) from which persons have a right to enter onto abutting land,
- only at fixed locations;
- “curb and gutter” means a paved waterway constructed at the edge of paving to control surface water;
- “ditches” means unpaved waterways constructed at the edge of the travelled way to control surface or subsurface water;
- “driveway” means that area between the curb or ditch and the property line which is constructed to provide vehicular access from the travelled way to the property line and includes a culvert at the ditch, or paving if the travelled way is paved;
- “gross weight” means the weight of the motor vehicle when loaded;
- “highway” includes any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway or other place, whether publicly or privately owned, any part of which the public is ordinarily entitled or permitted to use for the passage of vehicles;
- “lighting” means illumination by overhead lights;
- “maintenance” means the preserving and keeping of each road structure or other facility within a designated right-of-way as nearly as possible to its design standard, as constructed or subsequently improved, and any additional work necessary to keep traffic moving safely, but not including deviation from the original design standard of the facility, such as relocation of grade or right-of-way or replacement of structures or facilities to a higher design standard;
- “municipal boundaries” means the geographical limits of municipal responsibilities as defined by an Act or regulation;
- “officer” means any member of the public service employed in the administration of this Act and includes any member of the R.C.M.P.;
- “overload” means,
- (a) the number of kilograms derived by subtracting from the gross weight of a vehicle the licensed gross weight, or
 - (b) the number of kilograms derived by subtracting from the weight on any one axle or combination of axles of a vehicle the weight authorized by regulation to be carried on the axle or combination of axles;
- “oversize” means the amount derived by subtracting from the outside width, height or overall length of a vehicle with its load, if any, the permissible outside width, height or overall length prescribed under this Act;

- “park”, when prohibited, means the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading;
- “paving” means a flexible or rigid pavement structure composed of courses of selected material placed on the foundation or subgrade soil, for the use of vehicle traffic, including parking spaces on public roads;
- “roadway” means the portion of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and where a highway includes two or more separate roadways, the term “roadway” refers to any one roadway separately and not to all of the roadways collectively;
- “sidewalk” means an area between the curb and property line which is constructed to serve pedestrian traffic and includes any grassed areas between the curb and property line;
- “storm sewers” are underground conduits with appurtenances constructed to convey surface water to a disposal area;
- “traffic” includes pedestrians, ridden or herded animals, vehicles and other conveyances, either singly or together, while using a highway for purposes of travel;
- “traffic control device” means a sign, signal, marking or device not inconsistent with this Act placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic;
- “traffic control signal” means a device, whether manually, electrically or mechanically operated, by which traffic is directed to stop and to proceed.
- “Yukon highway” means a highway within the Yukon that is not under the jurisdiction of a municipality and is not privately owned, but does not include a service or frontage road contiguous to a Yukon highway;

CLASSIFICATION AND IMPROVEMENT OF HIGHWAYS

Authority

2.(1) The Executive Council Member has authority over all highways in the Yukon whether on public or private land.

(2) No person shall construct a highway on public land except under the authority of the Executive Council Member.

(3) The Commissioner in Executive Council may by regulation provide

- (a) for the control and management of the construction and maintenance of highways on public lands, and
- (b) for the issuing of permits for the construction or maintenance of highways on public lands and any conditions to be imposed in respect of such permits.

Designation of highways

3.(1) The Commissioner in Executive Council may by order designate as a Yukon highway

- (a) any existing highway in the Yukon, or
- (b) any proposed highway,

and may prescribe a route number and name for the highway so designated.

(2) In an order under this section, the existing highway or the land to be used for the proposed highway is sufficiently described if its location is indicated on a map attached to the order or referred to in the order showing the route of the highway.

(3) No order shall be made under this section in respect of a highway or proposed highway within a municipality unless the title to the highway or the land to be used for the proposed highway is vested in Her Majesty.

Control of highways

4. All Yukon highways are, notwithstanding anything in the Municipal Act, subject to the direction, control and management of the Executive Council Member.

Responsibility of highway authority

5.(1) The Executive Council Member is responsible for the costs of construction and maintenance of all Yukon highways.

(2) Construction of a Yukon highway includes grade construction, paving, curb and gutter, sidewalks, driveways, storm sewers, lighting and traffic control devices.

(3) The control of construction and maintenance of a Yukon highway is vested in the Executive Council Member.

Intergovernmental agreements

6.(1) The Commissioner in Executive Council may, subject to such terms and conditions as may be agreed upon, enter into agreements with the Government of Canada for the construction and maintenance of highways, bridges and ferries.

(2) The Commissioner in Executive Council may, subject to such terms and conditions as may be agreed upon, enter into agreements with appropriate authorities in other jurisdictions for the construction and maintenance of highways, bridges and ferries.

Prohibitions

7.(1) Notwithstanding the provisions of any other Act, no person shall

- (a) dig up, break up or remove any part of the improved, graded, surfaced or travelled portions of any Yukon highway for the purpose of any work constructed or maintained or proposed to be constructed in, upon or over the highway, or for any purpose whatsoever,
- (b) excavate in or under any Yukon highway, or
- (c) place or deposit any sign, erection, obstruction or material upon any Yukon highway,

except with the consent of the Executive Council Member and after having obtained from him a permit in writing therefor, and subject to such conditions to be set out in the permit as the Executive Council Member may consider proper.

(2) Every person violating any of the provisions of subsection (1) is liable, on summary conviction, to a fine not exceeding \$250.

(3) The court that convicts a person of an offence under paragraph (1)(c) may also order the convicted person to forthwith remove any obstruction or material deposited on the highway and to desist from further illegal obstruction or deposition of material, and any breach of such order is an offence.

(4) Where any person contravenes paragraph (1)(c), the Executive Council Member may remove the obstruction or material deposited on the highway or repair the highway, as the case may be, and recover his expenses incurred in so doing from that person as a debt due to the Government of the Yukon.

(5) Subsection (4) applies whether or not a conviction is made under subsection (2) or an order is made under subsection (3).

(6) No part of the expense of any work constructed or maintained or thing done by any person under a permit granted by the Executive Council Member under subsection (1) shall be borne by the Government of the Yukon, nor is the Government of the Yukon liable for any loss or damage caused to persons or property directly or indirectly by any work constructed or maintained or thing done under the permit.

Traffic interchanges

8. The Executive Council Member may enter into an agreement with any person under which that person agrees to contribute the whole or part of the costs of construction of any traffic interchange, underpass, overpass or any other addition or improvement with respect to a Yukon highway.

CONTROL OF ACCESS AND ADJACENT DEVELOPMENT

Abrogation of common law rights

9.(1) A person

- (a) is not, of right, entitled to any direct access to or from a Yukon highway from or to any land adjacent thereto, and
- (b) does not have any right of easement, light, air, or view to, from or over a Yukon highway.

(2) No person is entitled as of right to any compensation solely by reason of the designation of a Yukon highway.

(3) Where, because of a Yukon highway relocation, a property which abutted the highway no longer so abuts, the owner of the property is not entitled to any compensation.

(4) Notwithstanding subsection (3), where it is practical and reasonable to do so, the Executive Council Member may provide continued access to any property mentioned in subsection (3) either by continued maintenance of the former highway or by constructing an access road to the property.

Dangerous or unsightly buildings

10.(1) If an unoccupied building, structure, fixture or excavation within the right-of-way of a Yukon highway

- (a) is, by reason of its ruinous, dilapidated, unsafe or unprotected condition, dangerous to public safety or health, or
- (b) is, because of its unsightly condition, detrimental to the surrounding area,

the Executive Council Member may make an order under this section with respect to the building, structure, fixture or excavation.

(2) Any such order may require the owner within a period of time which shall not be less than 60 days from the date of the making of the order,

- (a) to remedy the condition in the manner and to the extent directed in the order, or
- (b) to demolish or remove the building, structure or fixture or fill the excavation and level the site thereof.

(3) If the owner does not remedy the condition within the period specified in the order, or the building, structure or fixture has not been demolished or removed at the expiration of the period specified in the order, the Executive Council Member may cause the condition to be remedied to the extent directed in the order, or cause the unoccupied building, structure or fixture to be demolished or removed or the excavation to be filled and the site thereof levelled.

(4) The removal may be done by way of selling the building, structure or fixture, in which case the net proceeds realized from the sale shall be paid to the owner, mortgagee or other person entitled thereto.

(5) If the proceeds from the sale of the building, structure or fixture are insufficient to meet the costs of the demolition or clearance of the site, or if no proceeds are realized from the demolition and removal of the building, structure or fixture, or the condition is remedied by the Executive Council Member, the Executive Council Member may charge the costs of the work done against the owner, mortgagee or other person entitled thereto and recover the costs as a debt due to the Government of the Yukon.

(6) Any person who thinks himself aggrieved by an order of the Executive Council Member made under this section may apply to the Supreme Court within 30 days from the date of making the order, and if the court is satisfied that

- (a) the proper procedure as set forth in this section has not been followed, or
- (b) the Executive Council Member has acted in a manner contrary to the intent and meaning of this section,

the court may set aside or vary the order of the Executive Council Member as it considers just.

Access to highways

11.(1) The Commissioner in Executive Council may designate any Yukon highway or any portion thereof as a controlled access highway.

(2) Where, on a controlled access highway, there is a sign indicating a location at which vehicles are permitted to enter, no person shall drive a vehicle onto the highway except at that location.

(3) Where, on a controlled access highway, there is a sign indicating a location at which vehicles are permitted to leave, no person shall drive a vehicle from the highway except at that location.

(4) The Commissioner in Executive Council may in accordance with the regulations close

- (a) any highway providing access to or from a Yukon highway, or
- (b) any means of access between a Yukon highway and land adjacent to the highway.

(5) No person shall by means of a motor vehicle enter upon or leave a Yukon highway except by way of

- (a) a highway connecting with the Yukon highway,
- (b) a means of access in existence prior to the designation of the highway as a Yukon highway under section 3, and not subsequently closed by the Executive Council Member pursuant to subsection (4),
- (c) a means of access authorized by permit, or
- (d) a means of access exempted under the regulations from the requirement for a permit.

(6) No person shall construct or maintain a means of access to or from a Yukon highway unless

- (a) a permit authorizes the construction, maintenance and use thereof as a means of access,
- (b) the regulations exempt the construction and maintenance from the requirement for a permit, or
- (c) the means of access was in existence prior to the designation of the highway as a Yukon highway under section 3, and has not been subsequently closed by the Executive Council Member pursuant to subsection (4).

GENERAL

Drainage of highways

12. The Executive Council Member shall make adequate provision for the drainage of all Yukon highways so as not to affect adversely existing drainage systems on land adjacent to the highway.

Action respecting drainage

13. No action shall be brought for the recovery of damages under section 12 unless notice in writing of the claim and of the injuries complained of has been served upon or sent by registered letter to the Executive Council Member within one month after the happening of the injury, but the failure to give or the insufficiency of the notice is not a bar to the action if the judge before whom the action is tried is of the opinion that there is reasonable excuse for the want or insufficiency of the notice and that the Government of the Yukon is not thereby prejudiced in its defence.

Detours

14. Where for any reason a detour is required on a Yukon highway, the Executive Council Member shall

- (a) ensure that directional signs are prominently displayed warning the persons travelling on the highway of the detour, and
- (b) take reasonable precautions to ensure that persons using the detour in accordance with the signs may do so with safety.

Closure of highway for construction

15.(1) While any construction or maintenance of a Yukon highway is in progress, any officer may close to traffic any part of the highway in which construction or maintenance is being carried out, for such time as is considered necessary.

(2) Where a highway is closed pursuant to this section, no person shall enter upon or travel on the highway unless he is authorized to do so by the Executive Council Member or unless he enters upon or travels on the highway in the course of his duties in connection with the construction or maintenance being done on that highway.

(3) Every person using a highway closed to traffic in accordance with this section does so at his own risk and the Government of the Yukon is not liable in any action for damages resulting from the use by a person of a highway so closed to traffic.

Closure of highway by order

16. The Commissioner in Executive Council may by order close the whole or any portion of a Yukon highway.

Closure of highway for public safety

17. An officer may close the whole or any portion of a Yukon highway where it is in the interest of public safety to do so.

Remedy of dangerous conditions

18. Where a peace officer finds upon any land conditions existing which may cause danger to life or to property of any person travelling on a Yukon highway, the peace officer may enter upon the land with such equipment and persons as he deems necessary and do any acts necessary to remedy the conditions.

Compensation relating to dangerous conditions

19.(1) No person is entitled to compensation in respect of damages resulting from any acts done pursuant to section 17.

(2) Compensation is payable in respect of damage resulting from acts done pursuant to section 18 unless the damage has been rectified.

Ferries

20.(1) Where the Executive Council Member considers it expedient to do so, he may establish and operate a ferry over or on a river, stream, lake or other body of water, and may do such other works as are necessary for the operation of the ferry.

(2) The Commissioner in Executive Council may by regulation provide for the licencing of ferries including

- (a) the term of the licence,
- (b) the rate of tolls to be charged,
- (c) the hours of operation,
- (d) the persons who may be charged,
- (e) the liability of ferry operators, and
- (f) generally the control and regulation of ferries.

Weigh scales

21.(1) The Executive Council Member may establish and operate weigh scales at such places as he deems necessary.

(2) The registrar of motor vehicles is responsible for the weighing of vehicles and the issuance of overload and oversize permits, and may upon application accompanied by the prescribed fee, issue

- (a) an overload permit for the operation on a highway of a vehicle that is overloaded, or
- (b) an oversize permit for the operation on a highway of a vehicle that is oversize.

(3) A vehicle

- (a) is overloaded if a computation as defined in section 1 with respect thereto would result in an overload, and
- (b) is oversize if a computation as defined in section 1 with respect thereto would result in an oversize.

(4) No person shall drive or operate on a Yukon highway a vehicle which is overloaded or oversize except under the authority of a permit to that effect issued under this Act in respect of the vehicle, and in accordance with that permit and with the regulations in that behalf made under this Act.

(5) A person who contravenes subsection (4) commits an offence and is liable on summary conviction, to a fine of not more than \$500, and in default of payment to imprisonment for a term not exceeding six months, and in addition shall be ordered to pay triple the fee found to be due; and every violation of subsection (4) is a separate and distinct offence.

Traffic signs

22.(1) The Executive Council Member may mark or erect along any Yukon highway traffic signs or devices

- (a) prescribing rate of speed,
- (b) regulating or prohibiting parking and designating parking areas,
- (c) prescribing load limits for any vehicle or class of vehicles,
- (d) prohibiting or regulating the use of any highway by any vehicle or class of vehicles,
- (e) designating any highway as a one-way highway,
- (f) for stopping vehicles,
- (g) for regulating pedestrian traffic,

- (h) for directing or controlling in any other manner traffic on any highway, and
- (i) indicating information, destinations or distances.

(2) Except as authorized by subsection (1), no person shall mark or erect any traffic sign or device along a Yukon highway.

(3) No person shall, without the authority of the Executive Council Member, remove or deface any traffic sign or device mentioned in subsection (1) along a Yukon highway.

Traffic control devices

23. No person shall erect or maintain upon or in view of a Yukon highway a device that purports to be, resembles or interferes with the effectiveness of a traffic control device, unless he is authorized to do so by the Executive Council Member.

Advertising

24. No person shall place or maintain advertising upon a traffic control device on a Yukon highway.

Altering or destroying traffic device

25. Except with lawful authority, no person shall alter, injure or remove, or attempt to alter, injure or remove a traffic control device or any part thereof on a Yukon highway.

Damage to traffic devices

26.(1) A person who wilfully defaces, knocks down, moves, injures or renders illegible a traffic control device or illumination device placed or erected along a Yukon highway by the Executive Council Member is guilty of an offence.

(2) In fixing a fine under this section the court may

- (a) take into account any damage that has been done to the sign, signal or traffic control device, and
- (b) include in the fine such sum as appears to the court to be the amount of the damage caused.

Stopping and parking on highways

27.(1) Subject to subsection (3), where outside of a business or residential district along a Yukon highway it is practicable to stop, park or leave a vehicle off the roadway, no person shall stop, park or leave the vehicle either unattended or attended on the roadway.

(2) Subject to subsection (3), no person shall park a vehicle so as to obstruct the free passage of traffic on a Yukon highway or any traffic lane thereof.

(3) Subsections (1) and (2) do not apply when a vehicle is so disabled that it is not practicable to avoid stopping and temporarily leaving it on a Yukon highway.

Removal of parked vehicles

28.(1) Where a vehicle is standing or parked

- (a) in violation of section 27,

- (b) in a position that causes it to interfere with removal of snow from a Yukon highway by a person authorized to do so by the Executive Council Member, or
- (c) in a position that causes it to interfere with fire fighting,

an officer may move the vehicle to a position determined by him or require the driver or person in charge of the vehicle to do so.

(2) When an unattended vehicle is

- (a) parked in violation of section 27 or 29, or
- (b) apparently abandoned on or near a Yukon highway,

an officer may take the vehicle into his custody and cause it to be taken to and stored in a safe and suitable place.

(3) All costs and charges incurred in moving and storing a vehicle under subsection (1) or (2) are a lien on the vehicle and may be recovered by the person who did the moving or storing under the provisions of the Mechanics Lien Act as though the costs and charges were a lien under section 30 of that Act.

Parking restrictions

29. Except when necessary to avoid conflict with traffic or to comply with the law or the directions of an officer or traffic control device, no person shall stop, stand or park a vehicle

- (a) on a sidewalk,
- (b) in front of a public or private driveway,
- (c) within an intersection,
- (d) on a crosswalk,
- (e) within six metres of the approach side of a crosswalk, or
- (f) within nine metres of any flashing beacon, stop sign or traffic control signal located at the side of a roadway.

Regulations

30.(1) The Commissioner in Executive Council may make such regulations and prescribe such forms as may be necessary to carry out the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Commissioner in Executive Council may make regulations

- (a) respecting the duties and powers of officers;
- (b) respecting the persons who may issue permits under this Act;
- (c) prescribing the form of permits issued under this Act;
- (d) respecting the persons who may exercise the powers and carry out the duties imposed upon the Executive Council Member pursuant to this Act;
- (e) respecting
 - (i) the closing of a Yukon highway or part thereof, or
 - (ii) the restriction of traffic including the type, weight of load and speed of vehicles on a Yukon highway or part thereof,

whenever and for such period of time as he deems necessary to prevent serious damage to a highway or to insure the safety of persons using the highway;

- (f) providing permissible gross weights and axle loading, the weight on any tire, axle, or wheel, the number of axles or wheels, the method of determining wheelbase, the weight on groups of axles and the weight according to wheelbase, for vehicles;
- (g) prescribing the method of determining any fact necessary to be determined for the purpose of computing the amount payable under this Act or the regulations and the person or official by whom the fact shall be determined;
- (h) providing for and compelling the weighing of vehicles and the furnishing of satisfactory evidence of their weight, the removal from any vehicle of a load or any portion of a load where it is found that the weight is in excess of that prescribed in the regulations, and the redistribution of the load;
- (i) with respect to the issuance and conditions of overload and oversize permits;
- (j) prescribing the permissible width, length, height, projections and overhangs of and from loads and vehicles;
- (k) providing for the issuance of permits for the operation of vehicles on specified highways and prescribing conditions thereof;
- (l) prescribing the fees to be established under this Act;
- (m) generally for carrying out the purposes and provisions of this Act.

Offence

31. Any person contravening any of the provisions of this Act or the regulations for which no penalty is specifically provided, is guilty of an offence and liable on summary conviction to a fine of not more than \$200 and in default of payment of the fine to a term of imprisonment of not more than 15 days.

Owner deemed to commit an offence

32.(1) The owner of a motor vehicle which is involved in any contravention of this Act is guilty of an offence unless he proves to the satisfaction of the judge that at the time of the offence the motor vehicle was not being driven or was not parked or left by him or by any other person with his consent, express or implied.

(2) Notwithstanding subsection (1), if the owner was not at the time of the offence driving the motor vehicle he is not in any event liable to imprisonment.

CHAPTER 83

HISTORIC SITES AND MONUMENTS ACT

Interpretation

1. In this Act,

“board” means the Historic Sites and Monuments Board established by this Act;

“historic place” means a site, building or other place of historic interest or significance, and includes buildings or structures or things that are of interest by reason of age or architectural design.

Commemoration of historic sites

2. The Commissioner in Executive Council may

- (a) by means of plaques or other signs or in any other suitable manner, mark or otherwise commemorate historic places,
- (b) make agreements with any persons for marking or commemorating historic places pursuant to this Act and for the care and preservation of any places so marked or commemorated,
- (c) establish historic museums,
- (d) acquire any historic places, lands or things for historic museums or any interest therein, by purchase, lease or otherwise, and
- (e) provide for the administration, preservation and maintenance of any historic places acquired or historic museums established pursuant to this Act.

Historic sites and monuments board

3.(1) A board to be called the Historic Sites and Monuments Board is hereby established, consisting of not more than 15 members appointed by the Commissioner in Executive Council, of whom 12 shall be appointed on the recommendation of the Legislative Assembly.

(2) A member holds office during pleasure for such period not exceeding four years as may be fixed by the Commissioner in Executive Council.

(3) A retiring member of the board is eligible for reappointment.

(4) The members of the board shall choose one of their number to be the chairperson thereof.

(5) The members of the board may choose one of their number to be vice-chairperson thereof.

(6) A majority of the members constitutes a quorum.

(7) The Executive Council Member may

- (a) designate an officer of the public service of the Yukon to be the secretary of the board, or

(b) appoint a secretary of the board at such remuneration and under such terms or conditions of employment as may be prescribed, and may, from among the persons employed in the public service, provide the board with such other employees or assistants that are necessary for the proper conduct of the business of the board.

(8) The board shall meet at least once in every calendar year at the call of the chairperson, but the time and place of each such meeting is subject to the approval of the Executive Council Member; and, in addition, the board shall hold such other meetings at such times and places as the Executive Council Member may require.

Powers and duties of board

4.(1) The board may receive and consider recommendations respecting the marking or commemoration of historic places, the establishment of historic museums and the administration, preservation and maintenance of historic places and historic museums, and shall advise the Executive Council Member in carrying out his powers under this Act.

(2) The board may recommend that studies be commissioned.

Fees and expenses

5. Each member of the board appointed by the Commissioner in Executive Council may be paid such remuneration and travelling and living expenses as may be fixed by the Commissioner in Executive Council.

Expenditures

6. All expenditures for the purpose of this Act shall be paid out of money appropriated by the Legislature therefor.

Regulations

7. The Commissioner in Executive Council may make regulations for carrying the provisions of this Act into effect.

Reports

8.(1) As soon as practicable after the end of each fiscal year the board shall submit to the Executive Council Member a report of its proceedings for that year in such form as the Commissioner in Executive Council may prescribe.

(2) In addition to the report required by subsection (1), the board shall furnish to the Executive Council Member such other statements or reports in respect of its activities, at such time and in such manner, as the Executive Council Member may require.

CHAPTER 84

HOME OWNERS GRANT ACT

Interpretation

1.(1) In this Act,

“eligible residence” means

- (a) a parcel of land shown as a separate taxable parcel on a taxation roll for the current year prepared under the Assessment and Taxation Act and that has as improvements situated thereon a building or buildings assessed and taxed in the current year as an improvement or improvements, and
- (b) a mobile home registered pursuant to section 2 of the Assessment and Taxation Act, owned by the occupier and located on his own property, in a mobile home park or on property not owned by him but which property is shown as a separate taxable parcel on a taxation roll

and in whole or in part occupied by the owner as his normal residence for a period of not less than 184 days in the year in respect of which the application is made;

“family” means any person who is the grandparent, parent or child of an owner or an owner’s spouse and who is supported by the owner or his spouse;

“owner” means in respect of property

- (a) the registered owner of the property,
- (b) the purchaser of the property under an agreement for sale, or
- (c) in respect of Crown land, the occupier under lease from the Crown;

“qualified applicant” means an owner of an eligible residence who has paid taxes in respect of the eligible residence for the year in respect of which his application is made;

“taxes” means

- (a) taxes levied on lands and improvements by the Commissioner in Executive Council or a municipality pursuant to the Assessment and Taxation Act but does not include licence fees, local improvement taxes, arrears, penalties, delinquent taxes or interest, and
- (b) in respect of a mobile home means the taxes payable in respect of the mobile home by the owner of the mobile home but does not include taxes payable by the owner or operator of a mobile home park in respect of the land upon which the mobile home is situated.

(2) Where the owner of property is living separate and apart from his spouse and the property is occupied by the spouse as his normal residence for a period of not less than 184 days in the year in respect of which application is made,

- (a) the property is an eligible residence of the owner, and
- (b) the spouse shall be deemed to be an owner of the property,

but only whichever one of them pays the taxes is entitled to be the qualified applicant.

Grant

2.(1) The Executive Council Member may each year subject to this Act, pay a home owners’ grant to every qualified applicant in respect of his eligible residence.

(2) The amount of the grant shall be the lesser of

- (a) the sum of \$350,
- (b) one-half of the taxes levied in respect of the eligible residence in the year of application, or
- (c) where the taxes payable are less than \$200, the difference between the taxes payable and \$100.

(3) Notwithstanding the provisions of subsection (2), where a qualified applicant produces evidence of being eligible for a benefit under the Old Age Security Act (Canada), the amount of the grant shall be the lesser of

- (a) the sum of \$350, or
- (b) three-quarters of the taxes levied in respect of the eligible residence in the year of application.

(4) Where a qualified applicant is the surviving spouse of a person who has received a grant in an amount determined under subsection (3) and the applicant has not re-married since the death, the applicant shall be deemed to be an applicant to whom subsection (3) applies notwithstanding that the applicant is not eligible for a benefit under the Old Age Security Act (Canada).

Application deadline

3. Every application shall be made on the prescribed form and delivered to the Executive Council Member not later than January 15 of the year immediately following the year in respect of which the application is made, and shall be accompanied by proof of payment in full of the taxes payable in respect of the eligible residence for the taxation year in respect of which the application is made.

One grant only

4.(1) Notwithstanding any other provision of this Act, no person is eligible for more than one grant in any year.

(2) Notwithstanding any other provision of this Act, no grant is payable to a person who has not been normally resident in the Yukon for a period of not less than 184 days in the year in respect of which the application is made.

Eligible residence

5. Except in the case of a grant made in respect of a residence that is deemed to be an eligible residence under section 9, only one grant is payable in respect of any eligible residence.

Assignments

6. No grant is capable of being assigned and the Government of the Yukon is not bound by any purported assignment.

Deceased owner

7. Where an eligible applicant dies the grant is payable to his heir or surviving spouse, and for the purposes of this section the residence of the heir or spouse in the eligible residence shall be deemed to be the residence of the deceased owner.

Mixed-use buildings

8.(1) Where an eligible residence is part of a building that is used also for commercial or industrial purposes, or that contains suites or sets of rooms separately occupied by persons who are not members of the family of the owner, the grant shall be paid in respect of that portion of the building that forms the eligible residence.

(2) Where a building mentioned in subsection (1) is taxable as a unit the assessor under the Assessment and Taxation Act shall compute the share of the taxation applicable to the residence for the purpose of section 2.

(3) In making a computation for the purpose of subsection (2), no account shall be taken of the land which forms part of the property.

Change of residence

9.(1) Where property would be the eligible residence of the owner but for the fact that the period for which he has occupied it as his normal residence is less than 184 days in the year in respect of which the application is made, it shall nevertheless be deemed to be his eligible residence if

- (a) he has, during the year in respect of which the application is made, occupied one or more other residences that for the same reason cannot be his eligible residences, and
- (b) the aggregate of the periods for which he has occupied, as his normal residence, the residence in respect of which the application is made and the residences referred to in paragraph (a) is not less than 184 days in the year in respect of which the application is made.

(2) No home owner's grant shall be paid in respect of a residence that is deemed to be an eligible residence under this section unless

- (a) the applicant is a qualified applicant in respect of the residence, and
- (b) taxes for the year in respect of which the application is made have been paid in respect of all of the residences referred to in paragraph (1)(a).

Regulations

10.(1) The Commissioner in Executive Council may make such regulations as he deems necessary to carry out the purposes of this Act.

(2) Notwithstanding subsection (1), the Commissioner in Executive Council may specify the form and manner of completing any application and specify any information which may be required in respect of the application.

CHAPTER 85

HOSPITAL INSURANCE SERVICES ACT

Interpretation

1. In this Act,

“federal Act” means the Canada Health Act (Canada);

“hospital insurance plan” means the plan established by this Act and the regulations for providing insured services to insured persons;

“insured person” means a person who is eligible for and entitled to insured services;

“insured services” means the in-patient and out-patient services to which insured persons are entitled under this Act and the regulations but does not include services any person is eligible for and entitled to under any Act of the Parliament of Canada or a provincial legislature specified in the regulations or any other statute or law specified in the regulations;

“resident” means a person legally entitled to remain in Canada who makes his home and is ordinarily present in the Yukon but does not include a tourist, transient or visitor to the Yukon.

Residents entitled to insured services

2. Subject to the provisions of this Act and the regulations, every resident is eligible for and entitled to insured services.

Agreement with Canada

3.(1) The Commissioner in Executive Council may enter into an agreement with the Minister of National Health and Welfare of Canada pursuant to the federal Act to provide for the payment by the Government of Canada to the Government of the Yukon of contributions in respect of the cost of insured services incurred by the Government of the Yukon pursuant to this Act and the regulations.

(2) An agreement under this section may, by mutual consent of the parties, be amended or terminated in the manner provided by the federal Act.

Payments out of Y.C.R.F.

4. Out of money issued and advanced from the Yukon Consolidated Revenue Fund there may be paid

- (a) to a hospital in the Yukon with which the administrator has entered into an agreement under paragraph 6(d), such amounts as are specified by the agreement in respect of the cost of insured services provided by that hospital to insured persons,
- (b) to any other hospital in the Yukon, such amounts in respect of the cost of insured services provided by that hospital to insured persons as are determined by the administrator in accordance with the regulations,

- (c) to any hospital outside the Yukon, such amounts in respect of the cost of insured services provided by that hospital to insured persons outside the Yukon as are determined by the administrator in accordance with the regulations, and
- (d) to an insured person, such amounts in respect of the cost of insured services provided by a hospital outside the Yukon to that person as are determined by the administrator in accordance with the regulations.

Administrator and staff

5.(1) There shall be an administrator to be appointed by the Commissioner in Executive Council and called the Yukon Hospital Insurance Administrator and where no administrator is appointed the Executive Council Member shall act as such.

(2) The administrator is the chief executive officer charged with the responsibility of administering the hospital insurance plan and has supervision over and direction of the staff required to administer the plan.

(3) The officers and employees necessary for the proper conduct of the hospital insurance plan shall be appointed under the provisions of the Public Service Commission Act.

Powers of administrator

6. Subject to this Act and the regulations, the administrator has power

- (a) to develop and administer the hospital insurance plan,
- (b) to determine eligibility for and entitlement to insured services,
- (c) to determine the amounts that may be paid pursuant to paragraphs 4(b) to (d) in respect of the cost of insured services provided to insured persons,
- (d) to enter into agreements on behalf of the Government of the Yukon with hospitals in or outside the Yukon, or with the Government of Canada or any province or an appropriate agency thereof, for the provision of insured services to insured persons,
- (e) to approve hospitals for purposes of this Act,
- (f) to conduct surveys and research programmes and obtain statistics for such purposes,
- (g) to appoint inspectors and auditors to examine and obtain information from hospital records, reports and accounts,
- (h) to prescribe the forms and records necessary to carry out the provisions of this Act, and
- (i) to perform such other functions and discharge such other duties as may be assigned to him by the regulations.

Annual report

7. The administrator shall make an annual report to the Executive Council Member respecting the administration of the hospital insurance plan and the report shall be tabled at the session of the Legislative Assembly next following the making thereof.

Liability of administrator

8. The administrator is not liable for any act or omission of any hospital official, any person on the medical staff or nursing staff of a hospital or any employee or agent of a hospital.

Regulations**9.** The Commissioner in Executive Council may make regulations

- (a) establishing a hospital insurance plan for the furnishing to insured persons by hospitals of insured services upon uniform terms and conditions;
- (b) defining "hospitals" for the purposes of this Act and the regulations;
- (c) prescribing the in-patient and out-patient services that insured persons are eligible for and entitled to as insured persons;
- (d) specifying for the purpose of section 1 the statutes or laws referred to therein;
- (e) prescribing the terms and conditions upon which a person is eligible for and entitled to insured services;
- (f) respecting the inspection of hospitals;
- (g) prescribing the terms and conditions of approving hospitals for the purposes of the hospital insurance plan;
- (h) determining the cost of providing services in hospitals;
- (i) establishing the charges that may be made by hospitals to patients;
- (j) specifying the records and accounts to be kept by hospitals and the returns and reports to be made by them to the administrator;
- (k) prescribing the terms and conditions upon which payment may be made to hospitals for the provision of insured services to insured persons, and the method of making such payments;
- (l) prescribing the terms and conditions upon which payment may be made in respect of the cost of insured services provided to insured persons outside the Yukon, and the amount of such payments;
- (m) prohibiting, restricting or regulating the making or renewing of contracts
 - (i) to provide a resident with, or to reimburse or indemnify a resident for the cost of insured services, or
 - (ii) to provide a resident with any benefit related directly or indirectly to hospitalization or to the length of time a resident is in hospital;
- (n) regulating insurance contracts that provide for the payment of hospital insurance benefits supplementary to those provided pursuant to this Act and the regulations;
- (o) respecting the powers of inspectors and auditors appointed by the administrator to inspect hospitals and the records, reports and accounts thereof;
- (p) providing for the appointment of such advisory or other committees, agencies or persons as he considers necessary or advisable for the effective operation of the hospital insurance plan;
- (q) generally for the administration of this Act and for carrying into effect the purposes and provisions of any agreement entered into under section 3.

Subrogation

10. Upon the provision of insured services to an insured person in respect of an injury resulting from a wrongful act or omission of another person, the Government of the Yukon shall be subrogated to all rights of the injured person for the purpose of recovering the cost of such insured services, and may bring an action either in his own name or in the name of the insured person for the recovery of the amount thereof and effect a settlement of such claim.

Suit by insured person

11.(1) Notwithstanding section 10, an insured person who, as a result of a wrongful act or omission of another person, suffers an injury for which he has received insured services may recover the amount of the cost of providing those services to him from the person guilty of the wrongful act or omission in the same manner as though he himself had been required to pay for those services.

(2) Every insured person described in subsection (1) who commences an action for the recovery of damages for personal injuries shall include therein a claim on behalf of the Government of the Yukon for the cost of any insured services provided to him.

(3) Where a resident recovers an amount in respect of insured services received by him either in an action to recover damages for personal injuries or by other means he shall forthwith pay the amount so recovered to the Government of the Yukon.

Joining of action commenced by government

12. Where the Government of the Yukon has commenced action in the name of an insured person for the recovery of the cost of insured services provided to him, the insured person may

- (a) at any time prior to the trial of the action, and
- (b) upon such conditions as to costs or otherwise as to the court seem just,

join in that action such other claims as he may have arising out of the same occurrence.

Defences to actions

13. It shall not be a defence to an action brought by the Government of the Yukon that the claim has been adjudicated upon unless the claim subrogated included a claim for the amount paid for insured services and it shall not be a defence to an action to recover damages for personal injuries brought by a person who has received insured services that an action taken by the Government of the Yukon for the recovery of the cost of those services has been adjudicated upon.

Release or settlement

14. No release or settlement of a claim or judgment based upon an action to recover damages for personal injuries where the injured person has received insured services shall be binding upon the Government of the Yukon unless the Executive Council Member or person designated by him has approved the release or settlement in writing.

Offences and penalties

15.(1) No person shall knowingly obtain or receive insured services to which he is not entitled under this Act or the regulations.

(2) No person shall knowingly aid or abet another person to obtain or receive insured services to which he is not entitled under this Act or the regulations.

(3) No person shall obstruct or hinder an inspector or auditor in carrying out his duties or functions under this Act or the regulations.

(4) Every person who violates any of the provisions of this Act or the regulations commits an offence and is liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding three months, or to both fine and imprisonment.

Limitation period

16. No prosecution for an offence under this Act shall be instituted more than two years from the date of the commission of such offence.

Confidentiality

17. Every person employed in the administration of the Act shall preserve secrecy with respect to all matters that come to his knowledge in the course of employment, and which pertain to insured services rendered and benefits paid therefor, and shall not communicate any such matters to any other person except as otherwise provided in this section.

(2) A person referred to in subsection (1) may furnish information pertaining to the date on which insured services were provided, the name and address of the person or facility which provided the service, the benefits paid and the person or facility to whom they were paid, but the information shall be furnished only

- (a) in connection with the administration of this Act, the regulations or the federal Act,
- (b) in proceedings under this Act, the regulations or the federal Act, and
- (c) to the person or facility which provided the service or the person who received the service, or the solicitor, personal representative or guardian, committee of estate, trustee in bankruptcy or other legal representative of the facility or person.

(3) Information in the hands of the administrator may be published in statistical form if the individual names of persons are not thereby revealed or made identifiable.

(4) With the consent of the administrator, information of the kind referred to in subsection (2) and any other information pertaining to the nature of insured services provided and any diagnosis given by the facility which provided the services, may be disclosed or communicated to the appropriate person or persons for the purpose of investigating a complaint against a medical practitioner or a facility or for use in proceedings involving a medical practitioner or a facility.

(5) No action lies against a facility or a member of its staff in respect to information furnished to the administrator concerning insured services rendered by such facility.

CHAPTER 86

HOTELS AND TOURIST ESTABLISHMENTS ACT

Interpretation

1. In this Act,

“inspector” means a person appointed pursuant to section 2;

“guest” means a person who obtains accommodation at a tourist establishment;

“operator” means the manager or other person in charge of a tourist establishment;

“register” means a bound book or card index system;

“tourist establishment” means an hotel, motel, lodge, inn, tourist home, cabin or cottage used or intended to be used for the purpose of providing accommodation for the public.

Appointment of inspectors and officers

2. The Executive Council Member may appoint inspectors and such other officers as he deems necessary for carrying out the provisions of this Act.

CONSTRUCTION AND ALTERATIONS

Permit required

3. No person shall

- (a) construct a tourist establishment,
- (b) move a building that is or forms part of a tourist establishment, or
- (c) make any structural alteration to a tourist establishment,

unless he obtains a permit for that purpose from an inspector.

Application for permit

4. Where a person seeks a permit for any purpose set out in section 3, he shall submit to an inspector

- (a) an application for a permit in the prescribed form, and
- (b) two copies of all plans and specifications relating to the application.

Issuance of permit

5.(1) When an application for a permit has been received by an inspector and the copies of plans and specifications referred to in section 4 are approved by him and by the fire marshal appointed pursuant to the Fire Prevention Act, the inspector shall issue a permit to the applicant.

(2) A permit issued under subsection (1) expires 12 months from the date upon which it is issued unless it is expressed to be for a shorter period of time.

Compliance with National Building Code

6. Where any work in respect of which a permit has been issued is performed, it shall be performed in compliance with such provisions of the National Building Code as the Commissioner in Executive Council may prescribe.

OPERATING REQUIREMENTS

Duties of operator

7. Every operator shall

- (a) keep his tourist establishment in good repair and in a clean and sanitary condition,
- (b) keep the land surrounding his tourist establishment in good order and free from refuse,
- (c) have in attendance, at all times during the operation of his tourist establishment, at least one person capable of operating the establishment in a proper manner,
- (d) identify by name or number each sleeping unit, cabin or cottage,
- (e) equip the door of each sleeping unit, cabin or cottage with a lock and key,
- (f) equip all public washrooms and water closets with baffle partitions in such a manner as to ensure the privacy of the user, and
- (g) take all reasonable precautions to ensure the safety of his guests and their property.

Notices to be posted

8.(1) Every operator shall post and keep posted on the entrance door of each sleeping unit, cabin or cottage a notice stating

- (a) the rates charged for the sleeping unit, cabin or cottage when occupied by one person, two persons and more than two persons,
- (b) the hour before which a guest must vacate a sleeping unit, cabin or cottage or be deemed to have retained it for an additional day, and
- (c) the provisions of sections 20 and 21 of this Act.

(2) No operator shall charge a rate for a sleeping unit, cabin or cottage in excess of the rates specified in the notice referred to in paragraph (1)(a).

REGISTRATION

Register to be kept

9. Every operator shall maintain a register in which he shall enter

- (a) the name or number of the sleeping unit, cabin or cottage occupied by each guest, and
- (b) the date of arrival and departure of each guest.

Guests required to register

10. Every guest shall enter his name, usual place of residence and his vehicle licence plate number, if any, in the register.

False registration prohibited

11. No operator shall enter or knowingly allow to be entered any false information in the register.

Entries to be kept for one year

12. Every entry made in the register shall be retained by the operator for a period of not less than one year from the date of the entry.

Register to be open for inspection

13. The register shall be open at all reasonable times for inspection by any member of the Royal Canadian Mounted Police or by any officer appointed by the Commissioner in Executive Council.

CLOSURE OF TOURIST ESTABLISHMENTS**Notice of closure**

14.(1) Where an operator wishes to close his establishment he shall

- (a) at least seven days prior to the date of closing his establishment, file with the Executive Council Member a written notice of closure setting forth the date on which his establishment will close and the date, if any, on which he expects it will be reopened, and
- (b) on or before the date on which the establishment is closed, affix to each highway sign advertising his establishment a notice advising the public that it is closed.

(2) A notice referred to in paragraph (1)(b) shall be not less than one-quarter the size of the sign to which it is affixed.

SEIZURE AND DETENTION OF GOODS**Right to seize and detain goods**

15.(1) Where a person who is indebted for accommodation to an operator has not removed his luggage or personal effects from a tourist establishment, the operator of that establishment may seize and detain such goods.

(2) The tools of a worker for use by him in his trade or profession may not be seized and detained by an operator under this section.

Responsibility for goods detained

16. An operator is responsible for the safe keeping of any goods detained by him pursuant to section 15.

Inspection and sale of detained goods

17. Where the amount of the indebtedness for which any goods were detained remains unpaid for a period of not less than one month after the date upon which they were seized, the operator who seized the goods may

- (a) in the presence of a peace officer, force or break the locks or fastenings on any trunk, valise or other article detained by him for the purpose of ascertaining and inspecting the contents thereof, and

- (b) subject to section 18, sell privately or by public auction the goods so detained.

Notice of sale

18.(1) Where an operator intends to sell any goods pursuant to section 17, he shall, at least one month before the date of the sale, forward a notice of sale by registered mail to the person indebted to him at that person's last previous known address.

(2) A notice referred to in subsection (1) shall

- (a) give a general description of the goods to be sold,
- (b) specify the time and place of the sale,
- (c) contain an itemized statement of the amount of the indebtedness, showing the sum due at the time of forwarding the notice,
- (d) demand that the amount of the indebtedness be paid before the time of the sale, and
- (e) state that if the amount of the indebtedness is not paid before the time of the sale, the goods will be sold privately or by public auction at the time and place specified in the notice.

(3) An operator referred to in subsection (1) shall keep posted in a conspicuous place on his premises for at least one week prior to the time of the sale a copy of the notice of the sale referred to in that subsection.

Application of proceeds of sale

19.(1) Where a sale is held pursuant to section 17, the operator may use the proceeds of the sale to pay

- (a) the reasonable costs of holding the sale, and
- (b) the amount of indebtedness owing to him by the former owner of the goods that were sold.

(2) Where the proceeds of a sale held under section 17 exceed the amount of money required to pay the costs and indebtedness referred to in subsection (1), the operator, upon application therefor, shall pay the balance of the proceeds to the person entitled thereto.

(3) Where an application referred to in subsection (2) is not made within 30 days from the date of the sale, the operator shall pay the balance of the proceeds to the Executive Council Member, who shall hold it for the person entitled to it for one year from the date of the sale.

(4) Where a claim for the balance of the proceeds of a sale held under section 17 is not made to the Executive Council Member within one year from the date of sale, the balance of the proceeds of that sale shall become part of the Yukon Consolidated Revenue Fund.

LIABILITY OF OPERATORS

Liability of operator for property of guests

20.(1) No operator is liable to compensate any guest for loss of or damage to goods or property brought to his establishment unless the goods or property

- (a) were located in the sleeping unit, cabin or cottage assigned to that person and were stolen, lost or damaged through the fault or neglect of the operator or of any employee or agent of the operator,
- (b) were deposited with the operator for safe custody, or
- (c) were checked in a checking room in the establishment.

(2) An operator may, as a condition of his liability, require that goods or property tendered by a guest for safe custody be placed in a box or other receptacle fastened and sealed by the guest.

(3) Where an operator refuses to receive for safe custody any goods or property of a guest, or where a guest, through any default of the operator, is unable to deposit goods or property for safe custody, the operator is not entitled to the protection of this Act in respect thereof unless he proves that his establishment was not equipped with a safe or vault and that he so informed the guest at the time of refusing to receive the goods or property.

(4) When a guest deposits money, jewelry, documents or valuables of a similar nature for safe custody with an operator, the operator at the time of deposit shall give that guest a receipt therefor, which shall be surrendered by the guest when his property is returned to him.

Liability for property in room of guest

21. Notwithstanding anything in this Act, an operator shall not be liable for theft, loss of or damage to any goods or property of a guest unless the door of the sleeping unit, cabin or cottage occupied by that guest was locked during his absence therefrom and the keys to the lock given to the guest were left with the operator.

No protection unless notice posted

22. An operator is entitled to the benefit of sections 20 and 21 only in respect of goods or property brought into his establishment while the provisions of those sections are posted as required by subsection 8(1).

GENERAL

Undesirable persons may be removed

23. Subject to section 3 of the Fair Practices Act, an operator may remove any person from his establishment who in his opinion is undesirable if the operator has requested that person to leave the establishment and has given such person a reasonable opportunity to do so.

Exemptions under writs of execution not to apply

24. Property exempt from seizure under writs of execution shall not be exempt from seizure under a writ of execution issued on a judgment obtained by an operator in respect of an indebtedness incurred for accommodation supplied by him.

Regulations

25. The Commissioner in Executive Council may make regulations necessary to carry out the provisions of this Act.

Offences and penalty

26. Every person who contravenes a provision of this Act commits an offence and is liable upon summary conviction to a fine not exceeding \$500.

CHAPTER 87

HOUSING CORPORATION ACT

Interpretation

1. In this Act,

“board” means the board of directors established pursuant to section 4;

“Canada corporation” means the Canada Mortgage and Housing Corporation;

“corporation” means the Yukon Housing Corporation;

“housing unit” means a unit that provides therein living, sleeping, eating, food preparation and sanitary accommodations for one or more persons, with or without essential facilities shared with other housing units;

“public housing project” means a project, together with the land on which it is situated, consisting of housing units in the form of detached, semi-detached or row housing or apartments, or of the hostel or dormitory type, or any combination or form thereof undertaken to provide housing accommodation in compliance with standards approved by the Commissioner in Executive Council for lease or sale to families or individuals.

Continuation of corporation

2.(1) There shall be a corporation entitled “the Yukon Housing Corporation” with powers, duties and functions pursuant to this Act, consisting of those persons who from time to time comprise the board of directors.

(2) The corporation is an agent of the Government of the Yukon and its powers may only be exercised as an agent of the Government of the Yukon.

Objects

3.(1) The objects of the corporation are to carry out any of the duties and functions provided for by this Act and such other duties and functions related to any program of housing or urban development as may be assigned to it by the Commissioner in Executive Council.

(2) Without restricting the generality of subsection (1), the corporation may undertake, carry to completion or assist in the provision, development, maintenance and management of housing

- (a) generally,
- (b) for families and individuals,
- (c) for employees of the public service,
- (d) for students,
- (e) for senior citizens, and
- (f) for families and individuals receiving social allowances or social assistance.

Board of directors

4.(1) The affairs of the corporation shall be conducted by a board of directors which shall consist of

- (a) a chairperson,

- (b) a deputy chairperson, and
- (c) not more than five other members

to be appointed by the Commissioner in Executive Council and to hold office during pleasure.

(2) A majority of the board constitutes a quorum.

(3) At its meetings, the board of directors may exercise any of its powers by resolution except where some other mode of exercising any power is prescribed in this Act.

(4) Members of the board of directors shall receive such remuneration for their services as directors as is prescribed by the Commissioner in Executive Council.

Employees

5.(1) The board of the corporation shall

- (a) appoint such employees as it considers necessary, and
- (b) fix the salaries or remuneration for its employees.

(2) Employees appointed pursuant to subsection (1) are subject to the terms and conditions of employment applicable to the public service of the Yukon.

(3) The corporation may appoint one or more experts or persons having special technical knowledge to enquire into and report in respect of any matter which the corporation considers necessary to have information for the proper carrying out of its duties under this Act, and may pay such remuneration as is considered suitable by the corporation.

Rules governing operation

6. The board may make bylaws regulating its proceedings and generally for the conduct and management of the affairs of the corporation.

General powers

7. In addition to the powers vested in a corporation by section 14 of the Interpretation Act, the corporation may

- (a) acquire, hold and alienate real or personal property,
- (b) undertake to develop lands with roads, streets, sidewalks, water and sewer and other municipal facilities, either alone or in conjunction with municipalities,
- (c) administer, manage and maintain properties,
- (d) make grants or loans for the purpose of acquiring, constructing or improving housing,
- (e) make grants or loans to municipalities for any of the purposes of section 31,
- (f) guarantee the repayment of any loans,
- (g) establish a mortgage insurance fund or any other fund it considers necessary,
- (h) establish any administration fee or other fee for any of its services or programs it considers necessary,
- (i) carry out any other program that is assigned to it,
- (j) enter into any agreement to carry out the intent and purpose of this Act, and

- (k) carry out any of the duties and functions provided for by this Act and any duties and functions related to any program of housing and urban development.

Borrowing powers

8.(1) The corporation may, from time to time, borrow such sums of money as the corporation requires for the purposes of the corporation and may, from time to time, issue notes, bonds, debentures or other securities which

- (a) shall bear interest at such rate or rates as may be determined by the corporation,
- (b) shall be in such denomination or denominations as may be determined by the corporation,
- (c) shall be payable as to principal and interest
 - (i) in such currency or currencies of such country or countries,
 - (ii) at such place or places,
 - (iii) at such time or times, and
 - (iv) in such manner
 as may be determined by the corporation,
- (d) may be redeemable or payable in whole or in part in advance of maturity either at the option of the corporation or on demand of the holder thereof
 - (i) at any time or times,
 - (ii) on such terms, and
 - (iii) at such price or prices, either with or without payment of a premium,
 as may be determined by the corporation, and
- (e) may be issued in such amounts as will realize the net sum required by the corporation for the purposes of the corporation.

(2) Where the authorizing resolution of the corporation made under subsection (1) contains a recital or declaration that the amount of the notes, bonds, debentures or other securities authorized by the resolution is necessary to realize the net sum required for the purposes of the corporation, the recital or declaration is conclusive proof of the facts stated therein.

(3) The corporation may sell or otherwise dispose of any notes, bonds, debentures or other securities on such terms and conditions as it considers advisable, either at the par value thereof or at less or more than the par value thereof, and may charge, pledge, hypothecate, deposit or deal with any such securities as collateral security.

(4) Any notes, bonds, debentures or other securities and the coupons, if any, attached thereto shall be in such form and shall be executed in such manner and by such persons as may be determined by the corporation.

Temporary loans

9.(1) The corporation may for the purposes of the corporation, borrow by way of temporary loan from time to time such sums and upon such terms as the corporation determines, and may effect the loans by way of an overdraft or line of credit or by the pledging as security for

such temporary loans of notes, bonds, debentures or other securities of the corporation pending the sale thereof or in lieu of selling them, or in such other manner as the corporation determines.

(2) Any cheques, promissory notes or other instruments that may be necessary or desirable in connection with the borrowing of money and the obtaining of advances by way of a temporary loan under subsection (1) may be executed in such manner as the corporation determines.

Purposes of the corporation

10. In sections 8 and 9, “purposes of the corporation” include

- (a) the carrying out by the corporation of the powers and duties given to it by or pursuant to this or any other Act, and
 - (i) the provision in whole or in part for expenditures made or to be made by the corporation in connection with the carrying out of those powers and duties, and
 - (ii) the reimbursement of the corporation for the whole or any part of any expenditures made or to be made by the corporation in connection with the carrying out of those powers and duties,
- (b) the repayment of sums advanced or paid over to the corporation pursuant to section 17,
- (c) the payment, funding or renewal from time to time of the whole or any part of any loan raised or the notes, bonds, debentures or other securities issued by the corporation, and
- (d) the payment of any other liability or indebtedness of the corporation.

Loans from the Canada corporation

11.(1) The corporation may borrow from the Canada corporation for any of the purposes mentioned in this Act or the National Housing Act (Canada) on such terms and conditions as the Commissioner in Executive Council considers proper.

(2) A municipality, with the approval of the corporation, may borrow from the Canada corporation for any of the purposes mentioned in this Act or the National Housing Act (Canada), on such terms and conditions as the Commissioner in Executive Council considers proper.

(3) The corporation and a municipality, with the approval of the corporation, may receive contributions available under the National Housing Act (Canada).

Government guarantee

12.(1) The repayment of principal and interest of any borrowings by the corporation and the principal and interest of, and any premiums payable under, any notes, bonds, mortgages, debentures or other securities issued by the corporation, are guaranteed by the Government of the Yukon.

(2) The guarantee, in such form and manner as the Commissioner in Executive Council approves, may be endorsed upon any notes, bonds, debentures or other securities issued by the corporation and may be signed on behalf of the Government of the Yukon by the Executive Council Member, or such other person as the Commissioner in Executive Council may designate.

(3) The signature of the Executive Council Member or the person designated by the Commissioner in Executive Council, upon the guarantee is conclusive proof that the relevant provisions of this Act have been complied with.

(4) Where in respect of any notes, bonds, debentures or other securities issued by the corporation, it becomes necessary or desirable under the terms of any guarantee given on behalf of the Government of the Yukon to make payment under the guarantee, the payment may be made upon the order of the Executive Council Member out of the Yukon Consolidated Revenue Fund, without further appropriation.

Seal and signatures on securities

13.(1) The seal of the corporation on any notes, bonds, debentures or other securities of the corporation and the signature of

- (a) any person authorized by the corporation to execute the notes, bonds, debentures or other securities or any coupon attached thereto, or
- (b) the Executive Council Member, or the person designated by the Commissioner in Executive Council to sign a guarantee that is endorsed on the notes, bonds, debentures or other securities

may be engraved, lithographed, printed or otherwise reproduced on the notes, bonds, debentures or other securities of the corporation and on the guarantee endorsed thereon.

(2) The reproduced signature of any person referred to in subsection (1) is for all purposes deemed to be the signature of that person and is binding on the corporation and the Government of the Yukon, notwithstanding that the person whose signature is reproduced did not hold office at the date of the notes, bonds, debentures or other securities or at the date of delivery thereof.

Sinking funds

14. The corporation has power to provide for the creation, management and application of sinking funds or other means of securing the repayment of any loan raised or notes, bonds, debentures or other securities issued by the corporation, including the redemption by call of any such securities issued subject to redemption in advance of maturity.

Investment of reserve funds

15.(1) The corporation may, from time to time, invest all or any portion of an insurance or sinking fund, or any other fund not presently required, in

- (a) debentures or securities of the Government of Canada or the government of any of the provinces of Canada, or
- (b) any debentures or securities the payment of which is guaranteed by the Government of the Yukon, the Government of Canada, the Canada corporation or the government of any of the provinces,

and may afterwards, whenever required to meet expenditure, dispose of any of the investments in such manner, on such terms and in such amounts as may be necessary or expedient.

(2) At the date of maturity of any loan of the corporation, such portion of the money so set aside as the corporation considers proper may be used for retiring the loan, in whole or in part, if any funds that exist in the sinking fund for that purpose are first so used.

Management of investments by the government

16.(1) Notwithstanding section 15, the corporation may authorize the Executive Council Member responsible for the Department of Finance to make and manage investments on behalf of the corporation.

(2) Where investments are made or managed by the Executive Council Member under subsection (1) on behalf of the corporation,

- (a) investments may be made in any investment permitted by the Trustee Act,
- (b) no net losses resulting from the investments, and no costs of making or managing the investments, shall be charged to the principal of any amount the Executive Council Member is authorized to invest under subsection (1),
- (c) reasonable costs of making or managing the investments may be charged to the net income or profit of the investments, and
- (d) all other interest, sale proceeds and other income resulting from the investments shall be paid to the corporation.

Advances and grants to the corporation

17.(1) Subject to subsection (2), there shall be advanced to the corporation, from time to time, such amounts as it may request for the operation and capital costs of the corporation, and there shall be paid to the corporation after the end of the fiscal year of the corporation a grant in an amount equal to the deficit of the corporation as shown on its audited financial statements.

(2) Payments under subsection (1) shall be made out of a vote on the direction of the management board under the Financial Administration Act, but no such payment shall be made unless it is authorized to be made by that Act or an appropriation Act.

(3) The fiscal year of the corporation shall be April 1 to March 31 in the year next following.

Financial Administration Act

18. Notwithstanding any other provision of this Act,

- (a) the receipt and payment of money by the corporation is subject to the Financial Administration Act, and
- (b) the investment of money by the corporation is subject to the Financial Administration Act, except section 39 of that Act.

Audit

19.(1) The accounts and financial transactions of the corporation are subject to the audit of the Auditor General of Canada, and for that purpose he is entitled

- (a) to have access to all records, documents, books, accounts and vouchers of the corporation, and
- (b) to require from officers of the corporation such information as he deems necessary.

(2) The Auditor General of Canada shall report annually to the Executive Member the results of his examination of the accounts and financial statements of the corporation, and the report shall state whether, in his opinion,

- (a) the financial statements represent fairly the financial position of the corporation at the end of the financial year and the results of its operations for that year in accordance with the accounting policies of the corporation applied on a basis consistent with that of the immediately preceding year,
- (b) proper books of account have been kept and the financial statements are in agreement with the books of account, and
- (c) the transactions of the corporation that have come under his notice are within the powers of the corporation under this Act or any other Act that applies to the corporation.

(3) In his report, the Auditor General shall call attention to any other matter within the scope of his examination that in his opinion should be brought to the attention of the Legislative Assembly.

(4) The Auditor General from time to time may make to the corporation or the Executive Council Member such other reports as he considers necessary or as the Executive Council Member may require.

Annual report

20.(1) The corporation shall annually, after the end of its fiscal year, prepare a report showing the revenues, expenditures and activities during its last fiscal year, together with

- (a) an audited financial statement, and
- (b) the report of the Auditor General referred to in section 19 for that fiscal year.

(2) The Executive Council Member shall table a copy of the report at the next ensuing session of the Legislative Assembly.

HOUSING PROJECTS AND LOANS

Public housing projects

21.(1) The corporation, or a municipality and the corporation, may undertake, carry to completion, maintain, operate, and lease or sell a public housing project.

(2) For the purposes of this section, the corporation, or a municipality and the corporation, may

- (a) acquire and develop land for public housing projects,
- (b) construct public housing projects,
- (c) acquire, improve and convert existing buildings for a public housing project, and
- (d) enter into agreements for the development or management of public housing projects,

and may exercise any other power or do any other thing that may be required to be exercised or done for the purpose of a project.

Projects under the National Housing Act (Canada)

22.(1) The corporation may enter into agreements with the Canada corporation and any municipality or either of them to undertake projects of a type mentioned in Part VI of the National Housing Act (Canada).

(2) With the approval of the Executive Council Member, a municipality may enter into agreements with the Canada corporation and the Government of the Yukon or either of them to undertake projects of a type mentioned in Part VI of the National Housing Act (Canada).

Cost sharing and profit

23. When the corporation enters into an agreement with the Government of Canada under section 40 of the National Housing Act (Canada), the corporation

- (a) shall pay 25 percent of the capital cost,
- (b) may require the municipality to reimburse to the corporation a percentage of the capital cost, and
- (c) may, in respect of the profits and losses, share with the municipality a proportion thereof.

Operating losses

24.(1) When the corporation or a municipality enters into an agreement with the Canada corporation under section 44 of the National Housing Act (Canada), the corporation may pay 50 percent of the annual operating losses and may require the municipality to pay a percentage thereof.

(2) The contributions shall be made for a period not exceeding the useful life of the project as determined by the corporation and in any case, not exceeding 50 years from the date of completion of the project.

(3) The date of completion of the project shall mean the last day of the calendar year in which the construction or acquisition and rehabilitation of the project has in the opinion of the corporation been substantially completed.

Senior citizen housing projects

25.(1) The corporation may undertake senior citizen housing projects.

(2) For the purpose of this section, the corporation may

- (a) acquire, lease, assemble and develop land,
- (b) design and construct senior citizen housing accommodation,
- (c) acquire, lease, improve or convert existing buildings for senior citizen housing accommodation,
- (d) administer, manage and maintain senior citizen accommodation,
- (e) borrow any money required for a project, and
- (f) sell, lease or dispose of any senior citizen accommodation or project.

(3) The corporation may enter into agreements with non-profit organizations for

- (a) the development of senior citizen housing projects, and
- (b) the provision of a grant towards the total capital cost of a project.

(4) In this section, “non-profit organization” means an organization wholly owned by the Government of the Yukon, by a municipality or any agency thereof, or an organization constituted exclusively for charitable or benevolent purposes, no part of the income of which is payable to or otherwise available for personal benefit of any proprietor, member or shareholder.

Staff housing projects

26.(1) The corporation may undertake and administer staff housing programs.

(2) For the purpose of this section, the corporation may

- (a) acquire, lease, assemble and develop land,
- (b) design and construct staff housing units,
- (c) acquire, lease, improve or convert existing buildings for staff housing purposes,
- (d) administer, manage and maintain staff housing units,
- (e) borrow any money required for staff housing,
- (f) sell, lease or dispose of any staff housing units, and
- (g) administer a scheme of purchasing and re-purchasing houses owned by staff.

(3) In this section, “staff” means employees of the Government of the Yukon or any agency thereof.

Cooperative housing projects

27.(1) Where the corporation enters into an agreement with the Government of Canada under section 40 of the National Housing Act (Canada) and with a cooperative association to undertake a cooperative housing project, the corporation may bear not more than 25 percent of the capital costs of the project on such terms as to security and payment as the corporation considers proper.

(2) In this section, “cooperative housing project” means a housing project built by a cooperative association incorporated or registered under the laws of the Yukon.

Student housing projects

28. The corporation may borrow any funds required for the development of student housing projects.

Joint guarantees

29. With the approval of the Commissioner in Executive Council and upon such conditions as he may prescribe, the corporation and a municipality may jointly guarantee the repayment of principal and interest on all or part of a borrowing made by a person for the private development of a housing project.

Housing loans

30. Where in the opinion of the corporation sufficient money is not being made available by lending institutions or the Canada corporation for housing purposes, the corporation may make

- (a) home improvement loans, and

(b) loans for new construction or the purchase of existing housing accommodation,
upon the terms and conditions prescribed by the corporation.

LAND ASSEMBLY AND DEVELOPMENT PROJECTS

Land assembly or development projects

31.(1) The corporation, or the corporation and a municipality, may undertake and carry to completion a land assembly project or land development project.

(2) For the purposes of this section, the corporation, or the corporation and a municipality, may

- (a) acquire, lease, assemble, service and develop land or do any of them,
- (b) lease, sell or otherwise dispose of any land acquired, assembled or developed under a land assembly or land development project, and
- (c) construct or acquire housing units of any form or type for lease or sale in conjunction with a land assembly project or land development project or separately therefrom.

Joint land assembly or development projects

32.(1) The corporation may enter into an agreement with any one or more of

- (a) the Government of the Yukon,
- (b) the Government of Canada,
- (c) the Canada corporation, and
- (d) any municipality

for the joint undertaking of a project under section 31.

(2) A municipality, with the approval of the Commissioner in Executive Council, may enter into agreement with any one or more of

- (a) the Government of the Yukon,
- (b) the Government of Canada,
- (c) the Canada corporation, and
- (d) the corporation,

for the joint undertaking of a project under section 31.

Municipal borrowing for projects

33. A municipality may, by bylaw, borrow such money as is necessary to enable it to develop and implement an approved project under section 31, and to secure the money borrowed.

URBAN RENEWAL SCHEMES

Agreements for urban renewal

34.(1) The corporation, or the corporation and a municipality, may enter into agreements with

- (a) the Government of the Yukon,
- (b) the Government of Canada, and

(c) the Canada corporation
or any combination of them for the preparation and implementation of urban renewal schemes.

(2) Before entering into any agreement for the carrying out of an urban renewal scheme, a municipality shall cause notice to be published once a week for two consecutive weeks in a newspaper circulated in the municipality preceding the presentation of the agreement to the council of the municipality, and the notice shall state

- (a) the purpose of the proposed agreement and a general description of the area affected,
- (b) that a copy of the proposed agreement is on file in the office of the clerk of the municipality and may be inspected by the public during business hours,
- (c) the time and place at which the council will hold a public hearing on the proposed urban renewal scheme, which shall not be less than ten days after the last publication of the official notice, and
- (d) the procedure to be followed by persons who wish to submit representations concerning the proposed urban renewal scheme.

(3) The council of the municipality may, by resolution passed before the first publication of the notice, prescribe the procedure to be followed by persons who wish to submit representations concerning the proposed urban renewal scheme and, without restricting the generality of the foregoing, may

- (a) require the submission of written representations to the council prior to the hearing, and
- (b) regulate the presentation of oral submissions at the hearing.

(4) The council of the municipality shall hold a public hearing at the time and place stated in the notice and at that hearing shall, subject to subsection (3), hear any person who wishes to make representations concerning the manner in which any provision of the proposed agreement may affect him, any owner of land whom he represents, the public at large or any local group of residents or property owners.

(5) The council of the municipality shall give due consideration to the recommendations, if any, of its departments or of consultants retained by it and representations made at the public hearing or submitted in writing pursuant to paragraph (3)(a) and make a ruling thereon.

Urban renewal undertaken by municipalities

35.(1) A municipality may prepare and implement an urban renewal scheme approved by the corporation for a blighted or substandard area of the municipality.

(2) Without restricting the powers it has under the Municipal Act, a municipality, for the purposes of carrying out an approved urban renewal scheme, may

- (a) acquire, clear, service and develop land within the urban renewal area,
- (b) demolish, remove, replace, renovate, repair and maintain buildings and other improvements owned or acquired by it in the urban renewal area,
- (c) sell, lease or otherwise alienate property in the urban renewal area,
- (d) provide assistance by grant or loan to the owners of property in the urban renewal area for the renovation or repair of that property on such terms as to security and repayment as the municipality considers just,

- (e) assist the relocation of persons dispossessed of housing accommodation by the scheme, and
- (f) exercise any other power or do any act or thing that may be required to be exercised or done in order to carry out the urban renewal scheme.

Cost-sharing

36.(1) Where the corporation enters into an agreement with a municipality or the Canada corporation and a municipality, the corporation may pay up to 50 percent and may require the municipality to pay the remainder of the share that is not paid by the Canada corporation of

- (a) the cost of the preparation of an urban renewal scheme, including the cost of all economic, social and engineering research and planning necessary therefor, and
- (b) the costs of implementing an urban renewal scheme, including the acquisition, clearing, demolition and disposition of lands and buildings and the installation of municipal services and works, other than public buildings in the urban renewal area.

(2) Every agreement entered into with a municipality under this section shall provide that the municipality will pay the corporation in the same proportion as provided for in subsection (1) of the share that is not paid to the Canada corporation of

- (a) any money received by the municipality from the sale, lease or other disposition of land in the urban renewal area, and
- (b) the value, as determined in the manner provided in the agreement, of land in the urban renewal area retained by the municipality for public purposes.

Municipal borrowing for urban renewal

37.(1) A municipality may, with the approval of the Commissioner in Executive Council, by bylaw borrow such money as is necessary to enable it to prepare and implement an urban renewal scheme, and to secure the money borrowed.

(2) The Government of the Yukon may guarantee the repayment by a municipality of any money borrowed for its share of the cost of preparing and implementing an urban renewal scheme.

GENERAL

Acquisition of land by the corporation

38. Land may be acquired by the corporation for any of the purposes provided by this Act by purchase or otherwise, and it may be acquired before it is actually needed for and in anticipation of any project or scheme mentioned in this Act.

Acquisition of land by a municipality

39. Land may be acquired by a municipality under sections 21, 31 and 35 by purchase or otherwise, and it may be acquired before it is actually needed for and in anticipation of any project or scheme mentioned in this Act.

Emergencies in housing conditions

40. To relieve any emergency in housing conditions, the corporation may erect, maintain, manage and wind up projects for temporary housing accommodation.

Grants for housing and studies

41. The corporation may

- (a) make grants in aid of studies into housing conditions or any matter relating to housing in the Yukon, and
- (b) make grants and otherwise assist the house building industry in the Yukon by stimulating and encouraging research, education and construction competition within the industry.

Housing advisory committees

42.(1) The Commissioner in Executive Council may by order establish housing advisory committees consisting of such number of persons as he determines, and prescribe their functions and duties.

(2) The Commissioner in Executive Council shall appoint the members of a housing advisory committee to hold office during pleasure or for such term as he determines, and the members so appointed shall appoint a chairperson from amongst themselves.

Areas not in a municipality

43. With respect to areas not within a municipality, the Commissioner in Executive Council may exercise all the powers given a municipality by this Act.

Agreement power of the government

44. Any agreement that may be entered into by the corporation under this Act may be entered into by the Commissioner in Executive Council.

Regulations

45. The Commissioner in Executive Council may make such regulations and prescribe such forms as he deems necessary for carrying out the purposes and provisions of this Act.

CHAPTER 88

HOUSING DEVELOPMENT ACT

Interpretation

1. In this Act,

“Corporation” means the Canada Mortgage and Housing Corporation;

“family housing unit” means a unit providing living, sleeping, eating, food preparation and sanitary facilities for one family, with or without other essential facilities shared with other family housing units;

“house” means a building, together with the land upon which it is situated, intended for human habitation comprising not more than two family housing units;

“housing project” means a project, together with the land upon which it is situated, consisting of one or more houses, or one or more multiple-family dwellings or a combination of houses and multiple-family dwellings, together with any public space, recreational facilities, commercial space, and other buildings appropriate to the project;

“multiple-family dwelling” means a building containing three or more family housing units;

“public housing project” means a project, together with the land upon which it is situated, consisting of a housing project or housing accommodation of the hostel or dormitory type or any combination thereof, undertaken to provide decent, safe and sanitary housing accommodation and intended to be leased to individuals or families of moderate or low income;

“urban renewal area” means a blighted or substandard area of a municipality for which the Commissioner in Executive Council has approved the implementation of an urban renewal scheme;

“urban renewal scheme” means a scheme for the renewal of an urban renewal area.

Municipal public housing projects

2.(1) The Government of the Yukon, or a municipality with the approval of the Commissioner in Executive Council, may undertake and operate a public housing project for the purpose of providing housing accommodation to individuals or families of moderate or low income at rentals that are sufficient to meet the cost of amortizing and operating the project or that are less than the rentals required to meet such costs.

(2) For the purpose of undertaking a public housing project approved by the Commissioner in Executive Council the council of a municipality may

- (a) acquire and develop land for housing purposes,
- (b) construct housing projects or housing accommodation of the hostel or dormitory type for sale or for rent, and
- (c) acquire, improve and convert existing buildings for a housing project or for housing accommodation of the hostel or dormitory type.

(3) The Commissioner in Executive Council may, on behalf of the Government of the Yukon, enter into an agreement with the council of any municipality operating a public housing project whereby the Government of the Yukon will pay annually to the municipality an amount

calculated in the agreement and not exceeding 30 percent of the annual operating losses incurred by the municipality, as determined by the Commissioner in Executive Council, in operating the public housing project.

Borrowing of money for public housing purposes

3. The Commissioner in Executive Council, on behalf of the Government of the Yukon, or the council of a municipality with the approval of the Commissioner in Executive Council, may enter into an agreement with the Corporation for the purpose of borrowing money for

- (a) acquiring and servicing land for public housing purposes, or
- (b) the construction or acquisition of a public housing project.

Joint projects

4.(1) The Commissioner in Executive Council, on behalf of the Government of the Yukon, may enter into an agreement with the Government of Canada to undertake jointly with the Government of Canada projects for

- (a) the acquisition and development of land for housing purposes,
- (b) the construction of housing projects or housing accommodation of the hostel or dormitory type for sale or for rent, and
- (c) the acquisition, improvement and conversion of existing buildings for a housing project or for housing accommodation of the hostel or dormitory type.

(2) The Commissioner in Executive Council, on behalf of the Government of the Yukon, or the council of a municipality, on behalf of the municipality, may enter into an agreement to undertake jointly any project described in subsection (1), but any such agreement shall not require the municipality to pay more than 12 ½ percent of the capital costs or losses of the project.

(3) Where a municipality enters into an agreement with the Government of the Yukon pursuant to subsection (2), the municipality may, notwithstanding anything contained in the Municipal Act, charge all or any part of the amount it is required to pay under the agreement for capital costs or losses or towards the costs of installing municipal services as a local improvement charge against the land comprised in the project and may determine the proportions in which the amount is to be charged against various parcels of land in the project.

Municipal urban renewal schemes

5.(1) A municipality may, with the approval of the Commissioner in Executive Council, prepare and carry out an urban renewal scheme within the municipality.

(2) An urban renewal scheme in a municipality shall include

- (a) a plan designating the buildings and works in the urban renewal area that are to be acquired and cleared by the municipality in connection with the scheme and for making available to persons dispossessed of housing accommodation by such acquisition or clearance, decent, safe and sanitary housing accommodation at rentals that are fair and reasonable having regard to the incomes of the persons to be dispossessed,

- (b) a plan describing the proposed street pattern and land use for the urban renewal area, and the program for the construction or improvement in the area of municipal services, schools, parks, playgrounds, community buildings and other facilities,
- (c) a description of the methods planned for municipal direction and control of the use of land in the urban renewal area, including zoning, building controls and standards of occupancy of buildings in the area, and
- (d) a description of the methods planned for the improvement, rehabilitation or replacement of privately owned facilities, including housing accommodation, that will continue in the area, and the techniques planned for retarding such facilities from becoming substandard.

Urban renewal powers

6. For the purpose of carrying out an urban renewal scheme, the council of a municipality may

- (a) acquire and clear, service and develop land within an urban renewal area,
- (b) demolish, remove, replace, renovate, repair and maintain buildings and other improvements owned or acquired by it in an urban renewal area,
- (c) sell, lease or otherwise alienate property in an urban renewal area,
- (d) provide assistance by grant or loan to the owners of property in an urban renewal area for the renovation or repair of that property on any terms for security and repayment that the municipality considers just,
- (e) assist the relocation of persons dispossessed of housing accommodation by the scheme, and
- (f) appoint a municipal development officer and authorize him to act on behalf of the council in the carrying out of the scheme and the enforcement of any bylaw passed for the purpose of carrying out the scheme.

Urban renewal bylaws

7. The council of a municipality, for the purpose of carrying out an urban renewal scheme, may pass bylaws

- (a) establishing minimum standards for existing property in an urban renewal area,
- (b) prescribing standards for the maintenance and occupancy of property in an urban renewal area and prohibiting the use of property that does not conform to those standards, and
- (c) requiring property that does not conform to the standards prescribed in a bylaw to be repaired and maintained in compliance with those standards or requiring the land to be cleared of buildings that do not comply with those standards.

Notice that property does not comply with bylaw

8.(1) Where, in the opinion of the council or the municipal development officer of a municipality, property in an urban renewal area does not comply with the standards prescribed in a bylaw made pursuant to section 7, the council or municipal development officer shall, before acting to enforce the bylaw with respect to that property, serve the assessed owner and

each occupant of the property and each person shown by the records of the land titles office as having an interest in the property with a notice stating in what respect the property does not comply with the bylaw.

(2) The notice described in subsection (1) shall also state

- (a) particulars of the repairs that are required to be made to the property described therein, or
- (b) the structures on the land that are to be removed,

and shall fix a day not less than six months from the date of service of the notice by which repairs shall be made to the property or structures on the land removed.

(3) A notice described in subsection (1) may be given by registered mail or by personal service.

Appeal to council of municipality

9.(1) Every person on whom a notice described in section 8 is served may appeal the requirements set forth in the notice to the council of the municipality.

(2) Notice of an appeal under subsection (1) shall be served on the clerk of the municipality within ten days from the day of service of the notice described in section 8, and the council shall fix a day for hearing the appeal, which day shall not be later than 30 days from the day of service of the notice of appeal.

(3) The hearing of an appeal may be adjourned from time to time by the council.

(4) A municipal council may, after hearing an appeal made under subsection (1),

- (a) confirm, discharge or vary the requirements set forth in the notice, or
- (b) grant an extension of not more than one year from the day specified in the notice described in section 8, for compliance with the requirements of that notice, but no extension shall be granted unless the council is of the opinion that the refusal of an extension will result in undue hardship to any of the persons on whom the notice was served.

Appeal to Executive Council Member

10.(1) Every person on whom a notice is required by section 8 to be served, may within ten days after the receipt by him of a decision of the council, appeal that decision to the Executive Council Member.

(2) Where an appeal is made to the Executive Council Member under subsection (1), the Executive Council Member may confirm, discharge or vary any decision of a council made under section 9.

Municipality may repair or remove structures

11. Where the repairs required to be made to any property or the removal of any structure is not completed within

- (a) the time fixed in the notice,
- (b) the time prescribed by the council of the municipality after hearing an appeal made under section 9, or

- (c) the time fixed by the Executive Council Member after hearing an appeal made under section 10,

the council of the municipality may carry out repairs to the property or remove any structures thereon and the cost thereof shall be levied as a debt due to the municipality and charged as taxes due and owing to the municipality.

Agreements with C.M.H.C. for urban renewal

12. The Commissioner in Executive Council, on behalf of the Government of the Yukon, or the council of a municipality with the approval of the Commissioner in Executive Council, may enter into agreements with the Corporation for the preparation and carrying out of urban renewal schemes.

Borrowing for urban renewal schemes

13. The Commissioner in Executive Council, on behalf of the Government of the Yukon, or the council of a municipality with the approval of the Commissioner in Executive Council, may enter into an agreement with the Corporation for the purpose of borrowing money for the implementation of an urban renewal scheme or any part thereof.

Payments towards costs

14. The Commissioner in Executive Council, on behalf of the Government of the Yukon, may enter into an agreement with any municipality undertaking or acquiring an urban renewal scheme whereby the Government of the Yukon will pay to the municipality an amount calculated in the agreement and not exceeding 30 percent of the costs incurred by the municipality, as determined by the Commissioner in Executive Council, in undertaking an urban renewal scheme.

Municipal housing projects

15.(1) A municipality may, with the approval of the Commissioner in Executive Council, undertake and operate a housing project within the municipality.

(2) For the purpose of undertaking a housing project approved by the Commissioner in Executive Council, the council of a municipality may exercise all the powers set out in subsection 2(2).

Borrowing of money for sewage treatment projects

16. The Commissioner in Executive Council, on behalf of the Government of the Yukon, or the council of a municipality with the approval of the Commissioner in Executive Council, may enter into an agreement with the Corporation for the purpose of borrowing money for the construction of a sewage treatment project consisting of a trunk sewer, collector system, a central treatment plant or both, for the collection and treatment of sewage.

Agreement for housing research and community planning

17. The Commissioner in Executive Council, on behalf of the Government of the Yukon, or the council of a municipality with the approval of the Commissioner in Executive Council, may enter into an agreement with the Corporation

- (a) for the preparation and undertaking of programs of technical research and investigation into the improvement and development of methods of construction, standards, materials, equipment, fabrication, planning, designing and

- other factors involved in the construction or provision of improved housing accommodation in the Yukon,
- (b) for promoting training in the construction or designing of houses, in land planning or community planning or in the management and operation of housing projects in the Yukon, and
 - (c) to conduct special studies relating to the condition of urban areas, to means of improving housing, to the need for additional housing or for urban redevelopment in the Yukon.

Security for loans to municipalities

18. The council of a municipality may with the approval of the Commissioner in Executive Council, by bylaw, authorize the borrowing of money for any of the purposes described in this Act on the security of mortgages given or debentures issued by the municipality and the provisions of the Municipal Act shall apply with respect to such bylaws and debentures.

Additional agreements

19. The Commissioner in Executive Council, on behalf of the Government of the Yukon, or the council of a municipality with the approval of the Commissioner in Executive Council, may enter into such other agreements with the Corporation as in the opinion of the Commissioner in Executive Council will assist the Government of the Yukon or the municipality in carrying out the purposes of this Act.

Housing authorities

20.(1) For the purpose of carrying out agreements entered into pursuant to this Act for the operation and maintenance of housing projects or public housing projects for or on behalf of the Government of the Yukon or a municipality, the Commissioner in Executive Council may, by order, incorporate housing authorities consisting of such number of persons as he determines.

(2) The Commissioner in Executive Council shall appoint the members of a housing authority to hold office during pleasure or for such term as he determines.

(3) The Commissioner in Executive Council may vest in a housing authority such powers, functions and duties as he deems necessary to operate, manage and maintain any housing project or public housing project under an agreement entered into pursuant to this Act.

CHAPTER 89

HUMAN TISSUE GIFT ACT

Interpretation

1. In this Act,

“consent” means a consent given under this Act;

“tissue” includes an organ, but does not include any skin, bone, blood, blood constituent or other tissue that is replaceable by natural processes of repair;

“transplant” means the removal of tissue from a human body, whether living or dead, and its implantation in a living human body;

“writing” includes a will and any other testamentary instrument whether or not probate has been applied for or granted and whether or not the will or other testamentary instrument is valid.

Inter vivos gifts for transplants

2. A transplant from one living human body to another living human body may be done in accordance with this Act but not otherwise.

Consent to inter vivos transplant

3.(1) Any person who has attained the age of majority, is mentally competent to consent, and is able to make a free and informed decision may in a writing signed by him consent to the removal forthwith from his body of the tissue specified in the consent and its implantation in the body of another living person.

(2) Notwithstanding subsection (1), a consent given thereunder by a person who had not attained the age of majority, was not mentally competent to consent, or was not able to make a free and informed decision is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority, was not mentally competent to consent, or was not able to make a free and informed decision as the case may be.

(3) A consent given under this section is full authority for any medical practitioner

- (a) to make any examination necessary to assure medical acceptability of the tissue specified therein, and
- (b) to remove forthwith such tissue from the body of the person who gave the consent.

(4) If for any reason the tissue specified in the consent is not removed in the circumstances to which the consent relates, the consent is void.

CONSENT TO POST MORTEM GIFT FOR TRANSPLANT

Consent

4.(1) Any person who has attained the age of majority may consent

- (a) in a writing signed by him at any time, or
- (b) orally in the presence of at least two witnesses during his last illness

that his body or the part or parts thereof specified in the consent be used after his death for therapeutic purposes, medical education or scientific research.

(2) Notwithstanding subsection (1), a consent given by a person who had not attained the age of majority is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority.

(3) Upon the death of a person who has given a consent under this section, the consent is binding and is full authority for the use of the body or the removal and use of the specified part or parts for the purpose specified, except that no person shall act upon a consent given under this section if he has reason to believe that it was subsequently withdrawn.

Consent by others

5.(1) Where a person of any age who has not given a consent under section 4 dies, or in the opinion of a medical practitioner is incapable of giving a consent by reason of injury or disease and his death is imminent,

- (a) his spouse of any age,
- (b) if none or if his spouse is not readily available, any one of his children who has attained the age of majority,
- (c) if none or if none is readily available, either of his parents,
- (d) if none or if neither is readily available, any one of his siblings who has attained the age of majority,
- (e) if none or if none is readily available, any other of his next of kin who has attained the age of majority, or
- (f) if none or if none is readily available, the person lawfully in possession of the body other than, where he died in hospital, the administrative head of the hospital,

may consent

- (g) in a writing signed by the spouse, relative or other person,
- (h) orally by the spouse, relative or other person in the presence of at least two witnesses, or
- (i) by the telegraphic, recorded telephonic, or other recorded message of the spouse, relative or other person

to the body or the part or parts thereof specified in the consent being used after death for therapeutic purposes, medical education or scientific research.

(2) No person shall give a consent under this section if he has reason to believe that the person who died or whose death is imminent would have objected thereto.

(3) Upon the death of a person in respect of whom a consent was given under this section the consent is binding and is, subject to section 6, full authority for the use of the body or for the removal and use of the specified part or parts for the purpose specified, except that no person shall act on a consent given under this section if he has actual knowledge of an objection

thereto by the person in respect of whom the consent was given or by a person of the same or closer relationship to the person in respect of whom the consent was given than the person who gave the consent.

- (4) In subsection (1), ‘‘person lawfully in possession of the body’’ does not include
- (a) the supervising coroner or a coroner in possession of the body for the purposes of the Coroners Act,
 - (b) the public administrator or any person on his behalf in possession of the body for the purposes of its burial,
 - (c) an embalmer or funeral director in possession of the body for the purpose of its burial, cremation or other disposition, or
 - (d) the superintendent of a crematorium in possession of the body for the purpose of its cremation.

Directions by coroner

6. Where in the opinion of a medical practitioner the death of a person is imminent by reason of injury or disease and the medical practitioner has reason to believe that section 6 of the Coroners Act may apply when death does occur and a consent under this Act has been obtained for a post-mortem transplant of tissue from the body, a coroner having jurisdiction, notwithstanding that death has not yet occurred, may give such directions as he thinks proper respecting the removal of such tissue after the death of the person, and every such direction has the same force and effect as if it had been made after death.

Determining death

7.(1) For the purposes of a post-mortem transplant, the fact of death shall be determined by at least two medical practitioners in accordance with accepted medical practice.

(2) No medical practitioner who has had any association with the proposed recipient that might influence his judgment shall take any part in the determination of the fact of death of the donor.

(3) No medical practitioner who took any part in the determination of the fact of death of the donor shall participate in any way in the transplant procedures.

(4) Nothing in this section in any way affects a medical practitioner in the removal of eyes for a cornea transplant.

Unusable gift

8. Where a post-mortem gift under this Act cannot for any reason be used for any of the purposes specified in the consent, the subject matter of the gift and the body to which it belongs shall be dealt with and disposed of as if no consent had been given.

Actions for damages

9. No action or other proceeding for damages lies against any person for any act done in good faith and without negligence in the exercise or intended exercise of any authority conferred by this Act.

Prohibited transactions

10. No person shall buy, sell or otherwise deal in, directly or indirectly, for a valuable consideration, any tissue for a transplant, or any body or part or parts thereof other than blood or a blood constituent, for therapeutic purposes, medical education or scientific research, and any such dealing is invalid as being contrary to public policy.

Confidential information

11.(1) Except where legally required, no person shall disclose or give to any other person any information or document whereby the identity of any person

- (a) who has given or refused to give a consent,
- (b) with respect to whom a consent has been given, or
- (c) into whose body tissue has been, is being or may be transplanted,

may become known publicly.

(2) Where the information or document disclosed or given pertains only to the person who disclosed or gave the information or document, subsection (1) does not apply.

Offence and penalty

12. Every person who knowingly contravenes any provision of this Act commits an offence and on summary conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both.

Coroners Act

13. Except as provided in section 6, nothing in this Act affects the operation of the Coroners Act.

CHAPTER 90

INCOME TAX ACT

Interpretation

1.(1) In this Act,

- “agreeing province” means a province that has entered into an agreement with the Government of Canada under which the Government of Canada will collect taxes payable under that province’s income tax statute and will make payments to that province in respect of the taxes so collected;
- “amount” means money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing;
- “assessment” includes a re-assessment;
- “business” includes a profession, calling, trade, manufacture or undertaking of any kind whatsoever and includes an adventure or concern in the nature of trade but does not include an office or employment;
- “collection agreement” means an agreement entered into pursuant to subsection 56(1);
- “Commissioner” means the Commissioner of the Yukon or, where a collection agreement is entered into, means
- (a) in relation to the remittance of any amount as or on account of tax payable under this Act, the Receiver General for Canada, and
 - (b) in relation to any other matter, the Minister;
- “corporation” includes an incorporated company and a “corporation incorporated in Canada” includes a corporation incorporated in any part of Canada before or after it became part of Canada;
- “court” means the Supreme Court;
- “deputy head” means,
- (a) the Treasurer, or
 - (b) where a collection agreement is entered into, the Deputy Minister of National Revenue for Taxation;
- “employed” means performing the duties of an office or employment;
- “employee” includes officer;
- “employer”, in relation to an officer, means the person from whom the officer receives his remuneration;
- “federal Act” means the Income Tax Act (Canada) as amended from time to time;
- “fiscal period” means a fiscal period determined in accordance with and for the purposes of the federal Act;
- “income tax statute” means, with reference to an agreeing province, the law of that province that imposes a tax similar to the tax imposed under this Act;
- “individual” means a person other than a corporation and includes a trust or estate as defined in subsection 104(1) of the federal Act;
- “loss” means a loss as determined in accordance with and for the purposes of the federal Act;

“Minister” means the Minister of National Revenue for Canada, but in any provision of the federal Act that is incorporated by reference in this Act, unless a collection agreement has been entered into, a reference to the Minister shall be read and construed for the purpose of this Act as a reference to the Commissioner;

“permanent establishment” means a permanent establishment as defined in the federal regulations;

“person” or any word or expression descriptive of a person, includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person according to the law of that part of Canada to which the context extends;

“Receiver General for Canada” means the Receiver General for Canada, but in any provision of the federal Act that is incorporated by reference in this Act, unless a collection agreement is entered into, a reference to the Receiver General for Canada, shall be read and construed for the purposes of this Act as a reference to the Commissioner;

“taxable income” means taxable income as determined in accordance with and for the purposes of the federal Act subject to variation on objection or on appeal, if any, in accordance with the provisions of the federal Act;

“taxation year” means

- (a) in the case of a corporation, a fiscal period,
- (b) in the case of an individual, a calendar year, and
- (c) in the case of an estate or trust arising on death, notwithstanding paragraph (b), a taxation year as defined in paragraph 104(23)(a) of the federal Act,

and when a taxation year is referred to by reference to a calendar year, the reference is to the taxation year or years coinciding with, or ending in, that year;

“taxpayer” includes any person whether or not liable to pay tax.

(2) The expression “last day of the taxation year” shall, in the case of an individual who resided in Canada at any time in the taxation year but ceased to reside in Canada before the last day thereof, be deemed to be a reference to the last day in the taxation year on which he resided in Canada.

(3) The tax payable by a taxpayer under this Act or under Part I of the federal Act means the tax payable by him as fixed by assessment or re-assessment subject to variation on objection or on appeal, if any, in accordance with this Act or Part I of the federal Act, as the case may be.

(4) For the purposes of this Act, except where they are at variance with the definitions contained in this section, the definitions and interpretations contained in or made by regulation under the federal Act, as amended from time to time, apply.

(5) In any case of doubt, the provisions of this Act shall be applied and interpreted in a manner consistent with similar provisions of the federal Act.

PART 1 INCOME TAX

DIVISION 1 - LIABILITY FOR TAX

Tax of individuals and corporations

2.(1) An income tax shall be paid as hereinafter required for each taxation year by every individual

- (a) who was resident in the Yukon on the last day of the taxation year, or
- (b) who, not being resident in the Yukon on the last day of the taxation year, had income earned in the taxation year in the Yukon as defined in subsection 3(5).

(2) An income tax shall be paid as hereinafter required for each taxation year by every corporation that maintained a permanent establishment in the Yukon at any time in the year.

DIVISION 2 - COMPUTATION OF TAX

Individual income tax

3.(1) The tax payable under this Act for a taxation year by an individual who resided in the Yukon on the last day of the taxation year and had no income earned in the taxation year outside the Yukon is the percentage of the tax payable under the federal Act for that year specified in subsection (4).

(2) The tax payable under this Act for a taxation year by an individual

- (a) who resided in the Yukon on the last day of the taxation year but had income earned in the taxation year outside the Yukon, or
- (b) who did not reside in the Yukon on the last day of the taxation year but had income earned in the taxation year in the Yukon,

is the amount that bears the same relation to the percentage of the tax payable under the federal Act for that year specified in subsection (4) that his income earned in the taxation year in the Yukon bears to his income for the year.

(3) An individual to whom section 2 is applicable for a taxation year is deemed to have paid on account of his tax for the year an amount equal to the product of

- (a) an amount that bears the same relation to the excess determined under subsection 120.1(4) of the Federal Act for the year that his income earned in the taxation year in the Yukon bears to his income for the year

by

- (b) the percentage specified in subsection (4) for the year.

(4) For the purposes of this section, the percentage of the tax payable under the federal Act to be used for computing the tax payable under this section is 45 percent.

(5) In this section,

“income earned in the taxation year in the Yukon” means the income earned in the taxation year in the Yukon determined in accordance with regulations referred to in paragraph 120(4)(a) of the federal Act;

“income earned in the taxation year outside the Yukon” means income for the year minus income earned in the taxation year in the Yukon;

“income for the year” means

- (a) in the case of an individual resident in Canada during part only of the taxation year in respect of whom section 114 of the federal Act applies, the aggregate of
 - (i) his income for the period or periods in the year referred to in paragraph 114(a) of the federal Act as determined in accordance with and for the purposes of the federal Act, and
 - (ii) his income for the portion of that year that is not included in the period or periods referred to in clause (i), computed under paragraphs 115(1)(a), (b) and (c) of the federal Act as though such portion of the year were the whole taxation year,
- (b) in the case of an individual not resident in Canada at any time in the taxation year, his income for the year as computed under paragraphs 115(1)(a), (b) and (c) of the federal Act, and
- (c) in the case of any other individual, his income for the year as determined in accordance with and for the purposes of the federal Act;

“tax payable under the federal Act” by an individual in respect of a taxation year means the amount determined under paragraph 120(4)(c) of the federal Act for the year in respect of that individual.

(6) An individual who, under the federal Act, pays tax computed in accordance with subsection 117(6) of that Act may, in lieu of the tax under subsection (1), pay a tax determined in accordance with the prescribed rules.

(7) Where an individual resided in the Yukon on the last day of a taxation year and had income for the year that included income earned in a country other than Canada in respect of which any non-business-income tax was paid by him to the government of a country other than Canada, he may deduct from the tax payable by him under this Act for that taxation year an amount equal to the lesser of

- (a) the amount, if any, by which any non-business-income tax paid by him for the year to the government of such other country exceeds the amount claimed under the federal Act as a deduction for that taxation year by virtue of subsection 126(1) of that Act, and
- (b) that proportion of the tax otherwise payable under this Act for that taxation year that
 - (i) the aggregate of the taxpayer’s income from sources in that country, excluding any portion thereof that was deductible by him under clause 110(1)(f)(i) of the Federal Act
 - (A) for that year, if section 114 of the federal Act is not applicable, or

(B) if section 114 of the federal Act is applicable, for the period or periods in the year referred to in paragraph (a) of that section,

on the assumption that

(C) no businesses were carried on by him in that country, and

(D) no amount was deducted under subsection 91(5) of the federal Act in computing his income for the year;

is of

(ii) the taxpayer's income earned in the Yukon

(A) in the year, if section 114 of the federal Act is not applicable, or

(B) if section 114 of the federal Act is applicable in the period or periods of the year referred to in paragraph (a) thereof, minus any amount deductible by him under paragraph 110(1)(f), section 110.1, paragraph 111(1)(b) or section 112 of the Federal Act for the year or such period or periods, as the case may be.

(8) For the purpose of subsection (7), "tax payable" and "tax otherwise payable" mean the amount that would, but for section 120.1 of the Federal Act, be the tax otherwise payable under this Act.

(9) For the purposes of subsection (7) and paragraph 4(5)(b), the non-business-income tax paid by a taxpayer to the government of a country other than Canada in respect of his income tax for a year is the non-business-income tax paid by him to the government of that country in respect of that year as computed under paragraph 126(7)(c) of the federal Act for the purposes of that Act.

Corporation income tax

4.(1) The tax payable by a corporation under this Act for a taxation year is ten percent of the corporation's taxable income earned in the year in the Yukon.

(2) Notwithstanding subsection (1), for a taxation year when a Canadian controlled private corporation is allowed a deduction from federal tax under subsection 125(1) of the federal Act, the tax payable under this Act by that corporation in respect of the income that is eligible for the deduction under subsection 125(1) of the federal Act is five percent of that eligible income.

(3) Notwithstanding subsection (1), where the taxable income of a corporation is eligible for the deduction from federal tax under section 125.1 of the federal Act, the rate of tax payable under this Act by that corporation in respect of that eligible taxable income is two and one-half percent.

(4) In this section,

"tax otherwise payable" means the amount that would, but for section 120.1 of the Federal Act, be the tax otherwise payable under this Act;

“taxable income earned in the year” means the aggregate of the taxable income earned in the year in each province by a corporation as determined in accordance with regulations referred to in paragraph 124(4)(a) of the federal Act;

“taxable income earned in the year in the Yukon” means the taxable income earned in the year in the Yukon by a corporation as determined in accordance with regulations referred to in paragraph 124(4)(a) of the federal Act.

(5) Where the income for a taxation year of a corporation that maintained permanent establishment in the Yukon at any time in the taxation year includes income described in clause 126(1)(b)(i) of the federal Act from sources in a country other than Canada (in this section referred to as “foreign investment income”) and where the corporation has claimed a deduction under subsection 126(1) of the federal Act in respect of the foreign investment income, the corporation may deduct from the tax for the year otherwise payable under this Act an amount equal to the lesser of

- (a) ten percent of the product of
 - (i) the foreign investment income of the corporation for the year from sources in the country, and
 - (ii) that proportion of the taxable income earned in the year by the corporation that is determined to have been earned in the year in the Yukon in accordance with regulations referred to in paragraph 124(4)(a) of the federal Act, and
- (b) that proportion of the amount by which such part of any non-business-income tax paid by the corporation for the year to the government of a country other than Canada (except any such tax or part thereof that may reasonably be regarded as having been paid in respect of income from a share of the capital stock of a foreign affiliate of the corporation) exceeds the amount of the deduction claimed by the corporation under subsection 126(1) of the federal Act that
 - (i) the taxable income earned in the year in the Yukon by the corporation as determined in accordance with regulations referred to in paragraph 124(4)(a) of the federal Act

is of

- (ii) the aggregate of the taxable income earned in the year in each province by the corporation as determined in accordance with regulations referred to in paragraph 124(4)(a) of the federal Act.

(6) Where the income of a corporation for a taxation year includes income from sources in more than one country other than Canada, subsection (5) shall be read as providing for separate deductions in respect of each of the countries other than Canada.

Political contributions

5.(1) In this section,

“amount contributed” means a contribution for Yukon political purposes to a registered political party or candidate in the form of cash or a negotiable instrument issued by the person making the contribution, but does not include a contribution made by an official of a registered political party or an agent of a candidate (in his capacity as official or agent, as the case may be) to another official or agent, as the case may be;

“candidate” means a candidate for election to the Legislative Assembly who has been nominated as a candidate under the Elections Act and includes a person who is a member of the Legislative Assembly;

“registered political party” means a political party registered under the Elections Act.

(2) There may be deducted from the tax otherwise payable by a taxpayer under this part for a taxation year in respect of the aggregate of all amounts each of which is an amount contributed by the taxpayer in the year to a registered political party or to a candidate at an election of a member to serve in the Legislative Assembly (in this section referred to as “the aggregate”)

- (a) 75 percent of the aggregate if the aggregate does not exceed \$100,
- (b) \$75 plus 50 percent of the amount by which the aggregate exceeds \$100 if the aggregate exceeds \$100 and does not exceed \$550, or
- (c) the smaller of
 - (i) \$300 plus 33 ⅓ percent of the amount by which the aggregate exceeds \$550, and
 - (ii) \$500,

if payment of each amount contributed that is included in the aggregate is proved by filing receipts in the prescribed form with the Minister, signed by an official of the registered political party or by an agent of the candidate, as the case may be.

(3) Where a person was at the end of a taxation year of a partnership a member of the partnership, his share of any amount contributed by the partnership in that taxation year that would if the partnership were a person be an amount contributed under this section, shall for the purposes of this section be deemed to be an amount contributed by the taxpayer in his taxation year in which the taxation year of the partnership ended.

(4) The Commissioner in Executive Council may make regulations for the purposes of this section

- (a) requiring the keeping of records and return of receipts;
- (b) restricting or qualifying the meaning of “amount contributed”.

DIVISION 3 - SPECIAL CASES

Income from farming or fishing

6.(1) Where an individual whose chief source of income has been farming or fishing during a taxation year (in this section referred to as the “year of averaging”) and the four immediately preceding years for which he has filed an election in accordance with section 119 of the federal Act for the year of averaging, the tax payable under this Part for the year of averaging is an amount determined by the following rules:

- (a) determine the amount (in this section referred to as the “average tax”) for each year in the averaging period (which, in this section, has the meaning given to that expression under section 119 of the federal Act) equal to the tax that would be payable under the federal Act, within the meaning of section 3 of this Act, if the taxable income for the year were the average net income for the year within the meaning of paragraph 119(1)(c) of the federal Act;

- (b) determine the amount (in this section referred to as the “provincial tax”) for each year in the averaging period equal to the tax that would be payable under this Part for the year if the tax that would be payable under the federal Act for the year, within the meaning of section 3 of this Act, were the average tax for the year;
- (c) deduct from the aggregate of the provincial taxes as determined under paragraph (b) for the years in the averaging period the aggregate of the taxes payable under this Part for the preceding years (which, in this section, has the meaning given to that expression under section 119 of the federal Act),

and the remainder obtained under paragraph (c) is the tax payable under this Part for the year of averaging.

(2) Where this section is applicable to the computation of a taxpayer’s tax for a taxation year and the aggregate of the taxes payable under this Part for the preceding years exceeds the aggregate of the provincial taxes as determined under paragraph (1)(b) for the years in the averaging period, the excess shall be deemed to be an overpayment made when the notice of assessment for the year of averaging was mailed.

(3) The provisions of this Part relating to the assessment of tax, interest and penalties apply mutatis mutandis to an assessment whereby, for the purposes of this section, it is determined by the Commissioner that no tax is payable under this Part for the year of averaging or that an overpayment has been made as described in subsection (2).

(4) Where an election for a year of averaging filed under subsection 119(1) of the federal Act has been revoked by the taxpayer in accordance with subsection 119(5) of the federal Act, subsection (1) of this section is not applicable in determining the tax payable under this Part for the year of averaging.

Exemptions

7. No tax is payable under this Act by any person for a period when that person

- (a) was exempt from tax by virtue of subsection 149(1) of the federal Act, or
- (b) was a non-resident-owned investment corporation,

and any definition or description in the federal Act applying to any such person applies mutatis mutandis for the purposes of this Act unless otherwise provided.

Mutual fund trusts and corporations

8.(1) Where an amount is to be refunded to a mutual fund trust in respect of a taxation year pursuant to section 132 of the federal Act the Commissioner shall, subject to subsection (2), at such time and in such manner as is provided in section 132 of the federal Act, refund to the mutual fund trust an amount (hereinafter referred to in this section as its “capital gains refund” for the year) equal to that proportion of the amount of the refund for the year calculated under subsection 132(1) of the federal Act that

- (a) the percentage obtained by multiplying the percentage referred to in subsection 3(4) of this Act for the year times the percentage referred to in paragraph 122(3)(a) of the federal Act for the year

is of

- (b) the percentage referred to in clause 132(4)(b)(i) of the federal Act for the year.

(2) For the purpose of computing the capital gains refund under subsection (1) for a mutual fund trust in respect of a taxation year, where the mutual fund trust had income earned in the taxation year outside the Yukon, the refund shall be that proportion of the capital gains refund for the year, otherwise determined under subsection (1), that the trust's income earned in the taxation year in the Yukon is of its income for the year.

(3) Instead of making a refund that might otherwise be made under subsection (1), the Commissioner may, where the mutual fund trust is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refunded to that other liability and notify the trust of that action.

(4) In this section,

“income earned in the taxation year in the Yukon” has the same meaning as in section 3;

“income earned in the taxation year outside the Yukon” has the same meaning as in section 3;

“income for the year” has the same meaning as in section 3;

“mutual fund trust” has the same meaning as in section 132 of the federal Act.

Capital gains refund to mutual fund corporations

9.(1) Where an amount is to be refunded to a mutual fund corporation in respect of a taxation year pursuant to section 131 of the federal Act, the Commissioner shall, subject to subsection (2), at such time and in such manner as is provided in section 131 of the federal Act, refund to the corporation an amount (hereinafter referred to in this section as its “capital gains refund” for the year) equal to that proportion of the amount of the refund for the year calculated under subsection 131(2) of the federal Act that

(a) the percentage referred to in subsection 4(1) of this Act for the year
is of

(b) the percentage referred to in clause 131(6)(d)(i) of the federal Act for the year.

(2) For the purpose of computing the capital gains refund under subsection (1) for a mutual fund corporation in respect of a taxation year, where

(a) the mutual fund corporation's taxable income earned in the year in the Yukon is less than

(b) the mutual fund corporation's taxable income for the year,

the refund shall be that proportion of the capital gains refund for the year, otherwise determined under subsection (1), that the amount determined under paragraph (a) is of the amount determined under paragraph (b).

(3) Instead of making a refund that might otherwise be made under subsection (1), the Commissioner may, where the mutual fund corporation is liable or about to become liable to make any payment under this Act, apply the amount that would otherwise be refunded to that other liability and notify the corporation of that action.

(4) In this section,

“mutual fund corporation” has the same meaning as in section 131 of the federal Act and includes an investment corporation within the meaning of subsection 130(2) of the federal Act;

“taxable income earned in the year” has the same meaning as in section 4;

“taxable income earned in the year in the Yukon” has the same meaning as in section 4.

DIVISION 4 - RETURNS, ASSESSMENTS, PAYMENT AND APPEALS

Returns

10.(1) A return for each taxation year in the case of a corporation and for each taxation year for which a tax is payable in the case of an individual shall, without notice or demand therefor, be filed with the Commissioner in the prescribed form and containing the prescribed information,

- (a) in the case of a corporation, by or on behalf of the corporation within six months from the end of the year,
- (b) in the case of a person who has died without making his return, by his legal representative, within six months from the day of death,
- (c) in the case of an estate or trust, within 90 days from the end of the year,
- (d) in the case of any other person, on or before April 30 in the next year, by that person or, if he is unable for any reason to file the return, by his guardian, curator, tutor, committee or other legal representative, and
- (e) in the case where no person described in paragraph (a), (b) or (d) has filed the return, by such person as is required by notice in writing from the Commissioner to file the return, within such reasonable time as is specified in the notice.

(2) Whether or not he is liable to pay tax under this Act for a taxation year and whether or not a return has been filed under subsection (1) or (3), every person shall, on demand by registered letter from the Commissioner, file, within such reasonable time as may be stipulated in the registered letter, with the Commissioner in the prescribed form and containing the prescribed information, a return for the taxation year designated in the letter.

(3) Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding up, controlling or otherwise dealing with the property, business, estate or income of a person who has not filed a return for a taxation year as required by this section shall file a return in the prescribed form for that year in respect of that person.

(4) Where a partner or an individual who is a proprietor of a business died after the close of a fiscal period but before the end of the calendar year in which the fiscal period closed, a separate return of the taxpayer's income as a member of the partnership or as a proprietor of the business after the close of the fiscal period to the time of death may be filed and, if such a separate return is filed, the tax under this Part shall be paid on the taxpayer's income as such member or proprietor after the close of the fiscal period to the time of death as if that income were the income of another person.

Estimate of the tax payable

11. Every person required by section 10 to file a return shall in the return estimate the amount of tax payable.

Assessments

12.(1) The Commissioner shall, with all due dispatch, examine each return of income required to be filed under this Act, assess the tax for the taxation year, the interest and penalties, if any, payable and determine the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 8 or 9 for the year.

(2) The Commissioner may determine the amount of a taxpayer's non-capital loss, net capital loss or restricted farm loss for a taxation year where, in his opinion, the amount thereof is different from the amount reported by the taxpayer in his return of income for the year.

(3) The provisions of paragraphs 56(1)(1) and 60(o) of the federal Act and this Division and Division 5, as they relate to an assessment, reassessment, assessing tax and reassessing tax, shall apply mutatis mutandis to a determination, redetermination, determining or redetermining of amounts under this Division.

(4) After examination of a return, the Commissioner shall send a notice of assessment to the person by whom the return was filed.

(5) Liability for tax under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

(6) The Commissioner may at any time assess tax, interest or penalties under this Act or notify in writing any person by whom a return for a taxation year has been filed that no tax is payable for a taxation year and may

- (a) at any time, if the taxpayer or some person filing the return
 - (i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or
 - (ii) has filed with the Commissioner a waiver in the prescribed form within four years from the day of mailing of a notice of an original assessment or of a notification that no tax is payable for a taxation year, or

(b) within four years from the day referred to in clause (a)(ii) in any other case, reassess or make additional assessments or assess tax, interest and penalties as the circumstances require.

(7) Notwithstanding subsection (6), there shall not be included in computing the income of a taxpayer for the purposes of any reassessment, additional assessment or assessment of tax, interest or penalties that is made after the expiration of four years from the day referred to in clause (6)(a)(ii) any amount that was not included in computing his income for the purposes of an assessment of tax made before the expiration of four years from that day and

- (a) in respect of which the taxpayer establishes that the failure so to include it did not result from any misrepresentation that is attributable to neglect, carelessness or wilful default or from any fraud in filing a return of his income or in supplying any information under this Act, or
- (b) that the taxpayer establishes cannot reasonably be regarded as relating to a matter specified in a waiver filed by the taxpayer with the Commissioner in the form and within the time referred to in subsection (6) with respect to a

taxation year to which the reassessment, additional assessment or assessment of tax, interest or penalties, as the case may be, relates.

(8) Where a collection agreement is entered into, notwithstanding that more than four years have elapsed since the day referred to in clause (6)(a)(ii), the Minister shall reassess or make additional assessments, or assess tax, interest or penalties, as the circumstances require, where the tax payable under Part I of the federal Act is reassessed.

(9) Where a taxpayer has filed the return required by section 10 for a taxation year and, within one year from the day on or before which he was required by section 10 to file the return for that year, has amended the return by filing a prescribed form claiming a deduction from income under section 111 of the federal Act in respect of non-capital losses, net capital losses, or restricted farm losses sustained in the taxation year immediately following that year, the Commissioner shall reassess the taxpayer's tax for the year.

(10) The Commissioner is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Act.

(11) An assessment shall, subject to being varied or vacated on an objection or appeal under this Act and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

Payment of tax

13.(1) Every person paying at any time in a taxation year

- (a) salary or wages or other remuneration,
- (b) a superannuation or pension benefit,
- (c) a retiring allowance,
- (d) an amount upon or after the death of an officer or employee, in recognition of his service, to his legal representative or widow or to any other person whatsoever,
- (e) an amount as a benefit under the Unemployment Insurance Act, 1971 (Canada),
- (f) an amount as a benefit under a supplementary unemployment benefit plan,
- (g) an annuity payment,
- (h) fees, commissions or other amounts for services,
- (i) a payment under a deferred profit sharing plan or a plan referred to in section 147 of the federal Act as a revoked plan,
- (j) a training allowance under the National Training Act (Canada),
- (k) a payment out of or under a registered retirement savings plan or a plan referred to in subsection 146(12) of the federal Act as an "amended plan",
- (l) a payment out of or under a registered retirement income fund,
- (m) an amount as a benefit under the Labour Adjustment Benefits Act (Canada), or
- (n) one or more amounts to an individual who has elected for the year in prescribed form in respect of all such amounts,

shall deduct or withhold therefrom such amount as may be determined in accordance with prescribed rules and shall, at such time as may be prescribed, remit that amount to the Commissioner on account of the payer's tax of the year under this Act.

(2) For the purposes of subsection (1), where a trustee who is administering, managing, distributing, winding up, controlling or otherwise dealing with the property, business, estate or income of another person authorizes or otherwise causes a payment referred to in subsection (1) to be made on behalf of that other person, the trustee shall be deemed to be a person making the payment and the trustee and that other person shall be jointly and severally liable in respect of the amount required under subsection (1) to be deducted or withheld and to be remitted on account of the payment.

(3) In subsection (2), "trustee" includes a liquidator, receiver, receiver-manager, trustee in bankruptcy, assignee, executor, administrator, sequestrator or any other person performing a function similar to that performed by any such person.

(4) Where amounts have been deducted or withheld under this section from the remuneration or other payments received by an individual in a taxation year, if the total of such amounts is equal to or greater than three quarters of the tax payable for the year, he shall on or before April 30 in the next year, pay to the Commissioner the remainder of his tax for the year as estimated under section 11.

(5) Where a taxpayer so elects in the prescribed manner and form, the amount required to be deducted or withheld under subsection (1) from any payment to him shall be deemed to be the aggregate of

- (a) the amount, if any, otherwise required to be deducted or withheld under that subsection from that payment, and
- (b) the amount specified by the taxpayer in that election with respect to that payment or with respect to a class of payments that includes that payment.

(6) Where amounts have been deducted or withheld under this section from the remuneration received by an individual in a taxation year, if the total of such amounts is equal to or greater than three-quarters of the tax payable for the year, he shall, on or before April 30 in the next year, pay to the Commissioner the remainder of his tax for the year as estimated under section 11.

(7) When an amount has been deducted or withheld under subsection (1), it shall for all the purposes of this Act be deemed to have been received at that time by the person to whom the remuneration, benefit, payment, fees, commissions or other amounts were paid.

Income from farming or fishing

14.(1) Every individual whose chief source of income is farming or fishing, other than an individual to whom subsection 13(4) applies, shall pay to the Commissioner

- (a) on or before December 31 in each taxation year, two-thirds of
 - (i) the amounts estimated by him to be his tax payable under this Act for the year, or
 - (ii) his tax payable under this Act for the immediately preceding year, and

- (b) on or before April 30 in the next year, the remainder of the tax as estimated under section 11.

(2) Where a collection agreement is entered into, an individual to whom subsection (1) applies shall pay an amount under paragraph (1)(a) computed in respect of the same year as the amount is computed that he is liable to pay under paragraph 155(1)(a) of the federal Act.

Individuals

15.(1) Every individual other than one to whom subsection 13(4) or section 14 applies shall pay to the Commissioner

- (a) on or before March 31, June 30, September 30 and December 31, respectively, in each taxation year, an amount equal to one-quarter of
 - (i) the amount estimated by him to be his tax payable under this Act for the year, or
 - (ii) his tax payable under this Act for the immediately preceding year, and
- (b) on or before April 30 in the next year, the remainder of the tax as estimated under section 11.

(2) Where a collection agreement is entered into, an individual to whom subsection (1) applies shall pay an amount under paragraph (1)(a) computed in respect of the same year as the amount is computed that he is liable to pay under paragraph 156(1)(a) of the federal Act.

Instalments not required

16. Where no federal instalments are required by virtue of section 156.1 of the federal Act, the requirements for payment by instalments under section 14 and 15 of this Act are not applicable and the individual shall pay to the Commissioner on or before April 30 in the year following the particular taxation year his tax as estimated under section 11 for that taxation year.

Corporations

17.(1) Every corporation shall, during the 15 month period ending three months after the close of each taxation year, pay to the Commissioner

- (a) either
 - (i) on or before the last day of each of the first 12 months in that period, an amount equal to one-twelfth of its tax payable for the year,
 - (ii) on or before the last day of each of the first 12 months in that period, an amount equal to one-twelfth of its first instalment base for the year, or
 - (iii) on or before the last day of each of the first two months in that period, an amount equal to one-twelfth of its second instalment base for the year, and on or before the last day of each of the next following ten months in that period, an amount equal to one-tenth of the amount remaining after deducting the amount computed under this clause in respect of the first two months in the period from its first instalment base for the year, and

- (b) the remainder of the tax as estimated by it under section 11
 - (i) on or before the last day of the period, where an amount was deducted by virtue of section 125 of the federal Act in computing the tax payable under Part I of that Act by the corporation for the year or for its immediately preceding taxation year, or
 - (ii) on or before the last day of the 14th month of the period, in any other case.

(2) Where a collection agreement is entered into, a corporation shall pay an amount computed with reference to

- (a) clause (1)(a)(i), if the corporation pays an amount computed under clause 157(1)(a)(i) of the federal Act,
- (b) clause (1)(a)(ii), if the corporation pays an amount computed under clause 157(1)(a)(ii) of the federal Act, and
- (c) clause (1)(a)(iii), if the corporation pays an amount computed under clause 157(1)(a)(iii) of the federal Act.

(3) Where subsection 157(2) of the federal Act is applicable to a corporation and it makes payment pursuant thereto, the corporation shall, instead of paying the instalments required by subsection (1), pay to the Commissioner, at the end of the period referred to in subsection (1), the whole of the tax as estimated under section 11.

(4) In this section, “first instalment base” and “second instalment base” of a corporation for a taxation year have the meanings established under subsection 157(4) of the federal Act, with such modifications as the circumstances require.

Time for payment

18.(1) The taxpayer shall, within 30 days from the day of mailing of the notice of assessment, pay to the Commissioner any part of the assessed tax, interest and penalties then remaining unpaid, whether or not an objection to or appeal from the assessment is outstanding.

(2) Where, in the opinion of the Commissioner, a taxpayer is attempting to avoid payment of taxes, the Commissioner may direct that all taxes, penalties and interest be paid forthwith upon assessment.

Provisions of federal Act

19. Sections 159 and 160, subsection 104(2), paragraph 104(23)(e) and subsection 70(2) of the federal Act apply mutatis mutandis in respect of the payment of tax under this Act for a taxation year by a taxpayer subject to tax under this Act to whom those provisions apply in respect of tax payable under the federal Act for the same taxation year.

Interest

20.(1) Where the amount paid on account of tax payable by a taxpayer under this Act for a taxation year before the expiration of the time allowed for filing the return for that year is less than the amount of tax payable for the year under this Act, the person liable to pay the tax shall pay interest at the rate per annum prescribed for the purposes of subsection 161(1) of the federal Act on the difference between those two amounts from the expiration of the time for filing the return to the day of payment.

(2) In addition to the interest payable under subsection (1), where a taxpayer, being required by this Act to pay a part or instalment of tax, has failed to pay all or any part thereof as required, he shall, on payment of the amount he failed to pay, pay interest at the rate per annum prescribed for the purposes of subsection 161(1) of the federal Act from the day on or before which he was required to make the payment to the day of payment or the beginning of the period in respect of which he is liable to pay interest thereon under subsection (1), whichever is earlier.

(3) In addition to the interest payable under subsection (1), where a corporation that paid tax under subsection 17(3) had a taxable income for the taxation year of more than \$10,000, it shall, forthwith after assessment, pay an amount equal to three percent of the tax payable under this Act for the taxation year.

(4) For the purposes of subsection (2), where a taxpayer is required to pay a part or instalment of tax for a taxation year as estimated by him with reference to a preceding year or with reference to the taxation year, he shall be deemed to have been liable to pay a part or instalment computed by reference to his tax payable for

- (a) the preceding year, or
- (b) the taxation year,

whichever is the lesser.

(5) Notwithstanding subsection (4), where a collection agreement is entered into, for the purposes of subsection (2) the taxpayer shall be deemed to have been liable to pay a part or instalment computed by reference to his tax for the same year as the year by reference to which the part or instalment that he is deemed by subsection 161(4) of the federal Act to be liable to pay was computed.

(6) Notwithstanding any other provision in this section, no interest is payable in respect of the amount by which the tax payable by a person is increased by a payment made by the Canadian Wheat Board on a participation certificate previously issued to him until 30 days after the payment is made.

(7) Where the income of a taxpayer for a taxation year or part thereof is from sources in another country and the taxpayer by reason of monetary or exchange restrictions imposed by the law of that country is unable to transfer it to Canada, the Commissioner if he is satisfied that payment as required by this Act of the whole of the additional tax under this Act for the year reasonably attributable to income from sources in that country would impose extreme hardship on the taxpayer, may postpone the time for payment of the whole or a part of that additional tax for a period to be determined by the Commissioner but no such postponement may be granted if any of the income for the year from sources in that country has been

- (a) transferred to Canada,
- (b) used by the taxpayer for any purpose whatsoever, other than payment of income tax to the government of that other country on income from sources therein, or
- (c) disposed of by him,

and no interest is payable under this section in respect of that additional tax or part thereof during the period of postponement.

(8) Notwithstanding any other provision in this section, where the tax payable under this Act by a taxpayer for a taxation year is increased by virtue of an adjustment of an income or profits tax payable by him to the government of a country other than Canada or to the government of a state, province or other political subdivision of any such country, no interest is payable, in respect of such increase in his tax payable, for the period ending 90 days after the day on which he is first notified of the amount of the adjustment.

(9) Where a taxpayer is entitled to deduct under section 111 of the federal Act in computing his taxable income for a taxation year an amount in respect of a loss sustained in the taxation year immediately following the taxation year (hereinafter in this subsection referred to as "the loss year"), for the purpose of computing interest under subsection (1) or (2) on tax or a part or instalment of tax for the taxation year for any portion of the period in respect of which the interest is payable on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 111 of the federal Act in respect of that loss.

Penalties

21.(1) Every person who fails to file a return as and when required by subsection 10(1) is liable to a penalty equal to the aggregate of

- (a) an amount equal to five percent of the tax that was unpaid when the return was required to be filed, and
- (b) the product obtained when one percent of the tax that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12, in the period between the date on which the return was required to be filed and the date on which the return was filed.

(2) Every person who has failed to file a return as required by subsection 10(3) is liable to a penalty of \$10 for each day of default but not exceeding \$50.

(3) Every person who has failed to complete the information on a prescribed form as required by or pursuant to section 10 is, unless in the case of an individual the Commissioner has waived it, liable to a penalty

- (a) of one percent of the tax payable under this Act but, whether he is taxable or not, not less than \$25 or more than \$100, or
- (b) in the case of an individual, of such lesser amount as the Commissioner may have fixed in respect of the specific failure.

(4) Where a collection agreement is entered into, the Minister may refrain from levying or may reduce a penalty provided in this section if the person who is liable to such penalty is required to pay a penalty under section 162 of the federal Act.

Penalty for mis-statement or omission

22.(1) Every person who, knowingly, or under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, makes, or participates in, assents to or acquiesces in the making of, a statement or omission in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation, as a result of which the tax that would have been payable by him for a taxation year if the tax had been assessed on the basis of the information provided in the return, certificate, statement

or answer is less than the tax payable by him for the year, is liable to a penalty of 25 percent of the amount by which the tax that would so have been payable is less than the tax payable by him for the year.

(2) Every person who wilfully attempts to evade payment of the tax payable by him by failing to file a return of income as and when required by subsection 10(1) is liable to a penalty of 50 percent of the amount of tax sought to be evaded.

(3) Where, in any appeal under this Act a penalty assessed by the Commissioner under this section is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Commissioner.

Refund of overpayment

23.(1) Where the return required to be filed by a taxpayer for a taxation year is made within four years from the end of the year, the Commissioner

- (a) may, upon mailing the notice of assessment for the year, refund, without application therefor, any overpayment made on account of the tax, and
- (b) shall make such a refund after mailing the notice of assessment if application therefor has been made in writing by the taxpayer within four years from the end of the year.

(2) Instead of making a refund that might otherwise be made under this section, the Commissioner may, where the taxpayer is liable or about to become liable to make another payment under this Act, apply the amount of the overpayment to that other liability and notify the taxpayer of that action.

(3) Where an amount in respect of an overpayment is refunded or applied under this section on other liability, interest at the rate per annum prescribed for the purpose of subsection 164(3) of the federal Act shall be paid or applied thereon for the period commencing with the latest of

- (a) the day when the overpayment arose,
- (b) the day on or before which the return in respect of which the tax was paid was required to be filed, or
- (c) the day when the return was actually filed,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection.

(4) Where, by a decision of the Commissioner under section 24 or by a decision of the court or the Supreme Court of Canada, it is finally determined that the tax payable by a taxpayer for a taxation year under this Act is less than the amount assessed by the assessment under section 12 to which the objection was made or from which the appeal was taken and the decision makes it appear that there has been an overpayment for the taxation year, the interest payable under subsection (3) of that overpayment shall be computed at the rate per annum prescribed for the purposes of subsection 161(1) of the federal Act instead of that prescribed for the purposes of subsection 164(3) of the federal Act.

(5) Where a collection agreement is entered into and, by virtue of a decision referred to in subsection 164(4) of the federal Act, that subsection applies to any overpayment made under that Act in respect of tax payable by a taxpayer for a taxation year, subsection (4) of this section applies to any overpayment made under this Act in respect of the same year that arose by virtue of the same decision.

(6) For the purpose of this section “overpayment” means the aggregate of all amounts paid on account of tax minus all amounts payable under this Act or an amount so paid where no amount is so payable.

(7) Where a taxpayer is entitled to deduct under section 111 of the federal Act in computing his taxable income for a taxation year an amount in respect of a loss sustained in the taxation year immediately following the taxation year (hereinafter in this subsection referred to as “the loss year”), and the amount of the tax payable for the taxation year is relevant in determining an overpayment for the purpose of computing interest under subsection (3) for any portion of a period ending on or before the last day of the loss year, the tax payable for the taxation year shall be deemed to be the amount that it would have been if the taxpayer were not entitled to deduct any amount under section 111 of the federal Act in respect of that loss.

(8) Where, in the course of administering the estate of a deceased taxpayer, the taxpayer’s legal representative has, within the 12 month period immediately following the death of the taxpayer, disposed of certain property of the estate described in paragraphs 164(6)(a) or (b) of the federal Act, subsection 164(6) of the federal Act is applicable with all necessary modifications.

Objections to assessments

24.(1) A taxpayer who objects to an assessment under this Act may, within 90 days from the day of mailing of the notice of the assessment, serve on the Commissioner a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(2) A notice of objection under this section shall be served by being sent by registered mail addressed to the deputy head.

(3) Upon receipt of the notice of objection, the Commissioner shall,

- (a) where the taxpayer indicates in the notice of objection that he wishes to appeal immediately to the court and that he waives reconsideration of the assessment and the Commissioner consents, file a copy of the notice of objection with the clerk of the court, or
- (b) with all due dispatch, reconsider the assessment and vacate confirm or vary the assessment or reassess,

and he shall thereupon notify the taxpayer of his action by registered mail.

(4) Where the Commissioner files a copy of a notice of objection pursuant to paragraph (3)(a), the Commissioner shall be deemed, for the purpose of section 25, to have confirmed the assessment to which the notice relates and the taxpayer who served the notice shall be deemed to have thereupon instituted an appeal in accordance with that section.

(5) A reassessment made by the Commissioner pursuant to subsection (3) is not invalid by reason only of not having been made within four years from the day of mailing of a notice of an original assessment or of a notification described in subsection 12(6).

(6) Where a taxpayer has served a notice of objection to an assessment in accordance with this section and thereafter the Commissioner reassesses the taxpayer's tax for the taxation year in respect of which the notice of objection was served or issues an additional assessment in respect thereof, and notifies the taxpayer of his action by registered mail, the taxpayer may, without serving a notice of objection to the reassessment or the additional assessment,

- (a) appeal therefrom to the court in accordance with section 25, or
- (b) if an appeal to the court has been instituted with respect to the assessment, amend such appeal by joining thereto an appeal in respect of the reassessment or additional assessment in such manner and on such terms, if any, as the court directs.

DIVISION 5 - APPEALS TO THE SUPREME COURT

Right to appeal and procedure for appeal

25.(1) A taxpayer who has served a notice of objection to an assessment under subsection 24(1) may appeal to the court to have the assessment vacated or varied after either

- (a) the Commissioner has confirmed the assessment or reassessed, or
- (b) 180 days have elapsed after service of the notice of objection and the Commissioner has not notified the taxpayer that he has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer in accordance with subsection 24(3) that the Commissioner has confirmed the assessment or reassessed.

(2) An appeal from an assessment under this Act may be taken in respect of any question relating,

- (a) in the case of an individual, to the determination of
 - (i) his residence for the purposes of this Act,
 - (ii) his income earned in the taxation year in the Yukon as defined in subsection 3(5), or
 - (iii) the amount of tax payable for a taxation year based on the tax payable under the federal Act for that year as defined in subsection 3(5), and
- (b) in the case of a corporation, to the determination of
 - (i) its taxable income earned in the year in the Yukon as defined in subsection 4(4), or
 - (ii) the amount of tax payable for a taxation year based on the taxable income of the corporation for that year,

but no appeal from an assessment lies in respect of the computation of the tax payable under the federal Act as defined in subsection 3(5) or of the taxable income of a corporation.

(3) An appeal to the court shall be instituted by serving upon the Commissioner a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the clerk of the court.

(4) A notice of appeal shall be served upon the Commissioner by being sent by registered mail addressed to the deputy head.

(5) The taxpayer appealing shall set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and the reasons that he intends to submit in support of his appeal.

(6) The taxpayer appealing shall pay to the clerk of the court a fee of \$15 upon the filing of the copy of the notice of appeal with him.

Reply to notice of appeal

26.(1) The Commissioner shall, within 60 days from the day the notice of appeal is received, or within such further time as the court or a judge thereof may either before or after the expiration of that time allow, serve on the appellant and file in the court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on.

(2) The court or a judge may, in its or his discretion, strike out a notice of appeal or any part thereof for failure to comply with subsection 25(5), and may permit an amendment to be made to a notice of appeal or a new notice of appeal to be substituted for the one struck out.

(3) The court or a judge may, in its or his discretion,

- (a) strike out any part of a reply for failure to comply with this section or permit the amendment of a reply, and
- (b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time to be fixed by the order.

(4) Where a notice of appeal is struck out for failure to comply with subsection 25(5) and a new notice of appeal is not filed as and when permitted by the court or a judge, the court or a judge thereof may, in its or his discretion, dispose of the appeal by dismissing it.

(5) Where a reply is not filed as required by this section or is struck out under this section and a new reply is not filed as ordered by the court or a judge within the time ordered, the court may dispose of the appeal *ex parte* or after a hearing, on the basis that the allegations of fact contained in the notice of appeal are true.

Hearing and disposition of appeal

27.(1) Upon the filing of the material referred to in sections 25 and 26, the matter shall be deemed to be an action in the court and, unless the court otherwise orders, ready for hearing.

(2) Any fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in such manner and upon such terms as the court may direct.

(3) The court may dispose of the appeal by

- (a) dismissing it,
- (b) allowing it, or

(c) allowing it and

- (i) vacating the assessment,
- (ii) varying the assessment,
- (iii) restoring the assessment, or
- (iv) referring the assessment back to the Commissioner for reconsideration and reassessment.

(4) The court may, in delivering judgment disposing of an appeal, order payment or repayment of tax, interest and penalties or costs by the taxpayer or the Commissioner.

In camera proceedings

28. Proceedings under this Division shall be held in camera upon request made to the court by the taxpayer.

Appeal practice and procedure

29. Except as provided in the regulations, the practice and procedure of the court, including the right of appeal and the practice and procedure relating to appeals, apply to every matter deemed to be an action under section 27, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

Effect of irregularities in assessments

30. An assessment shall not be vacated or varied on appeal by reason only of any irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act or of the federal Act if the provision in that Act applies in respect of any action under this Act.

PART 2

ADMINISTRATION AND ENFORCEMENT

Administration

31.(1) The Commissioner shall administer and enforce this Act and control and supervise all persons employed to carry out or enforce this Act, and the deputy head may exercise all the powers and perform the duties of the Commissioner under this Act.

(2) The Commissioner may at any time extend the time for making a return under this Act.

(3) The Commissioner may, if he considers it advisable in a particular case, accept security for payment of taxes by way of mortgage or other charge of any kind whatsoever on property of the taxpayer or any other person, or by way of guarantee from other persons.

(4) Any person employed in connection with the administration or enforcement of this Act may, in the course of his employment,

- (a) if he is designated by the Commissioner for the purpose, or

- (b) where a collection agreement is entered into, if he is a person designated by the Minister under the federal Act for the purposes of subsection 220(5) of that Act,

administer oaths and take and receive affidavits, declarations and affirmations for the purposes of or incidental to the administration or enforcement of this Act or the regulations, and every person so designated has for such purposes all the powers of a Commissioner for oaths.

Regulations

32.(1) The Commissioner may make regulations

- (a) prescribing anything that, by this Act, is to be prescribed or is to be determined or regulated by regulation;
- (b) providing in any case of doubt the circumstances in which, and extent to which, the federal regulations apply;
- (b) generally to carry out the purposes and the provisions of this Act.

(2) Except to the extent that they are inconsistent with any regulations made under subsection (1) or are expressed by any regulations made under subsection (1) to be inapplicable, the federal regulations made under section 221 of the federal Act apply *mutatis mutandis* for the purposes of this Act with respect to all matters enumerated in that section.

(3) A regulation made under this Act is a regulation to which the Regulations Act applies but, subject to subsection (5), has no effect unless it has been published as required in that Act.

(4) Where a regulation made under the federal Act is applicable, *mutatis mutandis*, it has, subject to subsection (5), no effect for the purposes of this Act unless it has been published in the Canada Gazette.

(5) A regulation made under this Act or made under the federal Act and that is applicable, *mutatis mutandis*, when published as herein provided shall, if it so provides, be effective with reference to a period before it was published.

Enforcement

33. All taxes, interest, penalties, costs and other amounts payable under this Act are debts to Her Majesty for the benefit of the Yukon and recoverable as such in any court of competent jurisdiction or in any other manner provided by this Act.

Certification of unpaid amounts

34.(1) An amount payable under this Act that has not been paid or such part of an amount payable under this Act as has not been paid may be certified by the Commissioner

- (a) where there has been a direction by the Commissioner under subsection 18(2), forthwith after such direction, and
- (b) otherwise, upon the expiration of 30 days after the default.

(2) On production to the court or any other court of competent jurisdiction, a certificate made under this section shall be registered in the court and, when registered, has the same force and effect and all proceedings may be taken thereon as if the certificate were a judgment obtained in that court for a debt of the amount specified in the certificate plus interest to the day of payment as provided for in this Act.

(3) All reasonable costs and charges attendant upon the registration of the certificate are recoverable in like manner as if they had been certified and the certificate had been registered under this section.

Commissioner's warrant

35. The Commissioner may issue a warrant directed to the sheriff for the amount of the tax, interest and penalty, or any of them, owing by the taxpayer, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant shall have the same force and effect as a writ of execution issued out of the court.

Rights against taxpayer's debtors

36.(1) Where the Commissioner has knowledge or suspects that a person is or will be, within 90 days, liable to make payment to another person who is liable to make a payment under this Act (in this section referred to as the "tax debtor"), he may, by registered letter or by a letter served personally, require that person to pay forthwith, where the money is immediately payable and, in any other case, as and when the money becomes payable, the money otherwise payable to the tax debtor in whole or in part to the Commissioner on account of the tax debtor's liability under this Act.

(2) Without limiting the generality of subsection (1), where the Commissioner has knowledge or suspects that within 90 days

- (a) a bank, credit union, trust company or other similar person (in this section referred to as the "institution") will loan or advance moneys to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a tax debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or
- (b) a person, other than an institution, will loan or advance moneys to, or make a payment on behalf of, a tax debtor who the Commissioner knows or suspects
 - (i) is employed by, or is engaged in providing services or property to that person or was or will be, within 90 days, so employed or engaged, or
 - (ii) where that person is a corporation, is not dealing arm's length with that person,

he may, by registered letter or by a letter served personally, require the institution or person, as the case may be, to pay in whole or in part to the Commissioner on account of the tax debtor's liability under this Act the money that would otherwise be so loaned, advanced or paid, and any money so paid to the Commission shall be deemed to have been loaned, advanced or paid, as the case may be, to the tax debtor.

(3) The receipt of the Commissioner for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

(4) Where the Commissioner has, under this section, required a person to pay to the Commissioner, on account of the liability of a tax debtor under this Act money otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement is applicable to all such payments to be made by the person to the tax debtor until the liability under this Act is satisfied, and the requirement

operates to require payments to the Commissioner out of each payment of such amount as may be stipulated by the Commissioner in the registered letter or letter served personally.

(5) Every person who fails to comply with a requirement under subsection (1) or (4) is liable to pay to Her Majesty for the benefit of the Yukon an amount equal to the amount that he was required under subsection (1) or (4), as the case may be, to pay to the Commissioner.

(6) Every institution or person that fails to comply with a requirement under subsection (2) with respect to money to be loaned, advanced or paid is liable to pay to Her Majesty for the benefit of the Yukon an amount equal to the lesser of

- (a) the aggregate of moneys so loaned, advanced or paid, and
- (b) the amount that the institution or person was required under that subsection to pay to the Commissioner.

(7) Where the person who is or is about to become indebted or liable carries on business under a name or style other than his own name, the registered or other letter under subsection (1) may be addressed to the name or style under which he carries on business and, in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee.

(8) Where the persons who are or are about to become indebted or liable carry on business in partnership, the registered or other letter under subsection (1) may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership.

Acquisition of debtor's property

37. For the purpose of collecting debts owed by a person to Her Majesty for the benefit of the Yukon under this Act, the Commissioner may purchase or otherwise acquire any interest in the person's property that the Commissioner is given a right to acquire in legal proceedings or under a court order or that is offered for sale on redemption, and may dispose of any interest so acquired in such a manner as he considers reasonable.

Money seized in criminal investigations

38.(1) Where the Commissioner has knowledge or suspects that a person is holding money that was seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person who is liable to make a payment under this Act (in this section referred to as the "tax debtor") and that are restorable to the tax debtor, he may, by registered letter or by a letter served personally, require that person to turn over the money otherwise restorable to the tax debtor in whole or in part to the Commissioner on account of the tax debtor's liability under this Act.

(2) The receipt of the Commissioner for money turned over as required by this section is a good and sufficient discharge of the requirement to restore the money to the tax debtor to the extent of the amount so turned over.

Seizure

39.(1) Where a person has failed to make a payment as required by this Act, the Commissioner, on giving 30 days notice by registered mail addressed to his last known place of residence, may, whether or not there is an objection to or appeal in respect of the assessment not disposed of, issue a certificate of the failure and direct that the goods and chattels of the person in default that are located in the Yukon be seized.

(2) Property seized under this section shall be kept for ten days at the cost and charge of the owner and, if he does not pay the amount due together with the costs and charges within ten days, the property seized shall be sold by public auction.

(3) Except in the case of perishable goods, the Commissioner shall, a reasonable time before the goods are sold, publish at least once in one or more newspapers of general local circulation a notice of the sale setting forth the time and place thereof, together with a general description of the property to be sold.

(4) The Commissioner shall pay or return to the owner of the property seized any surplus resulting from the sale after deduction of the amount owing and all costs and charges.

(5) The goods and chattels of any person in default that would be exempt from seizure under a writ of execution issued out of the court are exempt from seizure under this section.

Suspicion of taxpayer's impending departure

40.(1) Where the Commissioner suspects that a taxpayer is about to leave the Yukon or Canada, he may before the day otherwise fixed for payment, by notice served personally or by registered letter addressed to the taxpayer, demand payment of all taxes, interest and penalties for which the taxpayer is liable or would be liable if the time for payment had arrived, and they shall be paid forthwith notwithstanding any other provision of this Act.

(2) Where a person has failed to pay tax, interest or penalties demanded under this section as required, the Commissioner may direct that the goods and chattels of the taxpayer that are located in the Yukon be seized and subsections 39(2) to (5) are, thereupon, applicable *mutatis mutandis*.

Withholding of taxes by employers and others

41.(1) No action lies against any person for withholding or deducting any sum of money in compliance or intended compliance with this Act.

(2) Where a person (in this subsection referred to as the "payor") is required by regulations made under subsection 13(1) to deduct or withhold from a payment to another person an amount on account of that other person's tax for the year, that other person shall, from time to time as prescribed, file a return with the payor in prescribed form.

(3) Every person who fails to file a return as required by subsection (2) is liable to have the deduction or withholding under section 13 on account of his tax made as though he were an unmarried person without dependants.

(4) Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust for Her Majesty for the benefit of the Yukon.

(5) All amounts deducted or withheld by a person under this Act shall be kept separate and apart from his own money and, where a collection agreement is entered into, those amounts shall be kept with amounts deducted or withheld by that person under the federal Act.

(6) Any person who has failed to deduct or withhold any amount as required by this Act or a regulation is liable to pay to Her Majesty for the benefit of the Yukon

- (a) if the amount should have been deducted or withheld under section 13 from an amount that has been paid to a person resident in the Yukon, ten percent of the amount that should have been deducted or withheld, and
- (b) in any other case, the whole amount that should have been deducted or withheld,

together with interest thereon at the rate per annum prescribed for the purposes of subsection 227(8) of the federal Act.

(7) Every person who has failed to remit or pay an amount deducted or withheld as required by this Act or a regulation is liable to a penalty of ten percent of that amount or \$10, whichever is the greater, in addition to the amount itself, together with interest on the amount at the rate per annum prescribed for the purposes of subsection 227(8) of the federal Act, but where a collection agreement is entered into the Minister may refrain from levying or reduce the penalty if the person who is liable therefore is liable to pay a penalty under subsection 227(9) of the federal Act by reason of the failure to pay an amount described in paragraph (a) of that subsection.

(8) The Commissioner may assess any person for any amount that has been deducted or withheld by that person under the Act or a regulation or that is payable by that person under this section, section 42 or 47 and, upon his sending a notice of assessment to that person, Division I or J of the Federal Act is applicable, *mutatis mutandis*.

(9) Provisions of this Act requiring a person to deduct or withhold an amount in respect of taxes from amounts payable to a taxpayer apply to and bind the Commissioner.

(10) Where this Act requires an amount to be deducted or withheld, an agreement by the person on whom that obligation is imposed not to deduct or withhold is void.

(11) The receipt of the Commissioner for an amount withheld or deducted by any person as required by or under this Act is a good and sufficient discharge of the liability of any debtor to his creditor with respect thereto to the extent of the amount referred to in the receipt.

Liability of directors of corporations

42.(1) Where a corporation has failed to deduct or withhold an amount as required by section 13 or has failed to remit such an amount, the directors of the corporation at the time the corporation was required to deduct or withhold the amount, or remit the amount, are jointly and severally liable, together with the corporation, to pay any amount that the corporation is liable to pay under this Act in respect of that amount, including any interest or penalties related thereto.

(2) A director is not liable under subsection (1), unless

- (a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the court under subsection 34(2) and execution for such amount has been returned unsatisfied in whole or in part,
- (b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution, or
- (c) the corporation has made an assignment or a receiving order has been made against it under the Bankruptcy Act (Canada) and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the date of the assignment or receiving order.

(3) A director is not liable for a failure under subsection (1) where he exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(4) No action or proceedings to recover any amount payable by a director under subsection (1) shall be commenced more than two years after he last ceased to be a director of that corporation.

(5) Where execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(6) Where a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings, he is entitled to any preference that Her Majesty for the benefit of the Yukon would have been entitled to had such amount not been so paid and, where a certificate that relates to such amount has been registered, he is entitled to an assignment of the certificate to the extent of his payment, which assignment the Commissioner is hereby empowered to make.

(7) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

Requirement to keep records and books

43.(1) Every person carrying on business in the Yukon and every person who is required by or pursuant to this Act to pay or collect taxes or other amounts shall keep records and books of account, including an annual inventory kept in the prescribed manner, at his place of business or residence in Canada or at such other place as may be designated by the Commissioner, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

(2) Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Commissioner may require him to keep such records and books of account as he may specify and that person shall thereafter keep records and books of account as so required.

(3) Every person required by this section to keep records and books of account shall, until written permission for their disposal is obtained from the Commissioner, retain every such record or book of account and every account or voucher necessary to verify the information in any such record or books of account.

Right to enter, examine and audit books and records

44.(1) Any person thereunto authorized by the Commissioner or any person related to the administration or enforcement of this Act may, at all reasonable times, enter into any premises or place where any business is carried on in the Yukon or any property is kept or anything is done in connection with any business, or any books or records are, or should be, kept pursuant to this Act, and may

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the books or records or the amount of tax payable under this Act,
- (b) examine property described by an inventory or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of an inventory or in ascertaining the information that is or should be in the books or records or the amount of any tax payable under this Act,
- (c) require the owner or manager of the property or business and any other person on the premises or place to give him all reasonable assistance with his audit or examination and to answer all proper questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, require the owner or manager to attend at the premises or place with him, and
- (d) if, during the course of an audit or examination it appears to him that there has been a contravention of this Act or the regulations, seize and take away any of the documents, books, records, papers or things that may be required as evidence as to the violation of any provision of this Act or a regulation.

(2) The Commissioner shall,

- (a) within 120 days from the date of seizure of documents, books, records, papers or things pursuant to paragraph (1)(d), or
- (b) if within that time an application is made under this subsection that is, after the expiry of that time, rejected, then forthwith upon the disposition of the application,

return the documents, books, records, papers or things to the person from whom they were seized unless a judge of the court, on application made by or on behalf of the Commissioner supported by evidence on oath establishing that the Commissioner has reasonable and probable grounds to believe that there has been a violation of this Act or a regulation and that the seized documents, books, records, papers or things are or may be required as evidence in relation thereto, orders that they be retained by the Commissioner until they are produced in any court proceedings, which order the judge hereby is empowered to give on ex parte application.

(3) The Commissioner may, for any purpose related to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person

- (a) any information or additional information, including a return of income or a supplementary return, or
- (b) production, or production on oath, of any books, letters, accounts, invoices, statements (financial or otherwise) or other documents,

within such reasonable time as may be stipulated therein.

(4) Where the Commissioner has reasonable and probable grounds to believe that a violation of this Act or a regulation has been committed or is likely to be committed, he may, with the approval of a judge of the court, which approval the judge is hereby empowered to give on ex parte application, authorize in writing any officer of the Department of Finance, together with such members of the Royal Canadian Mounted Police as he calls on to assist him and such other persons as may be named therein, to enter and search, if necessary by force, any building, receptacle or place in the Yukon for documents, books, records, papers or things that may afford evidence as to the violation of any provision of this Act or a regulation and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

(5) An application to a judge under subsection (4) shall be supported by evidence on oath establishing the facts upon which the application is based.

(6) The person from whom any documents, books, records, papers or things seized pursuant to paragraph (1)(d) or subsection (4) is, at all reasonable times and subject to such reasonable conditions as may be determined by the Commissioner, entitled to inspect the seized documents, books, records, papers or things and to obtain copies thereof at his own expense.

(7) The Commissioner may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not he is an officer of the Department of Finance, to make such inquiry as he may deem necessary with reference to anything relating to the administration or enforcement of this Act.

(8) Where the Commissioner, pursuant to subsection (7), authorizes a person to make an inquiry, the Commissioner shall forthwith apply to the court for an order appointing a hearing officer before whom the inquiry will be held.

(9) Where any book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced or any officer of the Department of Finance may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Commissioner or a person thereunto authorized by the Commissioner to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

(10) No person shall hinder, molest or interfere with any person doing anything that he is authorized by or pursuant to this section to do, or prevent or attempt to prevent any person doing any such thing and, notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by or pursuant to this section to do.

(11) Every person thereunto authorized by the Commissioner may administer or receive an oath, affirmation or statutory declaration required to be given by or pursuant to this section.

(12) For the purposes of an inquiry authorized under subsection (7), a hearing officer appointed under subsection (8) in relation thereto has all the powers and authorities conferred on a board appointed under the Public Inquiries Act.

(13) A hearing officer appointed under subsection (8) in relation to an inquiry shall exercise the powers and authorities conferred on a board appointed under the Public Inquiries Act in relation to such persons as the person authorized to make the inquiry considers appropriate for the conduct thereof, but the hearing officer shall not exercise the powers to punish any person unless, on application by the hearing officer, a judge of the court certifies that such power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom he proposes to exercise such power 24 hours' notice of the hearing of the application or such shorter notice as the judge considers reasonable.

(14) Any person who gives evidence in an inquiry authorized under subsection (7) is entitled to be represented by counsel and, upon request made by him to the Commissioner, to receive a transcript of the evidence given by him.

(15) Any person whose affairs are investigated in the course of an inquiry authorized under subsection (7) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection (8) in relation to the inquiry, on application by the Commissioner or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry on the ground that the presence of the person and his counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

Application of section 232 of federal Act

45. Section 232 of the federal Act applies *mutatis mutandis* for the purposes of this Act where, in the same or similar circumstances, that section is or would be applicable for the purposes of the federal Act.

Information return

46. Whether or not he has filed an information return as required by a regulation made under paragraph 221(1)(d) of the federal Act as it applies by virtue of subsection 32(2) of this Act, every person shall, on demand from the Commissioner served personally or by registered mail file with the Commissioner, within such reasonable time as may be stipulated in the demand, such prescribed information return as is designated therein.

Penalties

47.(1) Every person who fails to comply with a regulation made under paragraph 221(1)(d) or (e) of the federal Act as it applies by virtue of subsection 32(2) of this Act is liable in respect of each failure to so comply to a penalty of \$10 a day for each day of default but not exceeding in all \$2,500.

(2) Every person who fails to comply with a regulation made under section 32 or incorporated by reference by virtue of subsection 32(2) is liable to a penalty of \$10 a day for each day of default but not exceeding in all \$2,500.

Signatures for corporations

48. A return, certificate or other document made by a corporation under this Act or the regulations shall be signed on its behalf by the president, secretary or Treasurer of the corporation or by any other officer or person thereunto duly authorized by the board of directors or other governing body of the corporation.

Penalties

49.(1) Every person who fails to file a return as and when required by or under this Act or the regulations is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a fine of not less than \$25 for each day of default.

(2) Every person who fails to comply with or contravenes subsection 13(1), subsection 41(5), section 43 or 44 is guilty of an offence and in addition to any penalty otherwise provided is liable on summary conviction to

- (a) a fine of not less than \$200 and not more than \$10,000, or
- (b) both the fine described in paragraph (a) and imprisonment for a term not exceeding six months.

(3) Where a person is convicted under this section of failing to comply with a provision of this Act or the regulations, he is not liable to pay a penalty imposed under section 21, 41 or 47 for the same failure unless he was assessed for that penalty or that penalty was demanded from him before the information or complaint giving rise to the conviction was laid or made.

Penalties

50. Every person who

- (a) makes, or participates in, assents to or acquiesces in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation,
- (b) to evade payment of a tax imposed by this Act, destroys, alters, mutilates, secretes or otherwise disposes of the records or books of account of a taxpayer,
- (c) makes, or assents to or acquiesces in the making of, false or deceptive entries, or omits, or assents to or acquiesces in the omission to enter a material particular, in records or books of account of a taxpayer,
- (d) wilfully, in any manner, evades or attempts to evade compliance with this Act or payment of taxes imposed by this Act, or
- (e) conspires with any person to commit an offence described by paragraphs (a) to (d)

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

- (f) a fine of not less than 25 percent and not more than double the amount of the tax that was sought to be evaded, or
- (g) both the fine described in paragraph (f) and imprisonment for a term not exceeding two years.

Minister's right of action

51. Where a collection agreement is entered into and proceedings under section 238 or 239 of the federal Act are taken against any person, the Minister may take or refrain from any action against such person contemplated by section 49 or 50 of this Act, as the case may be.

Communication of information

52.(1) Every person who, while employed in the administration of this Act, communicates or allows to be communicated to a person not legally entitled thereto any information obtained under this Act or allows any such person to inspect or have access to any written statement furnished under this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$200.

(2) Subsection (1) does not apply to the communication of information between

- (a) the Minister and the Commissioner,
- (b) the Minister, acting on behalf of the Yukon and the Commissioner or the Minister of Finance of the government of
 - (i) an agreeing province, or
 - (ii) a non-agreeing province to which an adjusting payment may be made under subsection 60(2).

Liability of officers of corporations

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

Minimum penalties

54. Notwithstanding any other Act, statute or law in force at the commencement of this Act, a court has, in any prosecution or proceeding under this Act, no power to impose less than the minimum fine or imprisonment fixed by this Act, and the court has no power to suspend sentence.

Procedure and evidence

55.(1) An information or complaint under this Act may be laid or made by any officer of the Department of Finance, by a member of the Royal Canadian Mounted Police or by any person thereunto authorized by the Commissioner and, where an information or complaint purports to have been laid or made under this Act it shall be deemed to have been laid or made by a person thereunto authorized by the Commissioner and shall not be called in question for lack of authority of the informant or complainant except by the Commissioner or by some person acting for him or Her Majesty.

(2) An information or complaint in respect of an offence under this Act may be for one or more offences and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

(3) An information or complaint in respect of an offence under this Act may be laid or made on or before a day five years from the time when the matter of the information or complaint arose or within one year from the day on which evidence, sufficient in the opinion of the Commissioner to justify a prosecution for the offence, came to his knowledge, and the Commissioner's certificate as to the day on which such evidence came to his knowledge is conclusive proof thereof.

(4) Where, by this Act or a regulation, provision is made for sending by mail a request for information, notice or demand, an affidavit of an officer of the Department of Finance sworn before a commissioner or other person authorized to take affidavits setting out that he has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered letter on a named day to the person to whom it was addressed, indicating such address, and that he identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion thereof and a true copy of the request, notice or demand, is admissible in evidence as prima facie proof of the sending and of the request, notice or demand.

(5) Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Department of Finance sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after a careful examination and search of the records he has been unable to find in a given case that the return, statement, answer or certificate, as the case may be, has been made by such person is admissible in evidence as prima facie proof that in such case that person did not make the return, statement, answer or certificate, as the case may be.

(6) Where, by this Act or a regulation, a person is required to make a return, statement, answer or certificate, an affidavit of an officer of the Department of Finance sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that after careful examination of such records he has found that the return, statement, answer or certificate was filed or made on a particular day, is admissible in evidence as prima facie proof that it was filed or made on that day and not prior thereto.

(7) An affidavit of an officer of the Department of Finance sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that a document annexed thereto is a document or true copy of a document made by or on behalf of the Commissioner or some person exercising the powers of the Commissioner or by or on behalf of a taxpayer, shall be received as prima facie proof of the nature and contents of the document and is admissible in evidence and has the same probative force as the original document would have if it had been proven in the ordinary way.

(8) An affidavit of an officer of the Department of Finance sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment for a particular taxation year was mailed or otherwise communicated to a taxpayer on a particular day pursuant to this Act and that, after careful examination and search of the records, he has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed therefore, is admissible in evidence as prima facie proof of the statements contained therein.

(9) Where evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Department of Finance, it is not necessary to prove his signature or that he is such an officer, nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

(10) Judicial notice shall be taken of

- (a) all orders or regulations made under this Act, and
- (b) a collection agreement entered into under this Act or any agreement for the collection by Canada of the tax imposed under the income tax statute of an agreeing province,

without such orders, regulations or agreements being specially pleaded or proven.

(11) Every document purporting to be an order, direction, demand, notice, certificate, requirement, decision, assessment, discharge of mortgage or other document purporting to have been executed under, or in the course of administration or enforcement of, this Act over the name in writing of the Commissioner, the deputy head, or an officer authorized by regulation to exercise powers to perform duties of the Commissioner under this Act, shall be deemed to be a document signed, made and issued by the Commissioner, the deputy head, or the officer unless called in question by the Commissioner or by some person acting for him or Her Majesty.

(12) For the purposes of this Act, the day of mailing of any notice of assessment or notification described in subsection 12(6) shall, in the absence of any evidence to the contrary, be deemed to be the day appearing from such notice or notification to be the date thereof unless called in question by the Commissioner or by some person acting for him or Her Majesty.

(13) Where any notice of an assessment has been sent by the Commissioner as required by this Act, the assessment shall be deemed to have been made on the day of mailing of the notice of the assessment.

(14) Every form purporting to be a form prescribed or authorized by the Commissioner shall be deemed to be a form prescribed by order of the Commissioner under this Act unless called in question by the Commissioner or some person acting for him or for Her Majesty.

(15) A document purporting to be a collection agreement entered into under this Act or an agreement with Canada for the collection of tax imposed under the income tax statute of an agreeing province that is

- (a) published in the Canada Gazette, or
- (b) certified as such by or on behalf of
 - (i) the Commissioner, or
 - (ii) the provincial Treasurer or the Minister of Finance of the appropriate agreeing province,

is admissible in evidence as prima facie proof of the contents thereof.

(16) In any prosecution for an offence under this Act, the production of a return, certificate, statement or answer required by or under this Act or a regulation purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been

made or signed by him or on his behalf is admissible in evidence as prima facie proof that such return, certificate, statement or answer was filed or delivered by or on behalf of that person or was made or signed by him or on his behalf.

(17) Every certificate by the Commissioner as to

- (a) a taxpayer's tax payable under the federal Act as defined in subsection 3(4),
- (b) a taxpayer's income for the year as defined in subsection 3(5), or
- (c) the taxable income of a corporation

is admissible in evidence as prima facie proof that a taxpayer's tax payable under the federal Act, his income for the year or the taxable income of a corporation, as the case may be, is in the amount set out therein.

(18) Where a collection agreement is entered into, any document or certificate that is executed or issued by the Minister, the Deputy Minister of the Department of National Revenue for Taxation, or an official of the Department of National Revenue on behalf or in place of the Commissioner, the Treasurer or an officer of the Department of Finance, shall be deemed, for all purposes of this Act, to be executed or issued by the Commissioner, the Treasurer or the Department of Finance, as the case may be.

PART 3 COLLECTION OF TAX

Collection agreement

56.(1) The Commissioner may, on behalf of the Government of the Yukon, enter into a collection agreement with the Government of Canada under which the Government of Canada will collect taxes payable under this Act on behalf of the Government of the Yukon and will make payments to the Government of the Yukon in respect of the taxes so collected, in accordance with such terms and conditions as the collection agreement prescribes.

(2) The Commissioner may, on behalf of the Government of the Yukon, enter into an agreement amending the terms and conditions of a collective agreement entered into under subsection (1).

(3) Where a collection agreement is entered into, the Minister, on behalf of, or as agent for, the Commissioner, may employ all the powers and perform all the duties of the Commissioner or the deputy head under this Act, and exercise any discretion that the Commissioner or the deputy head has under this Act including the discretion to refuse to permit the production in judicial or other proceedings in the Yukon of any document that is not, in the opinion of the Minister, in the interests of public policy to produce.

(4) Where a collection agreement is entered into, the Deputy Minister of National Revenue for Taxation of Canada may

- (a) employ all the powers and perform the duties of the Minister and exercise any discretion that the Minister has under subsection (3) or otherwise under this Act, and

- (b) designate officers of his department to carry out such functions, duties and powers as are similar to those that are exercised by them on his behalf under the federal Act.

Minister's right of appropriation

57.(1) A collection agreement may provide that where any payment is received by the Minister on account of tax payable by a taxpayer for a taxation year under this Act, the federal Act or an income tax statute of another agreeing province, or under any two or more of such statutes, the payment so received may be applied by the Minister towards the tax payable by the taxpayer under any such statute in such manner as may be specified in the agreement, notwithstanding that the taxpayer directed that the payment be applied in any other manner or made no direction as to its application.

(2) Any payment or part thereof applied by the Minister in accordance with a collection agreement towards the tax payable by a taxpayer for a taxation year under this Act

- (a) relieves the taxpayer of liability to pay such tax to the extent of the payment or part thereof so applied, and
- (b) shall be deemed to have been applied in accordance with a direction made by the taxpayer.

Remittance of tax in case of individual not resident in the Yukon

58. Where a collection agreement is entered into and an amount is remitted to the Minister under section 13 on account of the tax of an individual who is resident on the last day of the taxation year in another agreeing province,

- (a) no action lies for recovery of such amount by that individual, and
- (b) the amount may not be applied in discharge of any liability of that individual under this Act.

Liability to remit reduced by tax withheld outside the Yukon

59.(1) Where a collection agreement is entered into, an individual resident in the Yukon on the last day of the taxation year is not required to remit any amount on account of tax payable by him under this Act for the taxation year to the extent of the amount deducted or withheld on account of his tax for that year under the income tax statute of another agreeing province.

(2) Where the total amount deducted or withheld on account of tax payable under this Act and under the income tax statute of another agreeing province by an individual resident in the Yukon on the last day of the taxation year to whom subsection (1) applies exceeds the tax payable by him under this Act for that year, section 23 of this Act applies in respect of such individual as though the excess were an overpayment under this Act.

Adjusting payments

60.(1) In this section,

“adjusting payment” means a payment, calculated in accordance with this section, made by or on the direction of the Yukon to a non-agreeing province;

“amount deducted or withheld” does not include any refund made in respect of that amount;

“non-agreeing province” means a province that is not an agreeing province.

(2) Where, in respect of a taxation year, a non-agreeing province is authorized to make a payment to the Yukon that, in the opinion of the Commissioner, corresponds to an adjusting payment, the Commissioner may make an adjusting payment to that non-agreeing province and enter into any agreement that may be necessary to carry out the purposes of this section.

(3) Where a collection agreement is entered into, the adjusting payment that may be made pursuant to subsection (2) may be made by the Government of Canada where it has agreed to act on the direction of the Commissioner as communicated to the Minister.

(4) The adjusting payment to be made under this section shall be in an amount that is equal to the aggregate of the amounts deducted or withheld under section 13 in respect of the tax payable for a taxation year by individuals who

- (a) file returns under the federal Act,
- (b) are taxable thereunder in respect of that year, and
- (c) are resident on the last day of that year in the non-agreeing province to which the adjusting payment is to be made.

(5) Where an adjusting payment is to be made and there has been an amount deducted or withheld under section 13 on account of the tax for a taxation year of an individual who is taxable under the federal Act in respect of that year and who is resident on the last day of that taxation year in the non-agreeing province,

- (a) no action lies for the recovery of such amount by that individual, and
- (b) the amount may not be applied in discharge of any liability of that individual under this Act.

(6) Where an adjusting payment to a non-agreeing province is to be made under this section for a taxation year, an individual resident in the Yukon on the last day of the taxation year is not required to remit any amount on account of tax payable by him under this Act for the taxation year to the extent of the amount deducted or withheld on account of his income tax for that year under the law of that non-agreeing province.

(7) Where an adjusting payment to a non-agreeing province is to be made under this section for a taxation year and the total amount deducted or withheld on account of tax payable under this Act and on account of the income tax payable under the law of the non-agreeing province by an individual resident in the Yukon on the last day of the taxation year to whom subsection (6) applies exceeds the tax payable by him under this Act for that year, section 23 of this Act applies in respect of such individual as though the excess were an overpayment under this Act.

(8) Where a collection agreement is entered into and the Government of Canada has agreed in respect of a taxation year to carry out the direction of the Commissioner and to make an adjusting payment on behalf of the Yukon, the adjusting payment

- (a) shall be made out of any money that has been collected on account of tax under this Act for any taxation year, and
- (b) shall be the amount calculated by the Minister to be the amount required to be paid under subsection (4),

and the payment thereof discharges any obligation the Government of Canada may have with respect to the payment to the Yukon of any amount deducted or withheld under section 13 to which subsection (5) applies.

Reference to Court of Appeal

61.(1) The Commissioner may refer to the Court of Appeal for hearing and consideration any matter that relates to questions arising out of a collection agreement.

(2) The Attorney General of Canada and the Attorney General of an agreeing province may appear before the Court of Appeal and be heard as a party in respect of any matter referred under this Act.

Opinion of court

62. The Court of Appeal shall certify to the Commissioner its opinion on the matter referred and the reason for it in the same manner as in the case of a judgment in an ordinary action, and a judge who differs from the opinion of the majority may in the same manner certify his opinion and the reason for it.

Interested parties

63. The Court of Appeal may direct that any person interested or, where there is a class of persons interested, any one or more persons as representatives of that class, shall be notified of the hearing and those persons shall be entitled to be heard.

Appeal

64. The opinion of the Court of Appeal shall be deemed to be a judgment of the Court of Appeal and an appeal lies from it as in the case of a judgment in an action.

Enforcement of judgments

65.(1) A judgment of a superior court of an agreeing province under that province's income tax statute, including any certificate registered in such superior court in a manner similar to that provided in subsection 34(2), may be enforced in the manner provided in the Reciprocal Enforcement of Judgments Act, and shall be deemed to be a judgment to which that Act applies.

(2) For the purposes of subsection (1), where a judgment of a superior court of an agreeing province is sought to be registered under the Reciprocal Enforcement of Judgments Act, the judgment shall be registered notwithstanding that it is established that one or more of the provisions of subsection 2(6) of that Act apply.

(3) For the purpose of subsection (1), the Commissioner may make regulations to enable the enforcement in the Yukon of judgments in respect of taxes in agreeing provinces.

CHAPTER 91

INSURANCE ACT

Interpretation

1. In this Act,

“accident insurance” means insurance by which the insurer undertakes, otherwise than incidentally to some other class of insurance defined by or under this Act, to pay insurance money in the event of accident to the person or persons insured, but does not include insurance by which the insurer undertakes to pay insurance money both in the event of death by accident and in the event of death from any other cause;

“accidental death insurance” means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay an additional amount of insurance money in the event of the death by accident of the person whose life is insured;

“actuary” means a fellow of the Canadian Institute of Actuaries;

“adjuster” means a person who,

- (a) on behalf of an insurer or an insured, for compensation, directly or indirectly solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety or guarantee bond issued by an insurer, or investigates, adjusts or settles any such loss or claim, or
- (b) holds himself out as an adjuster, investigator, consultant or adviser with respect to the settlement of such losses or claims,

but does not include

- (c) a lawyer acting in the usual course of his profession,
- (d) a trustee or agent of the property insured,
- (e) a salaried employee of a licensed insurer while acting on behalf of such insurer in the adjustment of losses,
- (f) a person who is employed as an appraiser, engineer or other expert solely for the purpose of giving expert advice or evidence, or
- (g) a person who acts as an adjuster of marine losses only;

“agent” means a person who, for compensation, not being a duly licensed insurance broker or not being a person acting under the authority of subsection 215(15), (16) or (17), solicits insurance on behalf of an insurer, transmits for a person other than himself an application for or a policy of insurance to or from such insurer, or offers or assumes to act in the negotiation of such insurance or in negotiating its continuance or renewal;

“aircraft insurance” means insurance against loss of or damage to an aircraft and against liability for loss or damage to persons or property caused by an aircraft or by the operation thereof;

“appeal” includes a judicial revision or review of a judgment, decision, order, direction, determination, finding or conviction, and a case stated or reserved, and a removal of proceedings by law of certiorari or otherwise;

“automobile” includes a self-propelled vehicle and the trailers, accessories and equipment of automobiles, but does not include railway rolling stock that runs on rails, watercraft or aircraft;

- “automobile insurance” means insurance
- (a) against liability arising out of bodily injury to or the death of a person, or loss of or damage to property, caused by an automobile or the use or operation thereof, or
 - (b) against loss of or damage to an automobile and the loss of use thereof,
- and includes insurance otherwise coming within the class of accident insurance where the accident is caused by an automobile or the use or operation thereof, whether liability exists or not, if the contract also includes insurance described under employers’ liability insurance;
- “Automobile Insurance Plan” means an organization of insurers undertaking automobile insurance in the Yukon formed for the purpose of allocating automobile insurance risks so as to ensure the availability of insurance coverage to owners and drivers wishing to purchase automobile insurance;
- “boiler and machinery insurance” means insurance against loss of or damage to persons or property and against liability for loss or damage to persons or property through the explosion, collapse, rupture or breakdown of, or accident to, boilers or machinery of any kind;
- “broker” means a person who, for compensation, not being a licensed agent or not being a person acting under the authority of subsection 215(15), (16) or (17), acts or aids in any manner in negotiating contracts of insurance, placing risks or effecting insurance, or in negotiating the continuance or renewal of such contracts for a person other than himself;
- “chief agency” means the principal office or place of business in the Yukon of any licensed insurer having its head office out of the Yukon;
- “contract” means a contract of insurance, and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;
- “credit insurance” means insurance against loss to the insured through the insolvency or default of a person to whom credit is given in respect of goods, wares or merchandise;
- “disability insurance” means insurance undertaken by an insurer as part of a contract of life insurance whereby the insurer undertakes to pay insurance money or to provide other benefits in the event that the person whose life is insured becomes disabled as a result of bodily injury or disease;
- “due application” includes such information, evidence and material as the superintendent requires to be furnished, and also the payment of the fees hereinafter prescribed in respect of any application, certificate or document required or issued by virtue of this Act;
- “employers’ liability insurance” means insurance, not being insurance incidental to some other class of insurance defined by or under this Act, against loss to an employer through liability for accidental injury to or death of an employee arising out of or in the course of his employment;
- “endowment insurance”, as applied to a fraternal society, means an undertaking to pay an ascertained or ascertainable sum at a fixed future date if the person whose life is insured is then alive, or at his death if he dies before that date;
- “fire insurance” means insurance, not being insurance incidental to some other class of insurance defined by or under this Act, against loss of or damage to property through fire, lightning or explosion due to ignition;
- “foreign jurisdiction” means a jurisdiction other than the Yukon;

- “fraternal society” means a society, order or association incorporated for the purpose of making with its members only, and not for profit, contracts of life, accident or sickness insurance in accordance with its constitution, bylaws and rules and this Act;
- “guarantee insurance” means the undertaking to perform an agreement or contract or to discharge a trust, duty or obligation upon default of the person liable for such performance or discharge, or to pay money upon such default, in lieu of such performance or discharge or where there is loss or damage through such default, but does not include credit insurance;
- “head office” means the place where the chief executive officer of an insurer transacts his business;
- “inland transportation insurance” means insurance, other than marine insurance, against loss of or damage to property,
- (a) while in transit or during delay incidental to transit, or
 - (b) where, in the opinion of the superintendent, the risk is substantially a transit risk;
- “insurance” means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event;
- “insurance fund”, as applied to a fraternal society or as applied to a corporation not incorporated exclusively for the transaction of insurance, includes all money, securities for money and assets appropriated by the rules of the society or corporation to the payment of insurance liabilities or appropriated for the management of the insurance branch, department or division of the society, or otherwise legally available for insurance liabilities, but does not include funds of a trade union appropriated to or applicable for the voluntary assistance of wage earners unemployed or upon strike;
- “insurance money” means the amount payable by an insurer under a contract, and includes all benefits, surplus, profits, dividends, bonuses and annuities payable under the contract;
- “insurer” means the person who undertakes, agrees or offers to undertake a contract;
- “life insurance” means insurance whereby an insurer undertakes to pay insurance money,
- (a) on death,
 - (b) on the happening of an event or contingency dependent on human life,
 - (c) at a fixed or determinable future time, or
 - (d) for a term dependent on human life,
- and, without restricting the generality of the foregoing, includes accidental death insurance but not accident insurance;
- “licence” means a licence granted under this Act by the superintendent;
- “livestock insurance” means insurance, not being insurance incidental to some other class of insurance defined by or under this Act, against loss through the death or sickness of or accident to an animal;
- “marine insurance” means insurance against,
- (a) liability arising out of, bodily injury to or death of a person, or the loss of or damage to properties, or
 - (b) the loss of or damage to property,
- occurring during a voyage or marine adventure at sea or on an inland waterway or during delay incidental thereto, or during transit otherwise than by water incidental to such a voyage or marine adventure;

- “mortgage insurance” means insurance against loss caused by default on the part of a borrower under a loan secured by a mortgage upon real property, a hypothec upon immovable property or an interest in real or immovable property;
- “motor vehicle liability policy” means a policy or part of a policy evidencing a contract insuring
- (a) the owner or driver of an automobile, or
 - (b) a person who is not the owner or driver thereof where the automobile is being used or operated by his employee or agent or any other person on his behalf,
- against liability arising out of bodily injury to or the death of a person or loss or damage to property caused by an automobile or the use or operation thereof;
- “mutual insurance” means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts, whether or not the maximum amount of such consideration is predetermined;
- “non-owner’s policy” means a motor vehicle liability policy insuring a person solely in respect of the use or operation by him or on his behalf of an automobile that is not owned by him;
- “officer” includes a trustee, director, manager, treasurer, secretary or member of the board or committee of management of an insurer and a person appointed by the insurer to sue and be sued in its behalf;
- “owner’s policy” means a motor vehicle liability policy insuring a person in respect of the ownership, use or operation of an automobile owned by him and within the description or definition thereof in the policy and, if the contract so provides, in respect of the use or operation of any other automobile;
- “plate glass insurance” means insurance, not being insurance incidental to some other class of insurance defined by or under this Act, against loss of or damage to plate, sheet or window glass, whether in place or in transit;
- “policy” means the instrument evidencing a contract;
- “premium” means the single or periodical payment under a contract for insurance, and includes dues, assessments, administration fees paid for the administration or servicing of such contract, and other considerations;
- “property” includes profits, earnings and other pecuniary interests, and expenditure for rents, interest, taxes and other outgoings and charges in respect of inability to occupy the insured premises, but only to the extent of express provisions in the contract;
- “property damage insurance” means insurance against loss of or damage to property that is not included in or incidental to some other class of insurance defined by or under this Act;
- “public liability insurance” means insurance against loss or damage to the person or property of others that is not included in or incidental to some other class of insurance defined by or under this Act;
- “salesperson” means a person who is employed by a licensed insurance agent or broker on a stated salary that is not supplemented by commission, bonus or any other remuneration to solicit insurance or transact for a person other than himself an application for a policy of insurance, or to act in the negotiation of such insurance or in negotiating its continuance or renewal, or collects and receives premiums on behalf of his employer only, but does not include a licensed insurance agent, broker or employee engaged solely in office duties for an agent or broker or a person acting under the authority of subsection 215(15) or (16);

“sickness insurance” means insurance by which the insurer undertakes to pay insurance money in the event of sickness of the person or persons insured, but does not include disability insurance;

“sprinkler leakage insurance” means insurance against loss of or damage to property through the breakage or leakage of sprinkler equipment or other fire protection system, or of pumps, water pipes or plumbing and its fixtures;

“superintendent” means the superintendent of insurance and includes the deputy superintendent of insurance;

“theft insurance” means insurance against loss or damage through theft, wrongful conversion, burglary, house-breaking, robbery or forgery;

“title insurance” means insurance against loss or liability for loss due to the invalidity of the title to any property or of any instrument, or to any defect in such title or instrument;

“upon proof”, as applied to any matter connected with the licensing of an insurer or other person, means upon proof to the satisfaction of the superintendent.

PART 1

ADMINISTRATION AND ENFORCEMENT

Superintendent

2.(1) The Commissioner in Executive Council shall appoint a superintendent of insurance who shall exercise the powers and perform the duties vested in or imposed upon him by this or any other Act, shall have the general supervision of the business of insurance in the Yukon and shall see that the laws relating to the conduct thereof are enforced and obeyed.

(2) The superintendent may designate a person in his office to act as superintendent during the absence or inability of the superintendent.

Evidence

3. For the purposes of his duties and in the exercise of his powers under this Act or under any other Act relating to insurance, the superintendent may require to be made and may take and receive affidavits, statutory declarations and depositions, and may examine witnesses upon oath, and he has the same power to summon persons to attend as witnesses, to enforce their attendance, and to compel them to produce books, documents and things and to give evidence as any court has in civil cases.

Oaths

4. An oath required by this Act to be taken may be administered and certified to by the superintendent or by any person authorized to administer oaths in the Yukon.

Conflict of interest

5. Neither the superintendent nor any person in his office shall be interested as a shareholder, directly or indirectly, in any insurance company doing business in the Yukon.

Enforcement proceedings

6.(1) The superintendent may bring actions and institute proceedings in his name of office for the enforcement of any provision of this Act or for the recovery of any fee or penalty payable under this Act.

(2) No action or proceeding for the recovery of any fee or penalty payable under this Act shall be commenced without the leave of the superintendent.

Register of licences

7.(1) The superintendent shall keep a register of all licences, in which shall appear the name of the insurer, the address of the head office, the address of the principle office in Canada, the name and address of the chief agent in the Yukon, the number of the licence issued, particulars of the classes of insurance for which the insurer is licensed and such other information as the superintendent considers necessary.

(2) The register referred to in subsection (1) shall be open to inspection at such times and upon payment of such fees as are prescribed.

Publication and proof of registration

8.(1) The superintendent may cause to be published annually in the Yukon Gazette a list of the insurers licensed at the date of the list, and may from time to time cause notice of the licence of an insurer not theretofore licensed and notice of suspension, cancellation or revival of licence to be given by publication in the Yukon Gazette.

(2) A certificate under the hand and seal of office of the superintendent that on a stated day an insurer mentioned therein was or was not licensed under this Act, that any insurer was originally granted a licence, or that the licence of any insurer was renewed, suspended, revived, revoked or cancelled on a stated day, is admissible evidence as prima facie proof of the facts stated in the certificate.

(3) A certificate of the filing of any document in the office of the superintendent is admissible in evidence as prima facie proof of the filing if signed or purporting to be signed by the superintendent.

Decisions of the superintendent

9.(1) Every decision of the superintendent upon an application for a licence shall be in writing and notice thereof shall be forthwith given to the insurer.

(2) The insurer or any person interested is entitled upon payment of the prescribed fee to a certified copy of a decision of the superintendent.

(3) The evidence and proceedings in any matter before the superintendent may be reported by a stenographer sworn before the superintendent to faithfully report the same.

Appeals

10.(1) An applicant for a licence under this Act or any person who considers himself aggrieved by a decision of the superintendent may appeal therefrom to the Court of Appeal.

(2) The appeal shall be set down for argument at the first sitting of the Court of Appeal that commences after the expiration of 30 days from the decision complained of.

(3) The practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action.

(4) The superintendent shall certify to the registrar of the Court of Appeal the decision appealed from, his reasons therefor and the documents, inspection reports and evidence, if any, and such other information as he had before him in making his decision.

Inquiries

11. The superintendent may direct to an insurer any inquiry touching the contracts or financial affairs of the insurer, and the insurer shall make prompt and explicit answer to any such inquiry, and, in case of refusal or neglect to answer, is guilty of an offence.

Access to books

12. The superintendent or any person authorized under his hand or seal of office, shall at all reasonable times have access to all books, securities and documents of an insurer, agent or broker that relate to control of insurance, and any officer or person in charge, possession, custody or control of such books, securities or documents who refuses or neglects to afford such access is guilty of an offence.

Duty to furnish information on request

13.(1) It is the duty of the officers and agents of a licensed insurer, of persons licensed under this Act, and of any insured to furnish the superintendent on his request with full information relating to any contract of insurance issued by the insurer or to the insured, or relative to any settlement or adjustment under any such contract.

(2) The superintendent may visit the head office or chief agency from which the contract was issued, or the office of the adjuster, and inquire into such contract or settlement, and section 12 applies mutatis mutandis to such inquiry.

Inspection of insurers

14.(1) The superintendent or any person authorized by him may visit the head office or chief office of a licensed insurer, and he may examine the statements of the condition and affairs of each such insurer and make such inquiries as are necessary to ascertain its condition and ability to provide for the payment of its contracts as they mature and whether or not it has complied with all the provisions of this Act applicable to its transactions.

(2) The officers and agents of an insurer shall cause the books and records of the insurer to be opened for the inspection of the superintendent and shall otherwise facilitate such examination so far as it is in their power.

(3) In order to facilitate the inspection of the books and records of an insurer, the insurer may be required by the superintendent to produce the books and records at the head office or chief office of the insurer, or at such other convenient place as the superintendent directs, and the officer or officers of the insurer who have custody of the books and records are entitled to be paid by the insurer for the actual expenses of such attendance.

(4) The superintendent may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets or liabilities of any such insurer, and the cost thereof upon the certificate of the superintendent shall be paid by the insurer.

(5) Where the office of an insurer at which an examination is made under this section is out of the Yukon, the insurer shall pay the account in connection with such examination upon the certificate of the superintendent.

Service of notice or process

15.(1) Where the head office of a licensed insurer is situated out of the Yukon, notice or process in any action or proceeding in the Yukon may be served upon the chief agent of the insurer in the Yukon or, where no appointment of a chief agent is then in effect, notice may be served upon the superintendent, and such service shall be deemed service upon the insurer in the case of a corporation and upon members of the insurer in the case of an unincorporated body or association.

(2) Every licensed insurer shall file in the office of the superintendent notice of a postal address to which any such notice or process may be forwarded by the superintendent and shall from time to time notify the superintendent of any change in the address so filed.

Forwarding of notice of process

16. The superintendent shall forthwith after the receipt of any notice or process referred to in section 15 forward it to the insurer by registered mail addressed in the manner last notified to him for this purpose by the insurer.

Publication by superintendent

17. The superintendent may publish from time to time notices, reports, correspondence, results of hearings, decisions and any other matter considered by the superintendent to be in the public interest.

PART 2

GENERAL PROVISIONS APPLICABLE TO INSURERS

Application of Part

18.(1) This Part applies to insurance undertaken in the Yukon and to all insurers carrying on business in the Yukon.

(2) An insurer undertaking a contract that under this Act is deemed to be made in the Yukon, whether the contract is original or renewed, except the renewal from time to time of life insurance policies, shall be deemed to be undertaking insurance in the Yukon within the meaning of this Part.

(3) An insurer undertaking insurance in the Yukon or that, in the Yukon,

- (a) displays or causes to be displayed a sign containing the name of an insurer,
- (b) maintains or operates, either in its own name or in the name of its agent or other representative, an office for the transaction of the business of insurance either in or out of the Yukon,

- (c) distributes or publishes or causes to be distributed or published any proposal, circular, card, advertisement, printed form or like document,
- (d) makes or causes to be made any written or oral solicitation for insurance,
- (e) issues or delivers any policy of insurance or interim receipt, collects, receives or negotiates for or causes to be collected, received or negotiated for any premium for a contract of insurance, inspects any risk or adjusts any loss under a contract of insurance, or
- (f) prosecutes or maintains in the Yukon an action or proceeding in respect of a contract of insurance

shall be deemed to be an insurer carrying on business in the Yukon within the meaning of this Act.

(4) Any club, society or association incorporated or unincorporated that receives, either as trustees or otherwise, gratuities or benefits which are paid directly or indirectly upon the death of its members, or any of them, shall be deemed to be an insurer carrying on business in the Yukon within the meaning of this Act.

Necessity for licence

19.(1) Every insurer undertaking insurance in the Yukon or carrying on business in the Yukon shall obtain from the superintendent and hold a licence under this Act.

(2) Every insurer undertaking insurance or carrying on business in the Yukon without having obtained a licence as required by this section is guilty of an offence.

(3) A person who in the Yukon does or causes to be done any act or thing mentioned in subsection 18(3) or (4) on behalf of or as agent of an insurer not licensed under this Act or who receives directly or indirectly any remuneration for so doing is guilty of an offence.

(4) The following shall not be deemed insurers within the meaning of this Act or required or entitled to be licensed as such:

- (a) pension fund societies or employees' mutual benefit societies incorporated in the Yukon;
- (b) corporations mentioned in paragraphs 214(3)(a) and (b).

Reinsurance with unlicensed insurer

20. Nothing in this Act prevents a licensed insurer who has lawfully effected a contract of insurance in the Yukon from reinsuring the risk or part thereof with an insurer transacting business out of the Yukon and not licensed under this Act.

Issuance and effect of licences

21.(1) Upon due application and upon proof of compliance with this Act, the superintendent may issue a licence to undertake contracts of insurance and carry on business in the Yukon to any insurer coming within one of the following classes:

- (a) joint stock insurance companies;
- (b) mutual insurance corporations;
- (c) cash-mutual insurance corporations;
- (d) fraternal societies;

- (e) companies duly incorporated to undertake insurance contracts and not within paragraph (a) to (d);
- (f) underwriters or syndicates of underwriters operating on the plan known as Lloyds;
- (g) pension fund associations.

(2) A licence authorizes the insurer named therein to exercise in the Yukon all rights and powers reasonably incidental to the carrying on of the business of insurance named therein that are not inconsistent with this Act or with its Act or instrument of incorporation or organization.

Classes of insurance

22.(1) The Commissioner in Executive Council may make regulations determining and defining classes of insurance and classes of licences for the purposes of this Act.

(2) Subject to the provisions of the Parts of this Act that particularly relate to the classes of insurers mentioned in section 21, a licence may be granted to an insurer to carry on any one or more of the classes of insurance defined in section 1 and such other classes as are prescribed.

(3) For the purposes of this Act, the superintendent may determine the class or classes of insurance into which the circumstances or conditions in any case may bring any insurance granted or that may be granted in respect thereto, and the policy form to be used for that class of insurance.

(4) Any licence may be issued subject to such limitations and conditions as the superintendent may specify.

Conditions of automobile insurance licence

23.(1) A licence to carry an automobile insurance in the Yukon is subject to the following conditions:

- (a) in any action in the Yukon against the licenced insurer or its insured arising out of an automobile accident in the Yukon, the insurer shall appear and shall not set up any defence to a claim under a contract made outside the Yukon, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in the Yukon and such contract made outside the Yukon shall be deemed to include the benefits set out in the prescribed schedule;
- (b) in any action in a province against the licensed insurer or its insured arising out of an automobile accident in that province, the insurer shall appear and shall not set up any defence to a claim under a contract evidenced by a motor vehicle liability policy issued in the Yukon, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract, were evidenced by a motor vehicle liability policy issued in that province.

(2) An insurer undertaking automobile liability insurance in the Yukon shall be and remain a member of a facility association or a party to some other automobile insurance plan approved by the Commissioner in Executive Council to ensure a market for automobile insurance to all owners and licensed operators of automobiles, and shall comply with the requirements as to rates to be charged for business placed through the facility association or the other automobile insurance plan.

(3) Neither a facility association nor any other automobile insurance plan operating in the Yukon shall refuse to allow business to be placed through it where the agent who submits the application for the business complies with the facility association's or the plan's reasonable articles of association, bylaws or other conditions or requirements in respect of the application and business, and an agent who submits an application for business to be placed through the association or the plan shall comply with such articles, bylaws or other conditions or requirements.

(4) A facility association and any automobile insurance plan approved by the Commissioner in Executive Council under subsection (2) shall each prepare rates in respect of business to be placed through the facility association or the plan and shall file those rates and their supporting statistical evidence and any other evidence relevant to determining the rates with the superintendent at least 60 days prior to the introduction of the rates.

(5) Within 60 days of rates being filed under subsection (1), the superintendent shall either approve the rates so filed or, where he or she is of the opinion the rates are not in accordance with the statistical or other evidence, disallow the rates so filed.

(6) A facility association and any other automobile insurance plan approved by the Commissioner in Executive Council may each, in its name, sue or be sued and be prosecuted for an offence.

(7) In connection with proceedings referred to in subsection (6), service of a document on the superintendent shall be deemed to be service on a facility association or the other automobile insurance plan approved by the Commissioner in Executive Council, except that the time for the association or plan to respond to or comply with a direction in the document shall be deemed to run from the time when the superintendent notifies the association or plan of the document, rather than from the time of service of the document on the superintendent.

(8) A licence may be cancelled when the holder commits a breach of condition as set out in subsection (1).

Scope of life insurance licence

24. Every insurer licensed for the transaction of life insurance may, under the authority of its licence unless the licence expressly provides otherwise,

- (a) include in any policy of life insurance, in respect of the same life or lives insured thereby, disability insurance and accidental death insurance, and
- (b) transact annuities of all kinds and insurance providing for the establishment of accumulation or endowment funds.

Scope of fire insurance licence

25.(1) Every insurer licensed to carry on fire insurance may, subject to its Act of incorporation and subject to the restrictions prescribed by the licence, insure or reinsure any property in which the insured has an insurable interest against loss or damage by fire, lightning or explosion and may insure or reinsure the same property against loss or damage from falling aircraft, earthquake, windstorm, tornado, hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles and any one or more perils falling within such other classes of insurance as are prescribed.

(2) An insurer licensed to carry on fire insurance may insure an automobile against loss or damage under a policy falling within Part 4 of this Act.

Requirements for licensing

26.(1) A licence shall not be granted to an insurer except upon proof that it has complied with the provisions of this Act and the regulations applicable to it.

(2) Where the head office of an applicant for a licence under this Act is situate out of the Yukon, a licence shall not be granted except upon proof of its ability to provide for the payment at maturity of all its contracts, but the superintendent may accept as sufficient the fact that it is licensed by any other government in Canada.

(3) A licence shall not be granted to a corporation that is incorporated under the laws of a province unless its head office and chief place of business is situate in that province.

Information preliminary to licence

27. The superintendent may require notice of the application for a licence to be given by publication in the Yukon Gazette and elsewhere as he considers necessary.

Documents to be filed

28.(1) Every insurer shall, when applying for a licence, file in the office of the superintendent the following documents:

- (a) a certified copy of its Act or other instrument of incorporation or association, its constitution, and its bylaws and regulations, verified in a manner satisfactory to the superintendent;
- (b) a certified copy of its last balance sheet and auditor's report thereon;
- (c) if the head office of the insurer is out of the Yukon, notice of the place where the chief office of the insurer in the Yukon is to be situate;
- (d) if the head office of the insurer is out of the Yukon, an executed copy of a power of attorney from the insurer to the chief agent resident in the Yukon;
- (e) any evidence or documents required by other Parts of this Act.

(2) A power of attorney filed pursuant to paragraph (1)(d) shall be under the seal of the insurer, and shall be signed by the president and secretary or other proper officers of the insurer in the presence of a witness who shall make oath as to its due execution.

(3) A power of attorney filed pursuant to paragraph (1)(d)

- (a) shall declare in what place in the Yukon the chief agency of the corporation is,

- (b) shall expressly authorize the chief agent to receive service of process in all actions and proceedings against the insurer in the Yukon for any liability incurred by the insurer therein, and also to receive from the superintendent all notices that the law requires to be given or that it is thought advisable to give, and
- (c) shall declare that service of process for or in respect of such liability on the chief agent is legal and binding on the insurer.

(4) The production of a copy of the power of attorney certified by the superintendent is sufficient evidence for all purposes of the power and authority of the person therein named to act on behalf of the insurer in the manner and for the purposes set forth in the certified copy.

(5) Where the insurer changes its chief agent in the Yukon it shall within seven days of the appointment file with the superintendent a similar power of attorney stating the change and containing a similar declaration as to service of process and notices.

(6) After the power of attorney is filed, any process in any action or proceeding against the insurer for liability incurred in the Yukon may be validly served on the insurer upon its chief agent, but nothing in this section renders invalid service in any other modes in which the corporation may be lawfully served.

(7) An applicant for a licence shall furnish evidence satisfactory to the superintendent that the requirements of this Act have been complied with and that the applicant is entitled to the licence applied for.

(8) When the superintendent considers it necessary to conduct an examination of the affairs of an applicant for a licence, the applicant shall pay the costs of the examination upon receiving a statement thereof certified by the superintendent.

(9) Every licensed insurer shall file in the office of the superintendent certified copies of every amendment, revision or consolidation of its Act or other instrument of incorporation or association, and of its constitution, bylaws and regulations, verified in a manner satisfactory to the superintendent within 30 days after the passing or adoption of the amendment, revision or consolidation.

Terms and conditions of licences

29.(1) A licence shall be in such form or forms for the different classes of insurers as may be determined from time to time by the superintendent and a licence shall specify the business to be carried on by the insurer.

(2) Every licence expires on June 30 in each year, subject to renewal by the superintendent on or before that date.

(3) Any licence may be issued or renewed subject to such limitations or conditions as the superintendent considers appropriate.

(4) Notwithstanding subsections (2) and (3), the superintendent may at any time and in respect of any licence of an insurer,

- (a) reduce the term for which the licence was issued or renewed,
- (b) impose any conditions or limitations relating to the carrying on of the insurer's business that he considers appropriate, or
- (c) vary, amend or revoke any condition or limitation to which the licence is then subject,

but the superintendent may not exercise any power granted under this subsection until he has given the insurer notice of his intention to exercise such power and has afforded the insurer a reasonable opportunity to be heard with respect thereto.

Failure to pay undisputed claim

30.(1) Where written notice has been served on the superintendent and upon proof of an undisputed claim arising from loss insured against in the Yukon remaining unpaid for 60 days after being due or of a disputed claim after final judgment in the regular course of law and tender of a legal, valid discharge being unpaid, the superintendent may suspend or cancel the licence.

(2) The licence may be revived and the insurer may again transact business if, within six months after notice to the superintendent of the failure of the insurer to pay an undisputed claim or the amount of a final judgment as provided in this section, the undisputed claim or final judgment upon or against the insurer in the Yukon is paid and satisfied.

Insufficiency of assets and actions by other governments

31.(1) If the superintendent upon examination or from annual statements or upon other evidence finds

- (a) that the assets of an insurer are insufficient to justify its continuance in business or to provide proper security to persons effecting insurance with it in the Yukon, or
- (b) that an insurer has failed to comply with any provision of law or with its Act or instrument of incorporation or association,

he may suspend or cancel the licence of the insurer.

(2) Notice of suspension or cancellation under this section shall be published in the Yukon Gazette and elsewhere as the superintendent directs, and thereafter any person transacting business on behalf of the insurer except for winding-up purposes is guilty of an offence.

(3) In the case mentioned in subsection (1) the superintendent may, in lieu of suspending or cancelling the licence of the insurer, issue such modified, limited or conditional licence as he considers necessary for the protection of persons in the Yukon who have effected or effect contracts of insurance with the insurer.

(4) Upon the suspension or cancellation of the licence of an insurer by any government in Canada, the superintendent may suspend or cancel the licence of such insurer under this Act.

(5) An insurer may appeal a suspension or cancellation of his licence by the superintendent pursuant to subsection (1) or the decision of the superintendent to issue a modified, limited or conditional licence issued pursuant to subsection (3) to the Court of Appeal, and the provisions of section 10 apply to the appeal *mutatis mutandis*.

Statistical returns

32.(1) Every licensed insurer that carries on in the Yukon the business of automobile insurance, fire insurance, property damage insurance or sprinkler leakage insurance shall prepare and file, when required, with the superintendent or with such statistical agency as he may determine, such statistical return of the experience of such business as the superintendent may require, in such form and manner and according to such system of classification as he may approve.

(2) The superintendent may require any agency designated under subsection (1) to compile the data so filed in such form as he may approve, and the expense of making the compilation shall be apportioned among the insurers whose data is compiled by such agency by the superintendent who shall certify in writing the amount due from each insurer and it is payable by the insurer to such agency forthwith.

(3) If at any time it appears to the superintendent that the insurer's record of premium income and claims paid are not kept in such manner as to show correctly the experience of the insurer for the purposes of the statistical return, the superintendent may nominate an accountant to proceed under his direction to audit the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly thereafter.

(4) The expense of an audit under subsection (3) shall be borne by the insurer and the account shall, when certified and approved under the hand of the superintendent, be paid by the insurer forthwith.

(5) Any insurer that contravenes this section, and the principal officer in the Yukon of any such insurer, are guilty of an offence.

Annual statement

33.(1) Every licensed insurer shall prepare annually and deliver to the superintendent on or before March 15 of each year, a statement of the condition of affairs of the insurer as at December 31 immediately preceding, which statement

- (a) shall be in a form prescribed by the superintendent,
- (b) shall exhibit the assets, liabilities, receipts and expenditures of the insurer for the calendar year ending on such date,
- (c) shall exhibit particulars of the business done in the Yukon during such year and such other information as the superintendent considers necessary from time to time, and
- (d) shall be verified in such manner as may be prescribed by the superintendent.

(2) In the case of a corporation, a statement under subsection (1) shall be verified by the president, vice-president or managing director or other director appointed for the purpose by the board of directors and by the secretary or manager of the corporation.

(3) An insurer shall, when required by the superintendent, make prompt and explicit answer in reply to any inquiry directed to the insurer by him in relation to the statement or in relation to the transactions of the insurer in the Yukon.

(4) Subject to subsection (5), in the case of all classes of insurance other than life insurance, and in the case of all insurers, the statement shall show as a liability of the insurer not less than 80 percent of the actual portions of unearned premiums on all business in force on December 31 immediately preceding, or not less than 80 percent of 50 percent of the premiums written in its policies and received in respect of contracts having one year or less to run, and pro rata on those for longer periods.

(5) In the case of non-cancellable accident and sickness insurance, the statement shall show as a liability of the insurer a reserve computed on such bases and in accordance with such methods as will place an adequate value on the liabilities thereunder, but in no case shall the value placed upon the benefits under any policy be less than the value placed upon the future premiums.

(6) The statement shall not show as assets the unpaid balances owing by agents or other insurers in respect of business written before October 1 in the next preceding calendar year, bills receivable on account of the same, unpaid capital or premium on subscribed shares of capital stock, or investment in office furnishings or equipment, nor shall such statements include as assets any investments not authorized by any special or general Act to which the insurer is subject.

(7) Every licensed insurer may, in its annual statement or in any valuation of its securities required to be made, value all of its securities having a fixed term and rate and not in default as to principal or interest according to the following rule: if purchased at par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made; but the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, and the superintendent has full discretion in determining the method of calculating values according to the foregoing rule.

Published statements of insurers

34. No statement purporting to show the financial condition of an insurer that differs from the financial condition shown by the statement filed with the superintendent, and no balance sheet or other statement that differs in form from the form prescribed by the regulations, shall be published or circulated, and every insurer publishing such a statement is guilty of an offence.

Statements of guarantee

35. Every person who represents orally or in writing that the issue of a licence to an insurer, the printing or publication of an annual statement in any report or publication of the superintendent, or any other circumstance of the supervision or regulation of the business of the insurer by law or the superintendent is a warranty or guarantee of the financial standing of the insurer or of its ability to provide for the payment of its contracts at maturity, is guilty of an offence.

Separate accounts for life insurance

36. Every insurer licensed to transact life insurance shall keep separate and distinct accounts of participating and non-participating business.

Insurance with unlicensed insurers

37. Notwithstanding anything in this Act any person may insure property situated in the Yukon against fire with an unlicensed insurer, if such insurance is effected outside the Yukon and without any solicitation whatsoever directly or indirectly on the part of the insurer, and any property insured or to be insured under this section may be inspected and any loss incurred in respect thereof adjusted.

Trafficking in life insurance policies

38. Any person, other than an insurer or its duly authorized agent, who advertises or holds himself out as a purchaser of life insurance policies or of benefits thereunder, or who traffics or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation thereof to him or any other person, is guilty of an offence.

Privileged information

39. Any information, document, record, statement or thing made or disclosed to the superintendent concerning a person licensed or applying for a licence under this Act is absolutely privileged and shall not be used as evidence in any action or proceeding in any court brought by or on behalf of such person.

Form of policies and application

40.(1) The superintendent may require an insurer to file with him a copy of any form of policy or of the form of application for any policy issued or used by the insurer.

(2) Where the superintendent finds that an insurer has issued a policy or used an application that is unfair, fraudulent or not in the public interest, the superintendent may after giving the insurer an opportunity to be heard and make representations prohibit the insurer from issuing or using such form of policy or application, and any insurer that after being so prohibited issues such policy or uses any such application is guilty of an offence.

(3) An insurer who considers himself aggrieved by a decision of the superintendent pursuant to subsection (1) may appeal therefrom to the Court of Appeal and the provisions of section 10 shall apply mutatis mutandis.

Effect of violation of law on claim for indemnity

41. Unless the contract otherwise provides, a contravention of any criminal or other law in force in the Yukon or elsewhere does not, ipso facto, render unenforceable a claim for indemnity under a contract of insurance except where the contravention is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage, but in the case of a contract of life insurance this section applies only to disability insurance undertaken as part of the contract.

Wrongful withholding of payment by insurer

42. Where an insurer wrongfully withholds payment of any sum of money due to an insured under a contract of insurance, the insurer shall be liable to pay to the insured interest on the said sum from the date it became due and payable at a rate to be prescribed.

Penalties

43.(1) Unless otherwise provided, every person who knowingly

- (a) furnishes false information in any application under this Act or in any statement, return or answer required to be furnished under this Act or the regulations,
- (b) fails to comply with any order, direction or other requirement made under this Act, or
- (c) contravenes any provision of this Act or the regulations,

and every director or officer of an insurer who knowingly concurs in such furnishing, failure or contravention, is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or both.

(2) Where an insurer is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the insurer is \$25,000, and not as provided therein.

(3) In addition to the penalty set out in subsection (2), where an insurer contravenes the prohibitions or fails to comply with the requirements of this Act, the superintendent may suspend or cancel the licence of the insurer.

(4) Every person who

- (a) undertakes insurance or carries on business as an insurer in the Yukon,
- (b) acts on behalf of an insurer in the Yukon, or
- (c) does or performs any one or more of the acts constituting the business of insurance, in relation to any class of insurance without being licenced for that class, is guilty of an offence and on summary conviction is liable to a fine of not more than \$25,000.

(5) In case of default in making a return required by this Act to be made within a limited time, the insurer or the person required by this Act to make the return shall, in addition to the fine provided by subsection (1), incur a further fine of \$100 for every month or part thereof during which such insurer or person neglects to file the return so required.

(6) In any prosecution under this Act, whenever it appears that the accused has done any act or been guilty of any omission in respect of which he would be liable to some penalty under this Act or the regulations, unless he is duly licenced, it is incumbent upon him to prove that he is duly licenced.

Regulations

44. The Commissioner in Executive Council may make regulations

- (a) requiring the payment of fees for licences and renewals of licences and in respect of any function performed by the superintendent under this Act and prescribing the amounts thereof;

- (b) extending the provisions of this Act or any of them to a system or class of insurance not particularly mentioned in this Act;
- (c) governing group insurance contracts or schemes or any class thereof including prescribing and regulating their terms and conditions, the qualifications for membership in groups and the marketing of group insurance contracts or schemes;
- (d) governing the advertising of insurance contracts or any class thereof including prescribing and regulating the form and content of advertisements and requiring their filing;
- (e) prescribing a schedule of medical and funeral benefits, and accident benefits, in motor vehicle liability policies;
- (f) generally for the better administration of this Act.

PART 3

INSURANCE CONTRACTS IN THE YUKON

Application of Part

45. Except where otherwise provided and where not inconsistent with other provisions of this Act, this Part applies to every contract of insurance made in the Yukon, other than contracts of

- (a) accident and sickness insurance,
- (b) life insurance,
- (c) marine insurance, and
- (d) workers' compensation insurance.

Contracts deemed to be made in the Yukon

46. Where the subject matter of a contract of insurance is property in the Yukon or an insurable interest of a person resident in the Yukon, the contract of insurance, if signed, countersigned, issued or delivered in the Yukon or committed to the postal office or to any carrier, messenger or agent to be delivered or handed over to the insured, his assign or agent in the Yukon, shall be deemed to evidence a contract made therein, the contract shall be construed according to the law thereof, and all money payable under the contract shall be paid at the office of the chief officer or agent in the Yukon of the insurer in lawful money of Canada.

Terms and conditions of contracts

47.(1) All the terms and conditions of the contract of insurance shall be set out in full in the policy or by writing securely attached to it when issued and, unless so set out, no term of the contract or condition, stipulation, warranty or proviso modifying or impairing its effect is valid or admissible in evidence to the prejudice of the insured or beneficiary.

(2) Subsection (1) does not apply to an alteration or modification of the contract agreed upon in writing by the insurer and the insured after the issue of the policy.

(3) Whether the contract does or does not provide for its renewal, but it is renewed by a renewal receipt, it is a sufficient compliance with subsection (1) if the terms and conditions of the contract are set out as provided by that subsection and the renewal receipt refers to the contract by its number or date.

(4) The proposal or application of the insured shall not as against him be deemed a part of or be considered with the contract of insurance except in so far as the court determines that it contains a material misrepresentation by which the insurer was induced to enter into the contract.

(5) No contract of insurance shall contain or have endorsed upon it, or be made subject to, any term, condition, stipulation, warranty or proviso providing that such contract shall be avoided by reason of any statement in the application therefor, or inducing the entering into of the contract by the insurer, unless such term, condition, stipulation, warranty or proviso is and is expressed to be limited to cases in which such statement is material to the contract, and no contract shall be avoided by reason of the inaccuracy of any such statement unless it is material to the contract.

(6) The question of materiality in a contract of insurance is a question of fact for the jury, or for court if there is no jury, and no admission, term, condition, stipulation, warranty or proviso to the contrary contained in the application or proposal for insurance, or in the instrument of contract or in any agreement or document relating thereto, has any force or validity.

(7) This section does not apply to contracts of fire or automobile insurance.

Copy of proposal to be furnished to insured

48. An insurer shall upon request furnish to the insured a true copy of his application or proposal for insurance.

Consistency with the Act

49.(1) No insurer shall make a contract of insurance inconsistent with this Act.

(2) An act or omission of the insurer resulting in imperfect compliance with any of the provisions of this Act does not render a contract invalid as against the insured.

Contents of policies

50.(1) Every policy shall contain the name of the insurer, the name of the insured, the name of the person or persons to whom the insurance money is payable, the amount, or the method of determining the amount, of the premiums for the insurance, the subject matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which the liability is to accrue, the date upon which the insurance takes effect and the date it terminates or the method by which the latter is fixed or to be fixed.

(2) This section does not apply to contracts of guarantee insurance.

Appraisals

51.(1) This section applies to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.

(2) The insured and the insurer shall each appoint an appraiser, and the two appraisers, so appointed, shall appoint an umpire.

(3) The appraisers shall determine the matters in disagreement and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters.

(4) Each party to the appraisal shall pay the appraiser appointed by him and shall bear equally the expense of the appraisal and the umpire.

(5) Where

- (a) a party fails to appoint an appraiser within seven clear days after being served with written notice to do so,
- (b) the appraisers fail to agree upon an umpire within 15 days after their appointment, or
- (c) an appraiser or umpire refuses to act, is incapable of acting or dies,

a judge of the Supreme Court may appoint an appraiser or umpire, as the case may be, upon the application of the insured or of the insurer.

Relief from forfeiture

52. Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss and a consequent forfeiture or avoidance of the insurance in whole or in part and the court considers it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it considers just.

Payments

53. Insurance money is payable in the Yukon in lawful money of Canada.

Waiver of term or condition

54.(1) No term or condition of a contract shall be deemed to be waived by the insurer in whole or in part unless the waiver is stated in writing and signed by a person authorized for that purpose by the insurer.

(2) Neither the insurer nor the insured shall be deemed to have waived any term or condition of a contract by any act relating to the appraisal of the amount of loss, the delivery and completion of proofs or the investigation or adjustment of any claims under the contract.

Claims after unsatisfactory execution against insured

55.(1) Where a person

- (a) incurs a liability for injury or damage to the person or property of another,
- (b) is insured against such liability, and
- (c) fails to satisfy a judgment awarding damages against him in respect of his liability,

and an execution against him in respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

(2) This section does not apply to motor vehicle liability policies.

Consolidation of actions

56.(1) Where several actions are brought for the recovery of money payable under a contract or contracts of insurance, the court may consolidate or otherwise deal therewith so that there is but one action for and in respect of all the claims made in such actions.

(2) Where an action is brought to recover the share of one or more infants, all the other infants entitled, or the trustees, executors or guardians entitled to receive payment of the shares of such other infants, shall be made parties to the action, and the rights of all the infants shall be determined in one action.

(3) In all actions where several persons are interested in the insurance money, the court or judge may apportion among the persons entitled any sum directed to be paid, and may give all necessary directions and relief.

(4) Where the person entitled to receive money due and payable under a contract of insurance, except insurance of the person, is domiciled or resides in a foreign jurisdiction and payment valid according to the law of such jurisdiction is made to such person, such payment is valid and effectual for all purposes.

Effect of delivery of policy and effect of unpaid premiums

57.(1) Where the policy has been delivered, the contract is as binding on the insurer as if the premium had been paid although it has not in fact been paid and although delivered by an officer or agent of the insurer who had no authority to deliver it.

(2) The insurer may sue for any unpaid premium and may deduct the amount thereof from the amount for which he is liable under the contract of insurance.

(3) Where a cheque, bill of exchange or promissory note is given, whether originally or by way of renewal, for the whole or part of any premium and the cheque, bill of exchange or promissory note is not honoured according to its tenor, the insurer may terminate the contract upon giving written notice by registered mail to the insured.

Insurer to furnish forms for proof of loss

58.(1) An insurer, immediately upon receipt of a request, and in any event not later than 60 days after receipt of notice of loss, shall furnish to the insured or person to whom the insurance money is payable forms upon which to make the proof of loss required under the contract.

(2) An insurer who neglects or refuses to comply with subsection (1) is guilty of an offence and in addition section 59 is not available to the insurer as a defence to an action brought, after such neglect or refusal, for the recovery of money alleged to be payable under the contract of insurance.

(3) The furnishing by an insurer of forms to make proof of loss shall not be taken to constitute an admission by the insurer that a valid contract is in force or that the loss in question falls within the insurance provided by the contract.

When action may be brought under contract

59. No action should be brought for the recovery of money payable under a contract of insurance until the expiration of 60 days after proof, in accordance with the provisions of the contract,

- (a) of the loss, or
- (b) of the happening of the event upon which the insurance money is to become payable,

or of such shorter period as is fixed by the contract of insurance.

Insurance as collateral security for mortgages

60.(1) No mortgagee shall accept or be entitled to receive either directly or through his agent or employee, and no officer or employee of such mortgagee shall accept or receive, any commission, other remuneration or benefit in consideration of effecting a contract of insurance or renewal thereof under which contract loss, if any, is payable to him as mortgagee.

(2) No insurer or agent or broker shall pay, allow or give any commission, other remuneration or benefit to a mortgagee or to any person in his employ or on his behalf in consideration of effecting a contract of insurance or renewal thereof under which contract loss, if any, is payable to him as mortgagee.

(3) Every insurer or other person who contravenes the section is guilty of an offence.

Right to refund of premium on termination of contract

61.(1) Where an insured assigns the right to refund of premium that may accrue by reason of the cancellation or termination of a contract of insurance under the terms thereof and notice of the assignment is given by the assignee to the insurer, the insurer shall pay any such refund to the assignee notwithstanding any condition in the contract, whether prescribed under this Act or not, requiring the refund to be paid to the insured or to accompany any notice of cancellation or termination to the insured.

(2) Where the condition in the contract dealing with cancellation or termination by the insurer provides that the refund shall accompany the notice of cancellation or termination, the insurer shall include in the notice a statement that in lieu of payment of the refund in accordance with the condition the refund is being paid to the assignee under this section.

Contracts of title insurance

62.(1) Every contract of title insurance shall be in writing and in addition to the other requirements prescribed by this Act shall expressly limit the liability of the insurer to a sum stated in the contract.

(2) If a question arises as to the validity of the title insured or as to the liability of the insurer, the insured or the insurer or any person entitled to proceed in right of either may apply in a summary way to the Supreme Court to have such question determined, and the court may make such order upon the application as may be considered just.

Payment into court

63.(1) Where an insurer cannot obtain a sufficient discharge for insurance money for which it admits liability, the insurer may apply to the court ex parte for an order for the payment thereof into court, and the court may order the payment into court to be made upon such terms as to costs and otherwise as the court may direct, and may provide to what fund or name the amount shall be credited.

(2) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money so paid into court, and the insurance money shall be dealt with according to the orders of the court.

PART 4

FIRE INSURANCE

Application of Part

64.(1) This Part applies to insurance against loss of or damage to property arising from the peril of fire in any contract made in the Yukon except

- (a) insurance falling within the classes of aircraft, automobile, boiler and machinery inland transportation, marine, plate glass, sprinkler leakage and theft insurance,
- (b) where the subject matter of the insurance is rents, charges or loss of profits,
- (c) where the peril of fire is an incidental peril to the coverage provided, or
- (d) where the subject matter of the insurance is property that is insured by an insurer or a group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

(2) Notwithstanding subsection (1), this Part applies to insurance of an automobile as provided in subsection 25(2).

Extent of coverage by contract

65.(1) Subject to subsection (4) and to paragraph 71(a), in any contract to which this Part applies the contract shall be deemed to cover the insured property

- (a) against fire, whether resulting from explosion or otherwise, not occasioned by or happening through,
 - (i) in the case of goods, their undergoing any process involving the application of heat,
 - (ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power,
- (b) against lightning, but excluding destruction or loss to electrical devices or application caused by lightning or other electrical currents unless fire originates outside the article itself and only for such destruction or damage as occurs from such fire, and
- (c) against explosion not occasioned by or happening through any of the perils specified in clause (a)(ii) of natural, coal or manufactured gas in a building not forming part of a gas works, whether fire ensues therefrom or not.

(2) Unless a contract to which this Part applies otherwise specifically provides, it does not cover the insured property against loss or damage caused by contamination by radioactive material directly or indirectly resulting from fire, lightning or explosion within the meaning of subsection (1).

(3) Where property insured under a contract covering at a specified location is necessarily removed to prevent loss or damage or further loss or damage thereto, that part of the insurance under the contract that exceeds the amount of the insurer's liability for any loss incurred covers, for seven days only or for the unexpired term of the contract if less than seven days, the property removed and any property remaining in the original location in the proportions that the value of the property in each of the respective locations bears to the value of the property in them all.

(4) Nothing in subsection (1) precludes an insurer giving more extended insurance against the perils mentioned therein, but in that case this Part does not apply to the extended insurance.

(5) An insurer licensed to carry on fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of livestock insured against death or injury caused by fire or lightning, the word "lightning" is deemed to include other electrical currents.

Terms of policy in relation to application

66. After an application for insurance is made, if it is in writing, any policy sent to the insured shall be deemed to be intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy.

Mortgagees and other payees

67.(1) Where the loss if any under a contract has with the consent of the insurer been made payable to a person other than the insured, the insurer shall not cancel or alter the policy to the prejudice of that person without notice to him.

(2) The length of time for any manner of giving the notice under subsection (1) is the same as notice of termination to the insured under the statutory conditions in the contract.

Statutory conditions

68.(1) The conditions set forth in this section shall be deemed to be part of every contract in force in the Yukon and shall be printed on every policy with the heading "statutory conditions", and no variation or omission of or addition to any statutory condition is binding on the insured.

(2) In this section, "policy" does not include interim receipts or binders.

STATUTORY CONDITIONS

Misrepresentation

1. *If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.*

Property of others

2. *Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.*

Change of interest

3. *The insurer is liable for loss or damage occurring after an authorized assignment under the Bankruptcy Act (Canada) or change of title by succession, by operation of law or by death.*

Material changes

4. *Any change material to the risk and within the control and knowledge of the insured avoids the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent, and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within 15 days of the receipt of the notice, pay to the insurer an additional premium, and in default of such payment the contract is no longer in force and the insurer shall return the unearned portion, if any, of the premium paid.*

Termination

5. (1) *This contract may be terminated,*

- (a) *by the insurer giving to the insured 15 days notice of termination by registered mail or five days written notice of termination personally delivered, or*
- (b) *by the insured at anytime on request.*

(2) *Where this contract is terminated by the insurer,*

- (a) *the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but in no event shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified, and*
- (b) *the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.*

(3) *Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.*

(4) *The refund may be made by money, postal or express company money order or cheque payable at par.*

(5) *The 15 days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.*

Requirement after loss

6.(1) *Upon the occurrence of any loss of or damage to the insured property, the insured shall, if the loss or damage is covered by the contract, in addition to observing the requirements of conditions 9, 10 and 11,*

- (a) *forthwith give notice thereof in writing to the insurer,*
- (b) *deliver as soon as practicable to the insurer a proof of loss verified by a statutory declaration,*
 - (i) *giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,*
 - (ii) *stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated so far as the insured knows or believes,*
 - (iii) *stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,*
 - (iv) *showing the amount of other insurances and the names of other insurers,*
 - (v) *showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,*
 - (vi) *showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract, and*
 - (vii) *showing the place where the property insured was at the time of loss,*
- (c) *if required, give a complete inventory of undamaged property showing in detail quantities, cost and actual cash value, and*
- (d) *if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration and furnish a copy of the written portion of any other contract.*

(2) *The evidence furnished under clauses (c) and (d) of subcondition (1) of this condition shall not be considered proofs of loss within the meaning of conditions 12 and 13.*

Fraud

7. *Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars vitiates the claim of the person making the declaration.*

Who may give notice and proof

8. *Notice of loss may be given and proof of loss may be made by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.*

Salvage

9.(1) *The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.*

(2) *The insurer shall contribute pro rata towards any reasonable and proper expenses in connection with steps taken by the insured and required under sub paragraph (1) of this condition according to the respective interests of the parties.*

Entry, Control, Abandonment

10. *After loss or damage to insured property, the insurer has an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property and to make an estimate of the loss or damage, and after the insured has secured the property a further right of access and entry sufficient to enable them to make appraisal or particular estimate of the loss or damage, but the insurer is not entitled to the control or possession of the insured property and without the consent of the insurer there can be no abandonment to it of insured property.*

Appraisal

11. *In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under the Insurance Act before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.*

When loss payable

12. *The loss is payable within 60 days after completion of the proof of loss, unless the contract provides for a shorter period.*

Replacement

13.(1) *The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within 30 days after receipt of the proofs of loss.*

(2) *In that event the insurer shall commence to so repair, rebuild, or replace the property within 45 days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.*

Action

14. *Every action or proceeding against the insurer for the recovery of a claim under or by virtue of this contract is absolutely barred unless commenced within two years next after the loss or damage occurs.*

Notice

15. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Yukon. Written notice may be given to the insured named in the contract by letter personally delivered to him or by registered mail addressed to him at his latest postal address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

Limitation of liability**69. A contract containing**

- (a) a deductible clause,
- (b) a co-insurance, average or similar clause, or
- (c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional,

shall have printed or stamped upon its face in red ink the words, "This policy contains a clause that may limit the amount payable", failing which the clause is not binding upon the insured.

Rateable contribution

70.(1) Where on the happening of any loss or damage to property insured there is in force more than one contract covering the same interest, each of the insurers under the respective contracts is liable to the insured for its rateable proportion of the loss, unless it is otherwise expressly agreed in writing between the insurers.

(2) For the purpose of subsection (1), a contract shall be deemed to be in force notwithstanding any term thereof that the policy will not cover, come into force, attach or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

(3) Nothing in subsection (1) affects the validity of any divisions of the sum into separate items, or any limits of insurance on specified property, or any clause referred to in section 69 or any contract condition limiting or prohibiting the having or placing of other insurance.

(4) Nothing in subsection (1) affects the operation of any deductible clause and,

- (a) where one contract contains a deductible, the pro rata proportion of the insurer under that contract shall be first ascertained without regard to the clause and then the clause shall be applied only to affect the amount of recovery under that contract, and
- (b) where more than one contract contains a deductible, the pro rata proportion of the insurers under those contracts shall be first ascertained without regard to the deductible clauses and then the highest deductible shall be pro rated among the insurers with deductibles and these pro rated amounts shall affect the amount of recovery under those contracts.

(5) Nothing in subsection (4) shall be construed to have the effect of increasing the pro rata contribution of an insurer under a contract that is not subject to a deductible clause.

(6) Notwithstanding subsection (1), insurance on identified articles is a first loss insurance as against all other insurance.

Special stipulations

71. Where a contract

- (a) excludes any loss that would otherwise fall within the coverage prescribed by section 65, or
- (b) contains any stipulation, condition or warranty that is or may be material to the risk including but not restricted to a provision in respect to the use, condition, location or maintenance of the insured property,

the exclusion, stipulation, condition or warranty is not binding upon the insured if it is held to be unjust or unreasonable by the court before which a question relating thereto is tried,

Subrogation

72.(1) The insurer, upon making a payment or assuming liability therefor under a contract of fire insurance, is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce such rights.

(2) Where the net amount recovered under subsection (1), after deducting the costs of recovery, is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount shall be divided between the insurer and the insured in the proportions in which the loss or damage has been borne by them respectively.

PART 5 LIFE INSURANCE

Interpretation

73. In this Part,

“application” means an application for insurance or for the reinstatement of insurance;

“beneficiary” means a person, other than the insured or his personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;

“contract” means a contract of life insurance;

“court” means the Supreme Court or a judge thereof;

“creditor’s group insurance” means insurance effected by a creditor in respect of the lives of the debtors whereby the lives of the debtors are insured severally under a single contract;

“declaration” means an instrument signed by the insured,

- (a) with respect to which an endorsement is made on the policy,
- (b) that identifies the contract, or
- (c) that describes the insurance or insurance fund or a part thereof,

in which he designates, or alters or revokes the designation of, his personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable;

“family insurance” means insurance whereby the lives of the insured and one or more persons related to him by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

“group insurance” means insurance, other than creditor’s group insurance and family insurance, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

“group life insured” means a person whose life is insured by a contract of group insurance but does not include a person whose life is insured under the contract as a person dependent upon or related to him;

“instrument” includes a will;

“insurance” means life insurance;

“insured”

(a) in the case of group insurance, means, in the provisions of this Part relating to the designation of beneficiaries and the rights and status of beneficiaries, the group life insured, and

(b) in all other cases, means the person who makes a contract with an insurer;

“life insurance” includes disability insurance and accidental death insurance;

“will” includes a codicil.

Application of this Part

74.(1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to a contract made in the Yukon on or after July 1, 1967, and subject to subsections (2) and (3), applies to a contract made in the Yukon before that day.

(2) The rights and interests of a beneficiary for value under a contract that was in force immediately prior to July 1, 1966 are those provided in Part IV of the Insurance Ordinance as it existed immediately prior to that day.

(3) Where the person who would have been entitled to the payment of insurance money, if the money had become payable immediately prior to July 1, 1967, was a preferred beneficiary within the meaning of Part IV of the Insurance Ordinance as it existed immediately prior to that day, the insured may not, except in accordance with that Part,

(a) alter or revoke the designation of a beneficiary, or

(b) assign, exercise rights under or in respect of, surrender or otherwise deal with the contract,

but this subsection does not apply after a time at which the insurance money, if it were then payable, would be payable wholly to a person other than a preferred beneficiary within the meaning of that Part.

Group insurance

75. In the case of a contract of group insurance made with an insurer authorized to transact insurance in the Yukon at the time the contract was made, this Part applies in determining

(a) the rights and status of beneficiaries if the group life insured was resident in the Yukon at the time he became insured, and

(b) the rights and obligations of the group life insured if he was resident in the Yukon at the time he became insured.

Issuance of policy

76.(1) An insurer entering into a contract shall issue a policy.

(2) Subject to subsection (3), the provisions in

(a) the application,

(b) the policy,

- (c) any document attached to the policy when issued, and
- (d) any amendment to the contract agreed upon in writing after the policy is issued,

constitute the entire contract.

(3) In the case of a contract made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution, bylaws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant constitute the entire contract.

(4) An insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

Contents of policy

77.(1) This section does not apply to a contract

- (a) of group insurance,
- (b) of creditor's group insurance, or
- (c) made by a fraternal society.

(2) An insurer shall set forth the following particulars in the policy:

- (a) the name or a sufficient description of the insured and of the person whose life is insured;
- (b) the amount or the method of determining the amount of the insurance money payable, and the conditions under which it becomes payable;
- (c) the amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid;
- (d) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer;
- (e) the conditions upon which the contract may be reinstated if it lapses;
- (f) the options, if any,
 - (i) of surrendering the contract for cash,
 - (ii) of obtaining a loan or an advance payment of the insurance money, and
 - (iii) of obtaining paid-up or extended insurance.

Contents of group policy

78. In the case of a contract of group insurance or of creditor's group insurance, an insurer shall set forth the following particulars in the policy:

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the persons whose lives are insured;
- (c) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid;
- (e) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer.

Contents of group certificate

79. In the case of a contract of group insurance, an insurer shall issue for delivery by the insured to each group life insured a certificate or other document in which are set forth the following particulars:

- (a) the name of the insurer and an identification of the contract;
- (b) the amount or the method of determining the amount of insurance on the group life insured and on any person dependent upon or related to him;
- (c) the circumstances in which the insurance terminates and the rights, if any, upon such termination, of the group life insured or of any person whose life is insured under the contract as a person dependent upon or related to him.

Insurable interest

80.(1) Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

(2) A contract is not void for lack of insurable interest,

- (a) if it is a contract of group insurance, or
- (b) if the person whose life is insured has consented in writing to the insurance being placed on his life.

(3) Where the person whose life is insured is under the age of 16 years, consent to insurance being placed on his life may be given by one of his parents or by a person standing in loco parentis to him.

Insurable interest defined

81. Without restricting the meaning of the expression "insurable interest", a person has an insurable interest in his own life and in the life of

- (a) his child or grandchild,
- (b) his spouse,
- (c) any person upon whom he is wholly or in part dependent for or from whom he is receiving support or education,
- (d) his employee, and
- (e) any person in the duration of whose life he has a pecuniary interest.

Contract taking effect

82.(1) Subject to any provision to the contrary in the application or the policy, a contract does not take effect unless,

- (a) the policy is delivered to an insured, to his assign or agent or to a beneficiary,
- (b) the payment of the first premium is made to the insurer or its authorized agent, and
- (c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy was delivered.

(2) Where a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in paragraph (1)(a), it shall be deemed but not to the prejudice of the insured to have been delivered to the insured.

(3) Notwithstanding subsection (1), where an insured dies after payment of the first premium but before delivery of the policy, the policy shall be deemed to be in effect if full information on the life to be insured has been supplied and on the basis of this information a prudent insurer would have issued the policy.

Default in paying premium

83.(1) Where a cheque or other bill of exchange, or a promissory note or other written promise to pay, is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed not to have been paid.

(2) Where a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance shall be deemed to have been received at the time of the registration of the letter.

Payment of premiums

84.(1) Except in the case of group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or of the insured may pay any premium that the insured is entitled to pay.

(2) Where a premium other than the initial premium is not paid at the time it is due, the premium may be paid within a period of grace of

- (a) 30 days or, in the case of an industrial contract, 28 days from and excluding the day on which the premium is due, or
- (b) the number of days, if any, specified in the contract for payment of an overdue premium, whichever is the longer period.

(3) Where the happening of the event upon which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract shall be deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium, together with interest at the rate specified in the contract, but not exceeding six percent per annum, and the balance, if any, of the current year's premium, may be deducted from the insurance money.

Duty to disclose

85.(1) An applicant for insurance and a person whose life is to be insured shall each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.

(2) Subject to section 86, a failure to disclose or a misrepresentation of such a fact renders the contract voidable by the insurer.

Incontestability

86.(1) This section does not apply to a misstatement of age or to disability insurance.

(2) Subject to subsection (3), where a contract has been in effect for two years during the lifetime of the person whose life is insured, a failure to disclose or a misrepresentation of a fact required to be disclosed by section 85 does not, in the absence of fraud, render the contract voidable.

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact in respect of a person whose life is insured under the contract does not render the contract voidable, but, if evidence of insurability is specifically requested by the insurer, the insurance in respect of that person is voidable by the insurer unless it has been in effect for two years during the lifetime of that person, in which event it is not, in the absence of fraud, voidable.

Non-disclosure of insurer

87. Where an insurer fails to disclose or misrepresents a fact material to the insurance, the contract is voidable by the insured, but in the absence of fraud the contract is not by reason of such failure or misrepresentation voidable after the contract has been in effect for two years.

Incorrect statement of age

88.(1) This section does not apply to a contract of group insurance or of creditor's group insurance.

(2) Subject to subsection (3), where the age of a person whose life is insured is misstated to the insurer, the insurance money provided by the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age.

(3) Where a contract limits the insurable age and the correct age of the person whose life is insured at the date of the application exceeds the age so limited, the contract is, during the lifetime of that person but not later than five years from the date the contract takes effect, voidable by the insurer within 60 days after it discovers the error.

Incorrect statement of age in group insurance

89. In the case of a contract of group insurance or of creditor's group insurance, misstatement to the insurer of the age of a person whose life is insured does not of itself render the contract voidable and the provisions, if any, of the contract with respect to age or misstatement of age apply.

Effect of suicide

90.(1) Where a contract contains an undertaking express or implied that insurance money will be paid if a person whose life is insured commits suicide, the undertaking is lawful and enforceable.

(2) Where a contract provides that in case a person whose life is insured commits suicide within a certain period of time the contract is void or the amount payable under it is reduced, if the contract lapses and is subsequently reinstated on one or more occasions, the period of time commences to run from the date of the latest reinstatement.

Reinstatement after lapse

91.(1) This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

(2) Where a contract lapses and the insured within two years applies for reinstatement of the contract, if within that time he

- (a) pays the overdue premiums and other indebtedness under the contract to the insurer, together with interest at the rate specified in the contract, but not exceeding six percent per annum, compounded, and
- (b) produces evidence satisfactory to the insurer of the good health and other evidence satisfactory to the insurer of the insurability of the person whose life was insured,

the insurer shall reinstate the contract.

(3) Subsection (2) does not apply where the cash surrender value has been paid or an option of taking paid-up or extended insurance has been exercised.

(4) Sections 85 and 86 apply mutatis mutandis to reinstatement of a contract.

Designation of beneficiaries

92.(1) An insured may in a contract or by a declaration designate his personal representative or a beneficiary to receive insurance money.

(2) Subject to section 93, the insured may from time to time alter or revoke the designation by a declaration.

(3) A designation in favour of the "heirs", "next of kin" or "estate" of the insured, or the use of words of like import in a designation, shall be deemed to be a designation of the personal representative of the insured.

Designation of beneficiary irrevocably

93.(1) An insured may in a contract or by a declaration other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably, and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary and the insurance money is not subject to the control of the insured or of his creditors and does not form part of his estate.

(2) Where the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable.

Designations in wills

94.(1) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

(2) Notwithstanding the Wills Act, a designation in a will is of no effect against a designation made later than the making of the will.

(3) Where a designation is contained in a will, if subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

(4) Where a designation is contained in an instrument that purports to be a will, if subsequently the instrument is valid as a will would be revoked by operation of law or otherwise, the designation is thereby revoked.

Trustees for beneficiary

95.(1) An insured may in a contract or by a declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration.

(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment.

Beneficiary predeceasing life insured and several beneficiaries

96.(1) Where a beneficiary predeceases the person whose life is insured and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable,

- (a) to the surviving beneficiary,
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares, or
- (c) if there is no surviving beneficiary, to the insured or his personal representative.

(2) Where two or more beneficiaries are designated otherwise than alternatively, but no division of the insurance money is made, the insurance money is payable to them in equal shares.

Right to enforce payment of insurance money

97. A beneficiary may enforce for his own benefit, and a trustee appointed pursuant to section 94 may enforce as trustee, the payment of insurance money made payable to him in the contract or by a declaration and in accordance with the provisions thereof, but the insurer may set up any defence that it could have set up against the insured or his personal representative.

Insurance money free from creditors

98.(1) Where a beneficiary is designated, the insurance money, from the time of the happening of the event upon which the insurance money becomes payable, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.

(2) While a designation in favour of a spouse, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the rights and interests of the insured in the insurance money and in the contract are exempt from execution or seizure.

Insured dealing with contract

99. Where a beneficiary

- (a) is not designated irrevocably, or
- (b) is designated irrevocably but has attained the age of 19 years and consents,

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided therein or in this Part or as may be agreed upon with the insurer.

Insured entitled to dividends

100.(1) Notwithstanding the designation of a beneficiary irrevocably, the insured is entitled while living, to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

(2) Unless the insured otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force.

Transfer of ownership on death

101.(1) Notwithstanding the Wills Act, where in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, upon the death of the insured, the rights and interests of the insured in the contract,

- (a) the rights and interests of the insured in the contract do not, upon the death of the insured, form part of his estate, and
- (b) upon the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

(2) Where the contract or agreement provides that two or more persons named in the contract or in the agreement shall, upon the death of the insured, have successively, on the death of each of them, the rights and interests of the insured in the contract, this section applies successively *mutatis mutandis* to each of such persons and to his rights and interests in the contract.

(3) Notwithstanding any nomination made pursuant to this section, the insured may, prior to his death, assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer.

Interest of assignee

102.(1) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, he has priority of interest as against,

- (a) an assignee other than one who gave notice earlier in like manner, and
- (b) a beneficiary other than one designated irrevocably as provided in section 93 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

(2) Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(3) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

(4) A provision in a contract to the effect that the rights or interests of the insured or in the case of group insurance, the group life insured, are not assignable is valid.

Enforcement of rights by group life insured

103. A group life insured may in his own name enforce a right given to him under a contract, subject to any defence available to the insurer against him or against the insured.

Capacity of minors

104. Except in respect of his rights as beneficiary, a minor who has attained the age of 16 years has the capacity of a person of the age of 19 years,

- (a) to make an enforceable contract, and
- (b) in respect of a contract.

Capacity of minor beneficiary

105. A beneficiary who has attained the age of 18 years has the capacity of a person of the age of 19 years to receive insurance money payable to him and to give a discharge therefor.

Proof of claim

106. Where an insurer receives sufficient evidence of,

- (a) the happening of the event upon which insurance money becomes payable,
- (b) the age of the person whose life is insured,
- (c) the right of the claimant to receive payment, and
- (d) the name and age of the beneficiary, if there is a beneficiary,

it shall, within 30 days after receiving the evidence, pay the insurance money to the person entitled thereto.

Place and currency of payment

107.(1) Subject to subsection (4), insurance money is payable in the Yukon.

(2) Unless a contract otherwise provides, a reference in a contract to dollars means Canadian dollars.

(3) Where a person entitled to receive insurance money is not domiciled in the Yukon, the insurer may pay the insurance money to that person or to any other person who is entitled to receive it on his behalf by the law of the domicile of the payee.

(4) In the case of a contract of group insurance, insurance money is payable in the province in which the group life insured was resident at the time he became insured.

Action in the Yukon

108. Notwithstanding where a contract was made, an action on it may be brought in a court by a resident of the Yukon if the insurer was authorized to transact insurance in the Yukon at the time the contract was made or at the time the action is brought.

Limitation of actions

109.(1) Subject to subsection (2), an action or proceeding against an insurer for the recovery of insurance money shall not be commenced more than two years after the furnishing of the evidence required by section 106 or more than six years after the happening of the event upon which the insurance money becomes payable, whichever period first expires.

(2) Where a declaration has been made under section 111, an action or proceeding to which reference is made in subsection (1) shall not be commenced more than two years after the date of the declaration.

Documents affecting title

110.(1) Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there was no such instrument or order.

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

Declaration as to sufficiency of proof

111. Where an insurer admits the validity of the insurance but does not admit the sufficiency of the evidence required by section 106 and there is no other question in issue except a question under section 113, the insurer or the claimant may, before or after action is brought and upon at least 30 days notice, apply to the court for a declaration as to the sufficiency of the evidence furnished, and the court may make the declaration or may direct what further evidence shall be furnished and on the furnishing thereof may make the declaration or, in special circumstances, may dispense with further evidence.

Declaration as to presumption of death

112. Where a claimant alleges that the person whose life is insured should be presumed to be dead by reason of his not having been heard of for seven years and there is no other question in issue except a question under section 113, the insurer or the claimant may, before or after action is brought and upon at least 30 days notice, apply to the court for a declaration as to presumption of the death and the court may make the declaration.

Court order respecting payment

113.(1) Upon making a declaration under section 111 or 112, the court may make such order respecting the payment of the insurance money and respecting costs as it deems just, and subject to section 115 a declaration or direction or order made under this subsection is binding upon the applicant and upon all persons to whom notice of the application has been given.

(2) A payment made under an order made under subsection (1) discharges the insurer to the extent of the amount paid.

Stay of proceedings

114. Unless the court otherwise orders, an application made under section 111 or 112 operates as a stay of any pending action with respect to the insurance money.

Appeal

115. An appeal lies to the Court of Appeal from any declaration, direction or order made under section 111 or 112, or subsection 113(1).

Power of court

116. Where the court finds that the evidence furnished under section 106 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in an action brought or to be brought or may make such other order as it deems just respecting further evidence to be furnished by the claimant, publication of advertisements, further inquiry or any other matter or respecting costs.

Payment into court

117. Where an insurer admits liability for insurance money and it appears to the insurer that,

- (a) there are adverse claimants,
- (b) the whereabouts of a person entitled is unknown, or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,

the insurer may, at any time after 30 days from the date of the happening of the event upon which the insurance money becomes payable, apply to the court *ex parte* for an order for payment of the money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

Simultaneous deaths

118. Unless an contract or a declaration otherwise provides, where the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survives the other, for the purpose only of paying out the proceeds of the policy, the insurance money is payable in accordance with subsection 96(1) as if the beneficiary had predeceased the person whose life is insured.

Insurance money payable in instalments

119.(1) Subject to subsections (2) and (3), where insurance money is payable in instalments and a contract or an instrument signed by the insured and delivered to the insurer provides that a beneficiary has not the right to commute the instalments or to alienate or assign his interest therein, the insurer shall not, unless the insured subsequently directs otherwise in writing, commute the instalments or pay them to any person other than the beneficiary, and the instalments are not in the hands of the insurer subject to any legal process except an action to recover the value of necessities supplied to the beneficiary or his infant children.

(2) A court may, upon the application of a beneficiary and upon at least ten days notice, declare that in view of special circumstances,

- (a) the insurer may, with the consent of the beneficiary, commute instalments of insurance money, or
- (b) the beneficiary may alienate or assign his interest in the insurance money.

(3) After the death of the beneficiary, his personal representative may, with the consent of the insurer, commute any instalments of insurance money payable to the beneficiary.

(4) In this section, "instalments" includes insurance money held by the insurer under section 120.

Insurer holding insurance money

120.(1) An insurer may hold insurance money,

- (a) subject to the order of an insured or a beneficiary, or
- (b) upon trusts or other agreements for the benefit of the insured or the beneficiary,

as provided in the contract, by an agreement in writing to which it is a party, or by a declaration, with interest at a rate agreed upon therein or, where no rate is agreed upon, at the rate declared from time to time by the insurer in respect of insurance money so held by it.

(2) The insurer is not bound to hold insurance money as provided in subsection (1) under the terms of a declaration to which it has not agreed in writing.

Court may order payment

121. Where an insurer does not within 30 days after receipt of the evidence required by section 106 pay the insurance money to some person competent to receive it or into court, the court may, upon application of any person, order that the insurance money or any part thereof be paid into court, or may make such other order as to the distribution of the money as it deems just, and payment made in accordance with the order discharges the insurer to the extent of the amount paid.

Costs

122. The court may fix without taxation the costs incurred in connection with an application or order made under section 118 or 121, and may order them to be paid out of the insurance money or by the insurer or the applicant or otherwise as it deems just.

Payment into court for minor beneficiary

123.(1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a discharge therefor who is willing to do so, the insurer may at any time after 30 days from the date of the happening of the event upon which the insurance money becomes payable pay the money, less the applicable costs mentioned in subsection (3), into court to the credit of the minor.

(2) The insurer may retain out of the insurance money for costs incurred upon payment into court under subsection (1) the sum of \$10 where the amount does not exceed \$1,000, and the sum of \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.

(3) No order is necessary for payment into court under subsection (1), but the proper officer of the court shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the public administrator and deliver to him a copy of the affidavit.

Beneficiary under disability

124. Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid.

Presumption against agency

125. No officer, agent or employee of an insurer and no person soliciting insurance, whether or not he is an agent of the insurer, shall to the prejudice of the insured be deemed to be the agent of the insured in respect of any question arising out of a contract.

Insurer giving information

126. An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

**PART 6
AUTOMOBILE INSURANCE**

Interpretation

127. In this Part,

“contract” means a contract of automobile insurance;

“insured” means a person insured by a contract whether named or not and includes any person who is stated in a contract to be entitled to benefits payable under the insurance mentioned in section 158 or in subsection 159(1) or 160(1), whether described therein as an insured person or not.

Application of this Part

128.(1) This Part applies to contracts providing automobile insurance made or renewed in the Yukon on or after the coming into force of this section.

(2) This Part does not apply to contracts insuring only against

- (a) loss of or damage to an automobile while in or on described premises,
- (b) loss of or damage to property carried in or upon an automobile, or
- (c) liability for loss of or damage to property carried in or upon an automobile.

(3) This Part does not apply to a contract providing insurance in respect of an automobile not required to be registered under the Motor Vehicles Act unless it is insured under a contract evidenced by a form of policy approved under this Part.

(4) This Part does not apply to a contract insuring solely the interest of a person who has a lien upon, or has a security interest in, an automobile and who does not have possession of the automobile.

Approval of forms and policies

129.(1) No insurer shall use a form of application, policy, endorsement or renewal or continuation certificate in respect of automobile insurance other than a form approved by the superintendent.

(2) An insurer may require additional information in an approved application form, but such additional information does not constitute part of the application for the purposes of section 132.

(3) Where, in the opinion of the superintendent, any provision of this Part, including any statutory condition, is wholly or partly inappropriate to the requirements of a contract or is inapplicable by reason of the requirements of any Act, he may approve a form of policy, or part thereof, or endorsement evidencing a contract sufficient or appropriate to insure the risks required or proposed to be insured, and the contract evidenced by the policy or endorsement in the form so approved is effective and binding according to its terms notwithstanding that those terms are inconsistent with, vary, omit or add to any provision or condition of this Part.

(4) Except as to matters mentioned in section 142, the superintendent may, if he considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement thereto that extends the insurance beyond that prescribed in that part.

(5) The superintendent may approve a form of owner's policy containing insuring agreements and provisions in conformity with this Part for use by insurers in general and which, for the purposes of section 131, shall be the standard owner's policy.

(6) The superintendent may revoke an approval given under this section and, upon notification of the revocation in writing, no insurer shall thereafter use or deliver a form that contravenes the notification.

(7) The superintendent shall, on request of any interested insurer, specify in writing his reasons for granting, refusing or revoking an approval of a form.

(8) An insurer that issues or delivers an owner's policy in the Yukon, any renewal thereof or any evidence of the continuation of the policy shall issue to the insured a card evidencing the insurance, and the card shall be in a form approved by the superintendent.

Persons forbidden to act as agent

130. No person carrying on the business of financing the sale or purchase of automobiles and no automobile dealer, insurance agent or broker, and no officer or employee of such a person, dealer, agent or broker, shall act as the agent of an applicant for the purpose of signing an application for automobile insurance.

Application and policy

131.(1) A copy of the written application, signed by the insured or his agent, or if no signed application is made a copy of the purported application, or a copy of such part of the application or purported application as is material to the contract, shall be embodied in, endorsed upon or attached to the policy when issued by the insurer.

(2) If no signed written application is received by the insurer prior to the issue of the policy, the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, a form of application to be completed and signed by the insured and returned to the insurer.

(3) Subject to subsection (5), the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, the policy or a true copy thereof and every endorsement or other amendment to the contract.

(4) Where a written application signed by the insured or his agent is made for a contract, the policy evidencing the contract shall be deemed to be in accordance with the application unless the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and in that event the insured shall be deemed to have accepted the policy unless within two weeks from the receipt of the notification he informs the insurer in writing that he rejects the policy.

(5) Where an insurer adopts the standard owner's policy it may, instead of issuing the policy, issue a certificate in a form approved by the superintendent which when issued is of the same force and effect as if it was in fact the standard owner's policy, subject to the limits and coverages shown thereon by the insurer and any endorsements issued concurrently therewith or subsequent thereto, but at the request of an insured at any time the insurer shall provide a copy of the standard owner's policy wording as approved by the superintendent.

(6) Where a certificate is issued under subsection (5), subsection (8) of this section and section 156 apply *mutatis mutandis*.

(7) Where an insurer issues a certificate under subsection (5), proof of the terms of the policy may be given by production of a copy of the form of standard owner's policy approved by the superintendent.

(8) Upon every application form and policy there shall be printed or stamped in conspicuous type a copy of subsection 132(1).

Misrepresentation or violation of conditions

132.(1) Where

- (a) an applicant for a contract
 - (i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or
 - (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein,
- (b) the insured contravenes a term of the contract or commits a fraud, or
- (c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

(2) No statement of the applicant shall be used in defence of a claim under the contract unless it is contained in the signed written application thereof or, where no signed written application is made, in the purported application, or part thereof, that is embodied in, endorsed upon or attached to the policy.

(3) No statement contained in a purported copy of the application, or part thereof, other than a statement describing the risk and the extent of the insurance, shall be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to him in the purported application, or part thereof.

Statutory conditions

133.(1) Subject to subsection 129(3) and sections 134 and 156,

- (a) the conditions set forth in this section are statutory conditions and shall be deemed to be part of every contract and be printed in every policy with the heading “statutory conditions”, and
- (b) no variation of, omission from or addition to a statutory condition is binding on the insured.

(2) In this section, “policy” does not include an interim receipt or binder.

STATUTORY CONDITIONS

In these Statutory Conditions, unless the context otherwise requires, the word “insured” means a person insured by this contract whether named or not.

Material change in risk

1.(1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk, material to the contract and within his knowledge.

(2) Without restricting the generality of the foregoing, the words “change in the risk material to the contract” include

- (a) *any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the Bankruptcy Act (Canada) and in respect of insurance against loss of or damage to the automobile,*
- (b) *any mortgage, lien or encumbrance effecting the automobile after the application for this contract, and*
- (c) *any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.*

Prohibited use by insured and others

2.(1) The insured shall not drive or operate the automobile

- (a) *unless he is for the time being either authorized by law or qualified to drive or operate the automobile,*
- (b) *while his licence to drive or operate an automobile is suspended, while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile,*
- (c) *while he is under the age of 16 years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him,*
- (d) *for any illicit or prohibited trade or transportation, or*
- (e) *in any race or speed test.*

(2) The insured shall not permit, suffer, allow or connive at the use of the automobile

- (a) *by any person,*
 - (i) *unless that person is for the time being either authorized by law or qualified to drive or operate the automobile,*

- (ii) *while that person is under the age of 16 years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him,*
- (b) *by any person who is a member of the household of the insured while his licence to drive or operate an automobile is suspended, while his right to obtain a licence is suspended, or while he is prohibited under order of any court from driving or operating an automobile,*
- (c) *for any illicit or prohibited trade or transportation, or*
- (d) *in any race or speed test.*

Requirements where loss or damage to persons or property

3.(1) The insured shall

- (a) *promptly give to the insurer written notice, with available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident,*
- (b) *verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract, and*
- (c) *forward immediately to the insurer every letter, document, advice or writ received by him from or on behalf of the claimant.*

(2) The insured shall not

- (a) *voluntarily assume any liability or settle any claim except at his own cost, or*
- (b) *interfere in any negotiations for settlement or in any legal proceeding.*

(3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness, and shall cooperate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

Requirements where loss or damage to automobile

4.(1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,

- (a) *promptly give notice thereof in writing to the insurer with the fullest information obtainable at the time,*
- (b) *at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and*
- (c) *deliver to the insurer within 90 days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.*

(2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.

(3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,

(a) without the written consent of the insurer, or

(b) until the insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.

(4) The insured shall submit to examination under oath and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative all documents in his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

(5) The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

(6) Except where an appraisal has been made, the insurer, instead of making payment, may within a reasonable time repair, rebuild or replace the property damaged or lost with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

(7) There shall be no abandonment of the automobile to the insurer without the insurer's consent. If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

(8) In the event of disagreement as to the nature and extent of the repairs and replacements required or as to their adequacy if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under the Insurance Act before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

Inspection of automobile

5. The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

Time and manner of payment of insurance money

6.(1) *The insurer shall pay the insurance money for which it is liable under this contract within 60 days after the proof of loss has been received by it or, where an appraisal is made under subcondition (8) of statutory condition 4, within 15 days after the award is rendered by the appraisers.*

(2) *The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with nor until the amount of the loss has been ascertained as therein provided or by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer.*

(3) *Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile or in respect of loss or damage to persons or property shall be commenced within two years from the time when the loss or damage was sustained and not afterwards.*

Who may give notice and proof of claim

7. *Notice of claim may be given and proof of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or to make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.*

Termination

8.(1) *This contract may be terminated,*

- (a) *by the insurer giving to the insured 15 days notice of termination by registered mail or five days written notice of termination personally delivered, or*
- (b) *by the insured at any time on request.*

(2) *Where this contract is terminated by the insurer,*

- (a) *the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but in no event shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified, and*
- (b) *the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.*

(3) *Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.*

(4) *The refund may be made by money, postal or express company money order or cheque payable at par.*

(5) *The 15 days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.*

Notice

9. *Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Yukon. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest postal address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.*

Exceptions respecting statutory conditions

134.(1) Except as otherwise provided in the contract, the statutory conditions set forth in section 133 do not apply to insurance coming within section 158, 159 or 160.

(2) Where a contract does not insure against liability for loss or damage to persons and property, statutory condition 3 in section 133 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

(3) Where a contract does not insure against loss of or damage to the automobile, statutory condition 4 in section 133 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

MOTOR VEHICLE LIABILITY POLICIES

Coverage of owner's policy

135.(1) Every contract evidenced by an owner's policy insures the person named therein and every other person who with his consent personally drives an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

- (a) arising from the ownership, use or operation of any such automobile, and
- (b) resulting from bodily injury to or the death of any person and damage to property.

(2) Where the contract evidenced by an owner's policy also provides insurance against liability in respect of an automobile not owned by the insured named in the contract, an insurer may stipulate in the contract that the insurance is restricted to such persons as are specified in the contract.

(3) Where the insured named in an owner's policy dies, the following persons shall be deemed to be the insured under the policy:

- (a) the spouse of the deceased insured if residing in the same dwelling premises at the time of his death;
- (b) in respect of the described automobile, a newly acquired automobile that was acquired by the deceased insured prior to his death and a temporary substitute automobile, all as defined by the policy,

- (i) any person having proper temporary custody thereof until grant of probate or administration to the personal representative of the deceased insured, and
- (ii) the personal representative of the deceased insured.

Coverage of non-owner's policy

136. Every contract evidenced by a non-owner's policy insures the person named therein and such other person, if any, as is specified in the policy against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

- (a) arising from the use or operation of an automobile within the definition thereof in the policy, other than an automobile owned by him or registered in his name, and
- (b) resulting from bodily injury to or the death of any person and damage to property.

Persons deemed not owners

137. For the purposes of this Part, a person shall not be deemed to be the owner of an automobile for the reason only that he has a lien on the automobile or has legal title to the automobile as security.

Territorial limits

138. Insurance under sections 135 and 136 applies to the ownership, use or operation of the insured automobile within Canada and the United States of America and upon a vessel plying between ports of those countries.

Rights of unnamed insurer

139. Any person insured by but not named in a contract to which section 135 or 136 applies may recover indemnity in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

Additional agreements

140. Every contract evidenced by a motor vehicle liability policy shall provide that, where a person insured by the contract is involved in an accident resulting from the ownership, use or operation of an automobile in respect of which insurance is provided under the contract and resulting in loss or damage to persons or property, the insurer shall,

- (a) upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant and effect such settlement of any resulting claims as are deemed expedient by the insurer,
- (b) defend in the name and on behalf of the insured and at the cost of the insurer any civil action that is at any time brought against the insured on account of loss or damage to persons or property,
- (c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment upon that part of the judgment that is within the limits of the insurer's liability, and

- (d) where the injury is to a person, reimburse the insured for outlay for such medical aid as is immediately necessary at the time.

Liability from ownership

141. Liability arising from contamination of property carried in an automobile shall not be deemed to be liability arising from the ownership, use or operation of such automobile.

Exceptions from liability

142. The insurer is not liable under a contract evidenced by a motor vehicle liability policy for any liability,

- (a) imposed by any workers' compensation law upon any person insured by the contract, or
- (b) resulting from bodily injury to or the death of any employee of any person insured by the contract while engaged in the operation or repair of the automobile.

Exceptions from liability

143. The insurer may provide under a contract evidenced by a motor vehicle liability policy, in either or both of the following cases, that it shall not be liable,

- (a) to indemnify any person engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles for any loss or damage sustained while engaged in the use or operation of or while working upon the automobile in the course of that business unless the person is the owner of the automobile or is his employee, or
- (b) for loss of or damage to property carried in or upon the automobile or to any property owned or rented or in the care, custody or control of the insured.

Exceptions from liability

144. Subject to the limitations and exclusions of the endorsement, the insurer may provide by endorsement to a contract evidenced by a motor vehicle liability policy that it shall not be liable for loss or damage resulting from the ownership, use or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while such automobile is at the site of the use or operation of that machinery or apparatus.

Exceptions from liability

145.(1) The insurer may provide under a contract evidenced by a motor vehicle liability policy, in one or more of the following cases, that it shall not be liable while,

- (a) the automobile is rented or leased to another person,
- (b) the automobile is used to carry explosives or to carry radioactive material for research, education, development or industrial purposes or for purposes incidental thereto,
- (c) the automobile is used as a taxi-cab, public omnibus, livery, jitney or sight-seeing conveyance or for carrying passengers for compensation or hire,
- (d) where the insured vehicle is an automobile, other than a trailer, it is used for towing a trailer owned by the insured unless like indemnity is also provided by the insurer in respect of the trailer, or

- (e) where the insured vehicle is a trailer, it is towed by an automobile owned by the insured unless like indemnity is also provided by the insurer in respect of the automobile.

(2) In paragraph (1)(b), “radioactive material” means,

- (a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor,
- (b) radioactive waste material,
- (c) unused enriched nuclear fuel rods, or
- (d) any other radioactive material of such quantity and quality as to be harmful to persons or property if its container were destroyed or damaged.

(3) Paragraph (1)(a) does not include the use by an employee of his automobile on the business of his employer for which he is paid.

(4) Paragraph (1)(c) does not include,

- (a) the use by a person of his automobile for the carriage of another person in return for the former’s carriage in the automobile of the latter,
- (b) the occasional and infrequent use by a person of his automobile for the carriage of another person who shares the cost of the trip,
- (c) the use by a person of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse,
- (d) the use by a person of his automobile for the carriage of a client or customer or a prospective client or customer, and
- (e) the occasional and infrequent use by the insured of his automobile for the transportation of school children to or from school or school activities conducted within an educational program.

Minimum liability under policy

146.(1) Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of not less than \$200,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property.

(2) The contract shall be interpreted to mean that where, by reason of any one accident, liability results from bodily injury or death and from loss of or damage to property,

- (a) claims against the insured arising out of bodily injury or death have priority to the extent of \$190,000 over claims arising out of loss of or damage to property, and
- (b) claims against the insured arising out of loss of or damage to property have priority to the extent of \$10,000 over claims arising out of bodily injury or death.

(3) The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least \$200,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of liability of at least \$200,000 exclusive of interest and costs, against liability for loss of or damage to property.

(4) Nothing in this Part precludes an insurer, with respect to a limit or limits in excess of those specified in subsection (1) or (3), from increasing or reducing the limit or limits specified in the contract with respect to the use or operation of the automobile by a named person, but no reduction is effective for a limit less than that required under subsection (1) or (3).

Coverage elsewhere in Canada

147.(1) Every motor vehicle liability policy issued in the Yukon shall provide that, in the case of liability arising out of the ownership, use or operation of the automobile in any province,

- (a) the insurer shall be liable up to the minimum limit prescribed for that province if those limits are higher than the limits prescribed by the policy,
- (b) the insurer shall not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in that province, and
- (c) the insured, by acceptance of the policy, constitutes and appoints the insurer his irrevocable attorney to appear and defend in any province in which an action is brought against the insured arising out of the ownership, use or operation of the automobile.

(2) A provision in a motor vehicle liability policy in accordance with paragraph (1)(c) is binding on the insured.

Excess insurance

148.(1) Nothing in this Part precludes an insurer from providing insurance under a contract evidenced by a motor vehicle liability policy restricted to a limit in excess of that provided by another designated contract evidenced by a motor vehicle liability policy, whether the designated contract is a first loss insurance or an excess insurance.

(2) Where the contract designated as the excess contract terminates or is terminated, the excess contract is also automatically terminated.

Agreement for partial payment of claim by insured

149. Nothing in this Part precludes an insurer from entering into an agreement with its insured under a contract evidenced by a motor vehicle liability policy providing that the insured will reimburse the insurer in an agreed amount in respect of any claim by or judgment in favour of a third party against the insured, and the agreement may be enforced against the insured according to its tenor.

Liability when nuclear energy contract also in force

150.(1) In this section, "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the Atomic Energy Control Act (Canada).

(2) Where an insured is covered, whether named therein or not, under a contract evidenced by a motor vehicle liability policy for loss or damage resulting from bodily injury to or the death of any person or damage to property arising directly or indirectly out of a nuclear energy hazard and is also covered, whether named therein or not, against such loss or damage under a contract evidenced by a policy of nuclear energy hazard liability insurance issued by a group of insurers and in force at the time of the event giving rise to the loss or damage,

- (a) the motor vehicle liability insurance is excess to the nuclear energy hazard liability insurance, and the insurer under the contract of motor vehicle liability insurance is not liable to pay beyond the minimum limits prescribed by section 145, and
- (b) the unnamed insured under the contract of nuclear energy liability insurance may, in respect of such loss or damage, recover indemnity under that contract in the same manner and to the same extent as if named therein as the insured, and for that purpose he shall be deemed to be a party to the contract and to have given consideration therefor.

(3) For the purpose of this section, a contract of nuclear energy hazard liability insurance shall be deemed to be in force at the time of the event giving rise to the loss or damage, notwithstanding that the limits of liability thereunder have been exhausted.

Advance payments and release by claimant

151.(1) Where an insurer makes a payment on behalf of an insured under a contract evidenced by a motor vehicle liability policy to a person who is or alleges himself to be entitled to recover from the insured covered by the policy, the payment constitutes, to the extent of the payment, a release by the person or his personal representative of any claim that the person or his personal representative or any person claiming through or under him or by virtue of the Fatal Accidents Act may have against the insured and the insurer.

(2) Nothing in this section precludes the insurer making the payment from demanding, as a condition precedent to such payment, a release from the person or his personal representative or any other person to the extent of such payment.

(3) Where the person commences an action, the court shall adjudicate upon the matter first without reference to the payment, but in giving judgment the payment shall be taken into account and the person shall only be entitled to judgment for the net amount, if any.

(4) The intention of this section is to permit payments to a claimant without prejudice to the defendant or his insurer, either as an admission of liability or otherwise, and the fact of any payment shall not be disclosed to the judge or jury until after judgment but before formal entry thereof.

Defence where more than one contract

152.(1) Where a person is insured under more than one contract evidenced by a motor vehicle liability policy, whether the insurance is first loss insurance or excess, and a question arises under paragraph 140(b) between an insurer and the insured or between the insurers as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies liability under its contract, the insured or any insurer may apply to the Supreme Court, and the Supreme Court shall give such directions as may appear proper with respect to the performance of the obligation.

(2) On an application under subsection (1), the only parties entitled to notice thereof and to be heard thereon are the insured and his insurers, and no material or evidence used or taken upon such an application is admissible upon the trial of an action brought against the insured for

loss or damage to persons or property arising out of the use or operation of the automobile in respect of which the insurance is provided.

(3) An order under subsection (1) does not affect the rights and obligations of the insurers in respect of payment of an indemnity under their respective policies.

(4) Where indemnity is provided to the insured under two or more contracts and one or more of them are excess insurance, the insurers shall, as between themselves, contribute to the payment of expenses, costs and reimbursement for which provision is made in section 140 in accordance with their respective liabilities for damages awarded against the insured.

Application of insurance money

153.(1) Any person who has a claim against an insured for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, notwithstanding that such person is not a party to the contract, may, upon recovering a judgment therefor in any province against the insured, have the insurance money payable under the contract applied in or towards satisfaction of his judgment and of any other judgments or claims against the insured covered by the contract and may, on behalf of himself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

(2) No action shall be brought against an insurer under subsection (1) after the expiration of one year from the final determination of the action against the insured, including appeals if any.

(3) A creditor of the insured is not entitled to share in the insurance money payable under any contract unless his claim is one for which indemnity is provided for by that contract.

(4) The right of a person who is entitled under subsection (1) to have insurance money applied upon his judgment or claim is not prejudiced by,

- (a) an assignment, waiver, surrender, cancellation or discharge of the contract, or of any interest therein or of the proceeds thereof, made by the insured after the happening of the event giving rise to a claim under the contract,
- (b) any act or default of the insured before or after that event in contravention of this Part or of the terms of the contract, or
- (c) any contravention of the Criminal Code (Canada) or a statute of any province or of any state or the District of Columbia of the United States of America by the owner or driver of the automobile,

and nothing mentioned in paragraph (a), (b) or (c) is available to the insurer as a defence in an action brought under subsection (1).

(5) It is not a defence to an action under this section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer and alleged by a party to the action to be such a policy is not a motor vehicle liability policy, and this section applies mutatis mutandis to the instrument.

(6) The insurer may require any other insurers liable to indemnify the insured in whole or in part in respect of judgments or claims to which reference is made in subsection (1) to be made parties to the action and contribute according to their respective liabilities, whether the

contribution is rateable or by way of first loss or excess insurance, as the case may be, and the insured shall on demand furnish the insurer with particulars of all insurance covering the subject matter of the contract.

(7) Where any person has recovered a judgment against the insured and is entitled to bring action under subsection (1) and the insurer admits liability to pay the insurance money under the contract and the insurer considers that,

- (a) there are or may be other claimants, or
- (b) there is no person capable of giving and authorized to give a valid discharge for payment who is willing to do so,

the insurer may apply to the court *ex parte* for an order for payment of the money into court, and the court may, upon such notice, if any, as it thinks necessary, make an order accordingly.

(8) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into court under subsection (7), and the insurance money shall be dealt with as the court may order upon application of any person interested therein.

(9) Notwithstanding anything contained therein to the contrary, every contract evidenced by a motor vehicle liability policy shall, for the purposes of this section, be deemed to provide all the types of coverage mentioned in section 145, but the insurer is not liable to a claimant with respect to such coverage in excess of the limits mentioned in section 146.

(10) Where one or more contracts provide for coverage of a type mentioned in section 143 or 144, the insurer may,

- (a) with respect to that type of coverage, and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

(11) Where one or more contracts provide for coverage in excess of the limits mentioned in section 146, the insurer may,

- (a) with respect to the coverage in excess of those limits, and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

(12) The insured shall reimburse the insurer upon demand in the amount that the insurer has paid by reason of this section and that it would not otherwise be liable to pay.

(13) Where an insurer denies liability under a contract evidenced by a motor vehicle liability policy, it shall, upon application to the court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured enters an appearance or defence in the action.

(14) Upon being made a third party, the insurer may

- (a) contest the liability of the insured to any party claiming against the insured,
- (b) contest the amount of any claim made against the insured,

- (c) deliver any pleadings in respect of the claim of any party claiming against the insured,
- (d) have production and discovery from any party adverse in interest, and
- (e) examine and cross-examine witnesses at the trial, to the same extent as if it were a defendant in the action.

(15) An insurer may avail itself of subsection (14) notwithstanding that another insurer is defending in the name and on behalf of the insured an action to which its insured is a party.

Notice of action and disclosure of insurance

154.(1) Every insured against whom an action is commenced for damages occasioned by an automobile shall give notice thereof in writing to the insurer within five days after service of every notice or process in the action.

(2) Every insured against whom an action is commenced for damages occasioned by an automobile shall, upon recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of such contract within ten days after written demand therefor.

PHYSICAL DAMAGE COVER

Stipulations

155. Subject to subsection 129(1), the insurer may provide in a contract such exclusions and limitations, in respect of loss of or damage to or the loss of use of the automobile, as it considers necessary.

Partial payment of loss clause

156.(1) A contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use thereof may contain a clause to the effect that, in the event of loss, the insurer shall pay only,

- (a) an agreed portion of any loss that may be sustained, or
- (b) the amount of the loss after deduction of a sum specified in the policy,

and in either case not exceeding the amount of the insurance.

(2) Where a clause is inserted in accordance with subsection (1), there shall be printed or stamped upon the face of the policy in conspicuous type the words, "This policy contains a partial payment of loss clause."

Claims to be adjusted with insured

157.(1) Where a claim is made under any contract other than a contract evidenced by a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the contract as well as with any person having an interest indicated in the contract.

(2) Where notice is given or proof of loss is made by a person other than the insured because the insured cannot be located or neglects or refuses or is unable to give notice and makes claim under statutory conditions 4 and 7 in section 133, the insurer may, notwithstanding subsection (1) but in any event not earlier than 60 days from delivery of the proof required

under clause (c) of subcondition (1) of statutory condition 4, adjust and pay the claim to the other person having an interest indicated in the contract.

LIMITED ACCIDENT INSURANCES

Uninsured motorist cover

158.(1) Where an insurer provides in a contract insurance against loss resulting from bodily injury to or the death of a person insured arising out of an accident involving an automobile where,

- (a) there is legal liability of another person for the injury or death, and
- (b) the other person has no insurance against his liability therefor or that person cannot be identified,

that insurance applies only in respect of

- (c) any person who sustains bodily injury or death while driving, being carried in or upon or entering or getting onto or alighting from the described automobile in respect of which automobile liability insurance is provided under the contract, and
- (d) the insured named in the contract and his or her spouse and any dependent relative residing in the same dwelling premises as the insured named in the contract who sustains bodily injury or death while driving, being carried in or upon or entering or getting onto or alighting from or as a result of being struck by any other automobile that is defined in the contract for the purposes of that insurance.

(2) The insurance mentioned in subsection (1) does not apply in respect of a person specified therein who has a right of recovery under an unsatisfied judgment fund or a similar fund in any province or of any state or the District of Columbia of the United States of America.

Medical and funeral benefits

159.(1) Every contract evidenced by a motor vehicle liability policy shall provide the benefits set forth in the prescribed schedule subject to the limits, terms and conditions set forth in the schedule.

(2) Where an insurer makes a payment under a contract of insurance referred to in subsection (1), the payment constitutes, to the extent of such payment, a release by the insured person or his personal representatives of any claim that the insured person or any person claiming through or under him or by virtue of the Fatal Accidents Act may have against the insurer and any other person who may be liable to the insured person or his personal representatives if that other person is insured under a contract of the same type as is specified in subsection (1), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his personal representatives or any other person.

(3) The insurance mentioned in subsection (1) is a first loss insurance and any other automobile insurance of the same type available to the injured person or in respect of a deceased person is excess insurance only.

(4) The insurance mentioned in subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

(5) The insurance mentioned in subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

Death and disability benefits

160.(1) Every contract evidenced by a motor vehicle liability policy shall provide the death and total disability benefits set forth in the prescribed schedule in the terms, conditions, provisions and exclusions and subject to the limits as set forth in the schedule.

(2) Where an insurer makes a payment under a contract of insurance to which subsection (1) refers, the payment constitutes, to the extent of such payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives or any person claiming through or under him or by virtue of the Fatal Accidents Act may have against the insurer and any other person who may be liable to the insured person or his personal representatives if that other person is insured under a contract of the same type as is specified in subsection (1), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his personal representatives or any other person.

(3) All contracts evidenced by motor vehicle liability policies made or renewed before and subsisting on the coming into force of this section shall be deemed to contain the benefits, limits, terms and conditions set forth in the prescribed schedule, but in respect only of motor vehicle accidents occurring on or after that date.

Demand for particulars of insurance

161.(1) Where a person is injured or killed in an accident in the Yukon involving an automobile, that person or his personal representative may serve,

- (a) a demand by registered mail on the owner of the automobile, or
- (b) a demand by registered mail on the insurer of the owner of the automobile,

requiring the owner or insured, as the case may be, to state in writing to the person making the demand whether or not that owner has insurance of the type mentioned in sections 159 and 160, or either of them, and where the demand is made under paragraph (a) requiring the owner, if he has such insurance, to state the name of the insurer.

(2) An owner or insurer who does not, within ten days after receiving a demand made under subsection (1), comply with the demand is guilty of an offence.

Rights of unnamed insured

162. Any person insured by but not named in a contract to which section 158, 159 or 160 applies may recover under the contract in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

First liability

163.(1) Where a person entitled to benefits provided by insurance under sections 159 and 160 or either of them,

- (a) is an occupant of a motor vehicle involved in an accident, the insurer of the owner of the motor vehicle shall, in the first instance, be liable for payment of the benefits provided by the insurance, or
- (b) is a pedestrian and is struck by a motor vehicle, the insurer of the owner of the motor vehicle shall, in the first instance, be liable for the payment of the benefits provided by the insurance.

(2) Nothing in this section affects the operation of subsections 159(2) to (5) and subsection 160(2).

Payment into court

164.(1) Where an insurer admits liability for insurance money payable under section 158, 159 or 160 and it appears that

- (a) there are adverse claimants,
- (b) the whereabouts of an insured person entitled is unknown, or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so,

the insurer may, at any time after 30 days after the date upon which the insurance money becomes payable, apply to the Supreme Court *ex parte* for an order for payment of the money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

(2) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into court, and the insurance money shall be dealt with as the Supreme Court orders.

Limitation of action

165. Every action or proceeding against an insurer under a contract in respect of insurance provided under section 158, 159 or 160 shall be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than two years after the happening of the accident.

Claimant's obligation to inform and release by claimant

166.(1) Where any person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving or being carried in or upon or entering or getting onto or alighting from or as a result of being struck by an automobile, he shall furnish the person against whom the claim is made full particulars of all insurance available to the claimant under contracts falling within the scope of section 159 or 160.

(2) Where a claimant is entitled to the benefit of insurance as provided in the prescribed schedule, this, to the extent of payments made or available to the claimant thereunder, constitutes a release by the claimant of any claim against the person liable to the claimant or his insurer.

Terms of certain insurances

167. Subject to subsection 129(1), an insurer may in a policy,

- (a) provide insurance that is less extensive in scope than the insurance mentioned in section 158, and
- (b) provide the terms of the contract that relate to the insurance mentioned in section 158.

MISCELLANEOUS**Other insurance**

168.(1) Subject to section 150, insurance under a contract evidenced by a valid owner's policy is in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the insured named in the contract and within the description or definition thereof in the policy, a first loss insurance and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

(2) Subject to sections 150, 159 and 160 and to subsection (1) of this section, if the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use or operation of or against loss of or damage to an automobile or otherwise, of his interest in the subject matter of the contract or any part thereof, the insurer is liable only for its rateable proportion of any liability, expense, loss or damage.

(3) "Rateable proportion" as used in subsection (2) means,

- (a) if there are two insurers liable and each has the same policy limits, each of the insurers shall share equally in any liability, expense, loss or damage,
- (b) if there are two insurers liable with different policy limits, the insurers shall share equally up to the limit of the smaller policy limit, and
- (c) if there are more than two insurers liable, paragraphs (a) and (b) apply mutatis mutandis.

Subrogation

169.(1) An insurer who makes any payment or assumes liability therefor under a contract is subrogated to all rights or recovery of the insured against any person and may bring action in the name of the insured to enforce those rights.

(2) Where the net amount recovered whether by action or settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining shall be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

(3) Where the interest of an insured in any recovery is limited to the amount provided under a clause in the contract to which section 156 applies, the insurer shall have control of the action.

(4) Where the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to,

- (a) the lawyers to be instructed to bring the action in the name of the insured,
- (b) the conduct and carriage of the action or any matters pertaining thereto,

- (c) any offer of settlement or the apportionment thereof, whether action has been commenced or not,
- (d) the acceptance of any money paid into court or the apportionment thereof,
- (e) the apportionment of costs, or
- (f) the launching or prosecution of an appeal,

either party may apply to the Supreme Court for the determination of the matters in question, and the Supreme Court shall make such order as it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

(5) On an application under subsection (4) the only parties entitled to notice and to be heard thereon are the insured and the insurer, and no material or evidence used or taken upon the application is admissible upon the trial of an action brought by or against the insured or the insurer.

(6) A settlement or release given before or after an action is brought does not bar the rights of the insured or the insurer, as the case may be, unless they have concurred therein.

PART 7

ACCIDENT AND SICKNESS INSURANCE

Interpretation

170. In this Part,

“application” means a written application for insurance or for the reinstatement of insurance;

“beneficiary” means a person designated or appointed in a contract or by a declaration, other than the insured or his personal representative, to whom or for whose benefit insurance money payable in the event of death by accident is to be paid;

“blanket insurance” means that class of group insurance that covers loss arising from specific hazards incident to or defined by reference to a particular activity or activities;

“contract” means a contract of insurance;

“creditor’s group insurance” means insurance effected by a creditor whereby the lives or well-being, or the lives and well-being, of a number of his debtors are insured severally under a single contract;

“declaration” means an instrument signed by the insured,

- (a) with respect to which an endorsement is made on the policy,

- (b) that identifies the contract, or

- (c) that describes the insurance or insurance fund or a part thereof,

in which he designates or alters or revokes the designation of his personal representative or a beneficiary as one to whom or for whose benefit shall be paid the insurance money that is payable in the event of death by accident;

“family insurance” means insurance whereby the lives or well-being, or the lives and well-being, of the insured and one or more persons related to him by blood, marriage or adoption are insured under a single contract between an insurer and the insured;

“group insurance” means insurance other than creditor’s group insurance and family insurance, whereby the lives or well-being, or the lives and well-being, of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

“group person insured” means a person who is insured under a contract of group insurance and upon whom a right is conferred by the contract, but does not include a person who is insured thereunder as a person dependent upon or related to him;

“instrument” includes a will;

“insurance” means accident insurance, sickness insurance, or accident insurance and sickness insurance;

“insured”

(a) in the case of group insurance means, in the provisions of this Part relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured, and

(b) in all other cases means the person who makes a contract with an insurer;

“person insured” means a person in respect of an accident to whom, or in respect of whose sickness, insurance money is payable under a contract, but does not include a group person insured;

“will” includes a codicil.

Application of this Part

171.(1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to contracts made in the Yukon on or after the coming into force of this section.

(2) In the case of contracts made before and in effect on the coming into force of this section,

(a) this section and sections 170, 172, 173, 182, 185, 186, 187, 191 and 193 to 209 in this Part apply, and

(b) sections 142 to 146 and 152 and paragraph 153(c) of the Insurance Ordinance, as it existed immediately before March 1, 1978, continue to apply.

(3) This Part does not apply to

(a) accidental death insurance,

(b) creditor’s group insurance,

(c) disability insurance, or

(d) insurance provided under sections 158, 159 and 160.

Group insurance

172. In the case of a contract of group insurance made with an insurer authorized to transact insurance in the Yukon at the time the contract was made, this Part applies in determining,

(a) the rights and status of beneficiaries and personal representatives as recipients of insurance money, if the group person insured was resident in the Yukon at the time he became insured, and

(b) the rights and obligations of the group person insured if he was resident in the Yukon at the time he became insured.

Issue of policy

173. An insurer entering into a contract shall issue a policy.

Exceptions

174.(1) This section does not apply to,

- (a) a contract of group insurance, or
- (b) a contract made by a fraternal society.

(2) An insurer shall set forth the following particulars in the policy:

- (a) the name or a sufficient description of the insured and of the person insured;
- (b) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (c) the amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid;
- (d) the conditions upon which the contract may be reinstated if it lapses;
- (e) the term of the insurance or the method of determining the day upon which the insurance commences and terminates.

Confinement clauses void

175. Where a contract of accident insurance or sickness insurance issued on or after the coming into force of this section includes a provision that a benefit is payable to an insured on account of his disability and payment is conditional on the confinement of the insured, the provision does not bind the insured.

Contents of group policy

176. In the case of a contract of group insurance, an insurer shall set forth the following particulars in the policy:

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the group person insured and the persons insured;
- (c) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid;
- (e) the term of the insurance or the method of determining the day upon which the insurance commences and terminates.

Continuation of insurance where contract terminated

177.(1) Where a contract of group accident and sickness insurance or a benefit provision therein is terminated, the insurer continues to be liable to pay to or in respect of any group person insured under the contract benefits under the contract relating to

- (a) loss of income because of disability,
- (b) death, or
- (c) dismemberment,

arising from an accident or sickness that occurred before the termination of the contract or benefit provision as though the contract or benefit provision had remained in full force and effect, but the insurer is not liable to pay a benefit for loss of income because of disability in respect of the recurrence of disability arising from an accident or sickness that occurred before the termination of the contract or benefit provision if the recurrence occurs after the termination of the contract or benefit provision and after a period of 90 days, or such longer period as is provided in the contract, during which the group person insured was not disabled.

(2) Where a contract of group accident and sickness insurance (herein referred to as the “replacing contract”) is entered into within 31 days of the termination of another contract of group accident and sickness insurance (herein referred to as the “other contract”) and insures the same group or a part of the group insured under the other contract,

- (a) the replacing contract shall provide or shall be deemed to provide that any person who was insured under the other contract at the time of its termination is insured under the replacing contract from and after the termination of the other contract if,
 - (i) the insurance on that person under the other contract terminated solely by reason of the termination of the other contract, and
 - (ii) the person is a member of a class eligible for insurance under the replacing contract,
- (b) every person who was insured under the other contract and who is insured under the replacing contract is entitled to receive credit for satisfaction of any deductible earned before the effective date of the replacing contract, and
- (c) no person who was insured under the other contract shall be excluded from eligibility under the replacing contract solely because of not being actively at work on the effective date of the replacing contract.

Contents of group certificate

178.(1) Except as provided in subsection (2), in the case of a contract of group insurance an insurer shall issue for delivery by the insured to each group person insured a certificate or other document in which are set forth the following particulars:

- (a) the name of the insurer and a sufficient identification of the contract;
- (b) the amount or the method of determining the amount of insurance on the group person insured and on any person insured;
- (c) the circumstances under which the insurance terminates, and the rights, if any, upon such termination of the group person insured and of any person insured.

(2) This section does not apply to a contract of blanket insurance or to a contract of group insurance of a non-renewable type issued for a term of six months or less.

Exceptions or reduction

179.(1) Subject to section 180 and except as otherwise provided in this section, the insurer shall set forth in the policy every exception or reduction affecting the amount payable under the contract, either in the provision affected by the exception or reduction, or under a heading such as “exceptions or reductions”.

(2) Where the exception or reduction affects only one provision in the policy it shall be set forth in that provision.

(3) Where the exception or reduction is contained in an endorsement, insertion or rider, the endorsement, insertion or rider shall, unless it affects all amounts payable under the contract, make reference to the provisions in the policy affected by the exception or reduction.

(4) The exception or reduction mentioned in section 192 need not be set forth in the policy.

(5) This section does not apply to a contract made by a fraternal society.

Statutory conditions

180.(1) Subject to section 181, the conditions set forth in this section shall be deemed to be part of every contract other than a contract of group insurance, and shall be printed on or attached to the policy forming part of such contract with the heading "statutory conditions".

STATUTORY CONDITIONS**The contract**

1.(1) The application, this policy, any document attached to this policy when issued, and any amendment to the contract agreed upon in writing after the policy is issued, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

(2) The insurer shall be deemed not to have waived any condition of this contract, either in whole or in part, unless the waiver is clearly expressed in writing signed by the insurer.

(3) The insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

Material facts

2. No statement made by the insured or person insured at the time of application for this contract shall be used in defence of a claim under or to avoid this contract unless it is contained in the application or any other written statements or answers furnished as evidence of insurability.

Changes in occupation

3.(1) If after the contract is issued the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in this contract, the liability under this contract is limited to the amount that the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks and premium rates in use by the insurer at the time the person insured engaged in the more hazardous occupation.

(2) If the person insured changes his occupation from that stated in this contract to an occupation classified by the insurer as less hazardous and the insurer is so advised in writing, the insurer shall either,

(a) reduce the premium rate, or

(b) issue a policy for the unexpired term of this contract at the lower rate of premium applicable to the less hazardous occupation,

according to the limits, classification of risks and premium rates used by the insurer at the date of receipt of advice of the change in occupation, and shall refund to the insured the amount by which the unearned premium on this contract exceeds the premium at the lower rate for the unexpired term.

Relation of earnings to insurance

4. Where the benefits for loss of time payable hereunder, either alone or together with benefits for loss of time under another contract, including a contract of group accident insurance or group sickness insurance or of both and a life insurance contract providing disability insur-

ance, exceed the money value of the time of the person insured, the insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts, and the excess premium if any paid by the insured shall be returned to him by the insurer.

Termination by insured

5. The insured may terminate this contract at any time by giving written notice of termination to the insurer by registered mail to its head office or chief agency in the Yukon, or by delivery thereof to an authorized agent of the insurer in the Yukon, and the insurer shall upon surrender of this policy refund the amount of premium paid in excess of the short rate premium calculated to the date of receipt of such notice according to the table in use by the insurer at the time of termination.

Termination by insurer

6.(1) The insurer may terminate this contract at any time by giving written notice of termination to the insured and by refunding currently with the giving of notice the amount of premium paid in excess of the pro rata premium for the expired time.

(2) The notice of termination may be delivered to the insured or it may be sent by registered mail to the latest address of the insured on the records of the insurer.

(3) Where the notice of termination is delivered to the insured, 15 days notice of termination shall be given; where it is mailed to the insured, ten days notice of termination shall be given, and the ten days shall begin on the day following the date of mailing of notice.

Notice and proof of claim

7.(1) The insured, a person insured or a beneficiary entitled to make a claim, or the agent of any of them, shall

- (a) give written notice of claim to the insurer,
 - (i) by delivery thereof, or by sending it by registered mail to the head office or chief agency of the insurer in the Yukon, or
 - (ii) by delivery thereof to an authorized agent of the insurer in the Yukon,

not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability,
- (b) within 90 days from the date a claim arises under the contract on account of an accident, sickness or disability, furnish to the insurer such proof as is reasonably possible in the circumstances of the happening of the accident or the commencement of the sickness or disability, and the loss occasioned thereby, the right of the claimant to receive payment, his age, and the age of the beneficiary if relevant, and
- (c) if so required by the insurer, furnish a satisfactory certificate as to the cause or nature of the accident, sickness or disability for which claim may be made under the contract and as to the duration of such disability.

(2) Failure to give notice of claim or furnish proof of claim within the time prescribed by this statutory condition does not invalidate the claim if the notice or proof is given or furnished as soon as reasonably possible, and in no event later than one year from the date of the accident or the date a claim arises under the contract on account of sickness or disability, if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed.

Insurer to furnish forms for proof of claim

8. The insurer shall furnish forms for proof of claim within 15 days after receiving notice of claim, but where the claimant has not received the forms within that time he may submit his proof of claim in the form of a written statement of the cause or nature of the accident, sickness or disability giving rise to the claim and of the extent of the loss.

Rights of examination

9. As a condition precedent to recovery of insurance money under this contract,

- (a) the claimant shall afford to the insurer an opportunity to examine the person of the person insured when and so often as it reasonably requires while the claim hereunder is pending, and*
- (b) in the case of death of the person insured the insurer may require an autopsy subject to any law of the applicable jurisdiction relating to autopsies.*

When money payable other than for loss of time

10. All money payable under this contract, other than benefits for loss of time, shall be paid by the insurer within 60 days after it has received proof of claim.

When loss of time benefits payable

11. The initial benefits for loss of time shall be paid by the insurer within 30 days after it has received proof of claim, and payment shall be made thereafter in accordance with the terms of the contract but not less frequently than once in each succeeding 60 days while the insurer remains liable for the payments if the person insured when required to do so furnishes before payment proof of continuing disability.

Limitation of actions

12. An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than two years after the date the insurance money became payable or would have become payable if it had been a valid claim.

Omission or variation of conditions

181.(1) *Where a statutory condition is not applicable to the benefits provided by the contract it may be omitted from the policy or varied so that it will be applicable.*

(2) Statutory conditions 3, 4 and 9 may be omitted from the policy if the contract does not contain any provisions respecting the matters dealt with therein.

(3) Statutory conditions 5 and 6 shall be omitted from the policy if the contract does not provide that it may be terminated by the insurer prior to the expiry of any period for which a premium has been accepted.

(4) Statutory conditions 3, 4, 5, 6 and 9, and subject to the restriction in subsection (5), statutory condition 7, may be varied but, if by reason of the variation the contract is less favourable to the insured, a person insured or a beneficiary than it would be if the condition had not been varied, the condition shall be deemed to be included in the policy in the form in which it appears in section 180.

(5) Clauses (a) and (b) of subcondition (1) of statutory condition 7 may not be varied in policies providing benefits for loss of time.

(6) Statutory conditions 10 and 11 may be varied by shortening the periods of time prescribed therein, and statutory condition 12 may be varied by lengthening the period of time prescribed therein.

(7) The title of a statutory condition shall be reproduced in the policy along with the statutory condition, but the number of a statutory condition may be omitted.

(8) In the case of a contract made by a fraternal society, the following provision shall be printed on every policy in substitution for subcondition (1) of statutory condition 1:

The contract

1(1) This policy, the Act or instrument of incorporation of the society, its constitution, bylaws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

(9) In the case of a contract made by a fraternal society, statutory condition 5 shall not be printed on the policy.

Notice of statutory condition

182. In the case of a policy of accident insurance of a non-renewable type issued for a term of six months or less or in relation to a ticket of travel, the statutory conditions need not be printed on or attached to the policy if the policy contains the following notice printed in conspicuous type: "Notwithstanding any other provision herein contained, this contract is subject to the statutory conditions in the Insurance Act respecting contracts of accident insurance."

Termination for non-payment of premium

183.(1) Where a policy evidencing a contract or a certificate evidencing the renewal of a contract is delivered to the insured and the initial premium or in the case of a renewal certificate the renewal premium therefor has not been fully paid,

- (a) the contract or the renewal thereof evidenced by the certificate is as binding on the insurer as if such premium had been paid although delivered by an officer or an agent of the insurer who did not have authority to deliver it, and
- (b) the contract may be terminated for the non-payment of the premium by the insurer upon ten days notice of termination given in writing to the insured and mailed postage prepaid and registered to the latest address of the insured on the records of the insurer, and the ten days shall begin on the day following the date of mailing such notice.

(2) This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

Right where premium unpaid

184.(1) An insurer may,

- (a) deduct unpaid premiums from an account that it is liable to pay under a contract, or
- (b) sue the insured for unpaid premiums.

(2) Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part thereof shall be deemed never to have been paid.

(3) Paragraph (1)(a) does not apply to a contract of group insurance.

(4) This section does not apply to a contract made by a fraternal society.

Insurable interest

185. Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in his own life and well-being and in the life and well-being of

- (a) his child or grandchild,
- (b) his spouse,
- (c) any person upon whom he is wholly or in part dependent for, or from whom he is receiving, support or education,
- (d) his officer or employee, and
- (e) any person in whom he has a pecuniary interest.

Lack of insurable interest

186.(1) Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

(2) A contract is not void for lack of insurable interest

- (a) if it is a contract of group insurance, or
- (b) if the person insured has consented in writing to the insurance.

(3) Where the person insured is under the age of 16 years, consent to the insurance may be given by one of his parents or by a person standing in loco parentis to him.

Capacity of minors

187.(1) Except in respect of his rights as beneficiary, a minor who has attained the age of 16 years has the capacity of a person of the age of 19 years,

- (a) to make an enforceable contract, and
- (b) in respect of a contract.

(2) A beneficiary who has attained the age of 18 years has the capacity of a person of the age of 19 years to receive insurance money payable to him and to give a valid discharge therefor.

Duty to disclose

188.(1) An applicant for insurance on his own behalf and on behalf of each person to be insured, and each person to be insured, shall disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.

(2) Subject to sections 189 to 192, a failure to disclose or misrepresentation of such fact renders a contract voidable by the insurer.

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact with respect to a group person insured or person insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to section 197, voidable by the insurer.

Incontestability

189.(1) Subject to section 192 and except as provided in subsection (2),

- (a) where a contract, including renewals thereof, except a contract of group insurance, has been in effect continuously for two years with respect to a person insured, a failure to disclose or a misrepresentation of a fact with respect to that person required by section 188 to be disclosed does not, except in the case of fraud, render the contract voidable, and
- (b) where a contract of a group insurance, including renewals thereof, has been in effect continuously for two years with respect to a group person insured or a person insured, a failure to disclose or a misrepresentation of a fact with respect to that group person insured or person insured required by section 188 to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.

(2) Where a claim arises from a loss incurred or a disability beginning before a contract, including renewals thereof, has been in force for two years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim.

Application of incontestability to reinstatement

190. Sections 188 and 189 apply mutatis mutandis to a failure at the time of reinstatement of a contract to disclose a misrepresentation at that time, and the period of two years to which reference is made in section 188 commences to run in respect of a reinstatement from the date of reinstatement.

Pre-existing conditions

191. Where a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the person insured or group person insured suffers or has suffered from a disease or physical condition that existed before the date the contract came into force with respect to that person and the disease or physical condition is not by name or specific description excluded from the insurance respecting that person,

- (a) the prior existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part for a loss incurred or a disability beginning after the contract, including renewals thereof, has been in force continuously for two years immediately prior to the date of loss incurred or commencement of disability with respect to that person, and
- (b) the existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part if the disease or physical condition was disclosed in the application for the contract.

Incorrect statement of age

192.(1) Subject to subsections (2) and (3), if the age of the person insured has been misstated to the insurer then, at the option of the insurer, either

- (a) the benefits payable under the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age, or
- (b) the premium may be adjusted in accordance with the correct age as of the date the person insured became insured.

(2) In the case of a contract of group insurance, if there is a misstatement to the insurer of the age of a group person insured or person insured, the provisions if any of the contract with respect to age or misstatement of age shall apply.

(3) Where the age of a person affects the commencement or termination of the insurance, the true age governs.

Designation of beneficiary

193.(1) Unless otherwise provided in the policy, an insured may in a contract or by a declaration designate his personal representative or a beneficiary to receive insurance money payable in the event of death by accident and may from time to time alter or revoke the designation by declaration.

(2) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

(3) A designation in a will is of no effect against a designation made later than the making of the will.

(4) If a designation is contained in a will and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

(5) If a designation is contained in an instrument that purports to be a will and subsequently the instrument, if it had been valid as a will would have been revoked by operation of law or otherwise, the designation is thereby revoked.

Disposition of benefits

194.(1) A designation in favour of the “heirs”, “next-of-kin” or “estate”, or the use of words of like import in a designation shall be deemed to be a designation of the personal representative.

(2) Where a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by declaration, the share is payable

- (a) to the surviving beneficiary,
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares, or
- (c) if there is no surviving beneficiary, to the insured or group person insured, as the case may be, or his personal representative.

(3) A beneficiary designated under section 192 may upon the death by accident of the person insured or group person insured enforce for his own benefit, and a trustee appointed pursuant to section 195 may enforce as trustee, the payment of insurance money payable to him, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid, but the insurer may set up any defence that it could have set up against the insured or his personal representative.

Trustee for beneficiary

195. An insured may in a contract or by a declaration appoint a trustee for a beneficiary, and may alter or revoke the appointment by a declaration.

Documents affecting title

196.(1) Until an insurer receives at its head or principal office in Canada an instrument or an order of any court of competent jurisdiction affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there was no such instrument or order.

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

(3) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, he has priority of interest as against

- (a) any assignee other than one who gave notice earlier in like manner, and
- (b) a beneficiary.

(4) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given by the contract and by this Part to the insured and shall be deemed to be the insured.

(5) A provision in a contract to the effect that the rights or interests of the insured, or in the case of a contract of group insurance the group person insured, are not assignable is valid.

Insurance money free from creditors

197.(1) Where a beneficiary is designated, any insurance money payable to him is not, from the time of the happening of the event upon which it becomes payable, part of the estate of the insured and is not subject to the claims of the creditors of the insured.

(2) While there is in effect a designation of beneficiary in favour of any one or more of a spouse, child, grandchild or parent of the person insured or group person insured, the rights and interests of the insured in the insurance money and in the contract so far as either relate to the accidental death benefits are exempt from execution or seizure.

Enforcement of rights by group person insured

198. A group person insured may in his own name enforce a right given by a contract to him, or to a person insured thereunder as a person dependent upon or related to him, subject to any defence available to the insurer against him or such person insured or against the insured.

Simultaneous deaths

199. Unless a contract or a declaration otherwise provides, where a person insured or group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 194(2) as if the beneficiary had predeceased the person insured or group person insured.

Payment into court

200.(1) Where the insurer admits liability for the insurance money or any part thereof and it appears to the insurer that,

- (a) there are adverse claimants,
- (b) the whereabouts of the person entitled is unknown, or
- (c) there is no person capable of giving or authorized to give a valid discharge therefor who is willing to do so,

the insurer may apply ex parte to the Supreme Court for an order for payment of money into court, and the Supreme Court may upon such notice, if any, as it deems necessary, make an order accordingly.

(2) The Supreme Court may fix without taxation the costs incurred upon or in connection with any application or order made under subsection (1), and may order the costs to be paid out of the insurance money or by the insurer or otherwise as it deems just.

(3) A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the payment.

Payment into court for minor

201.(1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so, the insurer may at any time after 30 days from the date of the happening of the event upon which the insurance money becomes payable, pay the money less the applicable costs mentioned in subsection (2) into the Supreme Court to the credit of the minor.

(2) The insurer may retain out of the insurance money for costs incurred upon payment into court under subsection (1), the sum of \$10 where the amount does not exceed \$1,000, and the sum of \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.

(3) No order is necessary for payment into court under subsection (1), but the accountant or other proper officer of the court shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the public administrator and deliver to him a copy of the affidavit.

Beneficiary under disability

202. Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid.

Payments not exceeding \$2,000

203. Notwithstanding that insurance money is payable to a person, the insurer may if the contract so provides, but subject always to the rights of an assignee, pay an amount not exceeding \$2,000 to

- (a) a relative by blood or connection by marriage of a person insured or the group person insured, or
- (b) any person appearing to the insurer to be equitably entitled thereto by reason of having incurred expense for the maintenance, medical attendance or burial of a person insured or the group person insured, or to have a claim against the estate of a person insured or the group person insured in relation thereto,

and any such payment discharges the insurer to the extent of the amount paid.

Place and currency of payment

204.(1) Subject to subsection (2), insurance money is payable in the Yukon.

(2) In the case of a contract of group insurance, money is payable in the province in which the group person insured was resident at the time he became insured.

(3) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars whether the contract by its terms provides for payment in Canada or elsewhere.

(4) Where a person entitled to receive insurance money is not domiciled in the Yukon, the insurer may pay the insurance money to that person or to any person who is entitled to receive it on his behalf by the law of the domicile of the payee, and any such payment discharges the insurer to the extent of the amount paid.

(5) Where insurance money is by the contract payable to a person who has died or to his personal representative and such deceased person was not at the date of his death domiciled in the Yukon, the insurer may pay the insurance money to the personal representative of such person appointed under the law of his domicile, and any such payment discharges the insurer to the extent of the amount paid.

Action in the Yukon

205. Regardless of the place where a contract was made, a claimant who is a resident of the Yukon may bring an action in the Yukon if the insurer was authorized to transact insurance in the Yukon at the time the contract was made or at the time the action is brought.

Insurer giving information

206. An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

Prominence of statutory conditions

207. The insurer shall not in the policy give undue prominence to any provision or statutory condition as compared to other provisions or statutory conditions, unless the effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy.

Relief from forfeiture

208. Where there has been imperfect compliance with a statutory condition as to any matter or thing to be done or omitted by the insured, person insured or claimant with respect to the loss insured against and a consequent forfeiture or avoidance of the insurance in whole or in part, and any court before which a question relating thereto is tried deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it deems just.

Presumption against agency

209. No officer, agent, employee or servant of the insurer, and no person soliciting insurance, whether or not he is an agent of the insurer, shall to the prejudice of the insured, person insured or group person insured, be deemed to be the agent of the insured or of the person insured or group person insured in respect of any question arising out of the contract.

PART 8

LIVESTOCK INSURANCE

Application of this Part

210. This Part applies to livestock insurance and to any insurer carrying on the business of livestock insurance in the Yukon.

Property that may be insured

211. Every insurer licensed for the transaction of livestock insurance, may within the limits and subject to the conditions prescribed by the licence, insure against loss of livestock, by fire, lightning, accident, disease or other means, except that of design on the part of the insured, or by the invasion of an enemy or by insurrection.

Application of provisions as to fire insurance

212. The following provisions of Part 4 apply to livestock insurance contracts:

- (a) the provisions as to the form and contents of the policy;
- (b) the provisions as to the conditions, including the statutory conditions, except where inapplicable to the nature of the risk.

Term of contract

213.(1) Contracts of insurance shall not in any case exceed the term of two years.

(2) A contract made for one year or any shorter period may be renewed from time to time at the discretion of the insurer by renewal receipt instead of by policy, on the insured paying the required premium, and all payments or renewals must be made at or before the end of the period for which the policy was granted or renewed, otherwise the policy is void.

(3) No renewal receipt shall extend the contract beyond two years from the date of the policy.

PART 9 FRATERNAL SOCIETIES

Licensing

214.(1) No fraternal society shall, without a licence, carry on the business of life insurance in the Yukon.

(2) The superintendent may, on such terms and conditions as he considers in the public interest, grant licences to fraternal societies to carry on the business of life insurance in the Yukon.

(3) The following shall be deemed not to be fraternal societies within the meaning of this Part and shall not be required or entitled to be licensed as such:

- (a) a corporation not otherwise provided for in this Act that has by or under the authority of an Act of Parliament created a fund for paying a gratuity on the happening of death, sickness, infirmity, casualty, accident, disability or any change of physical or mental condition;
- (b) a corporation not otherwise provided for in this Act that has by or under the authority of an Act of Parliament an insurance and provident society or association, or an insurance or guarantee fund, in connection with the corporation;
- (c) a corporation that undertakes or offers to undertake contracts of insurance other than with its own members exclusively, or for more than \$5,000 payable on the death of any one member other than a funeral benefit, or any contracts of insurance with its members other than
 - (i) life insurance,
 - (ii) contracts for the payment of mortuary or funeral benefits, or
 - (iii) old age insurance;
- (d) a corporation in which the insurance fund is used for the purposes of a mercantile or business enterprise, or for mercantile profit, or a society formed on the lodge system, whose insurance fund is held other than as a trust fund for the members insured;
- (e) a society in which the persons insured do not exercise, either directly or through representatives elected for a term not exceeding four years, effective control over the insurance fund of the society, or in which the officers or

- other persons having the disposition, control or possession of the insurance fund are elected or appointed for a longer period than four years;
- (f) any corporation that undertakes contracts of insurance but is not formed exclusively for that purpose and that does not for the purpose of such contracts keep distinct and separate funds, securities, books and vouchers.

PART 10

AGENTS', BROKERS' AND ADJUSTERS' LICENCES

Licences

215.(1) The superintendent may issue to any person who has complied with this Act a licence authorizing such person to carry on business as an insurance agent subject to this Act, to the regulations and to the terms of the licence.

(2) Licences issued under subsection (1) shall be of three classes, that is:

- (a) licences for life insurance, or life and accident insurance, or life and accident and sickness insurance;
- (b) licences for accident and sickness insurance;
- (c) licences for all classes of insurance other than life insurance.

(3) Upon written notice to the superintendent that a licensed insurer has appointed a person to act as his agent in the Yukon and upon due application of such person and payment by him of the prescribed fee, the superintendent shall, if he is satisfied that the applicant is a suitable person to receive a licence and intends to hold himself out publicly and carry on business in good faith as an insurance agent, issue to the applicant a licence that shall state in substance that the holder is, during the term of the licence, authorized to carry on in the Yukon the business of an insurance agent.

(4) Such notice of appointment by an insurer shall be upon a form furnished by the superintendent and shall state that the appointee has been authorized in writing by the insurer to act as agent in the soliciting of and negotiating for insurance, and shall be accompanied by a sworn statement of the appointee on a form furnished by the superintendent giving the name, age, residence and present occupation of the applicant, his occupation for the five years next preceding the date of the notice, particulars of any other employment in which he is engaged and such other information as the superintendent may require.

(5) Where the applicant is the appointee of an insurer carrying on in the Yukon the business of life insurance, life and accident insurance, or life and accident and sickness insurance, the licence shall expressly limit the authorization of the agent to the class of insurance for which the insurer is licensed, and where the applicant is the appointee of an insurer carrying on in the Yukon any class or classes of insurance business other than life insurance, the licence shall expressly exclude the business of life insurance, but nothing herein prevents the issue to the same applicant of two licences including all classes of insurance if due application has been made for two licences.

(6) Where the agency upon notice of which a licence is issued is terminated, notice in writing shall be forthwith given by the insurer to the superintendent of the termination with the reason therefor, and thereupon the licence is ipso facto suspended, but it may be revived subject to the approval of the superintendent upon filing of notice of a new agency appointment and upon payment of the prescribed fee.

(7) An insurer who fails to notify the superintendent within 30 days of the termination of an agency appointment as required by subsection (6) is guilty of an offence.

(8) A licence issued under this section or section 216 may be revoked by the superintendent if, after due investigation and a hearing, he determines that the holder of the licence

- (a) has contravened any provision of this Act or the regulations in his operations as an insurance agent,
- (b) has made a material misstatement in the application for the licence,
- (c) has been guilty of a fraudulent practice,
- (d) has demonstrated his incompetency or untrustworthiness to transact the insurance agency business for which the licence was granted, by reason of anything done or omitted in or about such business under the authority of the licence, or
- (e) has employed upon salary or otherwise any person whose application for licence as an insurance agent has been refused or whose licence has been revoked or suspended under this Part without having first obtained the written approval of the superintendent.

(9) In determining the granting or refusal of an application for a licence or renewal of licence, or the revocation of an existing licence under this section or section 216, the superintendent may, and shall when so requested in writing by the applicant or licensee, appoint an advisory board consisting of,

- (a) a representative of insurers,
- (b) a representative of agents, and
- (c) a representative of the superintendent,

which shall hold a hearing and make a report to the superintendent with such recommendation as it considers fit.

(10) The representative of the superintendent upon the advisory board shall act as chairperson and, for the purposes of his duties in connection with the investigation and hearing contemplated by subsection (9), has the same powers as are vested in the superintendent by section 3.

(11) A licence issued hereunder expires at such time as the regulations provide unless automatically suspended by notice under subsection (6), or unless revoked or suspended by the superintendent, but such licence may, in the discretion of the superintendent, be renewed for a succeeding year upon due application upon a form prescribed by the superintendent giving such information as he may require, accompanied by a certificate of agency appointment of a licensed insurer and payment of the prescribed fee, without requiring anew the detailed information hereinbefore specified.

(12) The holder of a licence under this section as agent for insurance other than life insurance may, during the term and validity of his licence, act as agent for any licensed insurer within the limits prescribed by his licence, and may act as an insurance broker in dealing with licensed insurers without other or additional licences.

(13) A life insurance agent may be licensed to act as agent for more than one insurer transacting life insurance, and the name of each insurer shall be specified in the licence, but where such an agent is unable to negotiate insurance on behalf of an applicant for insurance with the insurers for which he is the authorized agent, such agent has the right to procure such insurance from another insurer if such other insurer obtains in each case the consent in writing of the insurers for which such agent is the authorized agent, and files a copy of such consent with the superintendent.

(14) A collector of insurance premiums who does not solicit application for or the renewal or continuance of insurance contracts or act or aid in negotiating such contracts or the renewal thereof may carry on such business without a licence therefor if his collection fee does not exceed five percent of any amount collected.

(15) An officer or a salaried employee of the head office of a duly licensed fraternal society who does not receive commission may, without a licence, solicit insurance contracts on behalf of the society.

(16) Any member not an officer or salaried employee described in subsection (15) may, without a licence, solicit insurance contracts on behalf of the society unless he devotes or intends to devote more than one-half of his time to soliciting such contracts or has in the previous licence year solicited and procured life insurance contracts on behalf of the society in an amount in excess of \$20,000.

(17) Unless the superintendent otherwise directs, an officer or salaried employee of a licensed insurer who does not receive commissions, may, without a licence, act for such insurer in the negotiation of any contracts of insurance or in the negotiation of the continuance or renewal of any contracts that the insurer may lawfully undertake, but officers or employees whose applications for licences as insurance agents or salespersons have been refused or whose licences have been revoked or suspended may not so act without the written approval of the superintendent, and in the cases of insurers authorized to undertake life insurance only the officers and salaried employees of the head office who do not receive commissions may so act without a licence.

(18) Notwithstanding anything in this Act, the superintendent may issue a licence to a transportation company authorizing it, by its employees in the Yukon to act as an agent for a licensed insurer with respect to accident insurance and such other classes of insurance as he approves.

(19) The Commissioner in Executive Council may make regulations

- (a) prescribing requirements, qualifications and conditions for the granting or renewal of licences;
- (b) providing for the holding of examinations for applicants for licences or renewals of licences;

- (c) classifying applicants for licences and restricting or prohibiting the licensing of any class of applicant;
- (d) prescribing the grounds upon which a licence may be revoked, suspended or not renewed;
- (e) regulating the method of handling premiums collected and requiring and regulating accounts and records to be maintained by agents;
- (f) requiring agents to supply information and make returns to the superintendent;
- (g) requiring an agent to furnish a professional liability policy and a bond or other security and fixing the amounts, forms, requirements and terms thereof;
- (h) prescribing fees and forms and providing for their use;
- (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this section.

(20) Regulations made under subsection (19) are in addition to the provisions of this section notwithstanding that the regulations concern a matter provided for in this section.

(21) Every person who acts as an agent without a licence, or while his licence is suspended, is guilty of an offence.

Licences of insurance salespersons

216.(1) The superintendent may issue to any person who has complied with this Act a licence authorizing such person to act as a salesperson on behalf of a licensed insurance agent or broker in negotiating contracts of insurance or in the negotiation of the continuance or renewal of any contracts such agent or broker may lawfully undertake.

(2) Licences so issued shall be for any classes of insurance, other than life insurance.

(3) Upon written notice to the superintendent that a licenced agent or broker has appointed a person as a salesperson to act on his behalf, and upon due application of such person and payment by him of the prescribed fee, the superintendent shall, if he is satisfied that the applicant is a suitable person to receive a licence and has not been refused a licence as an insurance agent or broker or had such a licence suspended or revoked, issue to the applicant a licence stating in substance that the holder is, during the term of the licence, authorized to act in the Yukon as a salesperson of such agent or broker.

(4) Such notice of appointment by a licensed agent or broker, other than a life insurance agent,

- (a) shall be upon a form furnished by the superintendent,
- (b) shall state that the appointee has been authorized in writing by the agent or broker to act as salesperson in the soliciting of and negotiating for insurance, and
- (c) shall be accompanied by a sworn statement of the appointee on a form furnished by the superintendent giving his name, age, residence, the amount of monthly salary he is to receive for such employment, his present occupation and occupation for the five years next preceding the date of notice,

particulars of any other employment in which he is engaged, and such other information as the superintendent may require.

(5) The licence shall expressly exclude the business of life insurance, but nothing herein prevents the issuance to the same applicant of a licence as a life insurance agent, if due application is made upon written notice of appointment by a licensed insurer.

(6) Where a licensed salesperson ceases to be employed by the appointing agent or broker, notice in writing shall forthwith be given by the agent or broker to the superintendent of such termination of employment with the reason therefor, and thereupon the licence is ipso facto suspended, but such licence may be revived subject to the approval of the superintendent upon filing a notice of the salesperson's appointment by another agent or broker, and upon payment of the prescribed fee.

(7) An agent or broker who fails to notify the superintendent within 30 days of the termination of a salesperson's appointment as required by subsection (6) is guilty of an offence.

(8) A licence issued under this section expires on a day fixed by the superintendent unless automatically suspended by notice under subsection (6) or unless revoked or suspended by the superintendent, but such licence may, in the discretion of the superintendent, be renewed for a succeeding year upon due application upon a form prescribed by the superintendent giving such information as he may require, accompanied by a certificate of a licensed agent or broker respecting the salesperson's appointment, and payment of the prescribed fee, without requiring anew the detailed information hereinbefore specified.

(9) The holder of a licence issued under this section may, during the term and validity of his licence, act as a salesperson only for the agent or broker by whom he is appointed and within the limits of such agent's or broker's licence for classes of insurance other than life insurance.

(10) Every person who acts as a salesperson of an insurance agent or broker without a licence, or while his licence is suspended, is guilty of an offence.

Licences of insurance brokers

217.(1) The superintendent may, upon the payment of the prescribed fee, issue to any suitable person resident in Canada a licence to act in the Yukon as an insurance broker to negotiate, continue or renew contracts of insurance, other than life insurance, or to place risks or effect insurance with any duly licensed insurer or its agent.

(2) The applicant for such a licence shall file with the superintendent a written application under oath upon a form provided by the superintendent in which the applicant shall state his name, age, residence and occupation at the time of making the application, his occupation for the five years next preceding the date of the application and such other information as the superintendent may require, and the applicant shall declare that he intends to hold himself out publicly and carry on business in good faith as an insurance broker and he shall furnish a statement as to his trustworthiness and competency signed by at least three reputable persons resident in the Yukon.

(3) If the superintendent is satisfied with the statement and information required by subsection (2), he shall issue the licence applied for, and the licence expires on a date fixed by the superintendent in each year unless sooner revoked or suspended.

(4) The licence may, in the discretion of the superintendent, be renewed upon payment of the prescribed fee for each succeeding year without requiring anew the detailed information hereinbefore specified.

(5) The superintendent may, for cause shown and after a hearing, revoke the licence, or may suspend it for a period not exceeding the unexpired term thereof, and may for cause shown and after a hearing revoke the licence while so suspended, and shall notify the licensee in writing of such revocation or suspension and may publish a notice of such revocation or suspension in such manner as he considers necessary for the protection of the public.

(6) Any person, other than a licensed agent, who acts as an insurance broker without licence or during a suspension of his licence is guilty of an offence.

(7) Subject to section 219, a broker shall not be presumed to be the agent of the insurer or the agent of the insured by reason of the issue to him of a licence under this section.

Licence may be granted limiting authority of licensee

218. In addition to issuing insurance brokers' licences giving full authority to the licensee as set forth in the preceding sections, the superintendent may issue insurance brokers' licences limiting the authority of the licensee to the extent agreed upon with the applicant and set forth in the licence, but in other respects the granting of such licences and the brokers so licensed are subject to this Act.

Agent or broker receiving premiums

219.(1) An agent or broker shall, for the purpose of receiving any premium for a contract of insurance, be deemed to be the agent of the insurer notwithstanding any conditions or stipulations to the contrary.

(2) This section does not apply to life insurance.

Broker's licences for business with unlicensed insurers

220.(1) The superintendent may, upon the payment of the prescribed fee, issue to any suitable person resident in or outside of the Yukon a licence to act as a special insurance broker to negotiate, continue or renew contracts of insurance in the Yukon, other than contracts of life insurance, with insurers not authorized to transact such business in the Yukon.

(2) The applicant for such a licence shall file with the superintendent a written application under oath as prescribed by subsection 217(2).

(3) If the superintendent is satisfied with the statements and information required by subsection (2), he shall issue the licence applied for, and the licence expires at such time as the regulations provide unless sooner suspended or revoked.

(4) The superintendent may renew a licence issued pursuant to this section for each succeeding year upon payment of the prescribed fee without requiring anew the detailed information specified by section 217.

(5) A person shall, before receiving such licence, execute and deliver to the superintendent security to the satisfaction of the superintendent in the sum of not less than \$5,000 that the licensee will faithfully comply with this Act.

(6) Where sufficient insurance in the Yukon cannot be obtained at reasonable rates or on the form of contract required by the insured from insurers licensed to do business in the Yukon, the person named in such license may effect insurance with unlicensed insurers, but shall in the case of every insurance effected under this section obtain from the insured a signed and dated statement describing the risk to be insured and the amount of insurance required and stating that the insurance cannot be obtained in licensed companies and that the application for such insurance at the stated rate of premium was previously made to and refused by named companies licensed in the Yukon, and the person named in such license shall, within ten days after the placing of such insurance with unlicensed insurers, submit to the superintendent a statement setting forth the name of the insured, a description of the risk insured, the full names of the unlicensed insurers, and the amount of insurance placed with each and the rate and amount of premium paid to each.

(7) Such a licensee shall keep a separate account of insurance effected by him under his license in books in the form prescribed by the superintendent, which shall be open to inspection by the superintendent or any officer appointed by him.

(8) Within ten days after the end of each month every such licensee shall make to the superintendent a return under oath in the form and manner by him prescribed, containing particulars of all insurances effected under the section by the licensee during such month.

(9) In respect of all premiums on insurance effected under a licence, the licensee shall pay such taxes as would be payable if such premiums had been received by a licensed insurer, and payment thereof shall accompany the monthly return provided for in subsection (8).

(10) The licensee is entitled to a release or cancellation of his security if all insurances effected by him under this section are no longer in force or have been reinsured.

(11) A licensee under this section shall accept applications for insurance with unlicensed insurers only from the insured or another licensee under this section and shall not receive any such application from, or pay or allow compensation or anything of value in respect of such applications to an agent or broker not licensed under this section, and any contract of insurance with an unlicensed insurer made by or through any agent or broker not licensed under this section shall be deemed to be unlawfully made within the meaning of section 222.

(12) The superintendent may, for cause shown, revoke a licence issued under this section, or may suspend it for a period not exceeding the unexpired term thereof and may for cause shown revoke the licence while so suspended, and shall notify the licensee in writing of such revocation or suspension and the cause shown.

(13) A person licensed under this section who contravenes any of its provisions is guilty of an offence and, in addition of any other penalty, shall forfeit his licence.

Fraudulent representations

221. An agent or broker who knowingly procures by fraudulent representations payment or the obligation for payment of any premium on any insurance policy is guilty of an offence.

Personal liability of agent for unlawful contracts

222. An agent or broker is personally liable to the insured on all contracts of insurance unlawfully made by or through him directly or indirectly with any insurer not licensed to undertake insurance in the Yukon in the same manner as if such agent or broker were the insurer.

Licences of insurance adjusters

223.(1) The superintendent may, upon the payment of the prescribed fee, issue to any suitable person a licence to act as an adjuster, but a person licensed as an insurance agent or broker under this Part shall not receive a licence to act as an insurance adjuster.

(2) The applicant for such licence shall file with the superintendent a written application under oath upon a form provided by the superintendent in which the applicant shall state his name, age, residence and occupation for the five years next preceding the date of the application and such other information as the superintendent may require, and the applicant shall furnish a statement as to his trustworthiness and competency signed by at least three reputable persons resident in the Yukon.

(3) If the superintendent is satisfied with the statements and information required, he shall issue the licence, which expires on a day fixed by the superintendent in each year unless sooner revoked or suspended.

(4) A licence may, in the discretion of the superintendent and upon payment of the prescribed fee, be renewed for each succeeding year without requiring anew the detailed information hereinbefore specified.

(5) The superintendent may, for cause shown and after a hearing, revoke the licence, or may suspend it for a period not exceeding the unexpired term thereof, and may, for cause shown and after a hearing, revoke the licence while so suspended, and shall notify the licensee in writing of the revocation or suspension.

(6) The provisions of subsections 215(8), (9) and (10), with reference to grounds of revocation of licences, to the appointment of an advisory board and to the power of the chairperson thereof in the matter of insurance agents' licences, apply mutatis mutandis to applicants and licensees under this section, except that a representative of adjusters shall replace a representative of agents on the board.

(7) A person who acts as an adjuster without such a licence or during a suspension of his licence is guilty of an offence.

Prohibition respecting adjusters

224.(1) Subject to subsection (2), no person shall, on behalf of himself or another person, directly or indirectly,

- (a) solicit the right to negotiate, negotiate or attempt to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant, or
- (b) hold himself out as an adjuster, investigator, consultant or otherwise as an adviser, on behalf of any person having a claim against an insured for which indemnity is provided by a motor vehicle liability policy.

(2) This section does not apply to a lawyer acting in the usual course of his profession.

Acting without licence and holding trust money

225.(1) A person who, not being duly licensed as an agent, broker or adjuster, represents or holds himself out to the public as being such an agent, broker or adjuster, or as being engaged in the insurance business by means of advertisements, cards, circulars, letterheads, signs or other methods, or being duly licensed as such agent, broker or adjuster advertises as aforesaid or carries on such business in any other name than that stated in the licence, is guilty of an offence.

(2) An agent or broker who acts in negotiating or renewing or continuing a contract of insurance with a licensed insurer and who receives any money or substitute for money for payment to a person in respect of the contract of insurance, shall be deemed to hold such money in trust for the person entitled thereto, and, if he fails to pay the money over to such person within 15 days after written demand made upon him therefor, less his commission and any deductions to which he is entitled, such failure is prima facie evidence that he has used or applied the money for a purpose other than paying it over to the person entitled.

(3) An agent or broker who acts in negotiating, renewing or continuing a contract of insurance, other than life insurance, with a licensed insurer, and who receives any money or substitute for money as a premium for such a contract from the insured, shall be deemed to hold such premium in trust for the insurer, and if he fails to pay the premium over to the insurer within 15 days after written demand made upon him therefor, less his commission and any deductions to which, by the written consent of the company, he is entitled, such failure is prima facie evidence that he has used or applied the premium for a purpose other than paying it over to the insurer.

Offences

226.(1) No insurer, and no officer, employee or agent thereof, and no broker shall directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in the Yukon, or negotiating the continuance or renewal thereof, or for attempting so to do, who at the date thereof is not a duly licensed insurance agent or broker or a person acting under subsection 215(17), and whoever knowingly contravenes this subsection is guilty of an offence.

(2) No insurer, and no officer, employee or agent thereof, and no broker shall directly or indirectly make or attempt to make an agreement as to the premium to be paid for a policy other than as set forth in the policy, or pay, allow or give, or offer or agree to pay, allow or give, a rebate of the whole or part of the premium stipulated by the policy, or any other consideration or thing of value intended to be in the nature of a rebate of premium, to any person insured or applying for insurance in respect of life, person or property in the Yukon, and an insurer or other person who contravenes this subsection is guilty of an offence.

(3) Nothing in this section affects any payment by way of dividend, bonus, profit or savings that is provided for by the policy, or shall be construed so as to prevent an insurer compensating a bona fide salaried employee of its head office or branch office in respect of insurance issued by the employing insurer upon the life of such employee or upon the employee's property or interests in the Yukon or so as to require that such employee shall be licensed as an agent under this Act to affect such insurance.

Misleading statements, comparisons or coercion

227.(1) A person licensed as an agent for life insurance who

- (a) makes a false and misleading statement or representation in the solicitation or registration of insurance,
- (b) makes or delivers any incomplete comparison of any policy or contract of insurance with that of any other insurer in the solicitation or registration of insurance, or
- (c) coerces or proposes, directly or indirectly, to coerce a prospective buyer of life insurance through the influence of a professional or a business relationship or otherwise to give a preference with respect to the policy of life insurance that would not otherwise be given on the effecting of a life insurance contract,

is guilty of an offence.

(2) The Commissioner in Executive Council may make regulations,

- (a) regulating the replacement of an existing life insurance contract by another contract of life insurance;
- (b) prescribing the duties of insurers and agents in connection with replacement of life insurance contracts.

Return to superintendent

228. Every licensed insurer shall make a return under oath to the superintendent in such form and at such times as he requires showing all persons, partnerships and corporations to whom it has, within such period as the form of return requires, paid or allowed or agreed to pay or allow, directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in the Yukon, or negotiating the continuance or renewal thereof, or for attempting to do so.

Appeal

229.(1) If the superintendent refuses, suspends, or revokes a licence applied for by or issued to a broker, agent or adjuster, the superintendent shall state in writing his reasons therefor and any person who considers himself aggrieved by the decision of the superintendent

may appeal therefrom to the Executive Council Member by delivering a notice of appeal to the superintendent setting out in writing the grounds of the appeal within 10 days of the decision.

(2) Upon receipt of the appeal the Executive Council Member shall refer the matter to an appeal board to be established by him and consisting of,

- (a) a representative of the Executive Council Member, who shall be the chairperson,
- (b) a representative of insurers, and
- (c) a representative of agents.

(3) When an appeal has been taken the decision of the superintendent shall not take effect until after any hearing and disposition of the appeal.

(4) The board shall consider the matter referred to it and shall hold a hearing and give the appellant an opportunity to make representations, call evidence, examine any witness or documents produced to the board and be represented by agent or counsel.

(5) The majority of the board, including the chairperson, shall constitute a quorum.

(6) The board may make rules for its own procedure.

(7) In conducting a hearing the board may act informally and shall not be bound by the rules of evidence customarily used by courts but shall carry on its proceedings with due regard to the rules of natural justice.

(8) Upon reaching its decision the board shall notify the Executive Council Member of the disposition of the appeal and transmit a copy of this decision to the superintendent and the appellant.

Limited or conditional licence

230. A licence may be issued to an agent or adjuster subject to such limitations and conditions as the superintendent may prescribe.

PART 11 UNFAIR AND DECEPTIVE ACTS

Interpretation

231. For the purposes of this Part,

“person” means a person engaged in the business of insurance and includes any individual, corporation, association, partnership, member of the society known as Lloyds, fraternal society, agent, broker or adjuster;

“unfair or deceptive acts or practices in the business of insurance” includes,

- (a) the commission of any act prohibited under this Act or the regulations,
- (b) any unfair discrimination between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged by it for contracts of life insurance or annuity contracts, or in

- the dividends or other benefits payable thereon or in the terms and conditions thereof,
- (c) any unfair discrimination in any rate or schedule or rates between risks in the Yukon of essentially the same physical hazards in the same territorial classification,
 - (d) any illustration, circular, memorandum or statement that misrepresents, or by omission is so incomplete that it misrepresents, the terms, benefits or advantages of any policy or contract of insurance issued or to be issued,
 - (e) any false or misleading statement as to the terms, benefits or advantages of any contract or policy of insurance issued or to be issued,
 - (f) any incomplete comparison of any policy or contract of insurance with that of any other insurer for the purpose of inducing, or intending to induce, an insured to lapse, forfeit or surrender a policy or contract,
 - (g) any payment, allowance or gift, or any offer to pay, allow or give, directly or indirectly, any money or thing of value as an inducement to any prospective insured to insure,
 - (h) any charge by a person for a premium allowance or fee other than as stipulated in a contract of insurance upon which a sales commission is payable to such person, or
 - (i) any consistent practice or conduct that results in unreasonable delay or resistance to the fair adjustment and settlement of claims.

Prohibition

232. No person shall engage in any unfair or deceptive act or practice in the business of insurance.

Investigation

233. The superintendent may examine and investigate the affairs of every person engaged in the business of insurance in the Yukon in order to determine whether such person has been or is engaged in any unfair or deceptive act or practice in the business of insurance.

Order of superintendent

234.(1) Where it appears to the superintendent that any person is engaging in any unfair or deceptive act or practice in the business of insurance, the superintendent may order that such person cease engaging in his business or any part thereof named in the order, and an order under this subsection may be made subject to such terms and conditions as the superintendent may specify in the order and the order may be revoked when the superintendent is satisfied that the unfair and deceptive acts or practices are corrected and not likely to recur.

(2) No order shall be made under subsection (1) without a hearing unless in the opinion of the superintendent the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire 15 days from the date of the making thereof or after such longer time as is consented to by the person entitled to the hearing.

(3) A notice of every order made under this Part shall be served upon every person named therein and upon such other persons as the superintendent considers appropriate, and thereupon no person shall engage in that part of the business of insurance that is the subject of the order.

Penalty

235. Any person who contravenes an order of the superintendent made under this Part is, in addition to any other consequence or remedy provided by law, guilty of an offence punishable in the same manner as if the person were undertaking insurance or carrying on business in the Yukon without holding a licence to do so.

CHAPTER 92

INSURANCE PREMIUM TAX ACT

Interpretation

1. In this Act,

“annuity contract” means a contract that provides for the payment of an income for a specified period or for life and under the terms of which the sole benefit stated to be payable by reason of death does not exceed the sum of the amounts paid as consideration for the contract together with interest;

“insurance company” means a person or corporation carrying on in the Yukon the business of insurance as defined in the Insurance Act, and

- (a) includes any person in the Yukon who purchases insurance outside the Yukon, and syndicates of underwriters operating on the plan known as “Lloyds”, but
- (b) does not include a “fraternal society” as defined in the Insurance Act;

“taxation year” means a calendar year in which premiums are receivable in respect of business transacted in the Yukon.

Tax provision

2.(1) Every insurance company shall pay to the Executive Council Member a tax equal to two percent of the gross premiums receivable by the company during the taxation year in respect of business transacted in the Yukon by the company after deducting from the gross premiums

- (a) an amount equal to the cash value of dividends paid or credited to its policy holders in that taxation year, and
- (b) an amount equal to the premiums returned in that taxation year.

(2) In addition to the taxes payable under subsection (1), every insurance company transacting the business of fire insurance or property damage insurance within the meaning of the Insurance Act, including insurance against loss of or damage to automobiles through fire, shall pay to the Executive Council Member a tax equal to one percent of the gross premiums receivable by the company during the taxation year in respect of that business transacted in the Yukon by the company after deducting from the gross premiums

- (a) an amount equal to the cash value of dividends paid or credited to its policy holders in that taxation year, and
- (b) an amount equal to the premiums returned in that taxation year.

(3) For the purposes of subsections (1) and (2), “business transacted in the Yukon” means

- (a) in the case of property insurance, all contracts on which premiums are receivable from, or in respect of, persons whose property was situated in the Yukon at the time their premiums became payable, and

(b) in the case of other insurance, all contracts on which premiums are receivable from, or in respect of, persons who are resident in the Yukon at the time their premiums became payable.

(4) The tax imposed under this section is not payable

- (a) on amounts receivable as consideration for an annuity contract,
- (b) in respect of premiums receivable under a contract of marine insurance, or
- (c) by a re-insurer in respect of re-insurance premiums credited to it by an insurer.

(5) Where a person effects, in respect of property in the Yukon, insurance with an insurance company to which subsection (1) or (2) does not apply, he shall pay a tax equal to the tax that otherwise would have been payable by the company under subsection (1) or (2).

Tax return

3.(1) An insurance company that is liable to pay a tax under this Act shall, on or before of March 15 in the year following the taxation year, file a return showing the amount of tax payable by the company in respect of the taxation year and shall remit to the Executive Council Member the amount of the tax, if any, payable by it in respect of the taxation year.

(2) The return required under subsection (1) shall be verified by the oath or affirmation of the president, manager, secretary or chief agent of the insurance company.

Unpaid taxes

4. Where any tax payable under this Act is not paid in full on the date on which payment is due, the insurance company shall pay to the Executive Council Member the amount due, together with interest on the amount of the tax unpaid at the rate of ten percent per annum from the date on which the tax was due until payment is made.

Statement under oath

5. If the Executive Council Member so desires in order to enable him to determine the correctness of any return made under the provision of this Act, or if he desires further information concerning a return, he may require the president, manager, secretary or agent of the insurance company to file a further statement under oath within 30 days.

Inspection

6.(1) The Executive Council Member may appoint inspectors to examine books and papers of an insurance company or an agent of an insurance company in so far as they relate to any business transactions whereby the company may be liable to taxation under this Act.

(2) The insurance company and the officers, employees or agents of the company shall produce to the inspectors for inspection by them all books, papers, letters and documents relating to any business transactions whereby the company may be liable to taxation under this Act.

(3) Any inspector may examine under oath any officer, employee or agent of any insurance company respecting any such business transactions and may administer the oath accordingly.

(4) An officer, employee or agent of an insurance company who refuses, neglects or omits to produce as required under subsection (2) any books, papers letters or documents or who refuses to answer a question put to him under subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 in respect of each offence, and in default of payment to imprisonment for a term not exceeding six months.

Revocation of licences

7. If any insurance company

- (a) neglects or refuses to make a return within the time prescribed by this Act,
- (b) neglects or refuses to furnish to the Executive Council Member any further statement or other information required after making the return, or
- (c) makes a return and furnishes such further statement or other information but it is found by the Executive Council Member that the return or statement made by the insurance company is inaccurate and that the tax that should be paid has been understated,

the Commissioner in Executive Council may order the agent of the insurance company in the Yukon to cease representing the insurance company and should he refuse to do so, revoke his licence.

Fine

8.(1) An insurance company liable to taxation under this Act that refuses or neglects or whose chief agent or attorney, as the case may be, refuses to neglects to make any return or statement or pay the tax as required by this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$200 for each and every day during which the refusal or neglect continues, and in addition shall pay the tax required under this Act to be paid.

(2) In construing and enforcing this section, the act, omission, neglect or failure of an officer, employee, agent or attorney of, or any other person acting for, an insurance company liable to taxation under this Act shall be deemed to be the act, omission, neglect or failure of the insurance company if the officer, employee, agent or other person was acting within the apparent scope of his employment or instructions.

(3) Unpaid taxes are a debt due to the Executive Council Member and may be sued for in a court of competent jurisdiction.

Regulations

9. The Commissioner in Executive Council may make such regulations as he deems necessary to carry out the provisions of this Act and, without restricting the generality of the foregoing, may make regulations and orders

- (a) respecting the form and content of all returns, reports and statements required by the Executive Council Member for the due administration of this Act;
- (b) respecting the form and content of any documents required for use under this Act;
- (c) respecting the definition of terms used in this Act and not herein defined.

CHAPTER 93

INTERPRETATION ACT

Interpretation

1.(1) In this Act,

“enactment” means an Act or a regulation or any portion of an Act or a regulation;

“public officer” includes any person in the public service of the Yukon

(a) who is authorized to do or enforce the doing of any act or thing or to exercise any power, or

(b) upon whom any duty is imposed by or under any public Act;

“regulation” includes any rule, rule of court, order prescribing regulations, tariff of costs or fees, form, bylaw, resolution or order made in the execution of a power given by an enactment;

“repeal” includes revoke or cancel.

(2) For the purposes of this Act, an enactment that has expired or lapsed or otherwise ceased to have effect shall be deemed to be repealed.

Application of the Act

2.(1) Every provision of this Act extends and applies to every enactment, unless a contrary intention appears, enacted or made before or after the commencement of this Act.

(2) Where an enactment contains an interpretation section or provision, it shall be read and construed as being applicable only if the contrary intention does not appear.

(3) Subsection (2) does not apply to the operation of section 4.

(4) The provisions of this Act apply to the interpretation of this Act.

(5) Nothing in this Act shall be construed to exclude the application to any enactment of a rule of construction applicable thereto and not inconsistent with this Act.

Date of coming into force and expiration of enactments

3.(1) Where an enactment is expressed to come into force or operation on a particular day, or on a day fixed by proclamation or otherwise, it shall be construed as coming into force or operation immediately on the expiration of the previous day; and where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall be construed as ceasing to have effect immediately on the commencement of the following day.

(2) Where an Act contains a provision that the Act or any provision thereof is to come into force on a day other than the date of assent to the Act, that provision shall be deemed to come into force on the date of assent.

(3) Where an enactment is not to come into force or operation immediately on its being passed or made and it confers power

- (a) to make appointments,
- (b) to hold elections,
- (c) to make regulations,
- (d) to make, grant or issue instruments,
- (e) to give notices,
- (f) to prescribe forms, or
- (g) to do any other thing,

that power may, for the purpose of making the enactment effective upon its commencement, be exercised at any time after the passing or making thereof, but a regulation made thereunder before the commencement of the enactment has no effect until the commencement of the enactment, except in so far as may be necessary to make the enactment effective upon its commencement.

CONSTRUCTION

Equality of male and female persons

4.(1) Female and male persons enjoy equality of status and obligations under enactments, unless the enactment expressly excludes the operation of this section.

(2) For the purpose of ensuring the equality of status of female and male persons in respect of rights and obligations under enactments, in an enactment an expression that imports a male person includes a female person and an expression that imports a female person imports a male person, unless the enactment in which the expression occurs expressly excludes the operation of this section.

Act always speaking

5.(1) The law is considered as always speaking, and whenever a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise so that effect may be given to each enactment according to its true spirit, intent and meaning.

(2) The expression “now”, “next”, “heretofore” or “hereafter” shall be interpreted as having reference to the time when the enactment or the part or provision thereof containing the expression came into force.

(3) The expression “shall” shall be read as imperative and the expression “may”, as permissive and empowering.

(4) The expression “herein” used in a section or provision of an enactment relates to the whole enactment and not to that section or provision only.

(5) Definitions or rules of interpretation contained in an enactment, unless the contrary intention appears, apply to the construction of the provisions of the enactment that contain those definitions or rules of interpretation, as well as to the other provisions of the enactment.

Acts to be deemed public

6. Every Act is a public Act unless by express provision it is declared to be a private Act.

Provisions in private Acts

7. No provision in a private Act affects the rights of a person except only as therein mentioned or referred to.

Title and preamble

8. The title and preamble of an enactment shall be read as a part thereof intended to assist in explaining its purpose and object.

Headings, marginal notes and references

9.(1) Marginal notes and references to former enactments form no part of an enactment but shall be deemed to have been inserted for convenience only.

(2) The headnotes and headings in an enactment, other than the headings identifying the Parts or Divisions into which the enactment is divided, form no part of the enactment but shall be deemed to have been inserted for convenience only.

Every enactment remedial

10. Every enactment and every provision thereof shall be deemed remedial and shall be given such fair, large and liberal construction and interpretation as best insures the attainment of its objects.

Appropriations

11. Where an Act provides for the payment of public money within the meaning of the Financial Administration Act for the administration of the Act or for any of the purposes of the Act, the provision shall be deemed to authorize the making of payments from the Consolidated Revenue Fund with money authorized by an Act of the Legislature to be paid for the purposes.

Meaning of expressions in regulations

12. Where an enactment confers power to make regulations or to grant, make or issue an order, writ, warrant, scheme or letters patent, expressions used therein shall, unless the contrary intention appears, have the same respective meanings as in the enactment conferring the power.

Her Majesty not bound

13. No provision in an enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner whatsoever unless it is expressly stated therein that Her Majesty is bound thereby.

Powers vested in corporation

14. Words in an enactment establishing a corporation

- (a) vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purposes for which the corporation is constituted and to alienate the same at pleasure,

- (b) vest in a majority of the members of the corporation the power to bind the others by their acts, and
- (c) exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the enactment incorporating them.

Proclamations

15. When the Commissioner in Executive Council is authorized to do an act by proclamation, it is to be understood that the proclamation is a proclamation issued under an Order of the Commissioner in Executive Council, but it is not necessary to mention in the proclamation that it is issued under the Order.

Appointment of public officers

16. Every public officer appointed before or after the commencement of this Act by or under the authority of an enactment or otherwise holds office during pleasure only, unless it is otherwise expressed in the enactment or in his commission or appointment.

Dismissal, pay and powers of public officers

17.(1) Words authorizing the appointment of a public officer include the power of

- (a) removing or suspending him,
- (b) reappointing or reinstating him,
- (c) appointing another in his stead or to act in his stead, and
- (d) fixing his remuneration and varying or terminating it,

in the discretion of the authority in whom power of appointment is vested.

(2) Words directing or empowering a public officer to do any act or thing, or otherwise applying to him by his name of office, include his successors in the office and his or their deputy.

(3) Where a power is conferred or a duty imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office.

Construction of enactments

18. In an enactment,

- (a) where anything is directed to be done by or before a public officer or a justice of the peace, it shall be done by or before one whose jurisdiction or power extends to the place where such thing is to be done,
- (b) where power is given to the Commissioner, the Commissioner in Executive Council or a public officer to do or enforce the doing of any act or thing, all such powers shall be deemed to be also given as are necessary to enable him to do or enforce the doing of the act or thing,
- (c) where any act or thing is required to be done by more than two persons, a majority may do it,
- (d) where a power is conferred or a duty imposed the power may be exercised and the duty shall be performed, from time to time, as occasion requires,

- (e) where power is conferred to make regulations, the power shall be construed as including power, exercisable in like manner and subject to like consent and conditions, if any, to rescind, revoke, amend or vary the regulations and make others,
- (f) where a form is prescribed, deviations therefrom not affecting the substance nor calculated to mislead shall not invalidate the form used,
- (g) words importing male persons or female persons include corporations,
- (h) words in the singular include the plural, and words in the plural include the singular and, without limiting the generality of the foregoing, the pronoun "they" and the variants may be used to denote, in the subjective, objective and possessive cases, the third person singular as well as the third person plural,
- (i) where a word is defined, other parts of speech and tenses of that word have corresponding meanings,
- (j) where the time limited for the doing of anything expires or falls upon a holiday, the time so limited extends to and the thing may be done on the first following day that is not a holiday,
- (k) where a number of days not expressed to be "clear days" is prescribed, it shall be reckoned exclusively of the first day and inclusively of the last, but where the days are expressed to be "clear days" or where the term "at least" is used, both the first day and the last shall be excluded, and
- (l) a reference to time shall be deemed to be a reference to standard time.

REFERENCES TO ENACTMENTS

Reference to amended enactment

19.(1) In an enactment, a citation of or reference to another enactment is a citation of or reference to the other enactment as amended from time to time whether before or after the commencement of the enactment in which the citation or reference occurs.

(2) In an enactment or document, an Act of the Legislature may be cited by reference to its title, either with or without reference to

- (a) its chapter number in the Revised Statutes of the Yukon, 1986, or
- (b) its year of enactment and the chapter number in the statutes for that year as published by the Queen's Printer.

References in enactments

20.(1) A reference in an enactment by number or letter to any section, subsection, paragraph, subparagraph, clause, subclause or other division or line of another enactment shall be read as a reference to the section, subsection, paragraph, subparagraph, clause, subclause or other division or line of such other enactment as printed by authority of law.

(2) A reference in an enactment by number or letter to two or more Parts, Divisions, sections, subsections, paragraphs, subparagraphs, clauses, subclauses, schedules or forms in an enactment shall be read as including the number or letter first mentioned and the number or letter last mentioned.

(3) A reference in an enactment to a Part, Division, section, schedule or form shall, unless the contrary intention appears, be read as a reference to a part, division, section, schedule or form of the enactment in which the reference occurs.

(4) A reference in an enactment to a subsection, paragraph, subparagraph, clause or subclause shall, unless the contrary intention appears, be read as a reference to a subsection, paragraph, subparagraph, clause or subclause of the section, subsection, paragraph, subparagraph or clause, as the case may be, in which the reference occurs.

(5) A reference in an enactment to regulations shall, unless the contrary intention appears, be read as a generic reference to regulations made under the enactment in which the reference occurs.

WORDS AND PHRASES

Definitions

21.(1) In an enactment,

“Act” means an ordinance of the Yukon enacted pursuant to the Yukon Act (Canada);

“bank” or “chartered bank” means a bank to which the Bank Act (Canada) applies;

“chiropractor” means a person who is entitled to practise as a chiropractor in the Yukon pursuant to the Chiropractors Act;

“commencement” when used with reference to an enactment or any provision thereof means the time at which the enactment or provision comes into force or operation;

“Commissioner” means the Commissioner of the Yukon or the person executing the office and functions of the Commissioner of the Yukon;

“Commissioner in Council” means the Legislature;

“Commissioner in Executive Council” means the Commissioner acting by and with the advice and consent of the Executive Council;

“Council” means the Council of the Yukon;

“dentist” means a person who is entitled to practise as a dentist in the Yukon pursuant to the Dental Profession Act;

“denture technician” means a person who is entitled to practise as a denture technician in the Yukon pursuant to the Denture Technicians Act;

“Executive Council” means the Executive Council appointed under the authority of section 4 of the Yukon Act (Canada);

“Executive Council Member” means the member of the Executive Council charged by order of the Commissioner in Executive Council with responsibility for the exercise of powers under the enactment;

“fiscal year”, when used with respect to the Government of the Yukon, means the 12 months ending March 31;

“Her Majesty”, “His Majesty”, “the Queen”, “the King” or “the Crown” means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth;

“holiday” includes Sunday, New Year’s Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Discovery Day (being the third Monday in August), Labour Day, Remembrance Day, Christmas Day, the birthday or the day prescribed for the celebration of the birthday of the reigning sovereign and any other day appointed by proclamation for a

- general fast or thanksgiving, and whenever a holiday other than Remembrance Day falls on a Sunday, the expression "holiday" includes the following day;
- "judge" means a judge of the Supreme Court;
- "justice" means a justice of the peace;
- "land titles office" means the land titles office for the Yukon land registration district established under the Land Titles Act (Canada);
- "lawyer" means a person entitled to practise as a barrister and solicitor in the Yukon pursuant to the Legal Profession Act;
- "Legislative Assembly" means the Council of the Yukon Territory constituted under section 9 of the Yukon Act (Canada);
- "Legislature" means the Commissioner acting by and with the advice and consent of the Legislative Assembly;
- "medical practitioner" means a person who is entitled to practise medicine in the Yukon pursuant to the Medical Profession Act;
- "month" means calendar month;
- "municipality" means a municipality under the Municipal Act;
- "oath", or "affidavit" in the case of persons for the time being allowed or required by law to affirm or declare instead of swearing, includes affirmation and declaration and "swear" in the like case includes "affirm" and "declare";
- "optometrist" means a person entitled to practise as an optometrist in the Yukon pursuant to the Optometrists Act;
- "or" includes "and";
- "Ordinance" means an ordinance of the Yukon enacted pursuant to the Yukon Act (Canada);
- "peace officer" means a peace officer as defined in the Criminal Code (Canada);
- "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person;
- "pharmacist" means a person who is entitled to practise as a pharmaceutical chemist in the Yukon pursuant to the Pharmacists Act;
- "prescribe" means prescribe by regulation of the Commissioner in Executive Council unless otherwise provided;
- "proclamation" means a proclamation under the seal of the Yukon;
- "professional engineer" means a person who is entitled to practise as a professional engineer in the Yukon pursuant to the Engineering Profession Act;
- "province" means a province of Canada and includes the Yukon and the Northwest Territories;
- "public administrator" means the public administrator appointed under the Judicature Act;
- "Queen's Printer" means the Queen's Printer appointed under the Public Printing Act;
- "Rules of Court" means the rules of the Supreme Court established under the Judicature Act;
- "security interest" means a security interest within the meaning of the Personal Property Security Act;
- "statute" means an Act of Canada or a province and includes an ordinance of the Northwest Territories;
- "Supreme Court" means Supreme Court of the Yukon Territory;
- "Territorial Court" means the Territorial Court of Yukon;
- "Treasurer" means the Treasurer under the Financial Administration Act;
- "under this Act" means under the Act or the regulations;
- "will" includes codicil;

“writing”, “written” or any term of like import includes words printed, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in a visible form;

“year” means calendar year;

“Yukon” means the Yukon Territory as defined in the Yukon Act (Canada);

“Yukon Gazette” means the Yukon Gazette published under the Public Printing Act.

(2) In an enactment, a name commonly applied to a country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied although the name is not the formal or extended designation thereof.

(3) In an enactment, a reference to a dentist, lawyer or medical practitioner includes a professional corporation entitled to practise as such in the Yukon pursuant to the Dental Profession Act, the Legal Profession Act or the Medical Profession Act.

(4) In an enactment, the terms “Yukon” and “the Yukon” shall be deemed to have the same meaning, and may be used interchangeably.

REPEAL AND AMENDMENT

Amendment to be construed as one with enactment

22. An amending enactment shall, as far as consistent with the tenor thereof, be construed as part of the enactment that it amends.

Effect of repeal

23.(1) Where an enactment is repealed in whole or in part, the repeal or revocation does not

- (a) revive an enactment or thing not in force or existing at the time when the repeal takes place,
- (b) affect the previous operation of the enactment so repealed or anything duly done or suffered thereunder,
- (c) affect a right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed,
- (d) affect an offence committed against or a violation of the provisions of the enactment so repealed, or any penalty, forfeiture or punishment incurred in respect thereof, or
- (e) affect an investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and an investigation, legal proceeding or remedy of the kind described in paragraph (e) may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment had not been repealed or revoked.

(2) Where an enactment is repealed in whole or in part and other provisions are substituted therefor,

- (a) every person acting under the enactment so repealed shall continue to act as if appointed under the provisions so substituted until another is appointed in his stead,

- (b) every bond and security given by a person appointed under the enactment so repealed remains in force, and all offices, books, papers and things made or used under the repealed enactment shall continue to be used as before the repeal as far as consistent with the substituted provisions,
- (c) every proceeding taken under the enactment so repealed shall be taken up and continued under and in conformity with the provisions so substituted, as far as consistently may be,
- (d) in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights, existing or accruing under the enactment so repealed or in a proceeding in relation to matters that have happened before the repeal, the procedure established by the substituted provisions shall be followed as far as it can be adapted thereto, and
- (e) when any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions or substituted, the penalty, forfeiture or punishment if imposed or adjudged after the repeal shall be reduced or mitigated accordingly.

Effect of repeal and substitution

24.(1) Where an enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation,

- (a) all regulations made under the repealed enactment remain in force, in so far as they are not inconsistent with the substituted enactment, until they are annulled or others made in their stead, and
- (b) a reference, in an unrepealed enactment to the repealed enactment shall, as regards a subsequent transaction, matter or thing, be read as a reference to the provisions of the substituted enactment relating to the same subject matter as the repealed enactment, but where there are no provisions in the substituted enactment relating to the same subject matter, the repealed enactment shall be read as unrepealed as far as is necessary to maintain or give effect to the unrepealed enactment.

(2) Where a statute of a province or of Canada is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation, a reference in an enactment of the Yukon to the repealed statute shall, as regards a subsequent transaction, matter or thing, be construed as a reference to the provisions of the substituted statute relating to the same subject matter as the repealed statute.

Implications of repeal or amendment

25.(1) The repeal of an enactment in whole or in part is not and shall not be deemed to be or to involve a declaration that the enactment was or was considered by the Legislature or other person or body by whom the enactment was passed or made to have been previously in force.

(2) The amendment of an enactment is not and shall not be deemed to be or to involve a declaration that the law under the enactment was or was considered by the Legislature or other person or body by whom the enactment was passed or made to have been different from the law as it is under the enactment as amended.

(3) The repeal of an enactment in whole or in part or the amendment of an enactment is not and shall not be deemed to be or to involve any declaration as to the previous state of the law.

(4) A re-enactment, revision, consolidation or amendment of an enactment is not and shall not be deemed to be an adoption of the construction that has by judicial decision or otherwise been placed upon the language used in the enactment or upon similar language.

(5) Where an Act or a part of an Act is, or appears to be, based on an Act of Canada or a province, a difference between the Act of the Yukon and the other Act shall not be deemed to be or to involve a declaration that the law in the Yukon is different from the law under the other Act.

(6) Where a section of an enactment that is not divided into subsections is amended by the addition of one or more subsections, the amendment shall be deemed to include an amendment designating the section as it existed prior to the amendment as subsection (1) of the amended section.

(7) Where a section of an enactment that is divided into subsections is amended by the deletion of all but one of the subsections, the amendment shall be deemed to include an amendment designating the remaining subsection as a new section not divided into subsections.

(8) Where a section or subsection is amended by the repeal or addition of one or more paragraphs, clauses, sub-paragraphs or sub-clauses, the repeal or addition shall be deemed to include such amendments to the punctuation and syntax of the section or subsection as may be necessary to preserve the grammatical correctness of the amended section or subsection without altering its meaning.

Substituted enactments take effect the day of repeal

26. Whenever a part of an enactment is repealed and other provisions are substituted therefor, the substituted provisions, unless the contrary intention appears, take effect from the day the repealing enactment comes into force.

ACTS

Form of enacting clause

27. The following words may be inserted in the preamble of Acts and shall indicate the authority by virtue of which they are passed: “The Commissioner of the Yukon, by and with the advice and consent of the Legislative Assembly, enacts as follows”.

Form of preamble

28. After the insertion of the words referred to in section 27, which shall follow the setting forth of the considerations or reasons upon which the law is grounded, if any, and which shall, with these considerations or reasons, constitute the entire preamble, the various clauses of the Acts shall follow in a concise and enunciative form.

Endorsement of assent

29. The clerk of the Legislative Assembly shall endorse on every Act immediately after the title thereof the day, month and year when the Act was assented to by the Commissioner, and such endorsement shall be taken to be part of the Act and the date of such assent shall be the date of the commencement of the Act if no later commencement is provided therein.

Custody of Acts

30. All Acts heretofore passed, now passed and hereafter to be passed shall be and continue to remain of record in the custody of the clerk of the Legislative Assembly.

Certified copies of Acts

31. The clerk of the Legislative Assembly shall affix the seal of the Yukon to certified copies of all Acts intended for transmission to the Governor in Council or required to be produced before courts of justice and in any other case that the Commissioner in Executive Council may direct, and such certified copies shall be held to be duplicate originals and also to be evidence (as if printed by lawful authority) of such Acts and of their contents.

Supply of certified copies of Acts

32.(1) The clerk of the Legislative Assembly shall furnish a certified copy of any Act to any person upon receiving the prescribed fee.

(2) The clerk of the Legislative Assembly shall place at the foot of every copy required to be certified a written certificate duly signed and authenticated by him to the effect that it is a true copy, and in the case of any Act disallowed after it came into force, "but disallowed by the Governor General in Council, which disallowance took effect on the day of, 19"

(3) The Commissioner in Executive Council may prescribe the fees to be charged under this section.

Standard time

33.(1) Subject to this section, standard time shall be reckoned as nine hours behind Greenwich Time and called Yukon Standard Time.

(2) Notwithstanding subsection (1), the Commissioner in Executive Council may make regulations varying the manner of reckoning standard time.

Orders, rules and regulations to be tabled

34. A copy of every order, rule or regulation made by the Commissioner in Executive Council pursuant to any Act shall be laid before the Legislative Assembly as soon as conveniently may be after the making thereof.

CHAPTER 94

INTERPROVINCIAL SUBPOENA ACT

Interpretation

1. In this Act,

“court” means any court in a province;

“subpoena” means a subpoena or other document issued by a court requiring a person within a province other than the province of the issuing court to attend as a witness before the issuing court.

Subpoena from outside the Yukon

2.(1) A court in the Yukon shall receive and adopt as an order of the court a subpoena from a court outside the Yukon if

- (a) the subpoena is accompanied by a certificate signed by a judge of a superior, county or district court of the issuing province and impressed with the seal of that court, signifying that, upon hearing and examining the applicant, the judge is satisfied that the attendance in the issuing province of the person subpoenaed
 - (i) is necessary for the due adjudication of the proceeding in which the subpoena is issued, and
 - (ii) in relation to the nature and importance of the cause or proceeding is reasonable and essential to the due administration of justice in that province, and
- (b) the subpoena is accompanied by the witness fees and travelling expenses in accordance with section 9.

(2) The certificate to which reference is made in paragraph (1)(a) may be in the prescribed form.

Immunity by outside law

3. A court in the Yukon shall not receive a subpoena from another province under section 2 unless the law of that other province has a provision similar to section 6 providing absolute immunity to a resident of the Yukon who is required to attend as a witness in the other province from all proceedings of the nature set out in section 6 and within the jurisdiction of the legislature of that other province, except only those proceedings grounded on events occurring during or after the required attendance of the person in the other province.

Penalty

4. Where a person who has been served with a subpoena adopted under section 2 and given the witness fees and travelling expenses in accordance with section 9 not less than ten days, or such shorter period as the judge of the court in the issuing province may indicate in his certificate, before the date the person is required to attend in the issuing court, fails without lawful excuse to comply with the order, he is in contempt of court and subject to such penalty as the court may impose.

Subpoena issued in the Yukon

5.(1) Where a party to a proceeding in any court in the Yukon causes a subpoena to be issued for service in another province, the party may attend upon a judge of the Supreme Court who shall hear and examine the party or his counsel, if any, and upon being satisfied that the attendance in the Yukon of the person required in the Yukon as a witness

- (a) is necessary for the due adjudication of the proceeding in which the subpoena or other document has been issued, and
- (b) in relation to the nature and importance of the proceedings, is reasonable and essential to the due administration of justice in the Yukon,

shall sign a certificate which may be in the prescribed form and shall cause the certificate to be impressed with the seal of the Supreme Court.

(2) The certificate shall be either attached to or endorsed on the subpoena.

Immunity in the Yukon

6. A person required to attend before a court in the Yukon by a subpoena adopted by a court outside the Yukon shall be deemed, while within the Yukon, not to have submitted to the jurisdiction of the courts of the Yukon other than as a witness in the proceedings in which he is subpoenaed and shall be absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the legislature of the Yukon except only those proceedings grounded on events occurring during or after the required attendance of the person in the Yukon.

Criminal offences

7. This Act does not apply to a subpoena that is issued with respect to a criminal offence under an Act of Parliament.

Additional fees

8. Where a person is required to attend before a court in the Yukon by a subpoena adopted by a court outside the Yukon, he may request the court to order additional fees and expenses to be paid in respect of his attendance as a witness and the court, if it is satisfied that the amount of fees and expenses previously paid to the person in respect of his attendance is insufficient, may order the party who obtained the subpoena to pay the person forthwith such additional fees and expenses as the court considers sufficient, and amounts paid pursuant to an order made under this section are disbursements in the cause.

Witness fees and travelling expenses

9.(1) The witness fees and travelling expenses required to be given to the witness upon service of an interprovincial subpoena shall be a sum of money, or a sum of money together with valid travel warrants, sufficient to satisfy the requirements of subsections (2) to (5).

(2) A witness shall be paid the fare for transportation by the most direct route via public commercial passenger carrier between his place of residence and the place at which he is required to attend in court in accordance with the following rules:

- (a) if the journey or part of it can be made by air, rail or bus, that portion of the journey shall be by airline, rail or bus by tourist class or equivalent class via carriers on which the witness can complete his total journey to the place

where he is required to attend in court on the day before his attendance is required;

- (b) if railway transportation is necessary for part of the journey and sleeping accommodation would normally be obtained for such a journey, the fare for sleeping accommodation shall be included;
- (c) in the calculation of the fare for transportation, the most rapid form of transportation by regularly scheduled carrier shall be accorded priority over all other forms;
- (d) if the material which the witness is required to produce in court is of such weight or size as to attract extra fares or charges, the amount so required shall be included.

(3) A witness shall be paid the cost of hotel accommodation for not less than three days at the place where the witness is required to attend in court, in an amount not less than \$150.

(4) A witness shall be paid the cost of meals for the total journey and for not less than three days at the place where the witness is required to attend in court, in an amount not less than \$75.

(5) A witness shall be paid, in addition to the amounts described above, an allowance of \$50 for each day of absence from the ordinary residence of the witness, and the witness shall be paid on account of this allowance not less than \$150.

CHAPTER 95

INTESTATE SUCCESSION ACT

Interpretation

1. In this Act,

“estate” includes both real and personal property;

“issue” includes all lawful descendants of the ancestor.

Distribution

2. Subject to the provisions of section 15,

- (a) where a person dies intestate leaving a widow and one child, one-half of his estate shall go to the widow,
- (b) where a person dies intestate leaving a widow and children, one-third of his estate shall go to the widow, and
- (c) where a child of an intestate has died leaving issue and such issue is alive at the date of the intestate’s death, the widow shall take the same share of the estate of the intestate as if the child had been living at that date.

Distribution to issue of intestate

3. Where a person dies intestate leaving issue, his estate shall be distributed, subject to the rights of the widow, if any, per stirpes among such issue.

Distribution where widow only survives intestate

4. Where a person dies intestate leaving a widow but no issue, his whole estate shall go to his widow.

Distribution to parents

5. Where a person dies intestate leaving no widow or issue, his estate shall go to his parents in equal shares if both are living, but if either of them is dead the estate shall go to the survivor.

Distribution to siblings and their issue

6. Where a person dies intestate leaving no widow, issue or parent, his estate shall go to his siblings in equal shares, and if any sibling is dead the children of the deceased sibling shall take the share their parent would have taken, if living; but where the only persons entitled are children of deceased siblings, they shall take per capita.

Distribution to next-of-kin

7. Where a person dies intestate leaving no widow, issue, parent, or sibling and no children of any deceased sibling, his estate shall go to his next-of-kin.

Distribution among next-of-kin

8. Where the estate goes to the next-of-kin, it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them; but in no case shall representation be admitted among collaterals after siblings' children.

Degrees of kindred

9. For the purposes of this Act, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative; and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

Descendants and relatives born after intestate's death

10. Descendants and relatives of the intestate, begotten before his death but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived him.

Advance by portion to child

11.(1) Where a child of a person who has died wholly intestate has been advanced by the intestate by portion, the portion shall be reckoned, for the purposes of this section only, as part of the estate of the intestate distributable according to law; if the advancement is equal to or greater than the share of the estate that the child would be entitled to receive as above reckoned, the child and his descendants shall be excluded from any share in the estate; but if the advancement is not equal to such share, the child and his descendants shall be entitled to receive so much only of the estate of the intestate as is sufficient to make all the shares of the children in the estate and advancement equal as nearly as can be estimated.

(2) The value of any portion advanced shall be deemed to be that which has been expressed by the intestate or acknowledged by the child in writing; otherwise the value shall be the value of the portion when advanced.

(3) The onus of proving that a child has been maintained or educated, or has been given money, with a view to a portion, shall be upon the person so asserting, unless the advancement has been expressed by the intestate, or acknowledged by the child, in writing.

Estate not disposed of by will

12. All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

Distribution of estate of intestate woman

13. The estate of a woman dying intestate shall be distributed in the same proportions and in the same manner as the estate of a man so dying, the word "husband" being substituted for "widow", the word "her" for "his", the word "she" for "he", and the word "her" for "him", where such words respectively occur in sections 2, 3, 4, 5, 6, 7 and 10.

Adultery

14.(1) Where a wife has left her husband and is living in adultery at the time of his death she shall take no part of her husband's estate.

(2) Where a husband has left his wife and is living in adultery at the time of her death, he shall take no part of his wife's estate.

Special relief

15. Where a person domiciled in the Yukon dies intestate leaving a spouse and a child or children under the age of 19 years, an application may be made to the Supreme Court by the spouse for an order directing that all the estate shall go to the spouse or such other order as the Supreme Court may see fit, the provisions of section 2 notwithstanding.

Application procedure

16. Any application hereunder may be made by notice of motion styled in the matter of the estate of the deceased.

Notice to public administrator

17. Notice of any application shall be served upon the public administrator of the Yukon and such other persons as the Supreme Court may direct, and notice of the application shall be advertised in the Yukon Gazette at least 14 days before the notice is returnable.

Practice and procedure

18. Subject to this Act the practice and procedure of the Supreme Court upon applications in chambers shall, so far as the same are found to be applicable, apply to proceedings under this Act.

Affidavit

19. An application shall be supported by an affidavit of the applicant setting forth fully all the facts in support of the application.

Evidence

20. In addition to the evidence adduced by the applicant, the Supreme Court may direct such other evidence to be given as it deems necessary.

CHAPTER 96

JUDICATURE ACT

Interpretation

1. In this Act,

- “action” means a civil proceeding commenced in such manner as may be prescribed by this Act or by Rules of Court, and includes suit;
- “cause” includes any action, suit or other original proceeding between a plaintiff and a defendant;
- “clerk” includes a deputy clerk;
- “Court” means the Supreme Court and “file in” or “pay into” Court means to file with or pay to a clerk of the Court, as the case may be;
- “defendant” includes a person served with any process, or served with notice of or entitled to attend any proceedings;
- “execution creditor” includes an assignee of an execution creditor;
- “judgment” includes decree;
- “matter” includes every proceeding in the Court not in a case;
- “order” includes rule;
- “party” includes a person served with notice of or attending any proceeding, although not named in the record;
- “petitioner” includes every person making any application to the Court, either by petition, motion or summons, otherwise than as against a defendant;
- “plaintiff” includes a person asking relief, otherwise than by way of counterclaim as a defendant, against any other person by any form of proceedings, whether the same is taken by action, petition, motion, summons or otherwise;
- “Rules of Court” includes the rules in force by virtue of this Act and any other rules made under the authority of this Act;
- “sheriff” includes deputy sheriff;
- “verdict” includes the finding of a jury and the decision of a judge.

Jurisdiction as regards procedure and practice

2. The jurisdiction of a judge shall be exercised so far as regards procedure and practice in the manner provided by this Act and the Rules of Court.

Judicial districts

3.(1) For the purposes of this Act, the Commissioner in Executive Council may establish judicial districts in the Yukon and may designate the place in each judicial district where the clerk of the Supreme Court shall have his office.

(2) Actions shall be entered and, unless otherwise ordered by a judge, tried in the district where the cause of action arose or in which the defendant or one of several defendants resides or carries on business at the time the action is brought.

Powers of judge in chambers

4. A judge sitting in chambers, if he announces that he is sitting in court, has and may exercise and enjoy all the powers and authorities, rights, privileges and immunities that he has when presiding over the trial of an action.

Judgments in chambers

5. Any judgment, decision, determination, rule, order or decree made by a judge while sitting in chambers after an announcement pursuant to section 4 has the same force and effect as if made while presiding over the trial of an action.

Power to make vesting orders

6. Where the Court has authority to order the execution of a deed of conveyance, transfer or assignment of any property, real or personal, the Court may by order vest such real or personal estate in such person or persons and in such manner and for such estates as would be done by any such deed, conveyance, assignment or transfer if executed; and thereupon the order has the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise for the same estate or interest to the person in whom the estate or interest is so ordered to be vested, or in the case of a chose in action as if such chose in action had been actually assigned to the person in whom the chose in action is so ordered to be vested.

Rules of law and equity

7. In every civil cause or matter commenced in the Court, law and equity shall be administered by the Court according to the rules set out in sections 8 to 17.

Relief in equity or law

8. Where a plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, the Court shall give to such plaintiff or petitioner the relief that would be given by the High Court of Justice in England in a suit or proceeding for the same or a like purpose.

Defences to claims for equitable relief

9. Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any plaintiff or petitioner in such cause or matter, the Court shall give to every equitable defence so alleged such and the same effect by way of defence against the claim of such plaintiff or petitioner as the High Court of Justice in England would give if the same or like matters had been relied on by way of defence in any suit or proceedings instituted in that Court for the same or a like purpose.

Relief against third parties

10. The Court may grant to a defendant, in respect of any equitable estate or right or other matter of equity and also in respect of any legal estate, right or title claimed or asserted by him, all such relief against any plaintiff or petitioner as the defendant has properly claimed by his pleadings; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the

same cause or matter or not, who has been duly served with notice in writing of the claim pursuant to this Act, or any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose, and every person served with such notice shall thenceforth be deemed a party to the cause or matter with the same rights in respect of the defence against the claim as if he had been duly sued in the ordinary way by the defendant.

Recognition of equitable estates

11. The Court shall recognize and take notice of all equitable estates, titles and rights and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the High Court of Justice in England would recognize and take notice of the same in any suit or proceeding duly instituted therein.

Legal and equitable remedies

12. The Court in the exercise of its jurisdiction in every cause or matter pending before it has power to grant and shall grant either absolutely or on such reasonable terms and conditions as to it seems just all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter, so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any such matters avoided.

Relief against penalties and forfeitures

13. Subject to appeal as in other cases, the Court shall have power to relieve against all penalties and forfeitures and in granting such relief to impose such terms as to costs, expenses, damages, compensation and all other matters as the Court sees fit.

Restraint and stay of proceedings

14.(1) No cause or proceeding at any time pending in the Court shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained in England prior to the passing of the Supreme Court of Judicature Act, 1873, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto.

(2) Nothing in this Act shall be construed as preventing the Court from directing a stay of proceedings in any cause or matter pending before it if it sees fit.

(3) Any person, whether a party or not to any such cause or matter, who would have been entitled in England, prior to the passing of the Supreme Court of Judicature Act, 1873, to apply to the Court to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise any judgment, decree, rule or order contrary to which all or any part of the proceedings in the cause or matter may have been taken, may apply to the Court by motion in a summary way for a stay of proceedings in the cause or matter, either generally or so far as may be necessary for the purpose of justice, and the Court shall thereupon make such order as shall be just.

Default under mortgage of land

15. When default is made in payment of money due under a mortgage of land, whether made before or after the commencement of this Act, or in the observance of a covenant contained therein, and under the terms of the mortgage by reason of such default the payment of other portions of the principal money is accelerated and such portions become presently due and payable, the mortgagor may, notwithstanding any provisions to the contrary and at any time before sale or before the grant of a final order of foreclosure, perform such covenant or pay such arrears as are in default, with costs to be taxed, and the mortgagor shall thereupon be relieved from immediate payment of so much of the money secured by the mortgage as may not have become payable by lapse of time.

Default under agreement for sale of land

16. When default has occurred in making any payment due under an agreement for sale, whether made before or after the commencement of this Act, of land or in the observance of any covenant therein contained and under the terms of the agreement by reason of such default the payment of other portions of the money is accelerated and such portions become presently due and payable, the purchaser may, notwithstanding any provision to the contrary and at any time prior to final judgment in an action brought to enforce the rights of the vendor, perform such covenant or pay such arrears as are in default, with costs to be taxed, and the purchaser shall thereupon be relieved from immediate payment of so much of the purchase money as may not have become payable by lapse of time.

Amendment of pleadings

17. Where an action is brought to enforce any right, legal or equitable, the Court may permit the amendment of any pleading or other processing therein upon such terms as to costs or otherwise as it deems just notwithstanding that, between the time of the issue of the statement of claim and the application for amendment, the right of action would, but by reason of action brought, have been barred by the provisions of any statute or Act, if such amendment does not involve a change of parties other than a change caused by the death of one of the parties.

Jurisdiction in lunacy

18. The jurisdiction of the Court with respect to mentally disordered persons and their property and estates shall, subject to the Rules of Court, include that which in England is conferred upon the Lord High Chancellor by a Commission from the Crown under the sign manual.

No limitation period for claims under trusts

19. No claim of a cestui que trust against his trustee for any property held on an express trust or in respect of any breach of such trust shall be held to be barred by any limitations Act.

Equitable waste under life estates

20. An estate for life without any impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste unless an intention to confer such right expressly appears by the instrument creating such estate.

Merger of estates

21. There shall not be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suit by mortgagor for rents and profits

22. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof has been given by the mortgagee may sue for such possession, or sue or distrain for the recovery of such rents or profits or to prevent or recover damages in respect of any trespass or other wrong relative thereto in his own name only, unless the cause of action arises upon a lease or other contract made by him with any other person and in that case he may sue or distrain jointly with such other person.

Disputed assignment of debt or chose in action

23. Where an assignment of a debt or other chose in action is made and the debtor, trustee or other person liable in respect of such debt or chose in action has had notice that such assignment is disputed by the assignor or anyone claiming under him or of any other opposing or conflicting claims to such debt or chose in action, the debtor, trustee or such other person may

- (a) call upon the several disputing and claiming persons to interplead concerning the debt or chose in action, or
- (b) pay the amount of the debt or chose in action into Court under and in conformity with the Trustee Act.

Time stipulations in contracts

24. Stipulations in contracts as to time or otherwise that would not in England, prior to the passing of the Supreme Court of Judicature Act, 1873, have been deemed to be or to have become of the essence of such contracts in a court of equity shall receive in the Court the same construction and effect as they would have received in equity.

Part performance

25. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in satisfaction or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to extinguish the obligation.

Interlocutory mandamus or injunction

26.(1) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that such order should be made, and such order may be made either unconditionally or upon such terms and conditions as the Court thinks just.

(2) If an injunction is asked, either before, at or after the hearing of any cause or matter to prevent any threatened or apprehended waste or trespass, the injunction may be granted if the Court thinks fit whether the person against whom the injunction is sought is or is not in possession under any claim or title or otherwise or, if out of possession, does or does not claim a right to do the act sought to be restrained under any color of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

Damages in addition to other relief

27. Where the Court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract or agreement, against the commission or continuance of any wrongful act or for the specific performance of any covenant, contract or agreement, the Court may if it thinks fit award damages to the party injured either in addition to or in substitution for the injunction or specific performance, and the damages may be ascertained in such manner as the Court may direct, or the Court may grant such other relief as it may deem just.

Effect of court orders on purchasers

28. An order of the Court under the authority of an Act or otherwise shall not as against a purchaser, whether with or without notice, be invalidated on the ground of want of jurisdiction or of want of any concurrence, consent, notice or service.

Conflict between rules of law and equity

29. Whenever there is any conflict or variance between the rules of equity and common law with reference to the same matter, the rules of equity shall prevail.

Wages of minors

30. Minors may sue for wages in the same way as if of full age.

Negligence of fellow worker

31. It is not a good defence in law to any action against an employer, or the successor or legal representative of an employer, for damages for the injury or death of an employee of such employer, that the injury or death resulted from negligence of an employee engaged in a common employment with the injured employee, any contract or agreement to the contrary notwithstanding.

Declaratory judgments

32. No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or can be claimed or not.

Sureties and guarantors

33. The giving of time to a principal debtor, or the dealing with or altering of the security held by a principal creditor, does not of itself discharge a surety or guarantor, and in such cases a surety or guarantor, but only in so far as he shows he was prejudiced, is entitled to set up such giving of time or dealing with or alteration of the security as a defence.

Court order for sale of real estate

34. When in any cause or matter relating to real estate or any interest therein it appears necessary or expedient that the real estate or interest or any part thereof should be sold, the Court may order the same to be sold and any party bound by the order and in possession of the estate or interest, or in receipt of the rents or profits thereof, shall deliver up such possession or receipt to the purchaser or such other person as may be thereby directed.

Pre-judgment interest

35.(1) In this section, “prime rate” means the lowest rate of interest quoted by chartered banks to the most credit-worthy borrowers for prime business loans, as determined and published by the Bank of Canada.

(2) For the purpose of establishing the prime rate, the periodic publication entitled the Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the prime rate as set out therein, without further proof of the authenticity of the publication.

(3) Subject to subsection (7), a person who is entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon at the prime rate existing for the month preceding the month on which the action was commenced,

- (a) where the judgment is given upon a liquidated claim, calculated from the date the cause of action arose to the date of judgment, or
- (b) where the judgment is given upon an unliquidated claim, calculated from the date the person entitled gave notice in writing of his claim to the person liable therefor to the date of the judgment.

(4) Where the judgment includes an amount for special damages, the interest calculated under subsection (3) shall be calculated on the balance of special damages incurred as totalled at the end of each six month period following the notice in writing referred to in paragraph (3)(b) and at the date of the judgment.

(5) Interest under this section shall not be awarded

- (a) on exemplary or punitive damages,
- (b) on interest accruing under this section,
- (c) on an award of costs in the action, or
- (d) on that part of the judgment that represents pecuniary loss arising after the date of the judgment and that is identified by a finding of the court.

(6) Interest under this section shall not be awarded

- (a) except by consent of the judgment debtor where the judgment is given on consent, or
- (b) where interest is payable by a right other than under this section.

(7) The judge may, where he considers it to be just to do so in all the circumstances, in respect of the whole or any part of the amount for which judgment is given,

- (a) disallow interest under this section,
- (b) fix a rate of interest higher or lower than the prime rate, or
- (c) allow interest under this section for a period other than that provided.

Tender of amends in tort cases

36. A person who has committed a wrong giving a cause of action for the recovery of damages to the person wronged may at any time before action tender amends, and the tender has the same effect as a tender in an action for the recovery of a debt.

Rules of Court

37. Subject to this and any other Act, the Rules of the Supreme Court of British Columbia in force from time to time shall, *mutatis mutandis*, be followed in all causes matters and proceedings, but the judges of the Court may make rules of practice and procedure, including tariffs of fees and costs in civil matters and fees and expenses of witnesses and interpreters in criminal matters, adding to or deleting from those rules, or substituting other rules in their stead.

CLERKS OF THE SUPREME COURT**Appointment**

38.(1) There shall be a clerk of the Court.

(2) If a deputy clerk is appointed, he shall have the same powers and duties as the clerk.

Seal of office

39. The clerk of the Court shall have a seal of office in such form as the Commissioner in Executive Council may prescribe, by which proceedings in the court shall be certified and authenticated.

Duties

40.(1) The duties of the clerk shall be

- (a) to attend at his office and keep it open on such days of the week, other than holidays, and during such hours as the Commissioner in Executive Council may fix,
- (b) on application of any person by himself or his agent
 - (i) to receive all complaints and other papers required to be filed in Court,
 - (ii) to issue all statements of claim, warrants, precepts, writs of execution and other documents rendered necessary or requisite for the effectual disposition of such matters, and
 - (iii) to tax costs, enter judgments and record all judgments and orders pronounced, given or made,
- (c) to keep an account of all fines, fees and money payable or paid into Court and to enter all such amounts in proper books or accounts as may be prescribed,
- (d) to attend all trials before the Court unless his attendance is dispensed with by the Court, and
- (e) to do and perform all such other acts and duties as may be necessary for the administration of justice in the Yukon or as may be prescribed.

(2) The clerk shall on or before the 15th day of each month prepare a statement in the prescribed form in duplicate from the accounts and books mentioned in paragraph (1)(c) and transmit a copy of the statement to the Executive Council Member.

(3) The statement required by subsection (2) shall set forth the total amount of fees, fines and money which have been received by the clerk during the previous month, and with such statement the clerk shall transmit to the Executive Council Member the amount of all fees, fines and money received by him during the preceding month.

Substitute clerks

41. In the absence of the clerk a judge may appoint a suitable person to perform the duties prescribed in section 40.

Powers of a judge

42. A judge has ex officio throughout the Yukon all the powers of the clerk of the Court.

Resignation, removal or death of a clerk

43. All books, papers, documents and money in the possession of a clerk by virtue of or appertaining to his office shall upon his resignation, removal or death immediately become the property of such person as a judge may appoint pending the appointment of a new clerk of the Court.

Clerks not to practise as lawyers

44. No clerk while holding office shall practise as a lawyer in the Yukon or be a member of any firm of lawyers practising in the Yukon.

PUBLIC ADMINISTRATOR**Appointment**

45.(1) The Commissioner in Executive Council may appoint a fit and proper person to be public administrator and official guardian under the name of public administrator.

(2) Before entering upon his duties, the public administrator shall take an oath of office prescribed by the Commissioner in Executive Council.

(3) The work and operation of the office of public administrator and his dealings and accounts in connection with estates and property coming into his hands by virtue of his office is subject to inspection, examination and audit by the Auditor General of Canada.

(4) The public administrator shall furnish security to the Executive Council Member in the penal sum of \$10,000 conditioned for the due performance of his duties, and he is not otherwise required to furnish security as an administrator unless a judge so directs.

(5) Such security may be furnished by bond or agreement of any guarantee company approved by the Commissioner in Executive Council.

Protection of assets of deceased persons

46.(1) When any person dies whether testate or intestate and his lands, personal estate and effects have not been taken possession of by his executors or next-of-kin, the public administrator shall, when the facts are brought to his notice, forthwith take possession of the said lands, personal estate and effects and safely keep, preserve and protect them, and pending the grant of probate to an executor or the grant of letters of administration to an administrator, as the case may be, the public administrator has all the powers, rights and duties of an executor or administrator.

(2) Subsection (1) applies notwithstanding section 39 of the Financial Administration Act.

(3) The public administrator may authorize the Executive Council Member responsible for the Department of Finance to make and manage investments on behalf of the public administrator.

(4) Where investments are made or managed by the Executive Council Member responsible for the Department of Finance under subsection (3),

- (a) investments may be made in any investment permitted by the Trustee Act,
- (b) no net losses resulting from the investments, and no costs relating to the making or managing of the investments, shall be charged to the principal of the estate of any person for whom the public administrator is acting as executor or administrator under subsection (1),
- (c) reasonable costs of making or managing the investments may be charged to the net income or profit of the investments, and
- (d) all other interest, sale proceeds and other income resulting from the investments shall be credited to the public administrator in the capacity as executor or trustee under subsection (1).

Report of death to public administrator or R.C.M.P.

47.(1) Where a person in the charge or care or upon the premises of another person dies, the other person shall forthwith communicate to the public administrator or the officer or constable commanding the post of the Royal Canadian Mounted Police nearest the place where the death occurred all of the facts within his knowledge, information or belief pertaining to

- (a) the death,
- (b) the name, age and nationality of the deceased,
- (c) the place of residence and the domicile of the deceased,
- (d) whether or not the deceased left a will and, if so, where it may be found,
- (e) the names and addresses of the executors, if any, and of the next-of-kin of the deceased, and
- (f) what person or persons are in charge of any real or personal property of the deceased.

(2) Where there is no executor or next-of-kin competent and willing to take charge of the lands, personal estate and effects of a deceased, any person having custody of any money, goods, chattels, books, documents, papers or other effects belonging to the estate of the deceased shall forthwith deliver them to the public administrator or the officer or constable mentioned in subsection (1) and advise the public administrator or such officer or constable of all facts within his knowledge, information or belief touching the property both real and personal and the liabilities of the deceased.

(3) Where an officer or constable is given information under subsection (1), he shall, as soon as possible, transmit the information to the public administrator, and where assets of the estate have been delivered to him under subsection (2), he shall also transmit these assets as soon as possible to the public administrator and whenever immediate transmission of the assets is practicable, he shall transmit forthwith a complete inventory with approximate valuation of the assets.

Administration of estates

48. In the absence of any application for probate of a will or letters of administration within one month after the death of any person leaving property within the Yukon, the public administrator shall, when the facts are brought to his notice, enter upon the administration of the estate of the deceased.

Advertisement and distribution

49.(1) Where the public administrator is the administrator of an estate, he shall without any order for that purpose advertise twice in a newspaper published weekly or semi-weekly describing the estate and requesting anyone who may have a claim against it to file his claim verified by a statutory declaration.

(2) After the expiration of three months from the time of the second advertisement, the public administrator shall proceed to distribute the estate having regard only to the claims of which he then has notice and he is not liable for any assets so distributed to any person of whose claim he has not notice at the time of the distribution.

(3) Nothing in this section prejudices the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who have received all or part of such assets.

Application for direction

50.(1) The public administrator, upon making a written statement verified on oath and without the institution of a suit,

- (a) shall, when any question arises as to
 - (i) the priority of claims as between creditors or classes of creditors,
 - (ii) the incidence of succession duty,
 - (iii) the rights of beneficiaries as between themselves, or
 - (iv) the advisability of instituting or defending an action on behalf of the estate, and
- (b) may, where any other question arises respecting the administration of the estate of a testator or intestate,

apply to a judge in chambers for direction.

(2) Notice of an application under subsection (1) shall be served upon such persons interested in the application as the judge before whom the application is made thinks expedient, and if the public administrator bona fide acts upon the direction of the judge he is saved harmless from any action arising out of the matter unless he has been guilty of fraud, misrepresentation or wilful concealment in obtaining the direction.

Guardianship

51. When no other appointment has been made the public administrator shall be the guardian of the estate within the Yukon of all infants who have no parent residing or living in the Yukon.

Power to summon witnesses

52. The public administrator may summon before him at such time and place as he may appoint any person who, in his opinion, has knowledge of the estate and effects of any deceased person, and may examine such person upon oath touching his knowledge of the estate and effects.

Notice of passing of accounts by public administrator

53. Whenever the public administrator, with a view to passing his accounts in any estate, has taken out a summons calling upon creditors, next-of-kin and all persons interested in the estate to attend upon the passing of accounts, he may serve the summons upon all such persons by giving notice thereof at least one month prior to the date fixed for passing the accounts in a newspaper published in the district where the deceased person resided or, if there is no such newspaper, in some other newspaper published in the Yukon.

Offence and penalty

54. Any person who neglects to comply with section 47, who does not appear to a summons, or who refuses to take an oath or to be examined on oath in accordance with section 52 is liable upon summary conviction to a fine of not more than \$500 and not less than \$50.

Fees of the public administrator

55. The Commissioner in Executive Council may prescribe the fees to be charged by the public administrator.

SHERIFF

Appointment

56. There shall be a sheriff.

Deputy sheriff

57. If a deputy sheriff is appointed he shall in the absence or during the illness of the sheriff or whenever authorized so to do by the sheriff, exercise and perform all the powers and duties of the sheriff.

Office hours

58. The sheriff shall keep his office open on such days of the week, other than holidays, and during such hours as the Commissioner in Executive Council may fix.

Fee book

59. The sheriff shall keep a separate book in which he shall enter from day to day all fees and emoluments received by him in virtue of his office, showing separately the fees received for each service performed and such further facts and information as the Court may from time to time require.

Annual statement

60. The sheriff shall, on or before January 15 in each year, make up a statement in duplicate from the book referred to in section 59 and return the same to the Executive Council Member verified under oath, and such statement shall set forth the total amount of fees that have been received during the 12 months ended on December 31 next preceding.

Seal of office and records

61. The sheriff shall keep in his office open to the inspection of any person a seal of office and the following books:

- (a) process books in which shall be entered a memorandum of every process other than writs of execution or writs in the nature of writs of execution received by the sheriff, the Court out of which the same was issued, the date of the receipt, the nature of the process, the names of the parties thereto, the lawyer by whom issued, the date of the return and the nature of the return made thereto or what was thereunder or therewith done respectively;
- (b) execution books for goods and lands respectively in which shall be entered a memorandum of every writ of execution or writ in the nature of a writ of execution, the Court out of which the same issued, the names of the parties thereto, the lawyer by whom issued, the date of return and the nature of the return made thereto or what was done thereunder or therewith;
- (c) a cash book in which shall be entered all cash received or paid away by the sheriff in his official capacity or in connection with his office for any service whatever for fees, poundage, service of process and papers, attendance at Court, money levied under execution or under writs in the nature of writs of execution or otherwise, the date of the receipt or payment and the cause, matter or service in which or on account of which the same was received or paid away.

Ownership of books and records

62. All books, accounts, records, papers, writs, warrants, processes, money and other matters and things in the possession or under the control of the sheriff by virtue of or appertaining to his office as sheriff shall be the property of Her Majesty and the same shall immediately upon the resignation, removal from office or death of any sheriff be, by the party in whose possession or control they may come or happen to be, handed over to and taken possession of by the successor in office of such sheriff or such person as a judge may appoint to receive the same.

Unauthorized holding of books and records

63. Unless authorized by this Act no person shall take, have or hold any books, accounts, records, papers, writs, warrants, processes, money or other matters or things referred to in section 62, and any person having or holding any of such matter shall forthwith on demand deliver over the same and every one of them to the person entitled thereto; and every person who neglects or refuses so to do commits an offence and is liable on summary conviction to a fine not exceeding \$100.

Sale of lands where sheriff dies

64. In case of the death, resignation or removal of a sheriff after he has made a sale of lands but before he has made a transfer of the same to the purchaser, such transfer shall be made by the person who is lawfully executing the duties of the sheriff at the time when the deed of conveyance is made.

Execution against lands after sheriff goes out of office

65. When the sheriff goes out of office during the currency of any writ of execution against lands and before the sale of such lands, such writ shall be executed and the sale and transfer of the lands be made by his successor in office or by the person who is lawfully exercising the duties of the sheriff.

Liability after forfeiture of office

66. Notwithstanding that the sheriff has forfeited his office and become liable to be removed therefrom, the liability of the sheriff remains until a new sheriff has been appointed and sworn into office.

Person levying cannot be purchaser

67. No person shall directly or indirectly purchase any goods or chattels, lands or tenements by him exposed to sale under execution.

Damages for wilful misconduct

68. When a person entrusted with the execution of any writ, warrant or process, mesne or final, wilfully misconducts himself in the execution of the same or wilfully makes any false return to the writ, warrant or process, he is answerable in damages to any party aggrieved by such misconduct or false return.

Duty of sheriff's officer to return papers

69.(1) A sheriff's officer or clerk entrusted with the custody of any writ or process or of any book, paper or document belonging to the sheriff or his office shall upon demand upon him by the sheriff restore and return the writ, process, book, paper or document to the custody of the sheriff.

(2) In case of any neglect or refusal to return or restore the same the party so neglecting or refusing may be required by an order of the Court to return and restore the writ, process, book, paper or document to the sheriff, and if he disobeys the order, he may be further proceeded against by attachment as in other cases of contumacy to orders or Rules of Court.

Recovery of warrants and other processes

70. When the sheriff's officer has in his possession custody or control any writ of summons, fieri facias or other writ or any bench warrant or process whatsoever, and upon demand made by the sheriff from whom the same was received, his successor in office or any other party entitled to its possession, neglects or refuses to deliver up the same, the sheriff or the party entitled to its possession may proceed by summons and order before a judge to compel the production thereof; such order may be enforced in the same manner as like orders for the return of writs against sheriffs and with or without costs or be discharged with costs against the party applying in the discretion of the judge.

Sheriff cannot practise as lawyer

71. The sheriff while holding office shall not practise as a lawyer in the Yukon or be a member of any firm of lawyers practising in the Yukon.

CHAPTER 97

JURY ACT

Interpretation

1. In this Act,

“action” has the same meaning as in the Judicature Act;

“clerk” means the clerk of the Supreme Court.

Right to jury in civil matters

2.(1) Where, in any action for libel, slander, false imprisonment, malicious prosecution, seduction or breach of promise of marriage, or in any action founded upon a tort or contract in which the amount claimed exceeds \$1000, or in any action for the recovery of real property, either party to the action applies to the Supreme Court, not less than two weeks prior to the time fixed for the trial of the action before a jury, the action shall, subject to subsection (2) and to section 3, be tried before a jury, but in no other case shall an action be tried before a jury.

(2) Where, in any action of a class specified in subsection (1), application is made for the trial of that action before a jury and it appears to a judge, either before or after the commencement of the trial, that the trial will involve any prolonged examination of documents or accounts or any scientific investigation that, in the opinion of the judge, cannot conveniently be made by a jury, the judge may direct that the action be tried without a jury or that the jury be dismissed, in which case the action shall be tried or the trial continued, as the case may be without a jury.

Jury costs

3.(1) Where, in accordance with subsection 2(1), application is made for the trial of an action before a jury, the party making the application shall deposit with the clerk security for payment of the cost of the jury.

(2) Upon the conclusion of the sittings at which the action is tried the party making the application shall pay to the clerk any amount by which the cost of the jury exceeds the amount of the security deposited by him in accordance with subsection (1), and is entitled to have returned to him any amount by which the amount of the security so deposited exceeds the cost of the jury.

(3) If the party making the application obtains judgment in his favour, he shall, unless the judge otherwise orders, be allowed and may tax against the unsuccessful party to the action the cost of the jury.

(4) In this section, “cost of the jury” means

- (a) the total cost of the jury for the sittings of the Supreme Court at which the action is tried, including the cost of summoning the panel, jurors’ fees and allowances, and all other lawful expenses in connection therewith, as certified by the clerk, or

- (b) in any case where a jury is used for the trial of more than one action or proceeding at the same sittings of the Supreme Court, a portion of the total cost specified in paragraph (a), the said portion to be determined at the conclusion of the sittings in accordance with the Rules of Court, or, if there are no such rules applicable, in accordance with an order to be made by the presiding judge.

Persons qualified to serve as jurors

4. Subject to this Act, every person who

- (a) is 21 or more years of age,
- (b) is a Canadian citizen or British subject, and
- (c) is able to speak and understand the English language,

is qualified to serve as a juror in any action or proceeding that may be tried by a jury in the Yukon.

Persons not qualified

5. No person is qualified to serve as a juror who

- (a) has been convicted of an offence for which he was sentenced to a term of imprisonment exceeding one year, not having been subsequently granted a free pardon, or
- (b) is afflicted with blindness or deafness, or is a mentally disordered person, idiot or imbecile, or possesses any other physical or mental infirmity incompatible with the discharge of the duties of a juror.

Persons exempt from service

6. The following persons are exempt from service as jurors:

- (a) members of the Queen's Privy Council for Canada or of the Senate or House of Commons of Canada;
- (b) the Commissioner and members of the Legislative Assembly;
- (c) members of the Royal Canadian Mounted Police;
- (d) judges of any court of record, justices of the peace and coroners;
- (e) practising lawyers;
- (f) clerics of any denomination;
- (g) salaried firefighters and active members of the fire brigade of a municipality;
- (h) officers of the Supreme Court, including sheriff's officers and bailiffs;
- (i) persons employed in the Corrections Branch of the Department of Justice;
- (j) persons employed in the public service of the Yukon classified as probation officers and social workers;
- (k) telegraph, telephone and radio operators;
- (l) postmasters;
- (m) commissioned and non-commissioned members of the regular naval, army or air forces of Her Majesty in right of Canada;
- (n) physicians, surgeons, dental surgeons and druggists in active practice;
- (o) nurses in active practice;
- (p) persons actually engaged in the operation of
 - (i) railway trains and steamships,
 - (ii) plants producing electricity for public consumption, and

- (iii) water distribution systems distributing water for public consumption.

Persons excused

7. No person is required to serve as a juror more than once in any two year period, unless the service of that person as a juror is necessary by reason of there being an insufficient number of persons qualified to serve as jurors within a distance of 20 miles from the place of trial.

Jury list

8.(1) The sheriff shall, prior to November 1 in each year or as nearly as possible thereafter, compile a list in the prescribed form of persons who are qualified to serve as jurors and who are not, to his knowledge, exempt from service, for each place fixed for the sittings of the Supreme Court in the following year.

(2) The list shall contain, if possible, not less than 48 names, and shall give the addresses and occupations of the persons whose names are listed.

(3) The name of any person whose dwelling is more than 20 miles from the place fixed for the sittings of the Supreme Court shall not be entered upon the list, unless the number of persons who live within a distance of 20 miles from the place so fixed and who are qualified to serve as jurors is, in the opinion of the sheriff, insufficient, having regard to the provisions of subsection (2).

Information to assist compilation of list

9. For the purpose of compiling the list referred to in section 8 the sheriff shall have access to the voters lists, assessment rolls and other public documents under the control of any officer of a municipality situated within, or partly within, a distance of 20 miles from the place fixed for the sittings, and the said officer shall furnish to the sheriff upon request any available information as to the qualifications and suitability of persons for service as jurors.

Certification of lists

10. As soon as possible after November 1 in each year, the sheriff shall certify the lists prepared by him and shall forward them to the clerk.

Supplementary lists

11.(1) If, after the lists previously referred to have been forwarded to the clerk, a place other than one for which a list has been prepared is fixed for the sittings of the Supreme Court, or if for any other reason a judge considers it necessary, the judge may order the sheriff to prepare, certify and return to him a supplementary list; the order shall state the time within which the return is to be made, and may contain such other directions as to the judge seems necessary.

(2) Upon receipt by the sheriff of the order referred to in subsection (1) the sheriff shall proceed according to the tenor thereof.

(3) Each supplementary list shall be in the prescribed form, and shall be marked "supplementary list".

Selection of jury panel

12.(1) Upon receipt of notice that a jury will be required for a sitting of the Supreme Court, the clerk shall, within a reasonable time before the day fixed for the commencement of the sitting, certify over his hand the number of jurors that, in his opinion, will be required for the sitting and shall forthwith forward the certificate to a judge and apply to him for an appointment to select the panel.

(2) Upon receipt of the application for an appointment the judge shall appoint a time and place for the selection of the panel, and if unable to attend at the time and place appointed he shall appoint some other person to act in his behalf.

(3) The clerk shall notify the sheriff in writing of the time and place fixed for the selection of the panel, at least 24 hours prior to the time so fixed.

(4) Prior to the time fixed for the selection of the panel, the clerk shall write the name of each person named in the list or supplementary list returned to him by the sheriff, together with the person's address and occupation, upon a card or piece of paper, each of uniform size, and shall place each card or piece of paper in a separate envelope and seal it, each such envelope being of uniform size and shape and without markings of any kind.

(5) At the time appointed for the selection of the panel the judge or the person appointed to act in his behalf and the sheriff shall attend at the place appointed, where the clerk shall cause all the envelopes containing the names of the persons named on the list to be placed in a suitable container and thoroughly mixed in the presence of the judge or his appointee and in the presence of the sheriff, and the sheriff shall draw from the container a number of envelopes corresponding to the number of jurors required, as certified by the clerk; the envelopes so drawn shall be opened by the sheriff and the names contained therein shall be placed on the panel list.

(6) If, at the time the panel is selected or at any time thereafter, the clerk is of the opinion that the number of jurors so selected will not be sufficient, by reason of the selection of names of persons who are exempt from service as jurors or are entitled to be excused therefrom, he shall so certify, and shall further certify to the additional number that, in his opinion is necessary, and shall in accordance with the requirements of this section make a second drawing and add the names contained in the envelopes so drawn to the panel list.

(7) A third drawing or as many as are required may be made in accordance with the provisions of this section.

(8) Where the same person performs the duties of sheriff and clerk or where the sheriff or clerk is not available by reason of illness or other cause, the judge shall appoint a person employed in the office of the sheriff or clerk, or, if such person is not available, a judge of the Territorial Court or justice of the peace, to perform the duties of sheriff or clerk as the case may be.

(9) The judge or his appointee shall certify as to his attendance at the selection of the panel and as to the regularity of the proceedings.

(10) All certificates required in accordance with this section shall be retained in the custody of the clerk.

Proceedings after selection of panel

13. Upon completion of the panel list, the clerk shall submit the same to the judge, who may remove from the list the names of any persons who, in his opinion, would suffer undue hardship or serious inconvenience were they to be called upon to serve as jurors, and immediately thereafter shall certify the list as revised by him and return the same to the clerk, who shall forthwith issue to the sheriff a precept, in the prescribed form, requiring the sheriff to summon the persons named on the panel list to attend the Supreme Court at the time and place fixed for the commencement of the sittings, and shall deliver the same to the sheriff at least ten days prior to the time so fixed.

Summoning of jurors

14.(1) Upon receipt of the precept referred to in section 13, the sheriff shall summon each person named on the panel list by serving upon him or leaving with a responsible member of his household a written summons in the prescribed form.

(2) When serving a summons upon any person the sheriff shall ascertain or attempt to ascertain whether that person's service as a juror will inflict upon him undue hardship or serious inconvenience, and if in the opinion of the sheriff such hardship or inconvenience is likely to result he shall report the same to the clerk.

(3) The sheriff is not guilty of a breach of duty by reason only that he fails to serve with a summons any person whose name appears on the panel list, if his failure to serve that person is due to a cause over which he has no control.

Return by sheriff

15. The sheriff shall, on or before the commencement of the sittings of the Supreme Court, deliver to the clerk the precept referred to in section 14, together with a return showing his action thereon and listing the names of persons requesting to be excused from service.

Selection of jurors from the panel

16. The sheriff shall write the name, address and occupation of each person who has been summoned by him and who is not excused from serving as a juror on a separate card or piece of paper, each of which shall be of uniform size, and shall place the cards in a suitable container and deliver it to the clerk.

Selection of individual jurors

17.(1) Immediately prior to the commencement of each trial for which a jury is required, the clerk shall, in open court, cause the container to be shaken and the cards or pieces of paper therein thoroughly mixed, and shall then draw out the cards or pieces of paper one at a time, shaking the container after each drawing, and shall continue to draw out such cards or pieces of paper so long as it is necessary to do so in order to obtain a complete jury.

(2) The cards selected bearing the names of persons subsequently sworn as jurors shall be kept apart until the verdict is given or the jury is dismissed or discharged and shall then be returned to the container, unless no other action or proceeding remains to be tried by a jury at the sittings of the Supreme Court.

Challenge in civil matters

18.(1) A party to a civil action may, at any time before a person whose name has been selected pursuant to section 18 is sworn, challenge that person for cause.

(2) Where a challenge is exercised pursuant to subsection (1), the judge may, in his discretion, allow the challenge or direct that the person so challenged be sworn.

(3) Each side prosecuting or defending an action may exercise not more than three peremptory challenges which, when exercised, may not be withdrawn.

Swearing of jurors

19. Where a person whose name is selected pursuant to section 17 is not challenged or is challenged but the challenge is disallowed, as the case may be, the clerk shall swear that person and when sworn that person shall be a juror for the trial of the action.

Judge may excuse

20. The judge may for a good cause excuse from service as a juror any person who has been summoned but has not been sworn.

Deficiency in number of jurors

21. Where at the trial of any action the number of jurors in attendance is less than the number required, or if so reduced for any reason that a full jury cannot be sworn, the judge may, upon application by any party to the action, direct the sheriff to summon such other qualified persons as are needed and can be found and to add their names to the panel.

Jurors not needed

22. If at any time during the sittings of the Supreme Court it appears to the judge that the services of any person as a juror will not be needed, he may order that person to be discharged.

Inspection by jury

23. Where, during the trial of an action before a jury, it appears to the judge that a view by the jury of any place or any real or personal property in question is necessary or desirable in order that the jury may better understand the evidence, the judge may, at any time before a verdict is returned, order such view by the jury, on such terms as to costs as to him seems just, and the order so made shall contain directions to the sheriff as to the manner in which and the persons by whom the place or property in question shall be shown to the jury, and shall contain any other direction to the sheriff that the judge sees fit to make.

Verdict

24.(1) The jury for the trial of an action shall consist of six persons, any five of whom may return a verdict or answer questions submitted to them by the judge.

(2) Where more than one question is submitted to the jury in any action, it is not necessary for the same five jurors to agree upon each answer.

Special verdict

25. Subject to subsection 6(1) of the Defamation Act, in the absence of any direction by the judge the jury may return a general or special verdict, but shall return a special verdict if the judge so directs and shall not return a general verdict if the judge directs them not to do so; the judge may direct the jury to answer any questions of fact submitted by him, in which case the jury shall answer any such questions and the answers thereto shall constitute a special verdict.

Impeaching verdict

26. Subject to section 18, failure to observe any direction in this Act respecting the qualification, exception or excusal of jurors, the compilation and preparations of lists for the purpose of this Act, the form of such lists or any other requirements with respect thereto, the summoning of jurors or the selection or formation of the panel is not a ground for impeaching the verdict or answers given by a jury in any action.

Attendance of jurors

27. If during the trial of an action a member of the jury becomes ill, the judge may, in his discretion, direct that the trial shall proceed without him and the verdict of the remaining five jurors, if unanimous, shall be valid.

Necessities of jury

28.(1) No jury shall be kept without meat, drink or other reasonable comfort while it is considering its verdict.

(2) Where, during the trial of an action, the judge directs that the jury shall not be allowed to separate, the sheriff shall provide such food and lodgings as he considers proper, the cost thereof as certified by him to be included as part of the costs of the jury.

Failure to obey summons

29. Where a person who is summoned to appear for service as a juror fails to obey the summons or fails to answer to his or her name when called by the clerk, the judge may impose a fine not less than \$25 and not exceeding \$200.

Breach of secrecy by juror

30. Every person shall, in respect of the trial of any action or proceeding in which he serves or has served as a juror, well and truly keep secret the Queen's counsel, his own and that of his fellow jurors, and any juror who divulges any such secret commits an offence and is liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding two months, or to both fine and imprisonment.

Regulations

31.(1) The Commissioner in Executive Council may make regulations respecting the fees and allowances payable to jurors, and in the absence of such regulations the fees and allowances payable are those specified in the Rules of Court.

(2) The Commissioner in Executive Council may make regulations prescribing forms to be used for the purposes of this Act.

CHAPTER 98

LANDLORD AND TENANT ACT

Interpretation

1. In this Act,

“crops” means the products of the soil, and includes all sorts of grain, grass, hay, hops, fruits, vegetables and other products of the soil;

“land” includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way, also a rent charged upon or payable in respect of any land, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land;

“landlord” includes every lessor, owner or person giving or permitting the occupation of land and their respective successors in title;

“mines and minerals” includes any strata or seam of minerals or substances in or under any land and powers of working and getting the same, but not an undivided share thereof.

PART 1

COVENANTS AND CONDITIONS

Rent and tenants’ covenants annexed to reversionary estate

2.(1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, relating to the leased premises and on the tenant’s part to be observed or performed, and every condition of re-entry and other condition therein contained, is annexed and incident to and goes with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate.

(2) Any rent, covenant or provision is capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(3) Where a person becomes entitled by conveyance or otherwise, he may recover, receive, enforce or take advantage of the rent, covenant or provision notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before a person becomes so entitled.

(4) This section applies to leases made before or after November 20, 1954, but does not affect the operation of

(a) any severance of the reversionary estate, or

(b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or provision

effected before November 20, 1954.

Covenants of landlord annexed to reversionary estate

3.(1) The obligation under a condition or of a covenant entered into by a landlord relating to his leased premises shall, if and as far as the landlord had power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is for the time being vested by conveyance, devolution in law or otherwise; and, if and as far as the landlord has power to bind the person from time to time entitled to that reversionary estate, the obligation may be taken advantage of and enforced against any person so entitled.

(2) This section applies to leases made before or after November 20, 1954, whether the severance of the reversionary estate was effected before or after that date.

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate.

Apportionment of condition of re-entry

4. Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cessation in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

Merger of reversions

5. Where a reversion expectant on a lease of land is surrendered or merged the estate or interest which, as against the tenant for the time being, confers the next vested right to the land shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion if there had been no surrender or merger thereof.

Waste by tenants

6.(1) Subject to the express terms of any lease, or of any valid and subsisting covenant, agreement or stipulation affecting the tenancy,

- (a) every tenant for years and every tenant for life is liable to his landlord and to every other person for the time being having a reversionary interest in the leased premises for voluntary waste and for permissive waste in respect of the premises to the extent by which the interest of the landlord and other persons, if any, having a reversionary interest in the premises is detrimentally affected thereby, and
- (b) every tenant at will is liable to his landlord and every other person having a reversionary interest in the leased premises for voluntary waste in respect of the premises to the extent by which the interest of the landlord and other

persons, if any, having a reversionary interest in the premises is detrimentally affected thereby.

(2) Every landlord and every person having a reversionary interest in any leased premises may in respect of any waste by a tenant in respect of the premises in an action brought in any court obtain damages or an injunction, or both.

Defects in lease made under power of leasing

7.(1) Where, in the intended exercise of any power of leasing whether conferred by a statute or by any other instrument, a lease is granted which by reason of any failure to comply with the terms of the power is invalid, the lease, if it was made in good faith and the lessee has entered thereunder, shall

- (a) as against the person entitled after the determination of the interest of the grantor to the reversion, or
- (b) as against any other person, who, subject to any lease properly granted under the power, would have been entitled to the land comprised in the lease,

take effect as a contract for the grant, at the request of the lessee, of a valid lease under the power, of like effect as the invalid lease, subject to such variations as may be necessary in order to comply with the terms of the powers; but a lessee under an invalid lease is not, by virtue of any such implied contract, entitled to obtain a variation of the lease if the other persons who would have been bound by the contract are willing and able to confirm the lease without variation.

(2) Where a lease granted in the intended exercise of a power of leasing conferred by a statute or other instrument is invalid by reason of the grantor not having power to grant the lease at the date thereof, but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a lease in the like terms, the lease takes effect as a valid lease in like manner as if it had been granted at that date.

(3) Where during the continuance of the possession taken under an invalid lease the person for the time being entitled, subject to such possession, to the land comprised therein or to the rents and profits thereof, is able to confirm the lease without variation, the lessee or other person who would have been bound by the lease had it been valid is, at the request of the person so able to confirm the lease, bound to accept a confirmation thereof, and thereupon the lease has effect and is deemed to have had effect as a valid lease from the grant thereof.

(4) Confirmation under subsection (3) may be by a memorandum in writing signed by or on behalf of the persons respectively confirming and accepting the confirmation of the lease.

(5) Where a receipt or a memorandum in writing confirming the invalid lease is, upon or before the acceptance of rent thereunder, signed by or on behalf of the person accepting the rent, that acceptance is, as against that person, deemed to be a confirmation of the lease.

(6) This section does not affect prejudicially

- (a) any right of action or other right or remedy to which, but for this section, the lessee named in an invalid lease would or might have been entitled under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby, or

- (b) any right of re-entry or other right or remedy to which, but for this section, the grantor or other person for the time being entitled to the reversion expectant on the termination of the lease would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the lease and binding on the lessee.

(7) Where a valid power of leasing is vested in or may be exercised by a person who grants a lease that, by reason of the determination of the interest of the grantor or otherwise cannot have effect and continuance according to the terms thereof independently of the power, the lease shall for the purposes of this section be deemed to have granted in the intended exercise of the power although the power is not referred to in the lease.

(8) This section takes effect without prejudice to the provision of this Act for the grant of leases in the name and on behalf of the estate owner of the land affected.

Implied powers of lessor

8. In every lease, unless a different intention appears therein, there shall be implied powers in the lessor

- (a) that, by himself or his agents, he may enter upon the demised land and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode, or upon the demised land, a notice in writing of any defect, requiring him within a reasonable time, to be therein mentioned, to repair the same, insofar as the tenant is bound so to do, and
- (b) that in case the rent or any part thereof is in arrears for the space of two calendar months, or in case default is made in the fulfilment of any covenant in such lease on the part of the lessee, whether express or implied, and is continued for the space of two calendar months, or in case the repairs required by such notice as aforesaid are not completed within the time therein specified, the lessor may enter upon and take possession of the demised land.

Re-entry on bawdy house conviction

9. In every lease whenever made there is implied an agreement that if the tenant or any other person is convicted of keeping a common bawdy house, within the meaning of the Criminal Code (Canada) on the demised premises or any part thereof, the landlord may at any time thereafter, into the demised premises or any part thereof, re-enter and the same have again, re-possess and enjoy as of his former estate.

Licences to tenants

10.(1) Where a licence is granted to a tenant to do any act, the licence, unless otherwise expressed, extends only

- (a) to the permission actually given,
- (b) to the specific breach of any provision or covenant referred to, or
- (c) to any other matter specifically authorized to be done,

and the licence does not prevent any proceeding for any subsequent breach unless otherwise specified in the licence.

(2) Notwithstanding any licence,

- (a) all rights under covenants and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorized or waived, in the same manner as if no licence had been granted, and
- (b) the condition or right of entry remains in force in all respects as if the licence had not been granted, save in respect of the particular matter authorized to be done.

(3) Where in any lease there is power or condition of re-entry on the tenant assigning, subletting or doing any other specified act without a licence, and a licence is granted

- (a) to any one of two or more tenants to do any act, or to deal with his equitable share or interest, or
- (b) to any tenant, or to any one of two or more tenants to assign or underlet part only of the property, or to do any act in respect of part only of the property,

the licence does not operate to extinguish the right of entry in case of any breach of covenant or condition by the co-lessees of the other shares or interests in the property, or by the tenant or tenants of the rest of the property, as the case may be, in respect of such shares or interest or remaining property, but the right of entry remains in force in respect of the shares, interests or property not subject to the licence.

(4) Subsection (3) does not authorize the grant after November 20, 1954, of a licence to create an undivided share in a legal estate.

Licences to assign or sublet

11.(1) In every lease containing a covenant, condition or agreement against assigning, subletting or parting with the possession, or disposing of the land leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject

- (a) to a proviso to the effect that such licence or consent shall not be unreasonably withheld, and
- (b) to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent, but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

(2) Where the landlord refuses or neglects to give a licence or consent to assign or sublet, a judge, upon the application of the tenant or assignee or subtenant, may make an order determining whether or not such licence or consent is unreasonably withheld, and where it is so withheld, permitting the assignment or sublease to be made, and such order shall be the equivalent of the licence or consent of the landlord within the meaning of any covenant or condition requiring the same, and such assignment or sublease shall not be a breach thereof.

Notice of process for recovery of premises

12. A tenant to whom there is delivered any process of any court for the recovery of premises demised to or held by him, or to whose knowledge any such process comes, shall forthwith give notice thereof to his landlord or his agent, and if he fails so to do, he shall be answerable for all damages sustained by the landlord by reason of the failure to give the notice.

Parties to action for re-entry

13. Where a landlord is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease, if it be known to the landlord that he claims such right or interest or if the instrument under which he claims is registered in the land titles office shall be made a party to the action.

Effect of waiver of covenants and conditions

14. Where the actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant or condition in any lease is proved to have taken place in any particular instance, such waiver shall not, unless a contrary intention appears, be deemed to extend to any instance, or to any breach of covenant or condition save that to which such waiver specially relates, nor operate as a general waiver of the benefit of any such covenant or condition.

Implied covenants

15. In every lease, unless a contrary intention appears therein, there shall be implied covenants by the lessee

- (a) that he will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised land during the continuance of the lease, and
- (b) that he will, at all times during the continuance of the lease, keep and, at the termination thereof, yield up the demised land in good and tenantable repair, accidents and damage to buildings from fire, storm and tempest or other casualty and reasonable wear and tear excepted.

Notice to terminate tenancies and overholding tenants

16.(1) Subject to any express agreement to the contrary, sufficient notice to quit shall be deemed to have been given where there is given,

- (a) in the case of a weekly tenancy, a week's notice ending with the week,
- (b) in the case of a monthly tenancy, a month's notice ending with the month, and
- (c) in the case of a tenancy from year to year, three months notice ending, in the case of a tenancy originally from year to year, with an anniversary of the last day of the first year thereof, and in the case of all other tenancies from year to year, with an anniversary of the last day of the original tenancy.

(2) Where a tenant, upon the determination of his lease, whether created by writing or by parol, remains in possession with the consent, express or implied, of the landlord, he is deemed to be holding subject to the terms of the lease, so far as they are applicable.

(3) Where the tenancy created by the lease was neither a weekly nor monthly tenancy nor a tenancy from year to year, the overholding tenant is deemed to be holding as a tenant from year to year.

Deemed right of distress for rent

17. Where any rent is payable or reserved by virtue of any deed, transfer or other assurance, or by will, and there exists no express right of distress for the recovery thereof, the person entitled to receive the rent has the same right of distress for the recovery thereof as if the same were rent reserved upon lease.

Distress for rent

18. Upon the determination of any lease the person entitled as landlord to receive any rent made payable thereby may at any time

- (a) within six months next after the determination of the lease,
- (b) within such six months during the continuance of the landlord's interest, and
- (c) within such six months during the possession of the tenant from whom the rent became due,

distrain for any rent due and in arrears in the same manner as he might have done if the lease were not determined.

Recovery of rent for the life of another

19. A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life such rent or land depended as he might have done if the person by whose death the estate in such rent or land determined had continued in life.

Distress limits

20.(1) No person shall take under distress more goods than are reasonably sufficient to satisfy the rent in arrears and the costs of the distress.

(2) Where chattels are distrained for rent due, the person making the distress is not liable to any action for excessive distress if within seven days after the making of the distress he abandons the excess and thereafter holds under the distress no more chattels than are reasonably necessary to satisfy the rent due with the costs of the distress.

Time

21. No distress for rent shall be made at any time in the interval between five o'clock in the afternoon and eight o'clock in the following morning.

Property liable to distress

22. Subject to this Act, goods or chattels that are not at the time of the distress upon the premises in respect of which the rent distrained for is due shall not be distrained for rent.

Exemptions

23. The following goods and chattels are not liable to seizure by a distress by a landlord for rent:

- (a) the beds, bedding and bedsteads, including perambulators or cradles, in ordinary use by the debtor and his family;
- (b) the necessary and ordinary wearing apparel of the debtor and his family;
- (c) one cooking stove with pipes and furnishings, one other heating stove with pipes, two towels, one wash-basin, one kitchen table, one tea kettle, one teapot, one saucepan, one frying pan;
- (d) for each member of the family, one chair, one cup and saucer, one plate, one knife, one fork and one spoon;
- (e) all necessary fuel, meat, fish, flour and vegetables for the ordinary consumption of the debtor and his family for 30 days;
- (f) the tools, agricultural implements and necessaries used by the debtor in the practice of his trade, profession or occupation to the value of \$600;
- (g) one axe and one saw.

Livestock

24. The landlord may take under a distress for rent any horses, cattle, sheep, swine, poultry, fowl, livestock and other domestic animals which are grazing, pasturing or feeding upon any highway or road allowance or upon any way belonging or appertaining to the premises in respect of which the rent distrained for is payable.

Goods fraudulently removed

25. Where a tenant of land under any kind of tenancy under which rent is payable fraudulently or clandestinely removes or causes to be removed from the land so held by him at a time when there are any arrears of rent payable in respect thereof that are recoverable by distress any goods or chattels liable to such distress with intent to prevent the landlord from distraining the same for arrears of rent so payable, the landlord or any person by him duly authorized may, within 30 days next after such removal, take and seize as a distress for such arrears any goods and chattels so removed, wherever the same are found, except any such goods and chattels which have been sold or mortgaged for valuable consideration before the seizure to a person not having notice of the fraudulent or clandestine removal, and may sell or otherwise dispose of the goods and chattels so taken in such manner as if the same had actually been distrained by the landlord for arrears of rent upon the premises from which the same had been so removed.

Execution of warrants of distress

26.(1) Every person lawfully charged with the duty of executing a warrant of distress for rent who has reason to believe that any goods or chattels have been fraudulently or clandestinely removed for the purpose of preventing the landlord from distraining the same, and that the goods are in any building, yard, enclosure or place in such circumstances as to prevent them from being taken or seized as a distress for arrears of rent, may at any time between eight o'clock in the morning and five o'clock in the afternoon enter into and upon the building, yard, enclosure or place and every part thereof for the purpose of searching for any goods and chattels so removed and seize any such goods and chattels there found for arrears of rent as he might have done if they were in an open field or place upon the premises from which they were removed, and for that purpose may obtain entry upon and access to the premises by breaking or removing any doors or any locks or other fastenings whereby such entry and access is hindered.

(2) Where a person encounters any resistance in doing any of the acts and things that he is authorized to do by subsection (1), he may call upon any peace officer to assist him in overcoming that resistance, and such person in the presence of a peace officer and the peace officer may use such force as is reasonably necessary for the purpose of overcoming that resistance.

Double value where goods fraudulently removed

27. Every tenant who fraudulently or clandestinely removes any goods and chattels for the purpose of preventing the landlord from distraining the same for arrears of rent, and every person who wilfully and knowingly aids or assists him in so doing or in concealing any goods or chattels so removed, is liable to the landlord for double value of the goods, which amount is recoverable by action in any court.

Property subject to distress

28. No goods and chattels may be taken under a distress for rent excepting the goods and chattels of the tenant and

- (a) goods and chattels that are claimed by a person other than the tenant
 - (i) by virtue of any execution against the tenant,
 - (ii) by virtue of any purchase, gift, transfer or assignment from the tenant whether absolute or in trust or by way of mortgage or otherwise, and
 - (iii) being the spouse, child, or child-in-law of the tenant or by any other relative of the tenant who lives upon the premises in respect of which the rent distrained for is payable as a member of the household of the tenant,
- (b) the interest of the tenant in any goods and chattels under a contract for the purchase thereof or under a contract whereby the tenant may become the owner thereof upon the performance of any condition, and
- (c) goods and chattels that have been exchanged between the tenant and another person, or that have been borrowed by the one from the other, for the purpose of defeating the claim of or the right of distress by the landlord.

Impounding

29.(1) Any goods or chattels taken in distress for rent may be impounded or otherwise secured either upon the premises chargeable with the rent or some part thereof, or in some other suitable and convenient place situate within ten miles of the premises chargeable with the rent, and the same may be appraised, sold and disposed of upon the premises in which they are so impounded or secured.

(2) Any person may come and go to and from the place at which any distress for rent is so impounded and secured, to view, appraise and buy and to carry off or remove the same on account of the purchaser thereof.

Appraisal

30.(1) Where any goods or chattels are distrained for rent and the tenant does not replevy the same within five days next after notice in writing of the distress, setting out the cause of the taking, has been posted upon a conspicuous place on the premises in respect of which the rent is payable and, where the distress is impounded elsewhere, at the place of impoundment, then after the expiration of the said five days, the person distraining shall cause the goods and chattels so distrained to be appraised by two appraisers.

(2) Before making any appraisal the appraisers shall each be sworn to appraise the goods taken in distress truly, according to the best of their understanding, and a memorandum of the said oath shall be endorsed on the inventory.

Sale

31. After the appraisal has been made the person distraining may sell the goods and chattels distrained for the best price that can be got for the same towards satisfaction of the rent for which the same were distrained and of the costs of such distress, appraisal and sale, and shall hold the overplus, if any, for use of the person lawfully entitled thereto and pay the same over to him on demand.

Set-off against rent

32.(1) A tenant may set-off against rent a debt due to him by the landlord, in which case he shall give notice in writing of the claim of set-off in the prescribed form, which notice may be given before or after seizure.

(2) Upon the giving of a notice under subsection (1), the landlord may distrain or proceed with the distress, as the case may be, for the balance of the rent due after deducting the amount of the debt mentioned in the notice that is due and owing by the landlord to the tenant.

(3) The notice mentioned in subsection (1) may be served either personally upon the landlord or upon any other person authorized to receive rent on his behalf or by leaving it with a grown-up person in and apparently residing on the premises occupied by the landlord.

(4) No notice given under this section is rendered invalid for any want of form.

Distrainable goods taken in execution

33.(1) Goods or chattels lying or being in or upon any land or premises leased for life or lives, or term of years, at will, or otherwise are not liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the execution is sued out before the removal of such goods or chattels from the land or premises by virtue of such execution pays to the landlord or his bailiff all money due for rent of the land or premises at the time of the taking of such goods or chattels by virtue of such execution, if the arrears of rent do not amount to more than one year's rent.

(2) Where arrears of rent exceed one year's rent the party at whose suit such execution is sued out, on paying the landlord or his bailiff one year's rent, may proceed to execute his judgment.

(3) The sheriff or other officer shall levy and pay to the execution creditor as well the money paid for rent under subsection (2) as the execution money.

Effect of irregularities

34. Where a distress is made for any kind of rent due, and any irregularity is afterwards done by the person distraining, or by his agent, or if there has been an omission to make the appraisalment under oath, the distress itself is not on that account deemed to be unlawful, nor is the person making it on that account deemed a trespasser ab initio, but the person aggrieved by such irregularity may recover by action full satisfaction for the special damage sustained thereby.

Liability of distrainor

35.(1) Subject to section 20, a distrainor who makes an excessive distress or makes a distress wrongfully is liable in damages to the owner of the goods or chattels distrained.

(2) Where a distress and sale are made for rent pretended to be in arrears and due when, in truth, no rent is in arrears or due to the person distraining, or to the person in whose name or right such distress is made, the owner of the goods or chattels distrained and sold, his executors or administrators may, by action to be brought against the person so distraining, recover full satisfaction for the damage sustained by the distress and sale.

Rights of landlord on tenant's bankruptcy

36.(1) Where an assignment for the general benefit of creditors, where an order for the winding-up of an incorporated company, or where a receiving order in bankruptcy or authorized assignment is made against or by a tenant, the right of the landlord to distrain or realize his rent by distress ceases from and after the date of the assignment or order and the assignee, trustee or liquidator may take immediate possession of the property of the tenant, but in the distribution of the property of the tenant the assignee, trustee or liquidator shall pay to the landlord, in priority to all other debts, an amount not exceeding the value of the distrainable assets and restricted to the arrears of rent due during the period of three months next preceding and the costs of distress, if any, and the rent for the three months following the date of the assignment or order, and from thence so long as the assignee, trustee or liquidator retains possession of the premises, but any payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the assignee, trustee or liquidator for the period of his occupation.

(2) Notwithstanding any provision, stipulation or agreement in any lease or agreement or the legal effect thereof, where an assignment for the general benefit of creditors, where an order for the winding-up of an incorporated company, or where a receiving order in bankruptcy or authorized assignment has been made against or by a tenant, the assignee, trustee or liquidator may at any time within three months after the date of the assignment or order for the purposes of the trust estate and before he has given notice of intention to surrender possession or disclaim, by notice in writing elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal thereof, upon the terms of the lease and subject to the payment of the rent as provided by such lease or agreement, and he may upon payment to the landlord of all arrears of rent, assign the lease with rights of renewal, if any, to any person who will covenant to observe and perform its terms and agree to conduct upon the demised premises a trade or business that is not reasonably of a more objectionable or hazardous nature than that which was thereon conducted by the debtor, and who shall on application of the assignee, trustee or liquidator be approved by a judge as a person fit and proper to be put in possession of the leased premises.

Notice to surrender possession

37.(1) The assignee, trustee or liquidator shall have the right at any time before electing by notice in writing to the landlord under section 36 to surrender possession or disclaim any such lease, and his entry into possession of the leased premises and their occupation by him, while required for the purpose of the trust estate, shall be deemed not to be evidence of an intention on his part to elect to retain possession pursuant to this section.

(2) Where the assignor or person against whom a receiving order in bankruptcy or a winding-up order has been made, being a lessee, has before the making of the assignment or order demised by way of under-lease, approved or consented to in writing by the landlord, any premises and the assignee, trustee or liquidator surrenders, disclaims or elects to assign the lease, the under-lessee shall if he so elects in writing within three months of the assignment or order stand in the same position with the landlord as though he were a direct lessee from the landlord but subject, except as to rental payable, to the same liabilities and obligations as the assignor, bankrupt or insolvent was subject to under the lease at the date of the assignment or order, but the under-lessee shall in such event covenant to pay to the landlord a rental not less

than that payable by the under-lessee to the debtor, and if such last mentioned rental was greater than that payable by the debtor to the landlord the under-lessee shall covenant to pay to the landlord the like greater rental.

(3) Any dispute arising under this section shall be disposed of upon summary application by a judge.

Attornment

38.(1) An attornment of a tenant of any land to a stranger claiming title to the estate of his landlord is void, and the possession of his landlord is deemed not to be changed, altered or affected by the attornment, but nothing in this section vacates or affects an attornment made

- (a) pursuant to and in consequence of a judgment or order of a judge, or
- (b) with the privity and consent of the landlord.

(2) Nothing in this section shall alter, prejudice or affect any rights that vendor, mortgagee or encumbrancee on November 20, 1954, had under any law or Act.

Grants of rent, reversion or remainder

39.(1) A grant or conveyance of any rent or of the reversion or remainder of any land is good and effectual without any attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

(2) A tenant is not prejudiced or damaged by the payment of rent to any grantor or by breach of any condition for non-payment of rent before notice to him of such grant by the grantee.

Renewal of leases

40.(1) Where a lease is duly surrendered in order to be renewed and a new lease is made and executed by the chief landlord, the new lease is, without a surrender of all or any of the under-leases, as good and valid as if all the under-leases derived thereout had been likewise surrendered at or before the time of taking of the new lease.

(2) A person in whom any estate for life or lives, or for years, is from time to time vested by virtue of a new lease, is entitled to the rents, covenants and duties, and has like remedy for recovery thereof, and the under-lessees shall hold and enjoy the land in the respective under-leases comprised as if the original lease had been kept on foot and continued, and the chief landlord has and is entitled to the same remedy by distress or entry in and upon the land comprised in any under-lease for the rents and duties reserved by the new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which such sub-lease was derived, as he would have had if the respective under-leases had been renewed under the new principal lease.

Renewal by court order

41.(1) Where a person who, in pursuance of any covenant or agreement in writing, if within the Yukon and amenable to legal process, might be compelled to execute any lease by way of renewal, is not within the Yukon or is not amenable to legal process, a judge upon the

application of any person entitled to such renewal, whether such person is or is not under any disability, may direct such person as he thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed the same.

(2) A new lease executed by the person appointed under subsection (1) is as valid as if the person in whose name the lease was made was alive and not under any disability and had himself executed it.

(3) A judge may direct an action to be brought to establish the right of the person seeking renewal under this section, but he may not make the order for such new leases unless by the judgment to be made in such action, or until after it has been entered.

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant or agreement, unless the sum of money, if any, that ought to be paid on such renewal and the things, if any, that ought to be performed in pursuance of such covenant or agreement by the tenant are first paid and performed, and counterparts of every such renewed lease shall be duly executed by the tenant.

(5) All sums of money that are had, received or paid for or on account of the renewal of any lease by any person out of the Yukon or not amenable to legal process after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into court to such account and be applied and disposed of as a judge directs.

(6) The judge may order the costs and expenses of and relating to the application, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from the land, or the rents in respect of which the same are respectively made, in such manner as he deems proper.

PART 2

OVERHOLDING TENANTS

Liability of tenant after notice from landlord

42. Where a tenant or other person who is in possession of any land by, from or under or by collusion with such tenant wilfully holds over the land or any part thereof after the determination of the term, if notice in writing requiring delivery of the possession thereof is given by his landlord or the person to whom the remainder or reversion of such land belongs or his agent thereunto lawfully authorized, the tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to such person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action before a judge, against the recovering of which penalty there is no relief.

Liability of tenant after notice to landlord

43. Where a tenant gives notice of his intention to quit the premises by him held at a time mentioned in the notice and does not then deliver up the possession of the premises, the tenant shall from thenceforward pay to the landlord double the rent or sum that he should otherwise

have paid, to be levied, sued for and recovered at the same times and in the same manner as the single rent or sum before the giving of such notice could be levied, sued for or recovered, and such double rent or sum shall continue to be while such tenant continues in possession.

Definition of “tenant”

44. In sections 44 to 50, “tenant” includes every lessee, occupant, subtenant and their assigns and legal representatives.

Application by landlord

45.(1) When a tenant, upon the determination of his lease or right of occupation, whether created by writing or by parol, wrongfully refuses or neglects upon demand made in writing to go out of possession of the land demised to him or which he has been permitted to occupy, the landlord may apply, upon affidavit, to a judge, to make the inquiry provided for in sections 44 to 51.

(2) The landlord shall

- (a) set forth on an affidavit the terms of the demise or right of occupation, if verbal,
- (b) annex a copy of the instrument creating or containing the lease or right of occupation, if in writing, or if for any cause a copy cannot be so annexed, make a statement setting forth the terms of the demise or occupation and the reason why such copy cannot be annexed,
- (c) annex a copy of the demand,
- (d) state the refusal of the tenant to go out of possession, and the reasons given for such refusal, if any were given, and
- (e) add such explanation in regard to the ground of such refusal as the truth of the case may require.

(3) The judge shall, in writing, appoint a time and place at which he will inquire and determine whether the tenant holds possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession.

(4) A copy of the appointment of the judge and of the affidavit on which it was obtained, and copies of the documents to be used upon the application other than of the instrument creating or containing the lease or right of occupation, shall be served upon the tenant or left at his place of abode at least three days before the day appointed, if the place appointed is not more than 20 miles from the tenant’s place of abode, and one day in addition to every 20 miles above the first 20, reckoning any broken number above the first 20 as 20 miles.

Postponement of hearing

46. The judge may, upon an application being made to him under section 45, or at any time thereafter pending the proceedings, having regard to the convenience of the parties, the costs of the proceedings and other considerations, and subject to such conditions as may to him seem just, direct that the case stand over to be heard and disposed of.

Application of Judicature Act

47. Except as otherwise varied by this Part, the provisions of the Judicature Act apply to applications made and proceedings had under this Part.

Style of cause

48. The proceedings under this Part shall be styled: “In the matter of, landlord, against, tenant”.

Hearing procedure and costs

49.(1) Where at the time and place appointed the tenant fails to appear, the judge, where it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession in the prescribed form directed to the sheriff, commanding him forthwith to place the landlord in possession of the land.

(2) Where the tenant appears the judge shall, in a summary manner, hear the parties and their witnesses and examine into the matter and may take evidence orally or by affidavit as he thinks fit, and if it appears to the judge that the tenant wrongfully holds against the right of the landlord he may order the issue of a writ of possession in the prescribed form.

(3) Upon an application under section 45, the judge may by order award costs according to the tariff of costs from time to time in force under the Judicature Act, or may order payment of a lump sum by way of costs.

(4) An order for the payment of costs by the judge may be filed in the office of the clerk of the Supreme Court and shall thereupon become a judgment of the Supreme Court.

(5) No order under subsection (4) shall be made if it appears to the judge that, in the circumstances of the case, the right to possession should not be determined by proceedings under this Part, and in such case the taking of proceedings under this Part does not affect or detract from any other remedy which a landlord may have against his tenant.

Effect of irregularities

50. The judge has the same power to amend or excuse irregularities in the proceedings as he has in an action.

Decision of judge

51. The decision of the judge respecting the order granting or refusing a writ of possession is final.

Action by landlord

52. Nothing in this Part shall require a landlord to proceed under this Part instead of bringing an action.

PART 3

SUMMARY PROCEEDINGS FOR NON-PAYMENT OF RENT

Application, summons and hearing

53.(1) Where a tenant fails to pay his rent within seven days of the time agreed on and wrongfully refuses or neglects upon demand made in writing to pay the rent or deliver up the premises demised, which demand shall be served upon the tenant or upon some grown-up person upon the premises, or if the premises be vacant, be affixed to the dwelling or other building or otherwise posted up upon the premises, the landlord or his agent may file with the clerk of the Supreme Court an affidavit setting forth the terms of the lease or occupancy, the amount of rent in arrears and the time for which it is so in arrears, producing the demand made for the payment of rent or delivery of the possession and stating the refusal of the tenant to pay the rent or to deliver up possession, and the answer of said tenant, if any answer were made, and that the tenant has no right of set-off or reason for withholding possession.

(2) Upon filing the documents mentioned in subsection (1), the clerk shall cause to be issued a summons in the prescribed form calling upon the tenant, three days after service, to show cause why an order should not be made for delivering up possession of the premises to the landlord, and the summons shall be served in the same manner as the demand.

(3) Upon the return of the summons mentioned in subsection (2), a judge shall hear the evidence adduced upon oath, either orally or by affidavit as he may deem proper, and make such order, either to confirm the tenant in possession or to deliver up possession to the landlord, as the facts of the case may warrant, and such order for delivery of possession may be in the prescribed form.

(4) Where the order mentioned in subsection (3) recites that the tenant shall deliver up possession and he refuses, the sheriff or any of his officers shall, with such assistance as he may require, forthwith proceed under the order to eject and remove the tenant together with all goods and chattels that he may have on or about the premises, and make the rent in arrears and place the landlord in possession of the premises.

(5) Where any tenant before the execution of the order mentioned in subsection (3) pays the rent in arrears and all costs, the proceedings shall be stayed and the tenant may continue in possession as of his former tenancy.

(6) Where the premises in question are vacant or the tenant is not found in possession, or if in possession he refuses on demand made in the presence of a witness to admit the sheriff or any of his officers, the latter, after a reasonable time has been allowed to the tenant or person in possession to comply with the demand for admittance, may force open any outer door in order to gain an entrance, and may also force any inner door for the purpose of ejecting the tenant or occupant and giving proper possession of the premises to the landlord or his agent.

Costs

54.(1) The judge may by order award costs according to the tariff of costs from time to time in force under the Judicature Act, or may order payment of a lump sum by way of costs.

(2) Where the landlord is awarded costs against the tenant, the costs so awarded may be added to the cost of the levy for rent, if such levy is or is to be made.

(3) An order for the payment of costs by the judge may be filed in the office of the clerk of the Supreme Court and shall thereupon become a judgment of the Supreme Court.

No appeal

55. No appeal lies from the order of a judge made under section 53.

Interpretation

56. In this section and in sections 57 and 58,

“lease” means every agreement in writing and every parol agreement whereby one person as landlord confers upon another person as tenant the right to occupy land, every sublease, every agreement for a sublease and every assurance whereby any rent is secured by condition;

“mining lease” means a lease, grant or licence for mining purposes, including the searching for, workings, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on or under the land, obtainable by the underground or by surface working or purposes connected therewith;

“sublease” includes an agreement for a sublease where the sublessee has become entitled to have his sublease granted;

“subtenant” includes any person deriving title under a sublease;

“tenant” includes every lessee, occupant, subtenant and their assigns and legal representatives.

Right of re-entry or forfeiture

57.(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, is not enforceable in any case in which the breach is capable of remedy or of being compensated by money payment, unless and until

- (a) the landlord serves on the tenant a notice specifying the particular breach, and requiring the tenant to remedy or to make compensation in money for the breach, and
- (b) the tenant fails, within a reasonable time after the service of the notice, to remedy the breach, or to make compensation in money to the satisfaction of the landlord for the breach.

(2) Where a landlord is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for nonpayment of rent or for other cause, the tenant may in the landlord’s action, if any, or if there is no such action pending, then in an action brought by himself, apply to a judge for relief, and the judge may grant such relief as having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances the judge thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the judge may deem just.

(3) This section applies whether the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease or is implied therein.

(4) For the purposes of this section a lease limited to continue as long as the tenant abstains from committing a breach of covenant is and takes effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(5) Where an action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the tenant, at any time before judgment, pays into the Supreme Court all the rent in arrears and the costs of the action, the cause of action shall be at an end.

(6) Where relief is granted under this section the tenant shall hold and enjoy the demised premises according to the lease thereof made without any new lease.

(7) Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not a policy of insurance in force in conformity with the covenant or condition to insure, except in addition to any other terms which the judge may impose upon the term that the insurance is effected.

(8) This section applies to leases made either before or after the commencement of this Act and notwithstanding any stipulation to the contrary.

(9) This section does not extend

- (a) to a covenant or condition against the assigning, underletting, parting with the possession or disposing of the land leased,
- (b) in the case of a mining lease, to a covenant or condition for allowing the landlord to have access or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the working thereof, or
- (c) to a condition for forfeiture on the bankruptcy of the tenant or on the taking in execution of the lessee's interest if contained in
 - (i) a lease of agriculture or pastoral land,
 - (ii) a mining lease,
 - (iii) a lease of a house let as a dwelling-house with the use of any furniture, books, works of art or other chattels not being of the nature of fixtures, or
 - (iv) a lease of land with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the landlord, or to any person holding under him.

(10) Where the whereabouts of the tenant cannot be ascertained after reasonable enquiry or if the tenant is evading service, the notice referred to in subsection (1) may be served on the tenant by leaving the same at the place of residence of the tenant with any adult person for the time being in charge thereof, and if the premises are unoccupied, the notice may be served by posting up the same in a conspicuous manner upon some part of the demised premises.

Application by subtenant

58. Where a landlord is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease or for non-payment of rent, a judge, on application by any person claiming as subtenant any estate or interest in the property comprised in the lease or any part thereof, either in the landlord's action, if any, or in any action brought or summary application made to the judge by such person for that purpose, may make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as subtenant to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the judge in the circumstances of each case thinks fit, but in no case is the subtenant entitled to require a lease to be granted to him for any longer term than he had under his original sublease.

**PART 4
RESIDENTIAL TENANCIES**

Interpretation

59.(1) In this Part,

“mobile home site” means land intended to be or used as a site for a mobile home, whether or not the landlord supplies the mobile home;

“residential premises” means premises used for residential purposes, includes mobile home sites and does not include premises occupied for business purposes with living accommodation attached under a single lease;

“security deposit” means money or any property or right paid or given by a tenant of residential premises to a landlord or his agent or to anyone on his behalf to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant or to be returned to the tenant upon the happening of a condition;

“tenancy agreement” means an agreement between a tenant and a landlord for possession of residential premises, whether written or oral, express or implied.

(2) This Part applies to tenancies of residential premises and tenancy agreements notwithstanding any other Part of this Act and notwithstanding any agreement or waiver to the contrary, except as specifically provided in this Part.

(3) Parts 1, 2 and 3 of this Act apply to tenancies of residential premises and tenancy agreements, except insofar as Parts 1, 2 and 3 conflict with Part 4, in which case Part 4 applies.

(4) Except where otherwise expressly provided in this Part, this Part applies to tenancies under tenancy agreements entered into or renewed before or subsisting when this Part comes into force or entered into after this Part comes into force.

Tenancy agreements a contract

60. For the purposes of this Part, the relationship of landlord and tenant is one of contract only, and a tenancy agreement does not confer on the tenant an interest in land.

New landlords

61.(1) Where a person becomes a new landlord, he is subject to this Act with respect to all subsisting tenancy agreements and security deposits held by the immediately preceding landlord.

(2) Every new landlord is deemed to have notice of all subsisting tenancy agreements in respect of which he becomes the new landlord.

(3) Subject to the rights of tenants under the other provisions of this Act, as between the new landlord and the immediately preceding landlord, all security deposits held by the immediately preceding landlord shall vest in the new landlord on the date on which he becomes the new landlord, and the immediately preceding landlord shall deliver to the new landlord, forthwith after he becomes the new landlord, all such security deposits or securities in which such deposits may have been invested, together with all records of the immediately preceding landlord relating to such deposits or securities.

(4) Every new landlord is substituted as the landlord in all subsisting tenancy agreements in respect of which he becomes the new landlord to the same extent as if each of the tenancy agreements had been entered into with the tenant by the new landlord, and the immediately preceding landlord shall forthwith deliver to the new landlord the copies of all tenancy agreements entered into by the immediately preceding landlord in respect of which the new landlord is substituted as the landlord.

(5) For the purposes of this section, “new landlord” includes

- (a) any person who becomes the owner of property on which residential premises are situated or that consists of residential premises, with respect to which at the time he becomes the owner there are subsisting tenancy agreements,
- (b) a person to whom a landlord assigns a tenancy agreement,
- (c) a trustee in bankruptcy, liquidator, receiver or committee appointed by any court or by law in respect of the property of a landlord,
- (d) the purchaser at a judicial sale of the residential premises of a landlord, and
- (e) a mortgagee of the residential premises of a landlord who acquires title to them by foreclosure or pursuant to a judicial sale of them, or who enters into possession of the residential premises, and the assigns of such a mortgagee.

(6) Notwithstanding subsection (4), any person referred to in paragraph (5)(c), (d), or (e) who becomes a new landlord may terminate a lease for a term certain or for periods longer than year to year by giving notice of the termination not less than 90 days before the intended effective date of the termination.

(7) This section applies notwithstanding section 60.

Delivery of copy of tenancy agreement

62.(1) Where a tenancy agreement in writing is executed by a tenant after this Part comes into force, the landlord shall ensure that a fully executed duplicate original copy of the tenancy agreement is delivered to the tenant within 21 days after its execution and delivery by the tenant.

(2) Where the copy of a tenancy agreement is not delivered in accordance with subsection (1), the obligations of the tenant thereunder cease until such copy is delivered to him.

Security deposits

63.(1) A landlord shall not require or receive a security deposit from a tenant in an amount exceeding the amount of rent payable for the first month of the tenancy.

(2) A security deposit under subsection (1) shall be applied toward the payment of the rent for the last rent period under the tenancy agreement.

(3) Notwithstanding subsection (2) but subject to subsection (4), where a landlord and a tenant have signed a statement as to the condition of residential premises, a security deposit may be applied toward the rectification of damage done to the premises during the term of the tenancy after the signing of the statement.

(4) Subsections 64(4), (5) and (6) apply to the retention of a deposit under subsection (3).

(5) A landlord shall pay annually or 15 days after the tenancy is terminated, whichever is earlier, to the tenant interest on the security deposit for rent referred to in subsection (1) at the rate of ten percent per annum.

(6) A landlord on a tenancy agreement shall not require the delivery of any post-dated cheque or other negotiable instrument to be used for payment of rent.

Security deposits already held

64.(1) This section applies to security deposits held by landlords at the time this Part comes into force, other than security deposits for rent only as described in section 63.

(2) A landlord shall pay annually to the tenant interest on any money held by the landlord as a security deposit at the rate of ten percent per year or such other rate as may from time to time be prescribed.

(3) Subject to subsection (4), the landlord shall pay the security deposit to the tenant, together with the unpaid interest that has accrued thereon and been retained, within 15 days after the tenancy is terminated or renewed, but a judge may, upon summary application therefor, extend the time to such longer period as he considers proper.

(4) Where the landlord proposes to retain any amount out of the security deposit, he shall so notify the tenant, together with the particulars of the grounds for the retention, and he shall not retain such amount unless

- (a) the tenant consents thereto in writing after receipt of the notice, or
- (b) he obtains an order of a judge under subsections (5) and (6).

(5) A landlord may apply to a judge for an order authorizing the retention of all or part of a security deposit, and section 63 applies to the application with the necessary changes and so far as is applicable.

(6) Upon an application under subsection (5), the judge may dismiss the application or order that all or part of the security deposit be retained by the landlord to be applied on account of any obligation or liability of the tenant for which the security deposit was taken.

Distress abolished

65. Except where a tenant abandons the premises, no landlord shall, except pursuant to a court order, distrain for default in the payment of rent or performance of any other obligation under this Act or the tenancy agreement.

Interesse termini

66.(1) The doctrine of *interesse termini* is hereby abolished.

(2) All tenancy agreements are capable of taking effect at law or in equity from the date fixed for commencement of the term, without actual entry.

Frustration

67. The doctrine of frustration of contract applies to tenancy agreements.

Breach of material covenants

68. Subject to this Part, the common law rules respecting the effect of the breach of a material covenant by one party to a contract on the obligation to perform by the other party apply to tenancy agreements.

Existing and possible covenants

69. Covenants concerning things related to the rented premises run with the land whether or not the things are in existence at the time of the demise.

Mobile home sites

70.(1) No landlord shall, with respect to residential premises consisting of a mobile home site, unreasonably restrict or interfere with a tenant's attempt to sell a mobile home situated on the residential premises.

(2) A landlord shall be deemed to have restricted unreasonably a tenant's attempt to sell a mobile home under subsection (1) where the landlord

- (a) limits the occupation of the residential premises to a mobile home sold, leased or otherwise made available by any specific person or persons, or
- (b) charges any fee in connection with such sale or attempted sale, except for the provision of some service with respect to the sale or attempted sale.

Right to assign or sublet

71.(1) Subject to subsections (3) and (6), where a tenancy agreement is for a term of six months or more, a tenant has the right to assign, sublet or otherwise part with possession of the rented premises.

(2) Subsection (1) does not apply to a tenant of premises administered by or for the Government of Canada, the Government of the Yukon or a municipality, or any agency thereof, developed and financed under the National Housing Act (Canada).

(3) A tenancy agreement may provide that the right of a tenant to assign, sublet, or otherwise apart with possession of rented premises is subject to the consent of the landlord and, where it is so provided, such consent shall not be arbitrarily or unreasonably withheld.

(4) Where subsection (3) applies, the tenant shall give to the landlord, in the manner prescribed in section 99, at least one month's notice of a request for the consent of the landlord to an assignment, subletting or other parting with possession under that subsection.

(5) A landlord shall not make any charge for giving his consent referred to in subsection (3) except his reasonable expenses incurred thereby.

(6) A tenancy agreement that provides that the consent of the landlord is required as authorized by subsection (3) may also provide that instead of consenting to the assignment, subletting or other parting with possession, the landlord may, at his option, serve one month's notice of termination of the tenancy agreement on the tenants in a manner provided in this Part.

Mitigation of damages

72. Where a tenant abandons the premises in breach of the tenancy agreement, the landlord's right to damages is subject to the same obligation to mitigate his damages as applies generally under the rule of law relating to breaches of contract.

Privacy

73. Except

- (a) in cases of emergency,
- (b) with the consent of the tenant given at the time of entry,
- (c) where the landlord has the right to show the premises to prospective purchasers or tenants after notice of termination of the tenancy has been given, or
- (d) where the tenant abandons the premises,

the landlord shall not exercise a right to enter the rented premises unless he has first given written notice to the tenant at least 24 hours before the time of entry, and the time of entry shall be between the hours of eight o'clock in the forenoon and nine o'clock in the afternoon and specified in the notice.

Entry by canvassers at elections

74. No landlord, his servant, or agent shall impose any special restrictions on access to the rented premises by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly or any office in a municipal government for the purpose of canvassing or distributing election material.

Alteration of locks

75. A landlord or tenant shall not, during occupancy of the rented premises by the tenant, alter or cause to be altered the locking system on any door giving entry to the rented premises, except by mutual consent.

Landlord's responsibilities

76.(1) A landlord has the following responsibilities:

- (a) notwithstanding any state of disrepair existing without the knowledge of the tenant at the commencement of the tenancy, to provide and maintain in a good, safe, healthy and tenantable state of repair
 - (i) the rented premises, the common areas and the property of which they form a part, and
 - (ii) the services and facilities agreed to be provided by the landlord under a written or unwritten tenancy agreement;
- (b) to comply with health, safety, maintenance and occupancy standards established by law;
- (c) except where the tenant vacates or abandons the premises, not to withhold or interfere, other than for an emergency, with the supply of any vital service, such as heat, water, electricity or any other utility to the premises, whether or not the supply of the service is an obligation of the landlord under the tenancy agreement;
- (d) at the request of the tenant, to provide to the tenant a receipt for any rent paid by the tenant for the rented premises;
- (e) not to demand or receive any payment or advantage from any merchant, salesperson, dealer, delivery person or any person in exchange for the privilege of access to the premises, the common areas or the property of which they form a part;
- (f) not to interfere unreasonably with the enjoyment of the rented premises for all usual purposes by the tenant and members of his household.

(2) A tenant has the following responsibilities:

- (a) to pay the rent when it is due;
- (b) not to interfere in any significant manner with the rights of either the landlord or other tenants in the premises, the common areas or the property of which they form a part;
- (c) not to perform illegal acts or to carry on an illegal trade, business or occupation in the premises, the common areas or the property of which they form a part;
- (d) not to endanger persons or property in the premises, the common areas or the property of which they form a part;
- (e) to repair damage to the premises, the common areas or the property of which they form a part caused by his wilful or negligent conduct or by that of persons permitted by him to enter the premises, the common areas or the property of which they form a part;
- (f) to maintain the premises and any property rented with it in a reasonably clean condition;
- (g) not to use the premises for other than residential purposes except with the advance consent of the landlord, which shall not be withheld unreasonably;
- (h) to vacate the premises upon the expiration or termination of the tenancy.

(3) The obligations imposed under this section may be enforced by summary application to a judge, and the judge may

- (a) terminate the tenancy agreement upon such terms and conditions as the judge sees fit, or

- (b) authorize any repair that has been or is to be made and order the cost thereof to be paid by the person responsible to make the repair, recoverable by due process or by set-off.

(4) This section applies to tenancies under tenancy agreements entered into or renewed after May 1, 1972, and to periodic tenancies on the first anniversary date of such tenancies after May 1, 1972, and in all other cases the law applies as it existed immediately before May 1, 1972.

Rules

77.(1) Before making a tenancy agreement with any person, the landlord shall disclose in writing to that person all rules concerning the tenancy that exist at the time that the tenancy agreement is made.

(2) After making the tenancy agreement, a landlord may from time to time make, amend or replace the rules if the rules or the amendment or the replacement of the rules is reasonable and intended to

- (a) promote the convenience, safety or welfare of the landlord's tenants,
- (b) preserve the landlord's property from abusive use, or
- (c) make a fair distribution of services and facilities held out by the landlord for the general use of his tenants.

(3) Rules made, amended or replaced pursuant to subsection (2) are enforceable against the tenant only if

- (a) the rules do not substantially modify the tenancy agreement,
- (b) the rules apply and are applied to all residential tenants of the landlord in a fair manner,
- (c) the rules are clear enough so as to fairly inform the tenant of what he must or must not do in order to comply with the rules, and
- (d) reasonable notice in writing of the rules is given to the tenant.

Fees and charges in addition to the rent

78.(1) Before making a tenancy agreement with any person, the landlord shall disclose in writing to that person all fees and charges payable by that person to the landlord in respect of the tenancy that are in addition to the rent payable.

(2) After the tenancy agreement is made, the landlord shall not increase any fees or charges disclosed under subsection (1) or impose any additional fees or charges without giving the tenant written notice of the increase or addition at least three months before the date the increase or addition is to be effective.

(3) The landlord shall not increase any fees or charges disclosed under subsection (1), or impose any additional fees or charges, during the first year of the tenancy.

(4) An increase or addition contrary to subsection (1), (2) or (3) is void and unenforceable.

Rentals officer

79.(1) The Executive Council Member may designate any person to be a rentals officer for the purposes of this Act.

(2) A rentals officer is authorized

- (a) to provide information and advice to landlords and tenants in tenancy matters,
- (b) to receive complaints from, and to mediate or arbitrate disputes between, landlords and tenants,
- (c) to disseminate information for the purpose of advising landlords and tenants about residential premises, rights and remedies, and the initiation and conduct of legal proceedings, and
- (d) to investigate complaints about conduct in contravention of this Act in its application to residential tenancies.

(3) Any person who is authorized by the landlord or tenant may file a complaint with a rentals officer on behalf of the landlord or tenant, as the case may be.

(4) For the purpose of investigating a complaint under subsection (3), a rentals officer may inspect and copy any document or record relevant to the complaint, and

- (a) he may enter the residential premises with the permission of the tenant, or
- (b) he may enter the residential premises without the permission of the tenant at any reasonable time of day after giving not less than 24 hours' written notice to the tenant specifying the time at which he intends to enter the premises.

(5) Except for the purposes of a prosecution under this Act, any court proceedings or the administration and enforcement of this Act, no rentals officer or other person shall

- (a) knowingly communicate, or allow to be communicated, to any person any information obtained by or on behalf of a rentals officer under this section, or
- (b) knowingly allow any person to inspect or have access to any copy of any document or record obtained by or on behalf of a rentals officer under this section.

(6) Subsection (5) does not prohibit the communication of information, or the inspection or provision of access to documents or records, as the case may be, with the consent of the person to whom the information relates or who owns the document or record.

Mediation and arbitration

80.(1) Subject to subsection (2), a rentals officer may mediate or arbitrate any dispute between a landlord and a tenant in respect of the tenancy including

- (a) a dispute with respect to the continued possession and occupancy of the residential premises by the tenant,
- (b) a dispute as to arrears or non-payment of rent,
- (c) a dispute with respect to compensation claimed by the landlord for use and occupancy of the residential premises by the tenant after the expiration or termination of the tenancy,

- (d) a dispute as to damages caused to residential premises, the common areas or the property of which they form a part by the tenant or any other person, or
- (e) any other dispute with respect to the performance by the landlord or the tenant of obligations under the tenancy agreement or section 76.

(2) A rentals officer may refuse to mediate or arbitrate a dispute where he is of the opinion that

- (a) the dispute is of such a serious nature that it should be dealt with only by a court,
- (b) the complaint is frivolous, vexatious, or concerns a trivial matter,
- (c) the complaint primarily affects some person other than the complainant and the complainant does not have a sufficient personal interest in it.

(3) A rentals officer shall not mediate or arbitrate a dispute where

- (a) the landlord or the tenant has commenced proceedings in a court for the resolution of the dispute, and
- (b) the dispute has been previously resolved by the court or it remains before the court.

Arbitration

81.(1) A rentals officer shall not arbitrate a dispute except upon the written request of the landlord and the tenant.

(2) Where the landlord and the tenant have requested a rentals officer to arbitrate a dispute under subsection (1), neither of them is entitled to withdraw the dispute from arbitration and the decision of the rentals officer is final and binding on both of them.

(3) The rentals officer may make such orders relating to the obligations of the landlord or the tenant to each other in respect of the tenancy as the rentals officer considers necessary to give effect to his decision on the arbitration.

(4) The rentals officer may file with the clerk of the court a copy of any order made by him under subsection (4) certified by him to be a true copy, and the order then becomes an order of the court and may be enforced as a judgment of the court.

(5) A decision or order of a rentals officer in respect of the arbitration of a dispute is not subject to appeal in any court.

(6) For the purposes of arbitrating a dispute, a rentals officer has the following powers:

- (a) to enter upon and inspect the rented premises at any reasonable time;
- (b) to require the attendance of witnesses and to receive their testimony;
- (c) to require the production of documents;
- (d) to administer oaths and affirmations;
- (e) to establish rules of procedure.

(7) In the conduct of an arbitration a rentals officer is not bound by the technical rules of legal evidence, and the rentals officer may act upon evidence given orally or in writing obtained in such manner as the rentals officer considers proper, whether or not the evidence is given on oath or affirmation.

(8) No proceedings lie against a rentals officer or any person acting on behalf of a rentals officer for anything done or purporting to be done pursuant to this Act.

(9) The Arbitration Act does not apply to an arbitration under this Act.

Report to judge

82.(1) In any proceedings under this Part, a judge may request a rentals officer to provide a report of any investigation conducted by or on behalf of the rentals officer relevant to the matter before the court.

(2) Upon the receipt of any report under subsection (1) at any time before or during the proceedings, the judge may make an order disposing of the matter in whole or in part without holding any further hearing.

Service of documents

83. Section 99 applies with the necessary changes to the giving and delivery of any notice, process or document by a rentals officer to a landlord or a tenant.

Acceleration of rent

84. Any term of a tenancy agreement that provides that, by reason of default in payment of rent due or in observance of any obligation of the tenant under a tenancy agreement, that the whole or any part of the remaining rent for the tenancy becomes due and payable, is void and unenforceable.

Notice of increase in rent

85.(1) No landlord shall increase the rent for a residential premises and no tenancy agreement shall provide for an increase in rent for a residential premises during the first year of a tenancy agreement or, where the tenancy agreement is for a term of less than one year, during the term of the tenancy agreement, and any renewals thereof up to one year from the date of the original tenancy agreement.

(2) No landlord shall increase the rent for a residential premises after the period of one year referred to in subsection (1) without first having notified the tenant in writing, in the manner provided in this Part, at least three months prior to the date of the increase.

(3) An increase in rent by a landlord contrary to subsection (1) or (2) is void and unenforceable.

(4) If a tenant, on the date stipulated in a notice under subsection (2) for commencement of the increase in rent, refuses to pay to the landlord the amount of the increase set out in the notice, the landlord may, on or after that date, serve on the tenant, in the manner provided in this Part, a notice of termination of the tenancy agreement at the end of 14 days from the date of service of the notice, and section 90 does not apply to a notice under this section,

Notice of termination of tenancy

86.(1) A weekly, monthly, year-to-year, or any other kind of tenancy determinable on notice may be terminated by either the landlord or the tenant upon notice to the other, and the notice

- (a) shall meet the requirements of section 87,
- (b) shall be given in the manner prescribed by sections 88 and 99, and
- (c) shall be given in sufficient time to give the period of notice required by section 89, 90 or 91, as the case may be.

(2) Nothing in subsection (1) prevents a landlord or a tenant from accepting a notice that does not comply with subsection (1).

Form and contents of notice

87.(1) A landlord or a tenant may give notice to terminate either orally or in writing, but notice by a landlord to a tenant is not enforceable under section 96 unless it is given in writing.

(2) A notice in writing

- (a) shall be signed by the person giving the notice, or his agent,
- (b) shall identify the premises in respect of which the notice is given, and
- (c) shall state the date on which the tenancy is to terminate.

(3) A notice need not be in any particular form, but a notice by a landlord to a tenant and a notice by a tenant to a landlord may be in the prescribed forms.

Manner of giving notice

88. Notice to terminate shall be given in the manner prescribed in section 99.

Notice to terminate weekly tenancy

89.(1) A notice to terminate a weekly tenancy shall be given on or before the last day of one week of the tenancy to be effective on the last day of the following week of the tenancy.

(2) For the purposes of this section, “week of the tenancy” means the weekly period on which the tenancy is based and not necessarily a calendar week and, unless otherwise specifically agreed upon, the week shall be deemed to begin on the day upon which rent is payable.

Notice to terminate monthly tenancy

90.(1) A notice by a tenant terminating a monthly tenancy shall be given to the landlord on or before the last day of one month of the tenancy to be effective on the last day of the immediately following month of the tenancy.

(2) A notice by a landlord terminating a monthly tenancy shall be given to the tenant on or before the last day of one month of the tenancy to be effective on the last day of the immediately following month of the tenancy.

(3) Notwithstanding section 89 and subsection (2), where the landlord gives a notice terminating the tenancy and the tenancy is in relation to a mobile home site, the tenancy shall not terminate in any of the months of December, January, or February.

(4) For the purposes of this section, “month of the tenancy” means the monthly period on which the tenancy is based and not necessarily a calendar month and, unless otherwise specifically agreed upon, the month shall be deemed to begin on the day upon which rent is payable.

Notice to terminate yearly tenancy

91.(1) A notice to terminate a year-to-year tenancy shall be given on or before the 90th day before the last day of any year of the tenancy to be effective on the last day of that year of the tenancy.

(2) For the purposes of this section, “year of the tenancy” means the yearly period on which the tenancy is based and not necessarily a calendar year and, unless otherwise agreed upon, the year shall be deemed to begin on the day, or the anniversary of the day, on which the tenant first became entitled to possession.

Declaratory order

92. A landlord or tenant may, at any time after a notice purporting to terminate a tenancy has been given, apply to a judge for a declaratory order respecting the validity of the termination of the tenancy under this Act, and the judge may

- (a) confirm the termination of the tenancy on a date specified in the order, in which case the order becomes enforceable on that date, or
- (b) invalidate the termination of the tenancy.

Termination for substantial breach of agreement

93.(1) Notwithstanding paragraph 86(1)(c) and sections 89, 90 and 91, where a tenant commits a substantial breach of his tenancy agreement, the landlord may

- (a) apply to a judge for an order terminating the tenancy, or
- (b) terminate the tenancy by giving 14 days written notice of termination to the tenant, stating the effective date of the termination and the details of the alleged substantial breach.

(2) In subsection (1), “substantial breach” includes

- (a) a breach of a responsibility of the tenant set out in subsection 76(2), or
- (b) a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial.

Notices to be posted

94. Where a landlord rents more than one residential premises in the same building and retains possession of part for use of all tenants in common, the landlord shall post up conspicuously and maintain posted a copy of sections 86 to 91 and 99, together with the legal name of the landlord and his address for service, and any proceeding taken by or on behalf of a tenant may be commenced against the landlord in the name so posted.

Compensation when premises not vacated

95.(1) A landlord is entitled to compensation for the use and occupation of premises after the tenancy has been terminated by notice.

(2) The acceptance by a landlord of arrears of rent or compensation for use or occupation of the premises after notice of termination of the tenancy has been given does not operate as a waiver of the notice or as a reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree.

(3) The burden of proof that the notice has been waived or the tenancy has been reinstated or a new tenancy created is upon the person so claiming.

(4) A landlord's claim for arrears of rent or compensation for use and occupation by a tenant after the expiration or termination of the tenancy may be enforced by action or on summary application as provided in section 96.

Applications under this Part

96.(1) An application in respect of any matter in which an application is authorized under this Part shall be made to a judge and shall state the grounds upon which the application is made and may be started by a request to a judge or a clerk of the court for an appointment of a time and place for the hearing of the application.

(2) The judge or clerk of the court who receives a request for an appointment under subsection (1) shall appoint a time and place for the hearing and the applicant shall serve a notice of the appointment and a copy of the application to the other parties to the tenancy agreement at least three days, exclusive of holidays and Saturdays, before the day appointed.

(3) Where a judge is satisfied, on the application, that a tenancy agreement is terminated, he may issue a warrant in the prescribed form to a sheriff or peace officer of the place within which the residential premises are situated, commanding him, within a period therein named, to enter into the premises and give possession of the premises to the landlord, and may, in any case, make such other order as he may consider appropriate in the circumstances.

Recovery of possession

97.(1) Unless a tenant has vacated or abandoned rented premises, the landlord shall not regain possession of the premises on the grounds he is entitled to possession, except under the authority of an order obtained under section 96.

(2) In any proceeding by the landlord for possession, if it appears to the judge that

- (a) the notice to quit was given because of the tenant's bona fide complaint to any governmental authority of the landlord's violation of any statute or municipal bylaw dealing with health or safety standards, including any housing standard law, or
- (b) the notice to quit was given because of the tenant's attempt to secure or enforce his legal rights,

the judge may refuse to grant the order.

Offences and penalties

98.(1) Any person who contravenes section 63, 64, 74, 75, 78, 85 or 97 is guilty of an offence and on summary conviction is liable to a fine not exceeding \$1,000.

(2) Where a landlord is convicted of an offence of contravening section 63 or 64, the judge making the conviction may order the landlord to pay to the tenant the security deposit and interest or any part thereof that is unpaid.

Service of documents

99.(1) Except as otherwise provided in this Part

- (a) any notice, process, or document required or permitted to be delivered or given by a tenant to a landlord is sufficiently given or delivered if delivered personally to the landlord or his agent or sent by registered mail addressed to the name and the address posted under section 94, and
- (b) any notice, process or document required or permitted to be delivered or given by a landlord to a tenant is sufficiently given or delivered if delivered personally to the tenant or sent by certified mail addressed to the tenant at the address of the residential premises described in the tenancy agreement to which the notice, process or document relate, or at any other address signified in writing by the tenant for the purpose.

(2) Where the document is given or delivered by mail, it shall be deemed to have been given or delivered on the fifth day after the date of mailing.

(3) Notwithstanding subsections (1) and (2), a judge may order any other method of service in respect of any matter before him.

Action for the recovery of land

100. Where an application is made under section 96 and the judge finds cause, he may order that the question of right, if any appears, be tried as in an ordinary action for the recovery of land.

Definition of “judge”

101. For the purpose of this Part, “judge” includes either a judge of the Supreme Court or the Territorial Court.

Regulations

102. The Commissioner in Executive Council may make such regulations and prescribe such forms as he deems necessary for carrying out the purposes and provisions of this Act.

Accrual of interest on security deposits

103. For the purpose of section 63, interest on a security deposit held by a landlord in respect of residential premises consisting of a mobile home site on January 1, 1983, begins to accrue on the later of

- (a) January 1, 1983, and
 - (b) the date on which the security deposit is received by the landlord.
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CHAPTER 99

LANDS ACT

Interpretation

1. In this Act,

- “applicant” means an individual or corporation who has made an application;
- “application” means an application to purchase or lease Yukon lands or to obtain a right-of-way or easement with respect to such lands;
- “corporation” means a corporation incorporated or registered in the Yukon and includes a society incorporated under the Societies Act;
- “disposition” means a sale or lease of Yukon lands or a grant of right-of-way or easement with respect to such lands;
- “notification” means a direction issued to a registrar of land titles directing him to issue a certificate of title to a person named in the direction in respect of Yukon lands described therein;
- “reserved lands” means Yukon lands that have been withdrawn from disposition;
- “Yukon lands” means properties to which this Act applies.

Application of the Act

2.(1) This Act applies with respect to all properties in the Yukon that are vested in Her Majesty in right of Canada but the right to the beneficial use or to the proceeds of which is appropriated to the Government of the Yukon and is subject to the control of the Legislature.

(2) Nothing in this Act shall be construed as limiting the operation of the Yukon Quartz Mining Act (Canada), the Yukon Placer Mining Act (Canada) or the Dominion Water Power Act (Canada) and every disposition of the Yukon lands is subject to the provisions of sections 5, sections 8 to 12 and paragraph 19(j) of the Territorial Lands Act (Canada).

Disposition of Yukon lands

3.(1) Subject to this Act and the regulations, the Executive Council Member may

- (a) sell or lease Yukon lands, or
- (b) grant a right-of-way or easement with respect to Yukon lands,

to any individual who has attained the full age of 19 years or to any corporation.

(2) The Executive Council Member may dispose of Yukon lands only after

- (a) he has received an application with respect to such lands, or
- (b) tenders for such lands have been called for by public notice.

Agreement for sale

4. Where the Executive Council Member intends to sell Yukon lands, he may enter into an agreement for sale of those lands with the proposed purchaser, which agreement shall contain such terms and conditions as the Executive Council Member deems appropriate.

Transfer of lands to purchaser

5.(1) The Executive Council Member may not transfer Yukon lands to a purchaser or issue a notification directing that a certificate of title be issued to a purchaser with respect to such lands unless

- (a) the purchaser
 - (i) has paid the amount of the purchase price of the lands together with the amount of all interest and other money required to be paid by him under this Act, or
 - (ii) satisfies the Executive Council Member that the purchaser requires a transfer of or certificate of title to the lands for the purpose of obtaining the amount of the purchase price and provides the Executive Council Member with such security as the Executive Council Member may require to guarantee payment of the purchase price,
- (b) has complied with all terms and conditions relating to the proposed disposition, and
- (c) has paid the amount of the prescribed fee.

(2) Where a deceased purchaser or his executor or administrator has paid the amounts referred to in paragraphs (1)(a) and (c) and the terms and conditions relating to the proposed disposition have been complied with, the Executive Council Member may transfer the lands to the executor or administrator or issue a notification directing that a certificate of title be issued to the executor or administrator.

Requirement for execution of documents

6.(1) Subject to subsection (2), no person may acquire any interest in or with respect to any Yukon lands until the transfer, notification, lease or grant of right-of-way or easement in respect of such lands is executed by such person and in such manner as is prescribed, and no person seeking a disposition of Yukon lands has any cause of action with respect to any negotiations, arrangements or agreements carried on or entered into by the Executive Council Member or on his behalf with respect to Yukon lands prior to such execution.

(2) Where a person has entered into an agreement for sale with the Executive Council Member with respect to Yukon lands and has complied with the terms and conditions of the agreement and with the provisions of this Act and the regulations, he is entitled to a transfer of those lands.

Withdrawal from disposition

7.(1) Where the Commissioner in Executive Council considers it advisable in the public interest, he may by order

- (a) withdraw any Yukon lands from disposition under this Act, or
- (b) designate the most desirable use of any Yukon lands and withdraw such lands from disposition under this Act for any purpose other than the use so designated.

(2) The Commissioner in Executive Council may revoke or amend any order made by him pursuant to subsection (1), but where an application is made with respect to any reserved lands, a disposition of or with respect to those lands may, for a period of not less than one year

after the application is made, be made only after tenders for such lands have been called for by public notice, unless the applicant requires the lands for a use designated in the order.

Application for disposition

8.(1) Where an individual or corporation wishes to purchase or lease the lands or obtain a right-of-way or easement with respect to Yukon lands and those lands are not the subject matter of a call for tenders, that individual or corporation may make an application to the Executive Council Member

- (a) specifying whether the individual or corporation seeks to purchase, lease or obtain a right-of-way or easement,
- (b) describing the location of the lands with respect to which the disposition is sought, and
- (c) specifying the purpose for which the lands are to be used.

(2) Every application made pursuant to subsection (1) shall be accompanied by such evidence as is prescribed to show that the applicant is eligible to obtain a disposition of Yukon lands and, where a survey of those lands exists, by a copy of such survey.

Refusal of applications

9.(1) The Executive Council Member shall refuse an application to purchase or lease Yukon lands

- (a) where the applicant fails or is unable or unwilling to comply with any applicable provision of a statute of the Parliament of Canada or the Legislature, or a regulation made under any such statute,
- (b) where the lands with respect to which the application is made are reserved lands, or
- (c) where the purpose for which the lands are to be used is not in the public interest.

(2) Where the Commissioner in Executive Council, within a period of one year after an application is made, revokes or amends the order whereby those lands were made reserved lands and proceeds to call for tenders with respect to such lands, the Executive Council Member shall in such manner as is prescribed notify the applicant accordingly.

(3) Where an application is made with respect to reserved lands the most desirable use of which has been designated by the Commissioner in Executive Council, paragraph (1)(b) does not apply if the lands are to be used for designated purposes.

Call for tenders

10.(1) Where any Yukon lands are to be disposed of by the Executive Council Member after tenders for such lands have been called, the call for tenders shall be published and posted in such manner and at such times as are prescribed.

(2) A call referred to in subsection (1) shall specify

- (a) the time after which tenders will not be received,
- (b) whether a sale or lease of the lands will be made,
- (c) any special terms or conditions subject to which the disposition is to be made, and
- (d) such other information as the Executive Council Member deems advisable.

Terms and conditions of disposition

11. Where the Executive Council Member disposes of Yukon lands under this Act he may make the disposition subject to any terms and conditions he deems advisable.

Regulations respecting price and procedure

12.(1) The Commissioner in Executive Council may make regulations providing for the determination of the amount for which Yukon lands may be sold or leased, and providing for the way in which Yukon lands may be offered for sale or lease.

(2) Regulations made under subsection (1) shall classify Yukon lands that are to be offered for sale or lease according to

- (a) the location of the land,
- (b) the nature of the land, including its suitability for any specified purpose,
- (c) the size of the parcels of land to be sold or leased,
- (d) the use to which the land may be put,
- (e) the conditions to which the disposition of the land is subject,
- (f) the place of residence of persons who may apply to purchase or lease the land,
- (g) the development cost of the land, or
- (h) such other characteristics of the land or its use, or as to the persons to whom the land may be sold or leased, as the Commissioner in Executive Council may consider advisable.

(3) A class of land established under subsection (2) may apply to one or more parcels of land to be offered for sale or lease.

(4) Regulations made under subsection (1) may provide, for any class of land established under subsection (2),

- (a) a special method of determining the sale or lease price,
- (b) a special method of offering the land for sale or lease, and
- (c) a special limitation as to the persons to whom the land may be sold or leased.

Sale or lease price

13.(1) Subject to subsection (2), no Yukon lands shall be sold or leased to any person except for a price fixed under the regulations in accordance with section 12.

(2) Where there are no regulations under section 12 providing for the determination of the amount for which a parcel of Yukon land may be sold or leased, the parcel

- (a) may be sold for such amount, not less than the appraised value of the parcel, as the Executive Council Member may determine, or
- (b) may be leased for such annual amount, not less than ten percent of the appraised value of the parcel, as the Executive Council Member may determine.

(3) Subsection (1) applies to the renewal of a lease.

Term of lease and renewal

14. No Yukon lands may be leased for a term exceeding 30 years, but where the terms of the lease so provide, a lease of Yukon lands may at the option of the lessee with the approval of the Executive Council Member be renewed for one additional term not exceeding 30 years.

Payment of rent

15. The amount of any rental payable under a lease, or a renewal thereof, shall be paid yearly in advance.

Option to purchase

16. A lease of Yukon lands may contain a provision whereby the lessee has an option to purchase the lands.

Assignment of lease

17. A lessee may with the approval of the Executive Council Member, assign his lease if
- (a) at the time of assignment, he has paid all the rent then owing under the lease and taxes then owing with respect to the lands, and
 - (b) he files with the Executive Council Member a properly executed unconditional assignment of the lease in duplicate together with the prescribed fee.

Purposes of leases

18. Where a lease of Yukon lands specifies that the lands are to be used for any purpose, it shall be deemed to be a condition of the lease that the lessee shall not use or allow any other person to use those lands for any other purpose.

Term of right-of-way and easement

19. No grant of the right-of-way or easement with respect to Yukon lands may be made for a term exceeding 30 years but any such right-of-way or easement may be renewed, at the option of the holder of the right-of-way or easement, for two additional terms not exceeding 30 years each.

Cancellation of dispositions

20.(1) Where a person who has obtained an agreement for sale or a disposition

- (a) defaults in payment of any amount of money payable under the terms thereof, or
- (b) fails or neglects to observe or perform any covenant, term or condition set out in the agreement or the disposition,

the Executive Council Member may cause a notice to be sent by registered mail, addressed to that person at his known address, requiring him

- (c) to pay the amount of money due under the terms of the agreement or disposition,
- (d) to comply with the covenants, terms or conditions set out in the agreement or disposition, or
- (e) to pay the amount of money so due and to comply with such covenants, terms and conditions,

within 90 days after the date the notice is mailed.

(2) Where any default, failure or neglect referred in subsection (1) continues for more than 90 days after the date the notice referred to in subsection (1) is mailed, the Executive Council Member may cancel the agreement or disposition.

(3) Where a person described in subsection (1) has commenced to construct a permanent residence on the lands that are the subject matter of the agreement for sale or disposition and is residing in that residence, the Executive Council Member may in accordance with the regulations, allow that person such period of time not exceeding one year after the date the notice referred to in subsection (1) is mailed to remedy the default, failure or neglect specified in the notice, in which case the Executive Council Member may cancel the agreement or disposition only if the default, failure or neglect continues after that period of time has expired.

(4) Where the Executive Council Member cancels an agreement for sale or disposition pursuant to subsection (2),

- (a) the person who was a party to that agreement or the holder of that disposition and all persons claiming through or under him cease to have any right or interest in those lands and any improvements thereto, and
- (b) the lands and any amount of money paid on account of the agreement or disposition are thereupon forfeited to the Government of the Yukon.

Errors respecting dispositions

21.(1) Where, in respect of an agreement for sale or disposition made under this Act, it is brought to the attention of the Executive Council Member that

- (a) a clerical error was made respecting the name or description of a person who is a party to the agreement or of the person to whom the disposition was made, the description of the lands or any other material part of the agreement or disposition,
- (b) the lands were not available for disposition,
- (c) the survey of those lands is incorrect, or
- (d) the information furnished by the person who is a party to the agreement or by the holder of the disposition was incorrect,

the Executive Council Member may where he considers it advisable cancel the agreement or disposition or make whatever changes or adjustments he deems appropriate.

(2) Where the Executive Council Member cancels an agreement or disposition pursuant to subsection (1), he may

- (a) repay to the person who was a party to the agreement or to the holder of the disposition the whole or any part of the amount of money paid in respect of the agreement or disposition or expended as a result thereof, and
- (b) pay to the person referred to in paragraph (a) whatever compensation the Executive Council Member considers appropriate in the circumstances.

Abandonment

22.(1) A person may abandon a disposition of Yukon lands with the written approval of the Executive Council Member and subject to such terms and conditions as the Executive Council Member may determine.

(2) Where a disposition of Yukon lands is abandoned pursuant to subsection (1), the right to the beneficial use or to the proceeds of such lands is re-appropriated to the Government of the Yukon.

Unauthorized use of Yukon lands

23.(1) Where a person uses or occupies Yukon lands without lawful authority, the Executive Council Member may serve that person with a notice requiring him

- (a) to cease forthwith the unauthorized use or occupation, and
- (b) to restore the lands to a condition satisfactory to the Executive Council Member or to pay the costs of having the lands so restored.

(2) A notice referred to in subsection (1) may be served by personal service, by registered mail, or if the identity of the person who is using or occupying the lands is unknown by posting it in a conspicuous place on the lands.

Payment regarding unauthorized use or occupation

24. The Executive Council Member may require any person who has used or occupied Yukon lands without lawful authority to pay for the unauthorized use or occupation such amount of money as the Executive Council Member considers just and reasonable in the circumstances.

Seizure of articles

25.(1) Any machinery, equipment, materials, goods or chattels found upon Yukon lands that are used or occupied by any person without lawful authority may be seized by the Executive Council Member.

(2) Any article seized by the Executive Council Member pursuant to subsection (1) may be removed from the place where it is found and may be sold, rented or destroyed as the Executive Council Member deems appropriate.

Offence and penalty

26. Every person who fails to comply with a notice served on him pursuant to section 23 requiring him to cease forthwith the unauthorized use or occupation of Yukon lands commits an offence and is liable on summary conviction to a fine not exceeding \$250 or to imprisonment for a term not exceeding three months, or to both fine and imprisonment.

Interest rate

27. Where any contract or agreement for the sale of Yukon lands is entered into or any lease or other disposition is made and interest is payable under the terms thereof, the rate of interest shall be five percent per annum or such higher rate as is prescribed.

Recovery of money

28. All money payable under this Act is payable to the Executive Council Member and may be recovered as a debt due to the Government of the Yukon.

Right of entry

29. Any member or employee of the Government of the Yukon may, in the discharge of his duties under this Act, enter upon any Yukon land at any reasonable time.

Quarrying and timber permits

30. Notwithstanding any other provision of this Act, the Executive Council Member may, in accordance with the regulations, issue quarrying or timber permits.

Regulations

31. The Commissioner in Executive Council may make such regulations and prescribe such forms as he deems necessary for carrying out the purposes and provisions of this Act.

CHAPTER 100

LEGAL PROFESSION ACT

Interpretation

1.(1) In this Act,

- “active member” means a member of the society in good standing who is entitled to practise law in the Yukon under this Act;
- “committee of inquiry” means a committee appointed pursuant to section 31 for the purpose of conducting an inquiry under this Act;
- “discipline committee” means the discipline committee appointed under section 25;
- “executive” means the regulating body of the society referred to in section 4;
- “member” means a member of the Law Society of Yukon but does not include an honorary member;
- “roll” means the roll of the Law Society of Yukon referred to in section 16;
- “rules” means the rules of the society made by the executive or confirmed or adopted by the society in a general meeting under this Act;
- “society” means the Law Society of Yukon constituted under section 2;
- “special examination” means examination at university standards in subjects pertaining to substantive law in force in the Yukon;
- “student-at-law” means a person serving articles of clerkship approved by the society to a member.

(2) Subject to subsection (3), in this Act the practice of law includes doing any of the following for another person on one or more than one occasion:

- (a) appearing as a counsel or advocate before any court or other adjudicative tribunal required to function judicially;
- (b) preparation of pleadings and other documents for use in proceedings in court or before any other adjudicative tribunal required to function judicially;
- (c) advising about the legal requirements for and consequences of the incorporation, registration, organization, dissolution or winding up of a corporate body, and the preparation of documents necessary to achieve any of those results;
- (d) preparation of any will or other testamentary instrument, power of attorney, deed of settlement, trust deed or other document relating to the estate of any deceased person or to probate or letters of administration;
- (e) preparation of any document that relates to property and that is intended or required to be registered, recorded, or filed in any registry or other public office;
- (f) advising on the legal sufficiency of any document referred to in paragraphs (b) to (e);
- (g) giving legal advice, such as by advising any person about his legal rights or the legal consequences of his acts.

(3) In this Act the practice of law does not include

- (a) any act referred to in subsection (2) that is not done for or in the expectation of any fee, gain or reward, whether direct or indirect, from any other person,
- (b) any act referred to in subsection (2) that is done by a member of Parliament, the Legislature or a municipal council, in his capacity as such, and
- (c) any act referred to in subsection (2) that is done by any of the following persons in their capacity as such and while not acting so as to hold themselves out to the public as a lawyer or as a member of the society:
 - (i) an employee or public officer of the Government of the Yukon;
 - (ii) an employee or public officer of the Government of Canada.

(4) Persons referred to in subsection (2) shall be deemed to hold themselves out to the public as a lawyer or as a member of the society where their employer, or anyone acting on their behalf with their authorization, represents or implies to anyone else that they are a lawyer or a member of the society.

PART 1

LAW SOCIETY OF YUKON

CONSTITUTION, EXECUTIVE AND POWERS GENERALLY

Establishment of the society

2.(1) There is hereby established a corporation to be known as the Law Society of Yukon.

(2) The head office of the society shall be such place within the Yukon, other than the office of a member, as may be determined by the executive.

Duty of the society

3. The paramount duty of the society and its members is to serve and protect the public interest in the administration of justice and the preservation of the rights of all persons in a manner that is consistent with respect for independence, subject only to law, in the relationship between a member and his client.

Executive

4.(1) The affairs of the society shall be managed and conducted by an executive which shall be composed of not less than six persons of whom

- (a) not less than four shall be elected by and from among the active members of the society, and
- (b) two shall be persons who are not members of the society and who shall be appointed by the Commissioner in Executive Council.

(2) The term of office of a member of the executive shall not exceed 12 months and, unless the member is re-elected or reappointed, his term shall be terminated by the election or appointment of another person in his place.

Powers of the executive

5. The executive, for and on behalf of the society and subject to this Act and the rules, has the power to

- (a) exercise the powers vested in a corporation by the Interpretation Act,
- (b) acquire and hold real property and sell, lease or otherwise dispose of it at pleasure,
- (c) borrow money for the purposes of the society and mortgage or charge property of the society or its sources of funds as security for money borrowed,
- (d) enter into any contract,
- (e) appoint any person as an honorary member of the society or an honorary member of the executive,
- (f) appoint, or provide for the appointment of, committees and confer upon any such committee power and authority to act for the executive in relation to such matters as the executive directs,
- (g) appoint counsel, delegates and other representatives to appear on behalf of and represent the society,
- (h) provide for the reporting of legal decisions,
- (i) establish and maintain libraries for the use of the members of the society,
- (j) distribute to members memoranda or publications relating to ethical standards of professional conduct in the practice of law,
- (k) take such action and incur such expenses as the executive considers necessary for the promotion, protection, interest or welfare of the society,
- (l) establish a program of continuing legal education,
- (m) authorize the society to provide legal aid or to enter into agreements relating to the provision of legal aid,
- (n) recommend guidelines for fees that may be charged to clients by solicitors,
- (o) enter into cooperative arrangements with other professional bodies in any jurisdiction,
- (p) insure or underwrite its members or any class thereof, reinsure its liability with regard to any insurance contracts, and generally operate insurance and pension schemes for the benefit of its members or any class thereof and for the protection of the public,
- (q) grant pensions and allowances to the employees and former employees of the society and the dependants of such persons, and make payments towards insurance to provide such pensions and allowances, and
- (r) do such things as are incidental or necessary to the exercise of the powers set out in paragraphs (a) to (q).

Rules

6.(1) The executive may make rules not inconsistent with this Act for the regulation of the society, the management and conduct of the business affairs of the society and for the exercise or carrying out of the duties and powers conferred or imposed on the society or the executive under this Act and, without restricting the generality of the foregoing, may make rules

- (a) respecting the terms and conditions upon which approval for admission as members or as students-at-law may be given, and the manner of proof thereof,

- (b) establishing a bar admission course, the contents thereof and fees for enrollment therein for persons required to pass a bar admission examination,
- (c) establishing a bar admission examination or a special examination or both, and the contents thereof,
- (d) fixing the admission fees and the membership fees payable to the society by students-at-law and members,
- (e) providing with respect to any rule respecting the payment of fees or an assessment that a member is suspended without notice or investigation upon contravening that rule,
- (f) respecting the reinstatement
 - (i) of members and students-at-law under suspension,
 - (ii) of former members whose names have been struck from the roll, and
 - (iii) of former students-at-law whose articles have been terminated under this Act,
- (g) respecting trust accounts to be opened and maintained by members for clients' money,
- (h) respecting books of account and records to be kept by members containing particulars and information as to money received, held or paid for or on account of clients, respecting the furnishing of evidence that those accounts and records are being kept and maintained, and providing for the inspection of those books and records from time to time by the auditors or agents of the society,
- (i) respecting the manner of keeping the records and accounts of the society including the roll and the information that may be entered therein,
- (j) providing for the procedure for the nomination of candidates for election as members of the executive and for the appointment of the discipline committee,
- (k) respecting the procedure to be used for the holding of elections and for determining the elected members,
- (l) respecting a code of professional ethics and conduct,
- (m) respecting advertising by members,
- (n) respecting certification of specialist fields of practice,
- (o) respecting matters relating to the discipline of members and students-at-law and the making of investigations and inquiries concerning the conduct of such persons, including the procedure to be followed by and the powers and duties of the discipline committee or any committee of inquiry and the giving of public notice of disbarments, expulsions and suspensions of members and students-at-law,
- (p) respecting the powers, duties and qualification of the officers and employees of the society,
- (q) for the admission of members of the legal profession outside the Yukon as barristers and solicitors for occasional appearances for specified proceedings,
- (r) respecting the procedure for meetings of the society and the executive, including the calling of meetings, the quorum required, voting and notice of motion to be given of the meeting and of rules to be made or submitted to a meeting of the society for confirmation or adoption,

- (s) respecting the maximum fees that may be charged by a member in the absence of a written agreement with his client,
- (t) respecting the form in which members must render their statements of account or bills of costs for services rendered,
- (u) respecting a requirement that members disclose to persons who seek to retain them the fees or basis for calculating the fees that the member proposes to charge that person, and
- (v) respecting the establishment of committees of the executive and the membership, duties and powers of such committees.

(2) Notwithstanding subsection (1),

- (a) the admission fee levied upon a person seeking registration as a student-at-law shall not exceed 25 percent of the annual membership fee levied upon an active member,
- (b) the admission fee levied upon a student-at-law seeking enrollment as a member shall not exceed 25 percent of the annual membership fee levied upon an active member,
- (c) the admission fee levied upon any person, other than a student-at-law, seeking enrollment as an active member shall not exceed 50 percent of the annual membership fee levied upon an active member,
- (d) the membership fee levied upon an active member who is not resident in the Yukon shall not exceed the membership fee levied upon an active member who is resident in the Yukon,
- (e) if there is more than one class of active member the membership fee levied upon an active member shall be the same for active members of all classes,
- (f) the fee levied upon a person to whom a permit is granted under subsection 20(6) shall not exceed 25 percent of the annual membership fee levied upon an active member, and
- (g) the fee levied upon a person to whom a permit is granted under subsection 20(7) shall not exceed the annual membership fee that is levied upon an active member.

(3) Notwithstanding subsection (1), admission and membership fees shall not be used directly or indirectly to pay for or fund in whole or in part the special fund or the professional liability claims fund.

(4) No rule made by the executive respecting the admission, conduct or discipline of members or of students-at-law or respecting admission fees or membership fees shall have effect until it is confirmed by resolution supported by at least two-thirds of the active members present at a general meeting.

(5) A rule made by the executive other than a rule referred to in subsection (4) shall not take effect until at least 30 days after the day the text of the rule is mailed to the active members, and shall have effect only until the day of the next annual meeting of the active members unless

- (a) it is sooner confirmed by resolution passed by the active members in general meeting, or
- (b) it is confirmed by resolution passed by the active members in the annual meeting.

(6) At any annual or other general meeting the active members may make, amend, or revoke any rule.

(7) Notice of motion proposing any rule to be submitted to an annual or other general meeting of the active members for confirmation, adoption, amendment, or revocation shall be given in accordance with subsection 12(2).

(8) Until otherwise provided by the rules under this Act, the code of professional conduct adopted by the council of the Canadian Bar Association on August 25, 1974 shall be the code of professional ethics and conduct to be followed by members.

(9) The executive may issue

- (a) a certificate of good standing about a member, or
- (b) a certificate of standing about a member or former member containing an endorsement about any respect in which the member or former member is not in good standing.

(10) No member or former member shall be denied a certificate of standing under paragraph (9)(b) containing such endorsement as may accurately represent his standing in or with the society.

Effect of rules

7.(1) A rule and any resolution under subsection 6(4) or (5) shall be deemed to be a regulation within the meaning of the Regulations Act and, except to the extent it is otherwise provided in this section, the provisions of that Act apply to every rule of the society.

(2) A rule shall be invalid unless it and any resolution under subsection 6(4) or (5) confirming it is filed in accordance with the Regulations Act.

(3) Where he believes the rule is contrary to the public interest, the Commissioner in Executive Council may annul any such rule in relation to the following matters:

- (a) the admission, conduct and discipline of members and student members and the suspension and restoration of their rights and privileges, the cancellation of memberships and student memberships, the resignation of members, and the readmission of former members and student members;
- (b) the books, records and accounts, including trust accounts, to be kept by members and the exemption from such requirements of any class of member;
- (c) the examination or audit of members' books, records, accounts and transactions and the filing with the society of reports with respect thereto;
- (d) a code of professional ethics and conduct;
- (e) the employment of student members;
- (f) legal education, including any bar admission course or bar admission examination.

(4) A rule that under subsection 6(4) shall not have legal effect until it is confirmed by resolution of the society does not have to be filed under the Regulations Act until it has been so confirmed.

(5) An order of the Commissioner in Executive Council annulling a rule is a regulation within the meaning of the Regulations Act.

(6) The executive shall no later than 15 days after each annual meeting file with the registrar under the Regulations Act a report about each rule made by the executive that is not confirmed under paragraph 6(5)(a).

Eligibility to be on the executive

8.(1) Subject to paragraph 4(1)(b), a person is not eligible for nomination and election to the executive unless he or she is an active member resident in the Yukon.

(2) A person is not eligible for nomination or election to the position of vice-president (discipline) unless he or she has been engaged in the practice of law for at least seven years immediately preceding the date of his or her nomination.

Voting rights

9.(1) To be eligible to vote at an election of the executive, a person must have been an active member in good standing for the period of 30 days immediately preceding the election.

(2) To be eligible to vote on any resolution or motion made at an annual or special general meeting of the society, a person must be an active member in good standing and the person must be personally present at the meeting.

Officers of the society

10.(1) From among the members of the executive there shall be a president and such other officers of the society as the rules may provide, and the president and those other officers shall be selected in such manner as the rules may provide.

(2) The president of the society shall be an active member of the society.

(3) The executive may appoint deputy executive officers who may, unless otherwise provided in the rules, exercise and perform such powers, functions and duties of an officer as the executive assigns to them.

(4) Where there is a vacancy in the portion of the membership of the executive that is elected by the members of the society, the executive may appoint some other active member of the society to fill the vacancy for the balance of the term of the person whose departure from office created the vacancy.

(5) A vacancy in the membership of the executive does not impair the right of the remaining membership of the executive to act.

(6) In meetings of the executive a quorum shall be such number as is fixed by the rules.

(7) Meetings of the executive shall be chaired by the president or, in his or her absence, by the vice-president (discipline), but if neither of them is present the meeting shall be chaired by another member of the executive designated by the president.

(8) A decision of the majority of members present at a meeting of the executive is a decision of the executive, but in the event of an evenly divided opinion between the members, including the vote of the chairperson of the meeting, the matter shall be decided in accordance with the vote of the chairperson.

Audit

11.(1) At every annual general meeting the society shall appoint an auditor for the society.

(2) Where the auditor is absent or for any reason cannot act, the president may appoint any person as acting auditor and that person while so acting has the powers and shall perform the duties of the auditor.

(3) The auditor shall be a chartered accountant or certified general accountant.

Annual general meeting

12.(1) The society shall, once in each year, hold an annual general meeting of the members of the society at such place and time as the executive determines.

(2) At least ten days before an annual general meeting the executive shall mail to each member of the society a notice of the meeting and of any rule that is to be submitted to the meeting for confirmation or adoption.

(3) At each annual general meeting the executive shall present a report of the proceedings of the executive and the proceedings of the discipline committee since the last annual general meeting.

Quorum for meetings

13. In an annual general meeting or a special meeting called under section 15 a quorum shall be such number of active members as is fixed by the rules.

Financial statement

14. A statement of the financial position of the society during the previous fiscal year, shall be given by the executive at each annual general meeting.

Special general meetings

15.(1) A special general meeting of the society shall be called by the secretary

- (a) when the executive so directs, or
- (b) within 14 days of the receipt by him of a written request signed by three active members setting out the business to be discussed at the meeting.

(2) At least ten days before a special general meeting the secretary shall cause to be mailed or delivered to each member of the society a notice of the meeting and of the nature of the business to be discussed or of the rule that is to be submitted to the meeting for confirmation or adoption.

PART 2

MEMBERSHIP AND ENROLLMENT IN LAW SOCIETY

Membership records

16.(1) The executive shall keep and maintain a record called the “Roll of the Law Society of Yukon” in accordance with the rules.

(2) The executive shall keep and maintain a record pertaining to persons admitted to the society as students-at-law.

(3) The roll and the records pertaining to students-at-law shall be open for inspection by any person upon reasonable notice to the secretary.

Appointment to the bench

17. The membership of any member who assumes office as a judge under any Act of Parliament of Canada or any Act of the Legislature or of any province is in abeyance while he continues in any such office, and when he ceases to hold the office he shall, upon his request, be restored to active member status.

Exemptions

18. Notwithstanding anything in this Part, the executive, where it considers that special circumstances so warrant with respect to any person, may waive or vary the requirements set out in paragraph 20(1)(c).

Articles with judges or governments

19. The executive may, subject to such terms and conditions as it considers proper, permit an applicant for admission as a student-at-law to serve a part of his period under articles with

- (a) a judge of the Supreme Court of Canada,
- (b) a judge of the Supreme Court,
- (c) a judge of the Territorial Court, or
- (d) an active member employed by the Government of Canada or the Government of the Yukon.

Membership qualifications

20.(1) The following persons are qualified to apply for admission to the society and enrollment as members:

- (a) any person who
 - (i) has been duly called to the bar of a province or has been admitted to practise as an attorney, advocate, barrister or solicitor in a province for a period of at least 12 consecutive months immediately preceding the date of application or such other period as may be prescribed by the rules,
 - (ii) is a member in good standing of the law society of the province in which he or she last practised as an attorney, advocate, barrister or solicitor, and

- (iii) has met all of the requirements for admission prescribed by the rules;
- (b) any person who
 - (i) has, subject to subsection (2), completed 12 months service in the Yukon under articles as a student-at-law approved by the executive,
 - (ii) has taken a bar admission course, if such a course is established by the rules,
 - (iii) has passed such bar admission examinations as may be prescribed by the rules,
 - (iv) is a graduate of a law school approved by the executive, and
 - (v) has met all of the requirements for admission prescribed by the rules;
- (c) any person who
 - (i) has been duly called to the bar in a country that is a member of the Commonwealth of Nations,
 - (ii) has been actively engaged in the practise of law in that jurisdiction for a period of not less than three years within the five years immediately preceding the date of application,
 - (iii) has a legal education that is equivalent to graduation from a law school approved by the executive,
 - (iv) has passed such bar examinations as may be prescribed by the rules, and
 - (v) has met all the requirements for admission prescribed by the rules.

(2) Except as provided under section 19, the articles of a student-at-law referred to in paragraph (1)(c) shall be with an active member who

- (a) resides in the Yukon,
- (b) who is and has been engaged in the practice of law for not less than five years or such lesser time as the executive may approve,
- (c) is in good standing, and
- (d) whose practice affords reasonable opportunity for the instruction and training of the student-at-law in the general practice of the profession of a barrister and solicitor.

(3) Every person who is qualified for admission and enrollment as a member under this section and who completes, to the satisfaction of the executive, all of the requirements for admission and enrollment set out in the Act and the rules is entitled to be admitted to the society and enrolled as a member.

(4) For the purpose of subsection (1), a person who is not in good standing in another province or jurisdiction solely by reason that he has not paid a fee or assessment in that province or jurisdiction or is suspended or struck off the roll or register in that province or other jurisdiction for failure to pay a fee or assessment may, with the approval of the executive, such approval not to be unreasonably withheld, be deemed to be in good standing.

(5) Notwithstanding paragraph (2)(c), where the member was in good standing when the student-at-law entered into articles with him, the articles of the student-at-law shall not be interrupted solely by reason that the member does not subsequently pay a fee or assessment to the society.

(6) The executive may permit a person who is entitled to practise in any province as an attorney, advocate, barrister or solicitor to act as a barrister or solicitor in the Yukon in relation to a particular matter or proceeding without becoming a member of the society.

(7) The executive may permit a person in the Yukon who is entitled to practise law in another province or jurisdiction to engage in the practice of giving in the Yukon, without becoming a member of the society, advice respecting the laws of that other province or jurisdiction, but no such permit is required solely for the purpose of appearing as a witness in a proceeding in the Yukon.

(8) When granting a permit under subsection (6) or (7), the executive may require compliance with such conditions as it thinks proper and as it is authorized by the rules to impose.

(9) A person who, on the coming into force of this Act, is enrolled under the Legal Profession Act as a barrister and solicitor shall be deemed to be enrolled as a member of the society.

Application to court for admission to the society

21. Where the society refuses or neglects to admit a person as a member or to grant a permit under subsection 20(6) or (7), the person aggrieved may, upon ten days written notice to the society, apply to the Supreme Court which, upon due cause shown, may make an order directing the society to admit the person or make such other order as is warranted by the facts.

Admission procedure

22.(1) When a person has been approved by the executive as a member of the society and the prescribed admission fee has been paid, the executive shall issue to that person a certificate to that effect.

(2) Every person to whom a certificate is issued under subsection (1), shall before engaging in the practice of law in the Yukon, make and subscribe the following upon oath or affirmation before a judge of the Supreme Court: "I do sincerely promise that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, that I will, as a barrister and solicitor, conduct all causes and matters faithfully and to the best of my ability, that I will not pervert the law to favour or prejudice any person, but will in all things conduct myself truly and with integrity, and that I will uphold and maintain the interests of my fellow citizens according to the constitution and laws in force in the Yukon."

(3) When the applicant for admission has made and subscribed the oath or affirmation set out in subsection (2), a clerk of the Supreme Court shall issue a certificate to that effect and deliver it forthwith to the executive who shall enroll the applicant as a member of the society.

Resignation

23.(1) No member may avoid proceedings, suspension, or disbarment under Part 3

- (a) by failure to pay any fee or assessment, or
- (b) by resigning from the society without the consent of the executive.

(2) The executive may permit a member to resign rather than be suspended or disbarred.

(3) Every application of a member for permission to resign shall be in writing and sent to the executive accompanied by sworn statement or statutory declaration setting forth

- (a) his age, date of call to the bar, place of residence, office address, if any, number of years in practice, if any, and stating briefly the reasons for the application,
- (b) that, except to the extent disclosed, all trust funds or clients' property for which the applicant was responsible have been accounted for and paid over to the persons entitled thereto (an accountant's certificate to that effect shall be attached and marked as an exhibit), or that the applicant has not handled trust funds or other clients' property,
- (c) that, except to the extent disclosed, all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister and solicitor, or that the applicant has not engaged in practice,
- (d) that, except to the extent disclosed, the applicant is not aware of any claims against him in his professional capacity or in respect of his practice, and
- (e) such additional information or explanation as may be relevant by way of amplification of the foregoing.

(4) The applicant shall also furnish proof of publication in two issues of the Yukon Gazette of a notice of his intention to apply for permission to resign in the form prescribed in the rules, such notice to be published at least 30 days and not more than 90 days before the application is sent to the executive.

(5) The executive may require additional information, may accept undertakings from the applicant and may include conditions which are to be complied with by the applicant as a term of granting permission to resign.

(6) Where the applicant believes that there may be good reason for dispensing with any of the foregoing requirements, he may make application to the executive setting forth his reasons and the committee may in its discretion dispense with any of such requirements.

(7) Where a member has been found to be mentally incompetent and a committee of his affairs has been appointed, the application for permission to resign may be made by his committee.

(8) A member has the same right of appeal against a decision of the executive in relation to his application for consent to resignation as he would have against any decision in relation to his reprimand, suspension or disbarment.

PART 3

DISCIPLINE OF MEMBERS

Conduct deserving of censure

24.(1) Subject to any right of appeal conferred by this Part or any other Act, the question of whether the conduct of a member or student-at-law is deserving of censure shall be determined by a committee of inquiry and the executive in accordance with this Part.

(2) Any act or conduct of a member or student-at-law that is contrary to the public interest or that harms the standing of the legal profession generally or that is contrary to the code of professional conduct and ethics established by the rules or under subsection 6(8) is conduct deserving of censure, whether or not that act or conduct is disgraceful or dishonourable and whether or not that act or conduct relates to the practice of law.

(3) Without restricting the generality of subsection (2), conduct deserving of censure includes incompetently carrying out duties or obligations undertaken by a member or student-at-law in his capacity as a member or student-at-law.

(4) Conduct deserving of censure may be censured by an order under section 37

- (a) reprimanding the member,
- (b) suspending in whole or in part and with or without conditions the rights and privileges of the member under this Act, or
- (c) striking the name of the member from the roll, thereby ending his rights and privileges as a member under this Act.

(5) Except where specific provision is made with respect to students-at-law, the provisions under this Part and any rules respecting discipline applicable to members apply with the necessary changes to students-at-law.

(6) Proceedings may be taken and orders may be made under this Part against

- (a) a person who is no longer a member by reason that he has been suspended or struck off the roll for failure to pay a fee or an assessment, and
- (b) a person who has resigned from the society, if the proceeding or order is in relation to a matter not disclosed or known to the executive at the time consent to resign was given or the proceeding or order is in consequence of some undertaking given or some condition imposed in relation to the resignation.

Discipline committee and committees of inquiry

25.(1) There shall be a discipline committee which shall consist of the membership appointed pursuant to subsections (2) and (3).

(2) The executive shall appoint to the discipline committee at least nine members of the society of whom no less than three shall be active members resident in the Yukon and no less than three shall be members not resident in the Yukon.

(3) The Commissioner in Executive Council shall appoint to the discipline committee a maximum of three persons who are not members of the society.

(4) The discipline committee shall be the panel of persons from which a committee of inquiry shall as the need arises under this Part be constituted.

(5) Subject to the rules and to disqualification for proper cause, such as conflict of interest, bias, reasonable apprehension of bias or every person who is a member of the discipline committee is entitled to participate in any committee of inquiry.

(6) The chairperson of the discipline committee shall be designated by the executive from among the members of the society appointed to the committee by the executive, and may also be an officer, other than the president, of the society.

(7) The chairperson of the discipline committee shall not be on any committee of inquiry.

(8) From among the members of the society appointed by it to the discipline committee, the executive shall designate one or more members to function as acting chairperson of the discipline committee in the event of the absence, disqualification, or incapacity of the chairperson in relation to any particular matter.

(9) A member who functions as acting chairperson of the discipline committee shall not be on any committee of inquiry in respect of a matter in which he acts as chairperson, but he may, if not otherwise disqualified, be on any other committee of inquiry.

(10) Each committee of inquiry shall be composed of three members of the discipline committee.

(11) A decision of a majority of the membership present at a meeting of any committee of inquiry is a decision of the committee, but in the event of an evenly divided opinion among the membership, the matter shall be deemed decided against the party on whom the onus of proof or persuasion rests.

(12) Each committee of inquiry shall include one of the persons appointed by the Commissioner in Executive Council to the discipline committee unless

- (a) all those persons, having been invited to serve on the committee of inquiry, refuse to serve on it or are disqualified from serving on it, or
- (b) the matter the committee of inquiry hears and determines relates solely to some aspect of the relationship between a member and the society and does not relate to any public conduct of the member or any conduct of the member that affects one or more of his clients or the public.

Rules

26. For the purposes of this Part the executive may make rules

- (a) providing for the making of preliminary investigations into any matter regarding the conduct of a member or a student-at-law, whether a complaint is made or not, and respecting the appointment and remuneration of persons to make such preliminary investigations,

- (b) prescribing the powers and duties of a person conducting such preliminary investigations,
- (c) prescribing the procedure for conducting such preliminary investigations,
- (d) respecting proceedings before the executive in matters pertaining to discipline, and
- (e) respecting the taking of courses of study and examinations by members who have, in accordance with this Part, been found by reason of incompetence to have engaged in conduct deserving of censure.

Complaints

27.(1) The executive shall refer to the chairperson of the discipline committee every complaint about the conduct of a member of the society that is made to the executive.

(2) The chairperson of the discipline committee shall review any matter regarding the conduct of a member referred to his attention by a member of the public or of the society, or by the executive, whether a complaint is made or not, and shall either

- (a) direct that no further action be taken, if he is of the opinion that the member's conduct is not capable of being found to be conduct deserving of censure, or
- (b) direct that a preliminary investigation be held regarding the matter.

Preliminary investigations

28.(1) A person conducting a preliminary investigation may require the member concerned and any other member to produce to him any ledgers, books, papers, records, files and other documents in the member's possession or under the member's control that, in any way, relate to the matter and may require the attendance at the investigation of the member concerned.

(2) The society may apply without notice to any party to the Supreme Court for an order

- (a) directing the member concerned and any other member to produce to the person conducting a preliminary investigation any ledgers, books, papers, records, files and other documents in his possession or under his control that, in any way, relate to the matter, or
- (b) directing the member concerned to produce to the person conducting a preliminary investigation any ledgers, books, papers, records, files and other documents in his possession or under his control that, in any way, relate to his practice as a barrister and solicitor or his articles as a student-at-law.

(3) The society in addition to the applications referred to in subsection (2) may apply without notice to any party to the Supreme Court for an order directing any person, including any bank, trust company or other corporation in which a member has trust money on deposit, to produce to a person conducting a preliminary investigation any ledgers, books, papers, records, files and other documents that are or may be related to the subject matter of the complaint being investigated.

(4) A person making a preliminary investigation into a matter concerning the conduct of a member may investigate any other matter regarding the conduct of the member concerned that arises in the course of the investigation.

(5) Nothing in this section compels disclosure of any thing or information that is protected by solicitor-client privilege.

Action by discipline committee

29.(1) On the conclusion of the preliminary investigation, the person or persons who conducted the investigation shall report their findings in writing to the chairperson of the discipline committee.

(2) The chairperson of the discipline committee shall consider the report on the preliminary investigation and shall

- (a) direct that no further action be taken, if he is of the opinion and belief that reasonable and probable grounds do not exist for concluding that the member's conduct might be deserving of censure,
- (b) direct that there be an investigation, if he is of the opinion that the member's conduct might be deserving of censure but that more investigation is necessary before he can decide whether or not further action can or should be taken,
- (c) subject to the rules and with the consent of the member against whom the complaint was made, refer the matter without citation to two members of the discipline committee for review and disposition, or
- (d) direct that the matter concerning the member's conduct be referred to a committee of inquiry for a hearing, if he is of the opinion and belief that reasonable and probable grounds do exist for concluding that the member's conduct might be deserving of censure.

Appeal by the complainant to the executive

30.(1) Where the chairperson of the discipline committee directs pursuant to section 27 or 29 that no further action be taken, the complainant, if any, may appeal to the executive against that direction.

(2) On hearing the appeal the executive shall give the complainant an opportunity to make representations in person or by agent, shall consider such things as the chairperson of the discipline committee ought to have considered, and may make any decision or direction that the chairperson could have made under section 27 or 29.

(3) In an appeal under subsection (1) the chairperson, or acting chairperson, whose direction is being appealed shall not participate in the hearing before or decision of the executive.

Committee of inquiry

31.(1) Where the chairperson of the discipline committee directs that the matter concerning the member's conduct be referred to a committee of inquiry, he shall in accordance with the rules and this Act

- (a) convene a committee of inquiry to hear the matter, and
- (b) give reasonable notice to the member whose conduct is the subject of the inquiry of the time and place of the inquiry and of reasonable particulars of the conduct and matter to be inquired into.

(2) A committee of inquiry may at any time during a hearing amend any notice in writing given to the member being inquired into and may also inquire into any other matter concerning the conduct of the member that arises in the course of the inquiry, but in either event the committee shall declare its intention to amend the notice in writing or to investigate the new matter and shall permit the member sufficient opportunity to prepare his answer to the amendment or the new matter.

(3) The committee of inquiry shall inquire into the matter in accordance with the principles of natural justice and for that purpose may

- (a) adduce and hear evidence on its own motion,
- (b) hear evidence adduced by the society or the member,
- (c) summon and enforce the attendance of persons, other than the member whose conduct is being inquired into,
- (d) compel the testimony of witnesses, other than of the member whose conduct is being inquired into,
- (e) compel witnesses to produce documents and things relevant as evidence in the matter being inquired into, and for that purpose may have the powers and remedies of a person under section 28 conducting a preliminary investigation,
- (f) administer oaths and affirmations, and
- (g) do all other things as are necessarily incidental to the reasonable exercise of the powers and discharge of the duties of the committee.

(4) The attendance of witnesses before a committee of inquiry and the production of documents or other things may be enforced by a notice issued by the chairperson of the discipline committee requiring the witness to attend and stating the time and place at which the witness is to attend and the documents or other things he is required to produce.

(5) On the written request of the member whose conduct is being inquired into, the chairperson of the discipline committee shall without charge issue and deliver to the member any notices he needs for the attendance of witnesses or the production of documents or other things.

(6) A witness who has been served with a notice to attend or a notice for the production of documents or other things under subsection (4) or (5) is entitled to the same fees as are payable to witnesses in civil proceedings in the Supreme Court.

(7) Failure to comply with any order or direction of the committee of inquiry made under subsection (3) may be dealt with by the Supreme Court, upon application by the member whose conduct is being inquired into or by the chairperson of the discipline committee, in the same way as the Supreme Court could deal with the failure to comply with a similar order or direction in civil proceedings before it, and in relation to the production of documents or other things the Supreme Court may also make any order that it could make under section 28.

(8) Nothing in the section compels disclosure of any thing or information that is protected by solicitor-client privilege.

(9) Subject to subsection 25(12), where the chairperson of the discipline committee directs that the matter concerning the member's conduct be referred to a committee of inquiry and the member whose conduct is being inquired into requests that the committee of inquiry be so constituted, the chairperson of the discipline committee shall convene a committee of inquiry that

- (a) does not include any member of the society who resides in the Yukon, or
- (b) does not include more members of the society who reside in the Yukon than the number that the member whose conduct is being inquired into consents to.

Right to counsel

32. The society and any member whose conduct is being inquired into has the right to be represented by counsel in proceedings before a committee of inquiry and before the executive.

Order pending inquiry

33. Notwithstanding any other provision of this Act, a committee of inquiry may make an order limiting the rights and privileges of a member or suspending the member pending the inquiry of a matter concerning his conduct and pending the making of its finding as to the matter, but in no case shall such limitation or suspension exceed a period of 30 days.

Evidence

34.(1) In any proceedings under this Part, the standard of proof shall be proof on the balance of probabilities and that standard is discharged if the trier of fact is satisfied of the existence of the fact to be proven on evidence sufficient to establish that the existence of the fact is more probable than its non-existence.

(2) In proceedings under this Part the following evidence is admissible if relevant:

- (a) opinion evidence, even where it is relevant to the very question before the committee of inquiry or court;
- (b) hearsay evidence, but the weight to be given to hearsay evidence shall be judged according to its apparent reliability and the availability of other evidence that would be admissible without relying on this paragraph.

(3) Subject to subsection 35(2), where previous proceedings under this Part have taken place with respect to the same member, the committee of inquiry may accept any evidence taken in the previous proceeding.

(4) Where other proceedings have taken place before any court or other tribunal acting judicially in respect of the same conduct that the committee of inquiry is inquiring into, the committee may accept any evidence taken in that other proceeding, other than evidence that would be excluded under subsection 35(2), if that other proceeding had been a proceeding under this Part.

(5) The weight to be attached in present proceedings to evidence referred to in subsection (3) shall be a matter for the committee of inquiry to determine and the committee is not bound by any determination in that respect that may have been made in the previous proceedings.

(6) Where it is established or admitted that a member has received any money upon trust, the burden of proof that the money have been properly dealt with lies upon the member.

Inquiry procedure

35.(1) A member whose conduct is being inquired into has the right to appear at the inquiry, but in the event of non-attendance of such member the committee of inquiry may, upon proof of service of notice to the member, proceed with the investigation in the absence of the member and without further notice to the member make a report of its findings or take such other action as it is authorized to take under this Act.

(2) A witness in a proceeding under this Part may be examined on all matters relevant to the inquiry but has the right not to have any incriminating evidence so given used to incriminate him in any other proceedings, except in a prosecution for perjury or for giving contradicting evidence.

(3) A member who attends as a witness in any proceedings under this Part may not refuse to give evidence or produce any documents or other things on the ground of solicitor and client privilege.

(4) For the purpose of obtaining the testimony of a witness who is out of the Yukon, the Supreme Court, upon an application without notice by the committee of inquiry or the member whose conduct is being inquired into, may make such orders for the taking of the evidence of that person out of the Yukon as the Supreme Court could make in civil proceedings before it.

(5) Where it is justifiable for the protection of the complainant or of a client or other person affected by the conduct of the member whose conduct is being inquired into or who attends as a witness, admittance to the place in which the hearing under this Part takes place may be restricted at the discretion of the committee of inquiry and no person shall be permitted to be present other than the officials of the committee, the parties, their counsel and such other persons as the committee may require or permit to be present and whose presence will not be prejudicial to the interests of that complainant, client or other person.

Finding of conduct not deserving of censure

36. Where the committee of inquiry finds that the member has not engaged in conduct deserving of censure, no further proceedings other than an appeal under section 42 may be taken under this Part in respect of the matter.

Conduct of member deserving of censure

37.(1) Where the committee of inquiry finds that the member has engaged in conduct deserving of censure, the committee may

- (a) reprimand the member,
- (b) order that the member's right under this Act to practise law be suspended for a specified time,
- (c) impose for a specified time reasonable restrictions on the member's right under this Act to practise law, including the restriction that he not carry on the private practice of law as a sole practitioner or in specified fields of law, or

- (d) order that the name of the member be struck off the roll and that the member's right under this Act to practise law be terminated.

(2) Where an order of suspension is made under subsection (1), or an order continuing the suspension is made under this subsection, the suspension shall not continue beyond the expiration of two years after the day the order is made unless

- (a) a committee of inquiry conducts a review of the justification for the suspension within the last six months of that two year period,
- (b) the continuation of the suspension is necessary for the protection of the public, and
- (c) the committee orders a continuation of the suspension.

(3) Notwithstanding subsection (1), where the committee of inquiry finds a member has engaged in conduct deserving of censure by reason of having incompetently carried out duties he undertook in his capacity as a member, the committee may

- (a) suspend the member from engaging in the practice of law or in a field of law,
- (b) suspend the member from engaging in the practice of law or in a field of law until the member has successfully completed a course of study ordered by the committee,
- (c) suspend the member from engaging in the practice of law or in a field of law until the member has appeared before a board of examiners appointed by the committee and has satisfied the board that he is competent to engage in the practice of law or in a field of law in respect of which an adverse determination was made,
- (d) suspend the member from engaging in the practice of law or in a field of law until the member has undertaken in writing in a form specified by the committee that he will restrict his practice in the manner ordered by the committee,
- (e) require that the member successfully complete a course of study ordered by the committee within a period of time determined by the committee and on his failure to complete the course successfully suspend the member from engaging in the practice of law or in a field of law in respect of which an adverse determination was made,
- (f) require the member to appear before a board of examiners appointed by the committee within a period of time ordered by the committee and satisfy the board that he is competent to engage in the practice of law or in a field of law in respect of which an adverse determination was made and, on his failure to satisfy the board, suspend the member from engaging in the practice of law or in a field of law in respect of which the adverse determination was made,
- (g) suspend the member from engaging in the practice of law until the member has appeared before a board of examiners appointed by the committee and has satisfied the board that his competence to practise is not adversely affected by a physical or mental disability, or addiction to alcohol or drugs, or
- (h) require the member to appear before a board of examiners appointed by the committee within a period of time ordered by the committee and satisfy the board that his competence to practise is not adversely affected by a physical

or mental disability or addiction to alcohol or drugs, and on his failure to satisfy the board, suspend the member from engaging in the practice of law or in a field of law in respect of which an adverse determination was made.

(4) For the purpose of subsection (3), no member shall be required to take and no board of examiners shall set an examination other than one that is based upon a curriculum or course of studies established by the rules, and the standard of success in an examination or of satisfactorily demonstrating competence to practise shall in all cases be reasonable.

(5) Where an order referred to in subsection (1) or (3) is made, costs in relation to the proceedings under this Part may be ordered against the member whose conduct was found to be deserving of censure, but those costs shall in no case exceed the cost incurred by the society in the conduct of the proceedings and shall in all cases be taxable by a clerk of the Supreme Court in the same manner and on the same basis as if the proceeding had been a proceeding in the Supreme Court.

(6) Costs ordered against a member under subsection (5) are a debt payable by the member to the society.

Conduct of student deserving of censure

38. Where the committee of inquiry finds that a student-at-law has engaged in conduct deserving of censure by reason of having incompetently carried out duties that he undertook in his capacity as a student-at-law, the committee

- (a) shall not terminate the articles of the student-at-law unless there is no reasonable prospect that he can, with more training and experience, qualify for admission as a member,
- (b) shall not suspend the articles of the student-at-law, but may instead extend the required period of articles for a specified time, and
- (c) subject to paragraphs (a) and (b), may exercise in relation to the student-at-law all the powers of the committee under section 37.

Records of proceedings

39.(1) Every committee of inquiry shall make and keep a record of the proceedings before it.

(2) The record shall consist of notices related to the proceeding or review and proof of service thereof, a transcript of any evidence adduced, the documents or other things received in evidence and a description of any findings or orders and reasons therefor, but need not include a transcript of argument presented by or on behalf of any party to the proceeding or review.

Destruction of records

40. Upon the expiration of two years after the date the last finding or order in the proceeding or review was given the society may apply, without notice to any party, to a judge of the Supreme Court for an order for the destruction of the record of the proceeding, other than of the findings or orders and reasons therefor, and the judge may make the order upon being satisfied there is no reasonable likelihood of any future need for the record in the interests of the society, the public or the member whose conduct was the subject of the proceeding or review.

Notice to other law societies

41. Where a member is suspended or struck from the roll or his right to practise is restricted, the chairperson of the discipline committee shall so notify the law society in each province.

Appeal to the Supreme Court

42.(1) The member whose conduct was inquired into or the society may appeal to the Supreme Court against any finding or order of the committee of inquiry under section 37.

(2) An appeal under subsection (1) shall be taken by notice of appeal given within 30 days, or such longer time as the Supreme Court may allow, from the date on which the finding or order appealed against was given.

(3) The procedure for the conduct of an appeal taken under subsection (1) shall be, with such reasonable modifications directed by the Supreme Court as may be necessary, the same as for an appeal in the Court of Appeal.

(4) On hearing the appeal the Supreme Court may

- (a) make any finding that in its opinion ought to be made,
- (b) quash or confirm any finding made by the committee of inquiry,
- (c) make any order that in its opinion the committee of inquiry ought to have made, and
- (d) refer the matter back to the committee of inquiry, with or without directions, for further consideration by it.

(5) Where a member appeals under subsection (1) the chairperson of the discipline committee shall deliver to the clerk of the Supreme Court and to the member a true copy of the record of proceedings before the committee of inquiry.

Stay of order pending appeal

43.(1) Where the member appeals under subsection 42(1) he may apply to the Supreme Court for, and the Supreme Court may grant, an order staying the order of the committee of inquiry pending the appeal.

(2) The judge may make the staying order under subsection (1) subject to such conditions as to the financial responsibility of the member and such restrictions on the member's right to practise as the judge thinks appropriate, including the restriction that he not carry on the private practice of law as a sole practitioner or in specified fields of law.

Reinstatement

44.(1) When the name of any member has been struck off the roll under this Part, he may apply to the executive for reinstatement, but he shall not be reinstated as a member except by permission of the executive, and that permission shall not be unreasonably withheld.

(2) When the articles of a student-at-law are terminated under this Part, he may apply to the executive for admission again, but he shall not be admitted again as a student-at-law except by permission of the executive, and that permission shall not be unreasonably withheld.

(3) The executive shall not grant permission under subsection (1) or (2) within two years after the date the order for striking off or termination was given, or confirmed on appeal if it was appealed.

(4) No member of the executive when the application is made for permission under subsection (1) or (2) who was a member of the committee of inquiry that ordered the striking off or termination is, for that reason alone, disqualified from participating in the hearing and decision on the application for permission.

PART 4

PROTECTION OF CLIENTS

DIVISION 1 - SPECIAL FUND

Establishment of the fund

45. The society shall establish, maintain and operate a fund to be known as the “special fund” for the reimbursement of pecuniary losses sustained by reason of the misappropriation or wrongful conversion by a member of property entrusted to or received by him in his capacity as a barrister or solicitor.

Rules

46. The executive may make rules,

- (a) respecting the administration of the special fund,
- (b) providing for levying upon active members an annual assessment and of special assessments of such amounts as may be fixed by the executive from time to time for the purpose of establishing, maintaining and augmenting the special fund,
- (c) providing for the payment out of the special fund of expenses incurred in the administration of the fund or in connection with audits, investigations, hearings or other action taken pertaining to the accounts of members under this Act, and
- (d) establishing conditions to be met before the reimbursement of a loss may be made out of the special fund.

Assessments and report of operation of the fund

47.(1) A member is not required to pay the annual assessment or any special assessment referred to in paragraph 46(b) if, during the time in respect of which the assessment is levied, no property that belongs to another person was entrusted to or received by him in his capacity as a barrister or solicitor in the private practice of law in the Yukon.

(2) A member who has not paid the annual assessment referred to in paragraph 46(b) shall not receive, in his capacity as a barrister or solicitor in the practice of law, any property that belongs to another person.

(3) In each annual general meeting of the society the executive shall deliver to the members a full financial report upon the special fund identifying,

- (a) the sources of its revenue and the disposition of claims made during the previous year, and
- (b) any claims outstanding as of the date of the report.

(4) A member is not required to pay the annual assessment or any special assessment referred to in paragraph 46(b) in respect of any property entrusted to or received by the member in his or her capacity as a member of the public service of the Yukon or Canada or as a public officer.

Investment

48.(1) The special fund is not subject to any trust, and it shall be kept separate from the other funds of the society.

(2) All funds of the special fund shall, pending investment or application in accordance with this section, be paid into a bank or trust company in the Yukon to the credit of a separate account.

(3) The executive may invest the special fund, but only in whatever way a trustee may, under the Trustee Act, invest money entrusted to him.

(4) The society may enter into contracts with insurers or other persons whereby the fund may be protected in whole or in part against any claim or loss to the fund.

Reimbursement for loss

49.(1) Where property that belongs to a person has been entrusted to or received by a member in his capacity as a barrister and solicitor in the practice of law and the person sustains pecuniary loss by reason of the misappropriation or wrongful conversion of the property by the member, the person qualifies for reimbursement of his loss out of the special fund.

(2) Any person who alleges he qualifies for reimbursement under subsection (1) may apply to the executive for reimbursement.

(3) The maximum entitlement of any person to reimbursement out of the assurance fund is \$500,000 in respect of the same loss.

(4) Where a person qualifies under subsection (1) for reimbursement out of the special fund, the executive may, subject to subsection (3), pay out of the fund to that person the amount of his loss or such other amount as the executive may determine.

(5) The executive may, in respect of the payment of an amount out of the special fund under this section, impose such reasonable terms and conditions as it considers necessary for the protection of the public and for the protection and reimbursement of the society.

(6) No payment shall be made out of the special fund in respect of any property referred to in subsection 47(4).

(7) Where the executive makes a payment out of the special fund the society is subrogated to the rights, remedies and securities to which the person who claimed and received payment from the fund was entitled as against the member who caused the loss or against that member's trustee, assignee, estate or personal representative, and those rights, remedies and securities may be enforced or realized in the name of the society.

DIVISION 2 - PROFESSIONAL LIABILITY CLAIMS FUND

Interpretation

50. In this Division,

“deductible amount” means

- (a) with reference to the fund, the amount, if any, prescribed by the rules as the amount to be deducted from any claim paid from the fund, and
- (b) with reference to a group contract, the amount, if any, specified in the contract as the amount that the insurer is entitled to deduct from the amount of any claim for which the insurer is liable under the contract,

“fund” means the professional liability claims fund,

“group contract” means a group insurance contract entered into pursuant to section 52,

“professional liability claim” means a claim against a member for an amount of money that the member is legally obligated to pay as damages arising out of the performance of professional services for another person in the member's capacity as a barrister or solicitor and caused by the member or any other person for whose acts the member is legally liable.

Establishment and operation of the fund

51.(1) The executive may establish and maintain a fund to be known as the professional liability claims fund.

(2) The executive may make rules

- (a) specifying the purposes mentioned in subsection (3) for which the fund may be used,
- (b) respecting the administration of the fund,
- (c) providing for levying upon active members an annual assessment and of special assessments of such amounts as may be fixed by the executive from time to time for the purpose of establishing, maintaining and augmenting the fund, and
- (d) governing the payment and recovery of the whole or part of any deductible amounts pursuant to section 52.

(3) The fund may be used for whichever of the following purposes the rules specify:

- (a) the indemnification by the society in whole or in part of members liable to pay assessments referred to in paragraph (2)(c) in respect of professional liability claims made against them;
- (b) the payment in whole or in part of deductible amounts pursuant to section 52;
- (c) the payment of premiums payable by the society under a group contract;
- (d) the payment of premiums or other costs payable by the society under a contract entered into pursuant to subsection (5);
- (e) the payment of expenses incurred in connection with audits, investigations of claims against the fund and hearings pertaining to such claims.

(4) Where the rules specify that the fund may be used for the purpose referred to in paragraph (3)(a), the executive may make rules

- (a) prescribing the deductible amount and also the maximum amount, which shall be not less than \$1,000,000, that may be paid from the fund in respect of any professional liability claim,
- (b) prescribing the conditions to be met before any claim may be paid from the fund,
- (c) prescribing classes of professional liability claims in respect of which no payment or partial payment only shall be made from the fund, and
- (d) providing for any matter or procedure in connection with the filing, settling, administration and payment of claims made against the fund.

(5) The society may enter into contracts with insurers or other persons whereby the fund may be protected in whole or in part against any claim or loss to the fund.

(6) The fund shall be kept separate and apart from any other funds of the society, and is not subject to any trust.

(7) The fund shall, pending investment or application in accordance with this Part, be deposited with a bank or trust company in the Yukon.

(8) The executive may invest the fund, but only in whatever way a trustee may, under the Trustee Act, invest money entrusted to him.

(9) A member may but is not required to pay the annual or any special assessment referred to in paragraph (2)(c) if, during the time in respect of which the assessment is levied

- (a) he did not engage in the private practice of law in the Yukon,
- (b) he practised exclusively as an employee of a sole practitioner or of a firm and did not practise on his own account apart from such employment, or
- (c) he acted exclusively as an employee of a corporation or a government or a government agency and has not practised on his own account apart from such employment.

(10) A member who is not required to pay and does not pay the annual or special assessment is not entitled to indemnification from the fund or under a group contract, as the case may be.

Group insurance contracts

52.(1) The society may enter into a group insurance contract providing for the indemnification by the insurer thereunder in whole or in part of members liable to pay assessments referred to in paragraph 51(2)(c) in respect of professional liability claims against them, on such terms and conditions as may be agreed upon.

(2) An insurance contract made under subsection (1) may stipulate a maximum amount that may be paid under the contract in respect of a professional liability claim, but that maximum amount shall be not less than \$1,000,000 in respect of any professional liability claim.

(3) The society may enter into a group contract with an insurer either alone or jointly with one or more law societies or governing bodies of the legal profession in other provinces that are incorporated for purposes comparable to those of the society.

(4) The executive may make rules

- (a) providing for any matter or procedure in connection with the filing, settling, administration and payment of claims made against the insurer under the group contract and which is not otherwise provided for in the group contract, and
- (b) respecting the notice required to be given by an active member to the society of a claim or possible claim against him and for which the insurer may be liable for indemnification under the group contract.

Payments from the fund

53.(1) Where an amount is paid or is payable from the fund or by the insurer under a group contract as indemnification in respect of a professional liability claim, or where the amount of a professional liability claim is equal to or less than the deductible amount, the society shall pay from the fund

- (a) the whole or part of the deductible amount to the claimant in the event of the inability or failure of the member concerned or any other person to pay the whole or part of the deductible amount, or
- (b) the whole or part of the deductible amount to the claimant with the consent of and on behalf of the member concerned, upon such terms as to repayment by the member to the society as the executive may prescribe.

(2) Where any payment is made by the society pursuant to paragraph (1)(a), the society is subrogated to the rights, remedies and securities to which the claimant was entitled as against the member concerned or against the member's trustee, assignee, estate or personal representative and those rights, remedies and securities may be enforced or realized in the name of the society.

Liability insurance requirement

54.(1) Where the executive has not established or is not maintaining the professional liability claims fund, every active member, other than a member referred to in subsection (2), shall take out and maintain in force a policy of liability insurance in respect of professional liability claims against him to a limit of at least \$1,000,000.

(2) Subsection (1) does not apply to any member who

- (a) does not engage in the private practice of law in the Yukon,
- (b) practises exclusively as an employee, for an employer who does not practise law, and does not practise on his or her own account apart from such employment, or
- (c) acts exclusively as an employee of a government or a government agency and does not practice on his own account apart from such employment.

(3) The executive may make rules limiting the amount of any deductible amount that a member may contract for in a policy of liability insurance he is required under subsection (1) to take out and maintain.

Proof of insurance

55.(1) Each active member to whom subsection 54(1) applies shall, at least once in each year and more frequently if so required by the rules, satisfy the executive that he is complying with subsection 54(1).

(2) Notwithstanding subsection (1), the chairperson of the discipline committee may, whenever he considers it necessary or advisable, require any active member to whom subsection 54(1) applies to satisfy the executive that he is complying with subsection 54(1).

Cancellation of insurance

56. Where a member has taken out a policy of liability insurance in respect of professional liability claims

- (a) no cancellation or voiding of that policy in whole or in part by the insurer for any reason is effective unless the insurer gives both the member and the executive at least 30 days notice of the cancellation or voiding, and
- (b) where the policy is cancelled or voided by reason of failure to pay a premium it shall be reinstated upon payment of the premium by or on behalf of the insured and, upon such reinstatement, shall be deemed to have been continuously in effect.

DIVISION 3 - SEIZURE AND CUSTODY OF PROPERTY**Interpretation**

57. In this Division,

“depository” means any bank or trust company or person holding by way of deposit or otherwise any money, trust funds or assets of any kind relating to the business of a member as a barrister and solicitor,

“member” includes a former member of the society,

“property” or “property of a member” means anything wherever situated acquired and being used by a member in relation to his practice or given to a member by or for a client or any other person where it in any way relates to his practice or former practice as a barrister or solicitor or the business or affairs of his clients or former clients and whether or not it was acquired before or after he ceased to practise as a barrister or solicitor.

Appointment of custodian

58.(1) A judge of the Supreme Court may, upon application by the society either without notice to any party or on such notice as the judge may require, appoint a person as custodian to have custody of the property of the member and to manage or wind up the legal business of the member in any of the following cases:

- (a) when the name of a member has been struck from the roll;
- (b) when a member has been suspended;
- (c) when a member has died or become mentally incapacitated;
- (d) when by reason of illness or for any other reason a member is unable to practise as a barrister and solicitor;
- (e) when a member has absconded or is otherwise improperly absent from his place of business or has neglected his practice for an unduly extended period;
- (f) where there is reason to believe that the trust money held by a member are not sufficient to meet his trust liabilities;

(g) when other sufficient grounds exist.

(2) In an order under subsection (1) or in any subsequent order made without notice to any party, or upon such notice as the judge may require, the judge may

- (a) direct the sheriff to seize, remove and place in the custody of the custodian all property of the member, and to that end the order may authorize the sheriff to enter upon any premises or open any safety deposit box or other receptacle where there are grounds for believing that property of the member may be found,
- (b) direct any depository of property of a member to deal with, hold, pay over or dispose of such property to the custodian, or in such other manner as the judge may deem proper,
- (c) direct the removal of any custodian appointed by such order and appoint another custodian,
- (d) give directions to the custodian as to the disposition of the property in his hands or any part or parts thereof,
- (e) make provision for the remuneration, disbursements and indemnification of the custodian out of the property of the member,
- (f) make provision for the discharge of a custodian upon completion of the responsibilities imposed on him under this Part, and
- (g) give such further directions or make such further orders as the nature of the situation requires.

Return of property

59.(1) Where property of a member has been placed in the custody of a custodian under section 58 the executive or any person appointed by the executive for the purpose shall examine the property and thereafter the custodian shall, upon reasonable notice, inform clients of the member or such other persons as he considers necessary

- (a) that the property of the member is in the custody of the custodian, and
- (b) that the client or other person may apply to the custodian in person or by solicitor or agent for the delivery to him of the property in which he appears to have an interest or for permission to make copies of any documents and papers among the property that he thinks necessary to copy, in respect of any transactions or dealings he had with the member.

(2) Where the custodian is satisfied that a person is entitled to any property in his custody he may deliver the property to the person claiming it.

(3) Where a member whose property has been placed in the custody of a custodian under section 58 claims to be entitled to a solicitor's lien upon or in respect of any part or parts thereof

- (a) he shall, within 30 days from the service of the order upon him, file notice and particulars of his claim for lien with the custodian, and
- (b) the custodian shall forthwith give notice of the claim for lien to the apparent owner of the property against which the lien is claimed and thereafter the rights of the parties shall be determined according to law.

(4) Where a barrister and solicitor fails to file a claim for lien pursuant to this section, any lien that he might otherwise be entitled to is extinguished and the custodian is entitled to deliver any property to the claimant thereof, if otherwise satisfied that it is proper to do so.

(5) Notwithstanding anything in this section, a judge of the Supreme Court may summarily determine the validity of any claim to a solicitor's lien.

DIVISION 4 - BOOKS, RECORDS AND ACCOUNTS

Interpretation

60. In sections 61 to 63,

“client” includes any person or body of persons, corporate or unincorporate, from whom or on whose behalf a member in connection with his practice receives money or other property;

“member” includes a firm of members;

“money” includes current coin, government or bank notes, cheques, drafts, post office orders, or express or bank money orders.

Trust accounts

61.(1) Every member who receives money in trust for a client, except money hereinafter expressly exempted from the application of this section, shall forthwith pay the money into an account at a bank or trust company to be kept in the name of the member or in the name of the firm of which he is a member or by which he is employed and designated as a trust account.

(2) A member may keep one or more trust accounts as he thinks fit.

(3) Trust money is money received by a member that belongs in whole or in part to a client or that is to be held on the client's behalf or to his or another's direction or order, and includes money advanced to a member on account of fees for services not yet rendered or money advanced on account of disbursements not yet made.

(4) There shall be paid into a trust account established under this section only,

- (a) trust money,
- (b) money that may by inadvertence have been drawn from the trust account in contravention of this section, and
- (c) money paid to a member representing in part money belonging to a client and in part money belonging to the member where it is not practicable to split the payment, but money belonging to the member shall be drawn from the trust account without delay.

(5) Money need not be paid into a trust account,

- (a) that a client in writing requests a member to withhold from the trust account or to deposit elsewhere,
- (b) that a member pays into a separate account opened or to be opened in the name of a client or some person named by that client or the duly authorized agent of that client, or
- (c) that in the ordinary course of business upon its receipt is paid forthwith, in the form in which it is received, to or on behalf of the client.

(6) The handling of money that, pursuant to subsection (5), is not paid into a trust account shall be shown in the books and records of the member.

(7) Money shall not be paid into a trust account,

- (a) that belongs entirely to the member or to others in his firm, including an amount received as a general retainer for which the member is not obligated either to account or to render services, or
- (b) that is received by the member on account of fees for which a billing has been delivered or for services already performed for which a billing is delivered forthwith thereafter or is received to reimburse the member for disbursements made or expenses incurred on behalf of a client.

(8) Money on deposit in a trust account to which the member becomes entitled shall promptly thereafter be drawn from the trust account in accordance with subsection (9).

(9) Money shall not be drawn from a trust account unless it is

- (a) money properly required for payment to or on behalf of a client,
- (b) money required to reimburse the member for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client,
- (c) money properly required for or toward payment of the member's fees for which a billing or other written notification has been rendered,
- (d) money that is directly transferred into another trust account and held on behalf of a client, or
- (e) money that may by inadvertence have been paid into the trust account in contravention of this section.

(10) In no case shall the money so drawn under subsection (8) exceed the unexpended balance of the money held in the trust account for the client.

(11) Money drawn from a trust account under paragraph (9)(b) or (c) shall be drawn only

- (a) by a cheque drawn in favour of the member, or
- (b) by a transfer to a bank account that is in the name of the member and is not a trust account.

(12) A cheque drawn on a trust account shall be signed by at least one person who is a member of the society.

(13) Money, other than money permitted by subsection (9), shall not be drawn from a trust account unless the executive specifically authorizes in writing its withdrawal.

(14) At all times a member shall maintain sufficient balances on deposit in his trust account or accounts to meet all his obligations with respect to money held in trust for clients.

(15) For the purposes of subsections (9) and (14), cash or a certified cheque or cheques negotiable by the member or cheques drawn by the member on his trust account, in the possession and control of the member, shall be deemed to be money held in a trust account if such cash or cheques received are deposited in the trust account not later than the next banking day.

(16) No cheque drawn on a trust account shall be made payable either to cash or to bearer.

Disposition of trust property of unlocated client

62.(1) Subject to any conditions of the trust, a member who has for seven years held money in his trust account or held any other property in trust in his capacity as member on behalf of a person who the member is unable to locate and to whom the money is payable or the property is to be delivered shall pay the money or deliver the property to the Executive Council Member unless the executive authorizes him to hold it for such longer time as the executive may specify.

(2) Subject to any conditions of the trust, a member who has for two years held money in his trust account or held any other property in trust in his capacity as member on behalf of a person who the member is unable to locate and to whom the money is payable or the property is to be delivered may apply to the executive for permission to pay the money or deliver the property to the Executive Council Member.

(3) On an application under subsection (1) or (2) the executive shall have regard to

- (a) the nature of the trust and the circumstances in which it arose,
- (b) whether the member has made a reasonable effort to locate the person to whom the money is payable or the property is to be delivered, and
- (c) whether there is a reasonable prospect that the member will be able to locate the person to whom the money is payable or the property is to be delivered.

(4) Upon the payment of the money or delivery of the property under subsection (1) or (2) to the Executive Council Member the liability of the member to pay or deliver it to the person on whose behalf he previously held it, or to that person's legal representative, is extinguished.

(5) Subject to subsections (7) and (8), money paid under subsection (1) or (2) to the Executive Council Member becomes public money within the scope of the Financial Administration Act.

(6) Subject to subsection (7), property delivered under subsection (1) or (2) to the Executive Council Member becomes public property within the scope of the Financial Administration Act.

(7) A person or his legal representative who, but for subsections (1), (2), and (4), could have claimed the money or property from the member may claim the money or property from the Executive Council Member and the Executive Council Member shall pay the money or deliver the property to him when he satisfactorily demonstrates that he is entitled to receive it.

(8) The Executive Council Member is not required to pay interest on any money paid to him under subsection (1) or (2).

(9) No claim against the Executive Council Member is enforceable after ten years after the money or property was received by the Executive Council Member under subsection (1) or (2) and, after that period, the money or property becomes the property of the Government of the Yukon.

(10) A person whose claim against the Executive Council Member under subsection (7) is not allowed by the Executive Council Member may apply to the Supreme Court for a review of the Executive Council Member's decision and the Supreme Court may allow the claim in such amount as it may determine.

Maintenance of books, records and accounts

63.(1) Every member shall maintain books, records and accounts in connection with his practice to record all money and other negotiable property received and disbursed, and as a minimum requirement every member shall maintain,

- (a) a book of original entry showing the date of receipt and source of money received in trust for each client and identifying the client on whose behalf the trust money is received,
- (b) a book of original entry showing all disbursements out of money held in trust for each client and showing each cheque number, the date of each disbursement, the name of each recipient, and identifying the client on whose behalf each disbursement is made out of money held in trust,
- (c) a clients' trust ledger showing separately for each person on whose behalf money has been received in trust all such money received and disbursed and any unexpended balance,
- (d) a record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made,
- (e) a book of original entry showing the date of receipt and source of all money received other than trust money,
- (f) a book of original entry showing all disbursements of money other than trust money and showing each cheque or voucher number, the date of each disbursement, and the name of each recipient,
- (g) a fees book or chronological file of copies of billings showing all fees charged and other billings to clients, the dates such charges are made, and identifying the clients so charged,
- (h) a record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the books and records together with the reasons for any differences between the totals and supported by,
 - (i) a detailed listing made monthly showing the amount of trust money held for each client and identifying each client for whom trust money is held,
 - (ii) a detailed reconciliation made monthly of each trust bank account,
 - (iii) a record showing all negotiable or other valuable property, other than money, held in trust from time to time for all clients, and

- (i) bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.
- (2) The books, records and accounts required to comply with subsection (1)
 - (a) shall be entered and posted currently at all times, and the trust comparison required by paragraph (1)(h) shall be made monthly within 15 days from the effective date of each comparison, and
 - (b) shall be entered and posted in ink or a duplication thereof, or by machine, and shall be preserved for at least the six year period previous to the most recent fiscal year-end of the member, with the exception of trust cash receipt and disbursement books of original entry and the books and records required by paragraphs (1)(c), (h) and (i) which shall be preserved for at least ten years.

Notices and reports to the executive

64.(1) Every active member who engages in the private practice of law in the Yukon shall inform the executive in writing of the termination date of his fiscal year, and shall file with the executive written notice of any change in the fiscal year within one month after the change is made.

(2) Subject to subsection (3), every active member who engages in the private practice of law in the Yukon shall file with the society within six months from the termination of his fiscal year a statutory declaration in the prescribed form and a report duly completed in the prescribed form by a chartered accountant or a certified general accountant signed by the member in respect of each practice with which he was associated since his last filing.

- (3) Subsections (1) and (2) do not apply to a member
 - (a) who has not engaged in the private practice of law in the Yukon since last filing under this section,
 - (b) who has practised exclusively as an employee of a sole practitioner or of a firm and who has not practised on his own account apart from such employment since last filing under this section, or
 - (c) who has acted exclusively as an employee of a corporation or a government agency and has not practised on his own account apart from such employment since last filing under this section.

Member's claim against trust money

65. Nothing in this Act deprives a member of any recourse or right, whether by way of lien, set-off, counter claim, charge or otherwise, against money standing to the credit of a client in the member's trust account.

Order for audit

66. Where he considers it necessary or advisable, the chairperson of the discipline committee may make an order providing for the audit by a chartered accountant or a certified general accountant of the books and accounts of a member, and that member shall forthwith make his books and accounts fully available for examination by such accountant.

Order to account or to pay into court

67.(1) Where the chairperson of the discipline committee is satisfied that a member has failed to account to a client or to deliver any property to a client or as directed by the client, the chairperson may,

- (a) direct the member to give to the client or to the executive, or both, an accounting of the property, or
- (b) direct the member to pay the property into or deposit the property with the Supreme Court, and may fix a time within which the member is to comply with the direction.

(2) Property paid or deposited under subsection (1) may, upon an order of a judge of the Supreme Court, be paid out or delivered to the person or persons named in the order as being entitled thereto.

DIVISION 5 - FEES AND REVIEW OF FEES**Fee agreements**

68.(1) Notwithstanding any law or usage to the contrary, a member may contract with a person as to the remuneration to be paid to him for services rendered or to be rendered to the person instead of or in addition to fees established under the rules or to the costs which are allowed to the member, but such a contract shall be unenforceable by the member unless in writing.

(2) A member may make an agreement, to be known as a contingent fee agreement, that provides that a member's remuneration for services to be provided for or on behalf of a client be based upon a percentage of the amount recovered, but such an agreement shall be unenforceable unless it is in writing.

(3) A member may not enter into a contingent fee agreement where the services provided relate to an application respecting

- (a) any proceeding under the Family Property and Support Act or the Divorce Act (Canada), or in relation to any other matrimonial cause or the property of an infant,
- (b) any proceeding in relation to the property of any person under legal disability,
- (c) any proceeding in relation to the distribution of the estate of a deceased person or the partition of property, or
- (d) any other matter or class of matters described in the rules.

(4) The executive may make rules respecting contingent fee agreements, and the rules may

- (a) provide for the form and content of contingent fee agreements,
- (b) establish maximum percentages for different classes of service, and
- (c) establish maximum percentages that are applicable at different stages of a proceeding in respect of which a contingent fee agreement has been entered into.

(5) Champertous contracts are prohibited and unenforceable by the member, but the taking of a fee based on a proportion of the amount recovered is not, in itself, champertous.

(6) No member shall purchase or agree to purchase the interest or any part of the interest of his client in any action or other contentious proceeding to be brought or maintained and, subject to subsections (2) to (5), no member shall make an agreement in which he stipulates for payment only in the event of success in the action or proceeding.

(7) Any agreement that is made contrary to subsection (6) shall be deemed to be champertous.

(8) A contingent fee agreement shall

- (a) set out the percentage established under paragraphs (4)(b) and (c), and
- (b) provide that the client or member may apply to have the contract reviewed by the clerk of the Supreme Court under subsection (10).

(9) Where a contingent fee agreement has been entered into and the member receives or is paid, through a settlement, costs in respect of the proceeding or anticipated proceeding in respect of which the contingent fee agreement was entered into, the costs shall not, for the purpose of determining the amount of fees the member is entitled to under the agreement, form part of the recovery, but shall

- (a) constitute part of the fees payable to the member, and
- (b) be deducted from the amount that would otherwise be payable under the agreement.

(10) A person who has made an agreement with a member for the payment of legal services or who is contingently liable to make payment on such an agreement including a contingent fee agreement may, within 90 days after the agreement was made or the retainer between the solicitor and client was terminated, apply to the clerk of the Supreme Court to have the agreement reviewed, notwithstanding that the person has made payment to the member under the agreement.

(11) On an application under subsection (10) the clerk shall, where he considers that the contract is unfair, modify or cancel the agreement, and where he cancels the agreement he

- (a) may require the member to prepare a bill for review, and
- (b) shall review the costs, fees, charges and disbursements for the services provided as though there were no agreement.

(12) A person or member, as the case may be, may appeal a decision of the clerk on any matter under subsection (11) to the Supreme Court.

(13) A provision in an agreement referred to in subsection (1) that the member shall not be liable for negligence, or that he shall be relieved from responsibility to which he would otherwise be subject as a member, is void.

(14) Where remuneration has been received or retained by a member in excess of the amount permitted by this section or, in the case of a review by a clerk under subsection (11), in excess of the amount fixed by the clerk, he shall refund the excess amount to the client.

(15) Unless a member informs his client and has the approval of his client, no member shall arrange to split the fees for his services with another member or with any other person.

Charge or property recovered or preserved

69.(1) A member who is employed to commence or defend a proceeding in a court or tribunal has a charge against any property that is recovered or preserved as a result of the proceeding for the proper costs, charges and expenses of or in relation to the proceeding, including counsel fees.

(2) Where the proceeding has been heard or is pending, the court or tribunal may make an order for the taxation and payment of the costs, charges and expenses out of the property as to the court or the tribunal may appear just and proper.

(3) Where the proceeding is before a court or tribunal, the member or the client may apply to the court or the tribunal for an order under subsection (2).

(4) Any agreement or conveyance that defeats or would defeat a member's charge under subsection (1) is unenforceable against the charge, unless the agreement is with or the conveyance is to a bona fide purchaser for value who does not have notice of the charge.

(5) No proceeding for the purpose of realizing or enforcing a charge under subsection (1) shall be taken except with the leave of the Supreme Court and upon such conditions as the Supreme Court may deem just and proper.

Suit for fees and disbursements

70.(1) A member may sue for reasonable fees and disbursements in relation to services performed by him in his capacity as an active member, but no such action may be taken until the expiration of 30 days after he has delivered or mailed a bill for those fees and disbursements to the person he seeks to charge with payment.

(2) Without restricting the rules or the rules of Court, the member's bill shall contain a reasonably descriptive statement of the services performed, itemizing the fees and services, and a detailed statement of the amount and purpose of each disbursement.

(3) The member may, without notice, apply to the Supreme Court for and the Supreme Court may grant, leave for the commencement of action for the recovery of the amount of the bill before the expiration of the 30 day period where the Supreme Court is satisfied that there is probable cause for believing that the person charged with the bill is about to leave the Yukon other than temporarily or has made or is about to make a preference or conveyance that would be, as against the member, void under the Fraudulent Preferences and Conveyances Act.

Review of bills

71.(1) A member's bill may be reviewed by the clerk of the Supreme Court, or any other officer empowered to tax a bill of costs in the Supreme Court.

(2) The review of the bill may be obtained at the request of any person claiming the whole or any portion of the bill or at the request of any person from whom payment of the whole or any portion of the bill is claimed.

(3) The person claiming the whole or any portion of the bill may not obtain a review of a bill under subsection (1) until he would be entitled to sue for the amount of the bill.

(4) The person from whom payment of the whole or any portion of the bill is claimed may obtain the review at any time.

(5) The person who seeks the review shall give his opposite party not less than five days notice of the time and place for the review.

(6) The notice shall be given

(a) by personal delivery or whatever other method allowed under the rules of Court for service of a writ of summons, where the notice is given by the person claiming the whole or any portion of the bill, and

(b) by personal delivery to or certified mail addressed to the office of the member who performed the services and incurred the disbursements that are the subject of the bill.

(7) If, after due notice, a party fails to attend for the review, the bill may be reviewed in his absence.

(8) Where a member's bill has been reviewed pursuant to subsection (1), the amount of the account allowed by the clerk or other officer shall become due and payable by the person from whom the payment of the account is claimed as if that amount were a judgment for a debt owing by order of the Supreme Court.

Order to render a bill

72.(1) If no bill for services of a member has been delivered or sent, a person believing himself to be chargeable with the bill may seek an order from the clerk of the Supreme Court, or any other officer empowered to tax a bill in the Supreme Court, requiring the delivery of the bill, and the clerk or other officer may make such an order but shall allow a reasonable time, not to exceed 30 days, for compliance with the order.

(2) The order under subsection (1) may be obtained by the same procedure as described in section 71 for obtaining a review of the bill.

(3) On an application under subsection (1), the clerk or other officer shall, if requested by the person believing himself chargeable with the bill, include in the order an appointment for the review of the bill.

(4) If the order under subsection (1) does not include an appointment for the review of the bill, the review may, after delivery of the bill, be obtained in the manner described in section 71.

Factors for review of bills

73.(1) On any review of a bill or an agreement under this part, the reviewing officer shall have power to determine what are the reasonable fees and disbursements for the services rendered and whether the person charged with the bill is liable to pay all or any part of the bill, and in making that determination the reviewing officer shall take into account all relevant factors including:

- (a) any agreement between the member and his client in respect of the services, and the circumstances of the making of that agreement;
- (b) the extent and character of the services rendered;
- (c) the labour exerted and the time spent;
- (d) the character and importance of the matter in respect of which the services were rendered;
- (e) the amount of money or the value of the property involved;
- (f) the skill and experience of the member rendering the service;
- (g) the reason the disbursement was incurred;
- (h) the results achieved.

(2) The principles and rules of law respecting taxation of costs in the Supreme Court shall apply to the review of bills and agreements under this Part and, in conducting the review, the reviewing officer shall have all the powers of the clerk of the Supreme Court upon a taxation of costs in the Supreme Court.

Effect of reviewing officer's determination

74. Upon the completion of his review the reviewing officer shall certify his determination and, subject to the right of appeal, his determination is binding on the parties and his certificate is enforceable as a judgment of the Supreme Court.

Appeal of review

75.(1) The determination of the reviewing officer under section 72 or 73 may be appealed to a judge of the Supreme Court.

(2) The procedure for the appeal under subsection (1) shall be the same as the procedure described in section 71 for obtaining a review.

(3) Nothing in this Act shall limit the power of the Supreme Court with respect to the revision or taxation of a member's bill.

Persons against whom orders may be made

76.(1) An order as to costs in relation to a review, an application for delivery of a bill or an appeal under subsection 75(1) may be made against the person claiming the whole or any portion of the bill or against the person from whom payment of the whole or any part of the bill is claimed.

(2) Subsection (1) does not restrict any entitlement to costs that there may be in any appeal against the decision of the judge of the Supreme Court in the appeal to him under subsection 75(1).

Application for delivery of client's property

77.(1) A client of a member may apply to the Supreme Court for an order that the client's solicitor or former solicitor deliver to the court or the client any property that the member has under his control on behalf of the client.

(2) Where a client changes solicitors or a client commences acting on his own behalf without a solicitor, the client or the former solicitor may apply to the Supreme Court for an order directing that the former solicitor deliver the client's records to a new solicitor nominated by the client or to the client himself, as the case may be.

(3) In an order under subsection (1) or (2) the Supreme Court may make the direction conditional on the client

- (a) paying all amounts due to the former solicitor by the client, or
- (b) giving security for the payment in an amount and manner satisfactory to the court.

(4) In an order under subsection (1) or (2) the Supreme Court may order a review of any claim of the solicitor or former solicitor for fees or disbursements.

PART 5

YUKON LAW FOUNDATION

Establishment of the foundation

78. There is hereby established a corporation to be known as the Yukon Law Foundation, in this Part called the foundation.

Objects of the foundation

79. The objects of the foundation are to receive money and property and to maintain and manage a fund the interest and capital of which is to be used from time to time as the board sees fit for

- (a) conducting research into and recommending reform of law and the administration of justice,
- (b) establishing, maintaining and operating law libraries for public use,
- (c) contributing to the legal education and knowledge of members and the people of the Yukon and providing programs and facilities therefor,
- (d) legal aid programs and programs of like nature for the benefit of persons unable to afford the legal services they require,
- (e) contributing to the special fund,
- (f) contributing to the cost incurred by the society in relation to proceedings under Part 3, and
- (g) doing all other things that are incidental or conducive to the attainment of the objects enumerated in paragraphs (a) to (f).

Board of directors

80.(1) The affairs of the foundation shall be conducted by a board of directors, in this Part called the "board", composed of six members of whom

- (a) three shall be appointed by the Executive Council Member, and
- (b) three shall be appointed by the executive from among the members of the society.

(2) The term of office of the members of the board shall be for a period of two years.

(3) The board shall designate one of its members as chairperson and may, in its absolute discretion, change the designation from time to time.

(4) Four members of the board constitute a quorum.

(5) A decision of a majority of the members present at a meeting of the board is a decision of the board, but in the event of an evenly divided opinion between the members, including the vote of the chairperson, the matter shall be decided in accordance with the vote of the chairperson.

(6) The foundation shall not make any contribution to the cost incurred by the society in relation to proceedings under Part 3 except upon the unanimous consent of the members of the board.

Bylaws

81.(1) The board may make bylaws respecting calling of meetings of the board and the conduct of its business, the duties and conduct of its members and generally as to the conduct of the business and affairs of the foundation.

(2) Without limiting the generality of subsection (1), the board may make bylaws regarding

- (a) the number and designation of officers of the foundation,
- (b) the appointment of and terms of office of officers of the foundation and all matters relating to their offices,
- (c) the resignation or removal from office of officers of the foundation,
- (d) the number and designations of employees of the foundation other than officers, and their terms and conditions of employment,
- (e) the remuneration, if any, of officers and employees of the foundation, and
- (f) the operation of the law foundation account.

Financial matters

82.(1) The board shall apply the funds of the foundation, in such manner as the board may decide, in carrying out the objects of the foundation.

(2) The board shall not contribute more than \$50,000 in any year to the special fund.

(3) The funds of the foundation shall consist of all sums paid to the foundation pursuant to section 85, interest accruing from investment of the funds of the foundation, and any other money received by the foundation.

(4) There shall be paid out of the funds of the foundation the costs, charges and expenses involved in the administration of the foundation, and the costs, charges, and expenses incurred by the board in carrying out the objects of the foundation.

(5) No director who is a member of the society may receive any remuneration for his services.

(6) A director may be paid out of the funds of the foundation transportation, accommodation, and living expenses incurred in connection with his duties as a member of the board away from his ordinary place of residence but, except as otherwise provided by the bylaws, the payment of such expenses shall conform as nearly as possible in all respects to the payment of such expenses for members of the public service of the Yukon.

(7) All funds of the foundation shall, pending investment or application in accordance with this section, be paid into a bank or trust company in the Yukon to the credit of a separate account.

(8) The board may invest the funds of the foundation, but only in whatever way a trustee may, under the Trustee Act, invest money entrusted to him.

(9) The accounts of the foundation shall be audited annually by a chartered accountant or a certified general accountant appointed by the board.

Annual report

83.(1) After the end of each year, the foundation shall prepare and submit to the Executive Council Member and the executive a report consisting of

- (a) a general summary of its transactions and affairs during that year, and its revenues and expenditures during that year,
- (b) an audited balance sheet, and
- (c) such other information as the Executive Council Member may require.

(2) Upon receiving a report under subsection (1), the Executive Council Member shall cause a copy of it to be tabled in the Legislature if it is then in session or, if it is not then in session, during the next session.

Borrowing

84. The foundation may borrow, raise or secure the payment of money upon the credit of the foundation from time to time as the board thinks fit to fulfill the objects of the foundation and may for the purpose issue notes, bonds, debentures, debenture stock or other evidences of indebtedness.

Interest on members' trust accounts

85.(1) Every member, or firm of more than one member, which shall be included in the term "member", shall maintain an interest-bearing trust account in a bank or trust company in the Yukon into which he shall deposit any money received by him upon trust from or on account of any client and shall instruct the bank or trust company, to remit the interest earned thereon to the foundation semi-annually, and such interest thereupon becomes the property of the foundation.

(2) A member is not liable, by virtue of the relation between the member and his client, to account to any client for interest earned on money deposited in the bank or trust company pursuant to subsection (1).

(3) Nothing in this Part affects any arrangement made between a member and his client to deposit money received from or on behalf of the client or to which the client is entitled in a separate account for the client at interest that is to be the property of the client.

PART 6

PROFESSIONAL CORPORATIONS

Interpretation

86. In this Part,

“permit” means a permit issued pursuant to subsection 88(3);

“professional corporation” means the holder of a subsisting permit.

Rules

87. The executive may make rules

- (a) respecting the procedure for making applications for permits and the information required to be submitted in support of an application,
- (b) respecting the reinstatement or reissuance of any permit suspended or revoked,
- (c) providing for the creation and maintenance of a register of professional corporations and requiring the filing of periodic returns by those corporations,
- (d) respecting the annual renewal of permits, and
- (e) prescribing the types of names by which a professional corporation, a partnership of two or more professional corporations, or a partnership of one or more professional corporations and one or more individual barristers and solicitors, may be known.

Permits

88.(1) Notwithstanding anything in this Act, a corporation to which a permit is issued under this section may practise law in its own name.

(2) Notwithstanding subsection (1), no corporation shall be enrolled as a member of the society.

(3) The executive shall issue a permit to any corporation that fulfils the following conditions:

- (a) files an application in the form prescribed by the executive;
- (b) pays all the fees prescribed by the executive;
- (c) satisfies the executive that it is a corporation limited by shares and is in good standing under the Business Corporations Act;
- (d) satisfies the executive that it has the capacity to practise law;
- (e) satisfies the executive that the name of the corporation is in accordance with the rules of the society and contains the words “professional corporation”;
- (f) satisfies the executive that the legal and beneficial ownership of all the issued voting shares of the corporation is vested in one or more active members of the society and that all of the directors of the corporation are active members of the society;

- (g) satisfies the executive that the persons who will carry on the practice of law on behalf of the corporation are active members of the society.

(4) A permit issued under subsection (3) expires on December 31 of the year for which it was issued.

(5) Paragraph (3)(g) shall not be construed so as to impose on a professional corporation any restriction that is not imposed on an individual member of the society in connection with the employment of a student-at-law or any other person.

Disqualification of corporation

89. If a professional corporation ceases to fulfil any condition specified in subsection 88(3) by reason only of the death or loss of active membership in the society of a shareholder of the corporation, the professional corporation has a period of 90 days from the date of the death or loss of active membership, as the case may be, in which to fulfil the condition, failing which the permit is automatically terminated effective on the expiration of the 90 day period without the necessity of an order of the executive.

Liability of shareholders and employees

90.(1) Notwithstanding anything to the contrary in the Business Corporations Act, every person who is a shareholder of a corporation during the time that it is the holder of a permit or of a corporation during the time that it acts in contravention of subsection 102(1) or section 103 is liable to the same extent and in the same manner as if the shareholders of the corporation were during that time carrying on the business of the corporation as a partnership or, if there is only one shareholder, as an individual practising law.

(2) The liability of any person in carrying on the practice of law is not affected by the fact that the practice of law is carried on by that person as an employee and on behalf of a professional corporation.

Agreements respecting voting rights

91. No shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in another person who is not an active member of the society the authority to exercise the voting rights attached to any or all of his shares.

Application of the Act and rules to members and students

92. The relationship of a member of the society or of a student-at-law to a professional corporation, whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application to him of the provisions of this Act and the rules.

Relationship with clients

93.(1) Nothing in section 88 affects, modifies or limits any law applicable to the fiduciary, confidential or ethical relationships between a barrister and solicitor and a person receiving the professional services of a barrister and solicitor.

(2) The relationship between a professional corporation carrying on the practice of law and a person receiving the professional services of the corporation is subject to all applicable laws relating to the fiduciary, confidential and ethical relationships between a barrister and solicitor and his client.

(3) All rights and obligations pertaining to communications made to or information received by a barrister and solicitor, or his advice thereon, apply to the shareholders, directors, officers and employees of a professional corporation.

Use of “professional corporation”

94.(1) No person or persons shall trade or carry on business within the Yukon under any name or title containing the words “professional corporation” or the abbreviation “P.C.” unless that person or those persons are duly incorporated and the corporation holds a subsisting permit, or unless otherwise expressly authorized by statute.

(2) Every person who contravenes subsection (1) commits an offence punishable on summary conviction.

(3) On application by the society, the Supreme Court may grant an injunction enjoining any person who has been convicted of an offence under subsection (2) from continuing the conduct that constitutes the offence, notwithstanding that a sentence has been imposed.

Application of the Act and rules to corporations

95.(1) Unless otherwise expressly provided in this Part, all the provisions of this Act and the rules thereunder that are applicable to members apply with all necessary modifications to a professional corporation under this Part, and a professional corporation shall be deemed to be an active member.

(2) Without limiting the generality of subsection (1), proceedings that may be taken under this Act against a member who is an individual may also be taken against a professional corporation, and any order that may be made against an individual may be made against a professional corporation, unless the order is to do a thing that is capable of being done only by an individual.

(3) Where in proceedings under Part 3 a professional corporation is found to have engaged in conduct deserving of censure, the individual member whose conduct justifies that finding may also be found to have engaged in conduct deserving of censure and, in addition to any order that is made against the professional corporation, any order that may be made against a member who is an individual may be made against him.

(4) In proceedings against a professional corporation, provisions in this Act in relation to striking the name of a member off the roll shall be deemed also to be provisions in relation to revoking the permit of the professional corporation.

Misappropriation and appointment of custodian

96.(1) The misappropriation or wrongful conversion referred to in subsection 49(1) includes misappropriation or wrongful conversion by a member of the society of money or other property entrusted to or received by any professional corporation in its capacity as a barrister or solicitor, of which corporation that member is a shareholder, director, officer or employee.

(2) An order authorized to be made by a judge of the Supreme Court in the case of a member under subsection 58(1) may, in the case of a professional corporation, be made in any of the following cases:

- (a) when the permit of the corporation has been revoked or suspended under subsection 95(3);
- (b) when a shareholder of the corporation has died or become mentally incapacitated;
- (c) when for any reason the corporation is unable to practise as a barrister and solicitor;
- (d) when a shareholder of the corporation has absconded or is otherwise improperly absent from the corporation's place of business, or the corporation has neglected its practice for an unduly extended period;
- (e) when there is reason to believe that the trust money held by the corporation is not sufficient to meet its trust liabilities;
- (f) when sufficient grounds otherwise exist.

Suit for fees

97. Subject to Part 4, Division 5, a professional corporation may sue for fees for services performed on its behalf and in its name by a person in his capacity as an active member at any time after the services are performed, if the services were performed during the time that the corporation was the holder of a subsisting permit.

Certificate

98. A certificate purporting to be issued by the executive and stating that a named corporation was or was not, on a specified day or during a specified period, a professional corporation according to the records of the society, shall be admitted in evidence as prima facie proof of the facts stated therein without proof of the appointment or signature of the officer who signed the certificate.

PART 7 MISCELLANEOUS

Reference to members

99. Members of the society shall be known and designated as barristers and solicitors.

Officers of the courts

100.(1) Active members and students-at-law are officers of the Supreme Court and all other courts in the Yukon and have a right of audience in the Supreme Court and those other courts.

(2) Any person who, in the absence of subsection 1(3) or 102(2), would be practising law or would violate subsection 102(1) by appearing in the Supreme Court or in any other court in the Yukon has a right of audience in the Supreme Court or that other court in respect of what he is permitted to do under subsection 1(3) or 102(2).

Disclosure by students

101. A student-at-law shall disclose to his client that he is a student-at-law before he acts for the client.

Practice of law

102.(1) No person shall engage in the practice of law in the Yukon unless he is an active member of the society.

(2) No person violates subsection (1) by

- (a) acting on his own behalf in an action, matter or proceeding to which he is a party,
- (b) drawing, preparing, revising or settling for his own use any will, conveyance or other instrument pertaining to real or personal property, or any other instrument or document that is or intended to be enforceable by law or have a legal effect,
- (c) lawfully acting as an insurance adjuster under the Insurance Act,
- (d) appearing as an agent without reward for another person before a justice of the peace or judge of any court or other tribunal,
- (e) acting as an accountant or auditor, or
- (f) doing anything described in subsection 1(3).

(3) Subsection (1) does not apply to a student-at-law in the course of acting as counsel or in doing any other thing in the course of his service under articles, if it is done under the direction or supervision of an active member or of a professional corporation under Part 6.

(4) The exemption provided by paragraph (2)(a) applies to a person to whom a debt has been assigned for collection purposes only.

Prohibited representations

103.(1) No person shall, unless he is an active member of the society, hold himself out as or represent himself to be an active member of the society.

(2) No suspended member shall, while suspended, hold himself out as or represent himself to be a member in good standing or a member not under suspension.

(3) No person shall, unless he is admitted to the society as a student-at-law, hold himself out as or represent himself to be a student-at-law or an articulated law student or law clerk.

Offence and injunction

104.(1) Every person who contravenes subsection 102(1) or section 103 commits an offence punishable on summary conviction.

(2) On application by the society the Supreme Court may grant an injunction enjoining any person who has been convicted of an offence under subsection (1) from continuing the conduct that constitutes the offence, notwithstanding that a sentence has been imposed.

Advertising

105. A member may advertise in his capacity as a member but, unless the rules otherwise provide, he shall restrict such advertising to conveying information about

- (a) his place and hours of practice,
- (b) the identity of other members with whom he practises,
- (c) with their consent and in professional directories or journals or reports only, the identity of representative clients,
- (d) fields of law to which he restricts his practice, and
- (e) the types of services he provides in his practice.

Responsibilities of the Executive Council Member

106.(1) The Executive Council Member shall serve as a guardian of the public interest in all matters within the scope of this Act, and for this purpose he may apply by originating application to the Supreme Court for an order requiring the society or any member to produce any document, record, or thing pertaining to the affairs of the society.

(2) No admission of any person in any document, record, or thing produced under subsection (1) is admissible in evidence against that person in any proceedings other than disciplinary proceedings under this Act.

Defamation actions

107. No action for defamation may be founded on a communication that consists of or pertains to a matter regarding the conduct of a member if the communication is published to or by the society, the executive, or any officer or employee of the society in the course of inquiring into the matter or in the course of proceedings relating to the matter.

Fees and assessments

108. All fees and assessments payable by a member under this Act or the rules are the property of the society and shall be paid to the treasurer of the society.

Service of documents

109.(1) Service of any notice, order or other document under this Act or the rules on a member or student-at-law may be made personally or by registered letter addressed to the last known place of residence or business of the person to be served; if service is made by registered letter, service is deemed to be made on the seventh day after the notice, order or other document is mailed; and proof that the notice, order or other document was so addressed and posted is proof of service.

(2) Service of any document on the society may be made by service upon the secretary or the registered office of the society.

Municipal licences

110. No municipality has the power to require any member or professional corporation to obtain a licence from the municipality to practise law or to carry on the practice or profession of a barrister and solicitor.

YUKON
TERRITORY



REVISED STATUTES 1986 SUPPLEMENT/APPENDIX 1987

Revised Statutes of the Yukon, 1986
Supplement
And
Appendix

This Supplement is a republication of Acts enacted by the Legislature of the Yukon Territory between May 28, 1986, the cut-off date for inclusion in the RSY, and October 12, 1987, the date on which the RSY 1986 came into force.

The Appendix is a republication of the Statutes of the Yukon, 1987, chapters 24 to 33. These chapters were originally published in Volume 3 of the SY 1987. They are reproduced here in their original form.

Sam Cawley
Queen's Printer for the Yukon Territory
Whitehorse, Yukon

Revised Statutes of the Yukon, 1986

Supplement

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SY 1987, c. 12	c. 12
SY 1987, c. 13	c. 13
SY 1987, c. 14	c. 14
SY 1987, c. 15	c. 16
SY 1987, c. 16	c. 17
SY 1987, c. 17	c. 19
SY 1987, c. 18	c. 20
SY 1987, c. 19	c. 23
SY 1987, c. 20	c. 26
SY 1987, c. 21	c. 28
SY 1987, c. 22	c. 29
SY 1987, c. 23	c. 30

Table of Concordance

(According to title of original act)

Original Act	RSY 1986, Supp.
Fifth Appropriation Act, An Act to Amend	c. 1
Fifth Appropriation Act, 1985-86	c. 4
Home Owner's Grant Act, An Act to Amend	c. 10
Legal Services Society Act, An Act to Amend	c. 15
Municipal and Community Infrastructure Grants Act	c. 21
Municipal Finance Act, An Act to Amend	c. 22
Workers Compensation Act, An Act to Amend	c. 27
First Appropriation Act, 1987-88	c. 7
Fourth Appropriation Act, 1986-87	c. 8
Human Rights Act	c. 11
Medical Profession Act, An Act to Amend	c. 18
Public Service Commission Act, An Act to Amend	c. 24
Public Service Staff Relations Act, An Act to Amend	c. 25
Brands, Highways, Pounds Act, An Act to Amend	c. 2
Business Development Assistance Act, An Act to Amend	c. 3
Fifth Appropriation Act, 1986-87	c. 5
Financial Administration Act, An Act to Amend	c. 6
Gas Burning Devices Act	c. 9
Insurance Act, An Act to Amend	c. 12
Interim Supply Appropriation Act, 1987-88	c. 13
International Commercial Arbitration Act	c. 14
Legislative Assembly Act and Legislative Assembly Retirement Allowances Act, An Act to Amend	c. 16
Lottery Licensing Act	c. 17
Motor Vehicles Act, An Act to Amend	c. 19
Motor Vehicles Act (No. 2), An Act to Amend	c. 20
Nursing Assistants Registration Act	c.23
Second Appropriation Act, 1987-88	c. 26
Workers Compensation Act, An Act to Amend	c. 28
Young Persons Offences Act	c. 29
Yukon Development Corporation Act, An Act to Amend	c. 30

Revised Statutes of the Yukon, 1986

Supplement

Explanatory Note

This Supplement contains the Acts that were passed between May 28, 1986, the cut-off date for inclusion in the RSY 1986, and October 12, 1987, the day on which the RSY's 1986 came into force.

The Acts in this Supplement have been adapted to the style, terminology, and numbering of Volumes 1 and 2 of RSY 1986. They are arranged in alphabetical order and their chapter numbers have been assigned in series according to that order. They are a republication of Acts originally published as SY 1986, c. 20 to 26 and SY 1987, c. 1 to 23. The first page of each Act in the Supplement shows the day of assent and the Statutes of Yukon chapter number of the corresponding original Act.

CHAPTER 1

(RSY 1986, Supplement)

AN ACT TO AMEND THE ASSESSMENT AND TAXATION ACT

(enacted as SY 1986, c. 20, assented to on Dec. 18, 1986)

1. This Act amends the Assessment and Taxation Act.

2. In the definition of "collector" or "collector of taxes" the expression "Deputy Head of Community and Transportation Services" is substituted for the expression "Executive Council Member".

3. Section 1 is amended by striking out the definition of "depreciation".

4. The following section is added immediately after section 25:

Late filing of complaint of assessment

"25.1(1) Notwithstanding subsection 25(3), where a person does not file a complaint within 30 days of the mailing of the assessment notice, the person may, with special leave of the assessment appeal board, make application to the assessment appeal board for an order directing the assessment review board to hear the complaint.

(2) An application to the assessment appeal board under subsection (1) shall be made in the same manner as a notice of appeal under subsection 39(3) and shall be delivered to an assessor within 90 days of the mailing of an assessment notice."

5. In subsection 36(1), the expression "Executive Council Member" is substituted for the word "Commissioner in Executive Council".

6. In paragraph 49(1)(d) the expression "but the exemption under this paragraph does not extend to the improvements or any part of the lands owned by a religious body that are used for residential, farming or agricultural purposes, or building or improvements used in connection with those purposes." is added after the expression "community service".

7. Section 2 of this Act shall come into force on January 1, 1987.

CHAPTER 2

(RSY 1986, Supplement)

AN ACT TO AMEND THE BRANDS ACT, HIGHWAYS ACT AND POUNDS ACT

(enacted as SY 1987, c. 7, assented to on April 16, 1987)

Brands Act

1.(1) This section amends the Brands Act.

(2) In section 1 the following is substituted for the definition of “brand”;

“‘brand’ means any character or combination of characters impressed upon the skin of stock, or any other prescribed means of animal identification, for the purpose of denoting ownership of the stock, but does not include the marking of an animal by a pound keeper under the Pounds Act;”.

(3) The following definition is added to section 1:

“‘impressed’ includes the placing or marking of any brand upon stock;”.

(4) The following subsection is substituted for subsection 9(2):

“(2) An impression of a brand upon stock shall be made

(a) by an iron

(i) that has a face that is in no place less than six millimetres in width, and

(ii) that is capable of making an impression of the brand not less than 75 millimetres in either height or width, as the case may be, or

(b) in any other prescribed manner.”

Highways Act

2. The following sections are added to the Highways Act immediately after section 29:

Animals straying on highway

“29.1(1) For the purposes of this section and section 29.2 animal has the same meaning as in the Pounds Act.

(2) No person shall allow any animal owned by the person or in the person’s care to be within 30 metres of the centre of a prescribed highway unless the animal is in a person’s control.

(3) A person who contravenes subsection (2) is guilty of an offence and is liable

(a) for a first offence, to a fine of \$100,

(b) for a second offence within three years, to a fine of \$300, and

- (c) for each subsequent offence within three years, to a fine of \$500.
- (4) Where the owner of an animal is guilty of a third or subsequent offence under paragraph (3)(c), the animal with respect to that offence shall be forfeited to the Government of the Yukon.

Impounding animals on highways

29.2 If an animal is within 30 metres of the centre of a prescribed highway and the animal is not under anyone's control, a person designated by the Executive Council Member may capture the animal and deliver it to the pound keeper in the nearest pound district."

Pounds Act

3.(1) This section amends the Pounds Act.

(2) The following section is added immediately after section 7:

Animals seized on highways

"7.1 If an animal has been seized and delivered to a pound keeper under section 29.2 of the Highways Act, the pound keeper shall impound the animal and the animal shall be dealt with as if seized and impounded under this Act."

(3) The following section is added immediately after section 8:

Marking impounded animals

"8.1(1) Where an animal has been seized and impounded, the pound keeper shall mark the animal in the prescribed manner.

(2) No person shall remove or deface a marking affixed to an animal by a pound keeper under subsection (1)."

(4) The following section is added immediately after section 11:

Notice and sale where owner is guilty of third offence

"11.1(1) Where the owner of an animal is found guilty of a third or subsequent offence in respect of the animal under section 22.1

(a) the animal with respect to that offence shall be forfeited to the Government of the Yukon, and

(b) the pound keeper in possession of the animal shall sell the animal at public auction after posting notices for at least ten days of the time and place of the auction in three of the most public places in the pound district.

(2) Subsections 9(2) and (3) do not apply to an animal being sold under this section."

4. Subsection 22 is amended by adding the expression "subject to section 22.1" at the beginning.

5. The following section is added immediately after section 22:

“22.1(1) No person shall allow any animal owned by the person or in the person’s care to run at large in a pound district

(2) A person who contravenes subsection (1) is guilty of an offence and is liable

(a) for a first offence, to a fine of \$100,

(b) for a second offence within three years, to a fine of \$300, and

(c) for each subsequent offence within three years, to a fine of \$500.”

6. Section 2 of this Act shall come into force by a day to be fixed by the Commissioner in Executive Council.

CHAPTER 3

(RSY 1986, Supplement)

AN ACT TO AMEND THE BUSINESS DEVELOPMENT ASSISTANCE ACT

(enacted as SY 1987, c. 8, assented to on April 16, 1987)

1. This Act amends the Business Development Assistance Act.
2. Subsection 5(3) is repealed.
3. The following heading and section is inserted immediately after section 21:

Guarantees of Debt

“22.1 Subject to regulations, the Executive Council Member may grant a guarantee of a debt instead of or in addition to approving financial assistance.”

CHAPTER 4

(RSY 1986, Supplement)

FIFTH APPROPRIATION ACT, 1985-86

(enacted as SY 1986, c. 21, assented to on Dec. 18, 1986)

Whereas it appears by message from the Commissioner and in the estimates accompanying the message that, in addition to the sums previously appropriated, the sums appearing in Schedule "A" of this Act are required for the purpose of defraying certain expenses of the public service of Yukon and for related purposes for the period of 12 months ending in March 31, 1986.

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act may be cited as the Fifth Appropriation Act, 1985-86.

2.(1) In addition to the sum of \$48,207,000 provided for in the First Appropriation Act, 1985-86 and the sum of \$165,880,000 provided for in the Second Appropriation Act, 1985-86 and the sum of \$25,056,000 provided for in the Third Appropriation Act, 1985-86 and the sum of \$5,044,000 provided for in the Fourth Appropriation Act, 1985-86, from and out of the Yukon Consolidated Revenue Fund there may be paid and applied a sum not exceeding in the whole \$32,000 for defraying the several charges and expenses of the public service of Yukon payable in the period of 12 months ending on March 31, 1986, as set forth in Schedule "A" of this Act and that sum shall not be paid or applied except in accordance with Schedule "A", the Financial Administration Act and, subject to that Act, the estimates accompanying the message from the Commissioner.

(2) The due application of all monies paid or applied pursuant to section 2 shall be accounted for.

(3) The 1985-86 grant to the Yukon Housing Corporation pursuant to subsection 17(2) of the Housing Corporation Act shall be \$1,316,000 for operational costs and \$222,000 for capital costs excluding depreciation.

FIFTH APPROPRIATION ACT, 1985-86

SCHEDULE A

		\$ (Dollars in 000's)		
Operation and Maintenance Votes		Voted to Date	This Appro- priation	Total Voted (Current Spend- ing Authority)
01	Yukon Legislative Assembly	1,770	-	1,770
02	Executive Council Office	4,012	-	4,012
09	Community and Transportation Services	39,783	-	39,783
07	Economic Development: Mines and Small Business	3,185	-	3,185
03	Education	36,615	-	36,615
12	Finance	2,898	32	2,930
16	Government Services	10,630	-	10,630
15	Health and Human Resources	35,017	-	35,017
08	Justice	14,836	-	14,836
10	Public Service Commission	12,419	-	12,419
14	Renewable Resources	5,804	-	5,804
13	Tourism	3,386	-	3,386
	Loan Capital	4,700	-	4,700
	Loan Amortization	1,859	-	1,859
	Subtotal Operation and Maintenance	176,914	32	176,946
Capital Votes				
02	Executive Council Office	5	-	5
09	Community and Transportation Services	31,218	-	31,218
07	Economic Development: Mines and Small Business	5,675	-	5,675
03	Education	7,138	-	7,138
16	Government Services	5,913	-	5,913
15	Health and Human Resources	2,361	-	2,361
08	Justice	10,172	-	10,172
14	Renewable Resources	1,243	-	1,243
13	Tourism	3,548	-	3,548
	Subtotal Capital	67,273	-	67,273
	Total	244,187	32	244,219

CHAPTER 5

(RSY 1986, Supplement)

FIFTH APPROPRIATION ACT, 1986-87

(enacted as SY 1987, c. 9, assented to on April 16, 1987)

Whereas it appears by message from the Commissioner and in the estimates accompanying the message that, in addition to the sums previously appropriated, the sums not appearing in parenthesis in Schedule "A" of this Act are required for the purpose of defraying certain expenses of the public service of the Yukon and for related purposes for the period of 12 months ending in March 31, 1987;

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act may be cited as the Fifth Appropriation Act, 1986-87.

2.(1) In addition to the sum of \$80,935,000 provided for in the First Appropriation Act, 1986-87, the sum of \$173,940,000 provided for in the Second Appropriation Act, 1986-87 and the sum of \$21,359,000 provided for in the Third Appropriation Act, 1986-87 and the sum of \$7,247,000 provided for in the Fourth Appropriation Act, 1986-87, from and out of the Yukon Consolidated Revenue Fund there may be paid and applied a sum not exceeding in the whole \$234,000 for defraying the several charges and expenses of the public service of the Yukon payable in the period of 12 months ending on March 31, 1987, as set forth in Schedule "A" of this Act and that sum shall not be paid or applied except in accordance with Schedule "A", the Financial Administration Act and, subject to that Act, the estimates accompanying the message from the Commissioner.

(2) The sums previously appropriated to a vote or item that is listed in Schedule "A" and that has a sum appearing in parenthesis after it are reduced by the amount of the sum appearing in parenthesis.

3. The due application of all monies paid or applied pursuant to section 2 shall be accounted for.

FIFTH APPROPRIATION ACT, 1986-87

SCHEDULE A

		(Dollars in 000's)		
Operation and Maintenance Votes		Voted to Date	This Appro- priation	Total Voted (Current Spend- ing Authority)
01	Yukon Legislative Assembly	1,526	20	1,546
02	Executive Council Office	4,080	(210)	3,870
09	Community and Transportation Services	41,661	110	41,771
07	Economic Development: Mines and Small Business	4,095	406	4,501
03	Education	39,870	501	40,371
12	Finance	3,086	353	3,439
16	Government Services	11,781	968	12,749
15	Health and Human Resources	36,900	(504)	36,396
08	Justice 15,731 677 16,408			
10	Public Service Commission	3,115	275	3,390
14	Renewable Resources	6,371	(50)	6,321
13	Tourism	4,359	(412)	3,947
11	Women's Directorate	208	5	213
	Loan Capital	1,000	-	1,000
	Loan Amortization	1,875		1,875
	Subtotal Operation and Maintenance	<u>175,658</u>	<u>2,139</u>	<u>177,797</u>
Capital Votes				
02	Executive Council Office	21	-	21
09	Community and Transportation Services	52,942	(1,585)	51,357
07	Economic Development: Mines and Small Business	11,617	603	12,220
03	Education	20,838	(927)	19,911
16	Government Services	6,675	126	6,801
15	Health and Human Resources	2,022	(60)	1,962
08	Justice	5,899	168	6,067
14	Renewable Resources	2,144	(52)	2,092
13	Tourism	5,665	(178)	5,487
	Subtotal Capital	<u>107,823</u>	<u>(1,905)</u>	<u>105,918</u>
	Total	<u>283,481</u>	<u>234</u>	<u>283,715</u>

CHAPTER 6

(RSY 1986, Supplement)

AN ACT TO AMEND THE FINANCIAL ADMINISTRATION ACT

(enacted as SY 1987, c. 10, assented to on April 16, 1987)

1. This Act amends the Financial Administration Act.

2.(1) In the definition of “contract” in subsection 1(1), the words “the expenditure of public money or the giving of any other consideration” are substituted for the words “the expenditure of public money”, and the words “the payment of public money or the giving of consideration” are substituted for the words “the payment of money or the giving of consideration” are substituted for the words “the payment of money”.

(2) In the definition of “department”, in subsection 1(1), the words “and includes the Women’s Directorate and any” are substituted for the words “and includes any”.

(3) In subsection 1(1), the definition of “Treasurer” is repealed.

(4) The words “Deputy Head of the Department of Finance” are substituted for the word “Treasurer” wherever the latter appears in the Act.

3. The following is substituted for subsection 3(3):

“(3) The Commissioner in Executive Council may appoint a secretary of the Management Board.”

4. The following is substituted for section 42:

“42. Subject to any other Act, the Management Board may issue directives

- (a) establishing fees for the provision of a service by the government to any person or for the use of public property by any person,
- (b) establishing conditions subject to which a service may be provided by the government to any person or to which public property may be used by any person,
- (c) authorizing public officers to provide to any person a service or the use of public property and to make agreements for the provision of the service or use.”

5.(1) Paragraph 44(1)(a) and subsections 44(2) and (3) are repealed.

(2) In paragraph 44(1)(c), the figure “\$1,750,000” is substituted for the figure “\$800,000”.

6. The following heading and section is inserted immediately after section 44:

Road Equipment Reserve Fund

“44.1(1) There shall be a Road Equipment Reserve Fund which shall be used for the replacement of road equipment.

- (2) Expenditures from the Road Equipment Reserve Fund shall not exceed the accumulated revenues in the Fund at the time of the expenditure and shall not exceed \$5,000,000 in a fiscal year.
- (3) Revenues from the sale, lease, or other use of road equipment shall be credited to the Road Equipment Reserve Fund, unless Management Board directs otherwise.
- (4) The Management Board may issue directives respecting
 - (a) the accounts to be kept,
 - (b) the method of charging and crediting the fund,
 - (c) the method of valuing the inventory of the fund, and
 - (d) any other matter it considers necessary governing the operation of the fund.
- (5) For the Road Equipment Reserve Fund, there shall be included in the Public Accounts
 - (a) the assets and liabilities of the Fund, and
 - (b) a summary of the transaction of the Fund.”

7. The following clause is substituted for clause 72(1)(g)(iv):

“(iv) the Yukon Development Corporation.”

8. The following is subsection is added to section 75:

- “(3) A directive under this Act shall be filed with the Regulations Clerk and be available for inspection by any person and shall be published in the Yukon Gazette.”

CHAPTER 7

(RSY 1986, Supplement)

FIRST APPROPRIATION ACT, 1987-88

(enacted as SY 1987, c. 1 assented to on Feb. 12, 1987)

Whereas it appears by message from the Commissioner and in the estimates accompanying the message that the sums mentioned in Schedules "A" and "B" of this Act are required for the purpose of defraying certain expenses of the public service of Yukon and for related purposes for the period of 12 months ending on March 31, 1988;

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act may be cited as the First Appropriation Act, 1987-88.

2. From and out of the Yukon Consolidated Revenue Fund there may be paid and applied a sum not exceeding in the whole \$114,302,000 for defraying the several charges and expenses of the public service of Yukon payable in the period of 12 months ending on March 31, 1988, as set forth in Schedules "A" and "B" of this Act and that sum shall not be paid or applied except in accordance with Schedules "A", "B", "C" and the Financial Administration Act.

3. The due application of all monies paid or applied pursuant to section 2 shall be accounted for.

FIRST APPROPRIATION ACT, 1987-88

SCHEDULE A

Capital Votes		\$ (Dollars in 000's)
02	Executive Council Office	44
09	Community and Transportation Services	56,291
07	Economic Development: Mines and Small Business	12,652
03	Education	22,618
16	Government Services	9,068
15	Health and Human Resources	5,996
08	Justice	178
14	Renewable Resources	1,747
13	Tourism	2,842
18	Yukon Housing Corporation	2,740
19	Yukon Liquor Corporation	126
Total		<hr/> 114,302 <hr/>

FIRST APPROPRIATION ACT, 1987-88

SCHEDULE B

GRANTS

Capital Votes	Purpose/Legislation	\$ (Dollars in 000's) Grant Amount
02	Executive Council Office	-
09	Community and Transportation Services	-
07	Economic Development: Mines and Small Business	-
03	Education	-
16	Government Services	-
15	Health and Human Resources	
	- Day Care Development	300
	- Community Health & Social Service Agency Development	80
08	Justice	-
14	Renewable Resources	-
13	Tourism	-
18	Yukon Liquor Corporation	-
19	Yukon Housing Corporation	-
	Total	<u>380</u>

FIRST APPROPRIATION ACT, 1987-88

SCHEDULE C

OBJECTIVES

DEPARTMENTAL OBJECTIVES

EXECUTIVE COUNCIL OFFICE

- To provide the Executive Council and Yukon Government departments with a range of services intended to promote and coordinate activities relevant to the provision of analysis, support and advice on all matters relating to the activities of the Government as a whole.

DEPARTMENT OF COMMUNITY AND TRANSPORTATION SERVICES

- To promote local self-government and to provide support to municipalities to offer the services and facilities which reflect their needs and to provide municipal services in un-organized communities.
- To provide for the planning, development and management of Yukon land and its use and to make land available to meet the needs of the Yukon.
- To plan, develop, maintain and regulate a transportation infra-structure and related services to support the social and economic development of the Yukon.
- To support the development of arts, sports and community recreation throughout the Yukon.
- To foster the development and provision of communication services to enhance the cultural, economic and leisure opportunities of Yukoners.

DEPARTMENT OF ECONOMIC DEVELOPMENT: MINES AND SMALL BUSINESS

- To promote development of a self-sustaining Yukon economy, with a balance and diversification of primary, secondary, and service industries, providing an acceptable level of income for Yukon residents in either wages or in kind.
- To increase the participation of Yukoners in employment, management, and ownership of Yukon business: to decrease leakage of wages and profits from the Territory, and increase economic returns, capital accumulation, and local influence on economic decision-making for the Yukon.
- To promote a more equitable distribution of economic benefits throughout all regions and segments of the population.

DEPARTMENT OF EDUCATION

- To ensure that all Yukoners are provided with the learning opportunities to achieve their maximum possible potential by the department planning, developing, managing and evaluating:
 - Primary, elementary and secondary education for all school age children;
 - French language programs;
 - Adult training and continuing education programs;
 - Manpower planning services, employment development and job retention programs;
 - Library and archival services.
 - To provide funds for the development, promotion and evaluation of the Native language program and for the training of local instructors for the program, and to provide the required central support.

DEPARTMENT OF GOVERNMENT SERVICES

- To provide goods and services to all the Yukon Government's departments and agencies so that the physical resources of the government are acquired, allocated and utilized in an efficient and optimum manner.
- To co-ordinate and facilitate the Yukon Government's relationship with the private sector.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

- To reduce lack of opportunity due to health or social condition and enhance the potential and well-being of all Yukoners while recognizing and respecting age, gender, culture, abilities, and community differences.

DEPARTMENT OF JUSTICE

- To respond to Yukon community needs to provide services designated to reduce crime and to serve and protect victims and potential victims.
- To provide police services designed to preserve law and order.
- To provide court services.
- To provide secure housing and correctional services designed to protect communities from past offenders and to provide rehabilitative services to past offenders.
- To maintain safe employment, orderly and responsible commercial and professional services in the Yukon and to promote the public interest in labour-management harmony and the consumer interest in commercial and professional activities.
- To provide legal services to the Yukon Government.

DEPARTMENT OF RENEWABLE RESOURCES

- To provide for the planning, development and management of the Yukon's renewable resources.

DEPARTMENT OF TOURISM

- To promote and develop the Yukon as a tourism destination for the economic and social benefit of Yukoners and to assist the private sector in similar efforts.
- To develop, enhance and transmit, for the benefit of all Yukoners and visitors, an appreciation and understanding of the Yukon's heritage as well as to preserve these resources for present and future generations.

YUKON LIQUOR CORPORATION

- To provide for and to regulate the purchase, transportation and sale of alcoholic beverages in the Yukon.

YUKON HOUSING CORPORATION

- To ensure the provision and availability of suitable and affordable accommodation to Yukon households in need, senior citizens, the disabled and special needs groups.
- To ensure the provision and availability of suitable accommodation to Government of Yukon staff living outside of Whitehorse, and to administer the Government's Employee Housing Buy-Back Program.
- To foster and promote programs that will assist the housing industry to supply adequate housing within Yukon.
- To create and promote an environment of community participation in the design development and delivery of housing programs.

CHAPTER 8

(RSY 1986, Supplement)

FOURTH APPROPRIATION ACT, 1986-87

(enacted as SY 1987, c. 2 assented to on April 16, 1987)

Whereas it appears by message from the Commissioner and in the estimates accompanying the message that, in addition to the sums previously appropriated, the sums not appearing in parenthesis in Schedule "A" of this Act are required for the purpose of defraying certain expenses of the public service of the Yukon and for related purposes for the period of 12 months ending in March 31, 1987;

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act may be cited as the Fourth Appropriation Act, 1986-87.

2.(1) In addition to the sum of \$80,935,000 provided for in the First Appropriation Act, 1986-87 and the sum of \$173,940,000 provided for in the Second Appropriation Act, 1986-87 and the sum of \$21,359,000 provided for in the Third Appropriation Act, 1986-87, from and out of the Yukon Consolidated Revenue Fund there may be paid and applied a sum not exceeding in the whole \$7,247,000 for defraying the several charges and expenses of the public service of the Yukon payable in the period of 12 months ending on March 31, 1987, as set forth in Schedule "A" of this Act and that sum shall not be paid or applied except in accordance with Schedule "A", the Financial Administration Act and, subject to that Act, the estimates accompanying the message from the Commissioner.

(2) The sums previously appropriated to a vote or item that is listed in Schedule "A" and that has a sum appearing in parenthesis after it are reduced by the amount of the sum appearing in parenthesis.

(3) The due application of all monies paid or applied pursuant to section 2 shall be accounted for.

FOURTH APPROPRIATION ACT, 1986-87

SCHEDULE A

		\$ (Dollars in 000's)		
Operation and Maintenance Votes		Voted to Date	This Appro- priation	Total Voted (Current Spend- ing Authority)
01	Yukon Legislative Assembly	1,526	-	1,526
02	Executive Council Office	4,080	-	4,080
09	Community and Transportation Services	41,661	-	41,661
07	Economic Development: Mines and Small Business	4,095	-	4,095
03	Education	38,704	1,166	39,870
12	Finance	3,086	-	3,086
16	Government Services	11,781	-	11,781
15	Health and Human Resources	36,900	-	36,900
08	Justice	15,731	-	15,731
10	Public Service Commission	3,115	-	3,115
14	Renewable Resources	5,819	552	6,371
13	Tourism	4,359	-	4,359
11	Women's Directorate	208	-	208
	Loan Capital	1,000	-	1,000
	Loan Amortization	1,875	-	1,875
Subtotal Operation and Maintenance		173,940	32	175,658
Capital Votes				
02	Executive Council Office	21	-	21
09	Community and Transportation Services	49,942	3,000	52,942
07	Economic Development: Mines and Small Business	11,617	-	11,617
03	Education	20,328	510	20,838
16	Government Services	6,394	281	6,675
15	Health and Human Resources	1,970	52	2,022
08	Justice	5,351	548	5,899
14	Renewable Resources	1,705	439	2,144
13	Tourism	4,966	699	5,665
Subtotal Capital		102,294	5,529	107,823
Total		276,234	7,247	283,481

CHAPTER 9

(RSY 1986, Supplement)

GAS BURNING DEVICES ACT

(enacted as SY 1987, c. 11 assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Interpretation

1. In this Act,

“alter” includes repair;

“appliance” means a device that utilizes gas to produce light, heat or power;

“contractor” means a person who carries on a business, the purpose of which is the installation or alteration of appliances, house piping, vents and gas installations;

“dealer” means a person who maintains a place of business for the sale of appliances;

“gas” means natural or manufactured gas, liquified petroleum gas or any mixture of those gases;

“gas fitter” means a person holding a gas fitter’s licence issued under this Act;

“gas installation” means a facility or system, including fittings, that is owned or operated by a gas company or a public utility and that it is used for storing, conveying, measuring or regulating gas;

“house piping” means the gas piping, including fittings, in any premises beyond the outlet of the meter or the gas supply tank and includes propane tanks and cylinders;

“public utility” means a public utility as defined in the Public Utilities Act;

“vent” means a conduit or passageway for conveying the products of combustion from a gas appliance to the outer air.

Application

2.(1) Subject to subsection (2), this Act applies to the manufacture, sale, installation and alteration of appliances, house piping, vents and gas installations.

(2) This Act does not apply to

- (a) a piping system used to refine or process gas in any way,
- (b) an internal combustion engine, turbine, or any other prime mover, other than a stationary engine that is supplied with gas by house piping, or
- (c) appliances, house piping, vents or gas installations that are exempted by the Commissioner in Executive Council from the operation of this Act.

(3) Where there is a conflict between this Act and the Public Utilities Act, this Act shall prevail.

Appointment of inspectors

3.(1) The Commissioner in Executive Council may appoint one or more inspectors to carry out the provisions of this Act.

(2) Every inspector has the authority to enforce the provisions of this Act and to issue any licence or permit under this Act.

Approval seal

4.(1) Except as otherwise provided by the regulations, no dealer shall sell or offer for sale any appliance that does not bear the approval seal of a prescribed testing agency or association.

(2) No person shall apply an approval seal unless the provisions of this Act have been complied with.

Permits for installation or alteration

5.(1) Subject to the regulations, no person shall install or alter an appliance, house piping, a vent or a gas installation unless a permit has been issued authorizing the installation or alteration.

(2) Regulations under subsection (1) may prescribe

- (a) classes of installations and alterations,
- (b) qualifications to be possessed by applicants for the performance of all or part of the work with respect to any class of installation or alteration, and
- (c) terms and conditions governing the performance of work with respect to any class of installation or alteration.

(3) Regulations under subsection (1) may provide for exemptions from the need to obtain a permit for all or part of the work with respect to any class of installation or alteration.

(4) An inspector may, upon the issuance of a permit, impose such terms and conditions respecting the installation or alteration of an appliance, house piping, a vent or a gas installation as may be necessary to ensure the safety of the installation or alteration.

(5) Where by reason of the distance of the premises from a place where there is a licensed gas fitter, the expense of doing work may be unreasonable, an inspector may subject to any conditions necessary issue a permit to do gas fitting and emergency repairs or service on equipment.

Application for permit

6. An application for a permit under section 5

- (a) shall be in the prescribed form,
- (b) shall be accompanied by the prescribed fee, and
- (c) shall be accompanied by such plans and specifications and contain such information as may be prescribed.

Authorization before use

7. Where an appliance, house piping, a vent or a gas installation has been installed or altered, no person shall use or permit the use of the house piping, appliance, vent or gas installation unless

- (a) a permit has been issued and the inspector has approved the installation or alteration of the appliance, house piping, vent or gas installation, or
- (b) the use of the appliance, house piping, vent or gas installation is permitted by the regulations without authorization of an inspector.

Inspector may examine dealer's stock

8.(1) Every inspector may, examine appliances in the course of manufacture or repair and appliances in the stock of dealers and manufacturers of appliances during their hours of operation.

(2) Where an inspector finds that any appliance examined under subsection (1) is defective or does not comply with this Act, the inspector may, by order, prohibit the sale, offering for sale or the repair of the appliance until such time as the provisions of the Act have been complied with.

Powers of inspectors

9.(1) An inspector may, subject to this section, enter any premises in respect of which a permit has been issued for the installation or alteration of house piping, an appliance, a vent or a gas installation in order to inspect the house piping, appliance, vent or gas installation for the purposes of this Act.

(2) Subject to this section, where an inspector has reasonable and probable grounds to believe and does believe that there is in any place an appliance, house piping, vent or gas installation that is a hazard to the occupants, or to the public generally, or that an offense contrary to this Act has been committed, the inspector may request a Justice of the Peace to issue a search warrant authorizing the inspector to enter and examine the place at such time or times as may be stated in the warrant.

(3) The inspector shall not search any place unless, immediately before the search, the inspector obtains the permission of the lawful occupant to do so, or unless the inspector has a search warrant authorizing the search.

(4) A search warrant may be issued by a justice of the peace where the justice of the peace is satisfied by information upon oath of an inspector that there are reasonable grounds for believing there to be in the place to be searched

- (a) any appliance, house piping, vent or gas installation that may be installed or altered in contravention of this Act, or
- (b) any appliance, house piping, vent or gas installation that is defective or dangerous to life or property.

(5) In the carrying out of a search under this section, an inspector may use all force that is necessary in the circumstances, including the breaking of any lock or fastening, but the inspector shall

- (a) ensure that the premises are left as secure after the search as they were at the commencement of the search, and
- (b) make a reasonable effort forthwith after the search to give notice of any action under this subsection to the owner or other person entitled to possession of the place searched.

(6) Where the owner or other person authorized to occupy a dwelling house that is not vacant is absent from the premises, an inspector shall not exercise any power under subsection (5) unless

- (a) the inspector is accompanied by a member of the Royal Canadian Mounted Police, and
- (b) the inspector has made a reasonable effort to give advance notice of the search to the owner or other person.

Order to disconnect appliances, etc.

10.(1) Where an inspector finds any appliance, house piping, vent or gas installation that has been installed in breach of this Act, or that is defective or dangerous to life or property, the inspector may

- (a) shut off the house piping to the appliance, or
- (b) order the occupier of the premises, if any, and the owner of the appliance, house piping, vent or gas installation to comply with this Act, or to shut off the appliance, house piping, vent or gas installation.

(2) Where an appliance, house piping or gas installation is disconnected or shut off under subsection (1), no person shall reconnect it or turn it on unless authorized by an inspector.

Order of inspectors

11.(1) An order or decision of an inspector under this Act may be made orally, but shall be confirmed in writing within 24 hours.

(2) An order of an inspector under this Act is not a regulation within the meaning of the Regulations Act.

Prohibition

12. No person, other than a gas fitter, shall perform the prescribed work in respect of any installation or alteration of an appliance, house piping, a vent or a gas installation.

Gas fitters

13. An inspector may issue a gas fitter's licence to a person who has the prescribed qualifications.

Contractors

14.(1) Subject to subsection (2), an inspector may issue a contractor's licence to a person to engage in business as a contractor.

(2) A licence shall not be issued under subsection (1) unless that person is a gas fitter, or has the prescribed qualifications.

Licences

15. A licence issued under this Act shall be subject to such terms and conditions as may be prescribed.

Revocation or suspension of licence

16. Every licence issued under this Act may be revoked or suspended by an inspector for violation of this Act, or for the making of any false statement in the application for the licence by the holder of the licence, by his or her agent or employee, or by a person working directly under his or her supervision.

Appeal board

17.(1) A person who is served with written notice of a decision, order or ruling of an inspector may, within 30 days after the date he or she is served with the written notice, appeal the decision, order or ruling by delivering a written notice of appeal to the Executive Council Member.

(2) For the purpose of subsection (1), the refusal to grant a licence or the revocation or suspension of a licence shall be considered a decision of an inspector.

(3) Where the Executive Council Member receives a Notice of Appeal in accordance with subsection (2), the Executive Council Member shall forthwith appoint an appeal board, consisting of three persons, at least two of whom shall be representative of the gas fitting industry, for the purposes of hearing the appeal.

(4) The Commissioner in Executive Council shall prescribe the procedural rules to be followed in respect of appeals under this section.

Power of appeal board

18. Upon hearing an appeal, an appeal board shall confirm, vary or reverse the decision, order or ruling of an inspector and may order the appellant or any other person to comply with its decision.

Regulations

19.(1) The Commissioner in Executive Council may make regulations

- (a) respecting the manufacture, installation or alteration of any appliance, house piping, vent or gas installation;
- (b) requiring any person doing work under a permit under this Act to submit the work for inspection or testing at any stage of the work;
- (c) providing that, with respect to any part of a vent, an inspector may rely on an inspection of it made under any enactment of Canada or the Yukon, or any bylaw of a municipality;
- (d) respecting the licensing of contractors and gas fitters;
- (e) providing for the granting, renewal, cancellation or suspension of any licence, or permit;
- (f) prescribing fees;

- (g) prescribing the records to be kept by inspectors, contractors, manufacturers, dealers or gas fitters;
- (h) prescribing anything required by this Act to be prescribed or provided for in the regulations;
- (i) generally, respecting any other matter the Commissioner in Executive Council considers necessary for carrying the purposes and provisions of this Act into effect.

(2) The Commissioner in Executive Council may make regulations adopting the standards of the Canadian Gas Association or any other code of rules for the construction, installation, testing or inspection of appliances, house piping, vents or gas installations promulgated by any association or body of persons.

(3) Notwithstanding the Regulations Act, in case the standards of the Canadian Gas Association or any other code of rules for the construction, installation, testing or inspection of appliances, house piping, vents or gas installations, promulgated by any association or body of persons in an available printed form is adopted in whole or in part or with variations under subsection (2), publication in the Yukon Gazette of a notice of the adoption setting out the variation subject to which it is adopted, shall be deemed sufficient publication of the regulations for this section without publication in the Yukon Gazette of the text of the code or rules or parts adopted.

Offence

20.(1) Every person who contravenes this Act, a term or condition of a licence or permit, an order of an inspector or an order of an appeal board commits an offence.

(2) Every person who commits an offence under this Act is liable on conviction to a fine of up to \$2,000 or to imprisonment for a term of six months or both.

Consequential amendments

21. The following paragraph is added to subsection 19(1) of the Electrical Protection Act:

- “(f) the replacement or repair of electrical components in a gas burning appliance by a gas fitter licensed under the Gas Burning Devices Act.”.

Commencement

22. This Act comes into force on a day to be fixed by the Commissioner in Executive Council.

CHAPTER 10

(RSY 1986, Supplement)

AN ACT TO AMEND THE HOME OWNER'S GRANT ACT

(enacted as SY 1986, c. 22, assented to on Dec. 18, 1986)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

- 1.** This Act amends the Homeowner's Grant Act.
- 2.** In section 3
 - (a) the expression "Deputy Head of the Department of Community and Transportation Services" is substituted for the expression "Executive Council Member", and
 - (b) the word "February" is substituted for the word "January".
- 3.** Paragraph 2(a) of this Act shall come into force on April 1, 1987.

CHAPTER 11

(RSY 1986, Supplement)

HUMAN RIGHTS ACT

(enacted as SY 1987, c. 3, assented to on Feb. 12, 1987)

Recognizing that respect for human rights is a fundamental part of Canada's heritage,

That Canada is a party to the United Nations' Universal Declaration of Human Rights and other international undertakings having as their object the improvement of human rights in Canada and other nations of the world,

That the Yukon Government has a responsibility to encourage an understanding and recognition of human rights that is consistent with Canada's international undertakings and with the initiatives taken by Canada and the provinces, and

That it is just and consistent with Canada's international undertakings to recognize and make special provision for the unique needs and cultural heritage of the aboriginal peoples of the Yukon,

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Objects

1.(1) The objects of this Act are

- (a) to further in the Yukon the public policy that every individual is free and equal in dignity and rights,
- (b) to discourage and eliminate discrimination,
- (c) to promote recognition of the inherent dignity and worth and of the equal and inalienable rights of all members of the human family, these being principles underlying the Canadian Charter of Rights and Freedoms and the Universal Declaration of Human Rights and other solemn undertakings, international and national, which Canada honours.

(2) This Act does not affect rights pertaining to aboriginal peoples established by the Constitution of Canada or by a land claims agreement.

Multi-cultural heritage

2. This Act shall be interpreted in a manner consistent with the preservation and enhancement of the multi-cultural heritage of the residents of the Yukon.

PART 1

BILL OF RIGHTS

Right to freedom of religion and of conscience

3. Every individual and every group shall, in accordance with the law, enjoy the right to freedom of religion, conscience, opinion, and belief.

Right to freedom of expression

4. Every individual and every group shall, in accordance with the law, enjoy the right to freedom of expression, including freedom of the press and other media of communication.

Right to freedom of assembly and of association

5. Every individual and every group shall, in accordance with the law, enjoy the right to peaceable assembly with others and the right to form with others associations of any character.

Right to enjoyment and disposition of property

5.1 Every individual has a right to the peaceful enjoyment and free disposition of his or her property, except to the extent provided by law, and no one shall be deprived of that right except with just compensation.

PART 2

DISCRIMINATORY PRACTICES

Prohibited grounds

6. It is discrimination to treat any individual or group unfavourably on any of the following grounds:

- (a) ancestry, including colour and race,
- (b) national origin,
- (c) ethnic or linguistic background or origin,
- (d) religion or creed, or religious belief, religious association, or religious activity,
- (e) age,
- (f) sex, including pregnancy, and pregnancy related conditions,
- (g) sexual orientation,
- (h) physical or mental disability,
- (i) criminal charges or criminal record,
- (j) political belief, political association or political activity,
- (k) marital or family status,

- (l) actual or presumed association with other individuals or groups whose identity or membership is determined by any of the grounds listed in paragraphs (a) to (k).

Duty to provide for special needs

7.(1) Every person has a responsibility to make reasonable provisions in connection with employment, accommodations, and services for the special needs of others where those special needs arise from physical disability, but this duty does not exist where making the provisions would result in undue hardship.

(2) For the purposes of subsection (1) “undue hardship” shall be determined by balancing the advantages and disadvantages of the provisions by reference to factors such as

- (i) safety,
- (ii) disruption to the public,
- (iii) effect on contractual obligations,
- (iv) financial cost,
- (v) business efficiency.

(3) This Act does not apply to structures which at the commencement of this Act were existing and complied with the applicable requirements of the Building Standards Act and regulations under that Act.

Prohibited discrimination

8. No person shall discriminate

- (a) when offering or providing services, goods, or facilities to the public,
- (b) in connection with any aspect of employment or application for employment,
- (c) in connection with any aspect of membership in or representation by any trade union, trade association, occupational association, or professional association,
- (d) in connection with any aspect of the occupancy, possession, lease, or sale of property offered to the public,
- (e) in the negotiation or performance of any contract that is offered to or for which offers are invited from the public.

Reasonable cause

9. It is not discrimination if treatment is based on

- (a) reasonable requirements or qualifications for the employment,
- (b) on a criminal record or criminal charges relevant to the employment,
- (c) sex, so as to respect the privacy of the people to whom accommodations or a service or facility is offered, or
- (d) other factors establishing reasonable cause for the discrimination.

Exemptions

10.(1) It is not discrimination for a religious, charitable, educational, social, cultural, or athletic organization to give preference to its members or to people the organization exists to serve.

(2) It is not discrimination for individuals to give preference to members of their family.

(3) Section 8 does not apply to

- (a) the employment of a person to provide services in a private home or in any exclusively religious, charitable, educational, social, cultural or athletic organization,
- (b) the choice by an occupant of a private home of a boarder or tenant to occupy part of the home.

Systemic discrimination

11. Any conduct that results in discrimination is discrimination.

Special programs and affirmative action

12.(1) Special programs and affirmative action programs are not discrimination.

(2) Special programs are programs designed to prevent disadvantages that are likely to be suffered by any group identified by reference to a prohibited ground of discrimination.

(3) Affirmative action programs are programs designed to reduce disadvantages resulting from discrimination suffered by a group identified by reference to a prohibited ground of discrimination.

Harassment

13.(1) No person shall

- (a) harass any individual or group by reference to a prohibited ground of discrimination,
- (b) retaliate or threaten to retaliate against an individual who objects to the harassment.

(2) In subsection (1), “harass” means to engage in a course of vexatious conduct or to make a demand or a sexual solicitation or advance that one knows or ought reasonably to know is unwelcome.

Equal pay for work of equal value

14.(1) This section applies only to the Government of the Yukon and municipalities and their corporations, boards, and commissions.

(2) It is discrimination for an employer to establish or maintain a difference in wages between employees who are performing work of equal value, if the difference is based on any of the prohibited grounds of discrimination.

(3) In assessing the value of the work performed the criterion to be applied is the composite of the skill, effort, and responsibility required and the working conditions.

(4) For the purposes of this section, “wages” means any form of payment for work performed by an individual, and includes salaries, commissions, vacation pay, dismissal wages, bonuses, value for board, rent, housing, lodging, payments in kind, employer contributions to pension funds or plans, employer contributions to long-term disability plans, employer contributions to any forms of health insurance plans, and any other advantage received directly or indirectly from the individual’s employer.

(5) An employer shall not reduce wages in order to comply with this section.

PART 3

YUKON HUMAN RIGHTS COMMISSION

Human Rights Commission

15.(1) There shall be a Yukon Human Rights Commission accountable to the Legislature and the commission shall

- (a) promote the principle that every individual is free and equal in dignity and rights,
- (b) promote the principle that cultural diversity is a fundamental human value and a basic human right,
- (c) promote education and research designed to eliminate discrimination,
- (d) promote a settlement of complaints in accordance with the objects of this Act by agreement of all parties,
- (e) cause complaints which are not settled by agreement to be adjudicated, and at the adjudication adopt the position which in the opinion of the commission best promotes the objects of this Act.

(2) The commission shall conduct education and research on the principle of equal pay for work of equal value in the private sector.

Appointment of commission

16.(1) The commission shall consist of a minimum of three and a maximum of five members who shall be appointed for a term of three years by the Legislature.

(2) A member of the commission may only be removed from office by resolution of the Legislature.

Annual report of commission

17. In each fiscal year the commission shall deliver to the Speaker of the Legislature a report about the administration of this Act. The report shall not publish any names of individuals or businesses in which a complaint was dismissed or has not yet been dealt with.

Director of Human Rights

18. There shall be a Director of Human Rights responsible to the commission for

- (a) ensuring that complaints are dealt with in accordance with this Act,

- (b) carrying out, in accordance with the commission's policies and directives, the administration of this Act.

PART 4

COMPLAINTS

Complaints

19.(1) Any person believing that there has been a contravention of this Act against him or her may complain to the commission who shall investigate the complaint unless

- (a) the complaint is beyond the jurisdiction of the commission,
- (b) the complaint is frivolous or vexatious, or
- (c) the victim of the contravention asks that the investigation be stopped.

(2) A complaint must be made within six months of the alleged contravention.

Disposition of complaints by commission

20. After investigation, the commission shall

- (a) dismiss the complaint, or
- (b) try to settle the complaint on terms agreed to by the parties, or
- (c) ask a board of adjudication to decide the complaint.

Panel of adjudicators

21.(1) There shall be a panel of adjudicators to be called upon as required to adjudicate complaints.

(2) The panel of adjudicators shall consist of not less than three members, one of whom shall be designated Chief Adjudicator, who shall be appointed for a term of three years by the Legislature.

(3) A member of the panel may only be removed from the panel by resolution of the Legislature.

(4) When the commission asks that a complaint be adjudicated, the Chief Adjudicator shall establish a board of adjudication and determine its membership.

Fundamental justice

22. The board of adjudication shall conduct its hearings in accordance with the principles of fundamental justice and may exercise all the powers of a board appointed under the Public Inquiries Act.

Where complaint established

23.(1) If the complaint is proven on the balance of probabilities the board may order the party who discriminated to

- (a) stop the discrimination,
- (b) rectify any condition that causes the discrimination,
- (c) pay damages for any financial loss suffered as a result of the discrimination,

- (d) pay damages for injury to dignity, feelings, or self-respect,
 - (e) pay exemplary damages if the contravention was done maliciously,
 - (f) pay costs.
- (2) No order made under this section shall contain a term
- (a) requiring an individual to be removed from employment if the individual accepted the position in good faith, or
 - (b) requiring an occupant of a dwelling to leave if the occupant obtained possession of the dwelling in good faith.

Costs of adjudication

24. If the board of adjudication concludes that the complaint was frivolous or vexatious or that the proceedings have been frivolously or vexatiously prolonged the board may order the commission to pay to the respondent

- (a) part or all of the respondent's costs of defending against the complaint, and
- (b) damages for injury to the respondent's reputation.

24.1 If the board of adjudication concludes that the complaint was based on information that the complainant knew to be false the board may order the complainant to pay to the respondent

- (a) part or all of the respondent's costs of defending against the complaint, and
- (b) damages for injury to the respondent's reputation.

Enforcement of adjudication orders by court

25. An order of the board of adjudication may be filed in the Supreme Court and it shall then be enforceable as an order of the Supreme Court.

Appeals

26.(1) Any party to a proceeding before a board of adjudication may appeal final decisions of the board to the Supreme Court by filing a notice of appeal with the court within thirty days after the order of the board of adjudication is pronounced.

(2) The procedure for the appeal shall be the same as for an appeal in the Court of Appeal.

(3) An appeal under this section may be made on questions of law and the court may affirm or set aside the order of the board and direct the board to conduct a new hearing.

(4) The only proceeding that may be taken to set aside or vary decisions of the board is the right of appeal given by this Act.

PART 5
OFFENCES

Obstruction

27. Every person who willfully obstructs or interferes with any person acting under the authority of this Act commits an offence.

Retaliation

28. It is an offence for a person to retaliate or threaten to retaliate against any other person on the ground that the other person has done or proposes to do anything this Act permits or obliges them to do.

False reports

28.1 Any person who reports to the commission information that the person knows to be false commits an offence.

Penalties

29. A person who commits an offence under section 27, 28, or 28.1 is liable on summary conviction to a fine of up to \$2,000.

PART 6
MISCELLANEOUS

Interim injunction

30. If a complaint has been made to the commission or a prosecution has been commenced, a judge of the Supreme Court may grant a temporary injunction restraining any conduct alleged to be in contravention of this Act, or requiring the respondent or accused to comply with this Act until the complaint proceedings or prosecution have been completed.

Disclosure

31.(1) If a judge of the Supreme Court is satisfied that a request for disclosure of a document has been refused and that there are reasonable grounds to believe that the document is relevant to the investigation of a complaint, the judge may order the person who has the document to produce it for inspection and copying by the commission's investigator.

(2) Personal information under the control of the commission shall not, without the consent of the individual to whom it relates, be disclosed or be used except

- (a) in proceedings under this Act or for any other purpose for which the commission obtained the information or a purpose consistent with that purpose, or
- (b) in accordance with an order or rules of procedure of a court or other adjudicative tribunal.

Acts of employees

32. Employers are responsible for the discriminatory conduct of their employees unless it is established that the employer did not consent to the conduct and took care to prevent the conduct or, after learning of the conduct, tried to rectify the situation.

Regulations

33. After consultation with the commission, the Commissioner in Executive Council may make regulations

- (a) establishing the procedures of the commission and boards of adjudication,
- (b) regarding the hiring of people by the commission and the terms and conditions of their employment or service,
- (c) prescribing remuneration and expenses that may be paid.

Interpretation**34. In this Act**

“physical disability” means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and includes epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a seeing eye dog or on a wheelchair or other remedial appliance or device;

“mental disability” means any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, or learning disability;

“person” includes a partnership, an unincorporated organization or association, and a trade union.

“sexual orientation” means heterosexual, homosexual or bi-sexual and refers only to consenting adults acting within the law.

Act binds Government of the Yukon Territory

35. This Act is binding upon the Government of the Yukon Territory and its corporations, boards, and commissions.

Paramountcy

36. This Act supersedes every other Act, whether enacted before or after this Act, unless it is expressly declared by the other Act that it shall supersede this Act.

Fair Practices Act

37. The Fair Practices Act is repealed.

CHAPTER 12

(RSY 1986, Supplement)

AN ACT TO AMEND THE INSURANCE ACT

(enacted as SY 1987, c. 12 assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Insurance Act.
2. The following definition is added to section 1:
“ ‘compensation association’ means a body corporate or an unincorporated association designated under subsection 22.1(1) as a compensation corporation;”.
3. The following section is added immediately after section 1:

Agreements with compensation associations

“1.1 The Executive Council Member may enter into agreements with compensation associations relating to a plan for the compensation, by the compensation association, of policy holders of and eligible claimants on insolvent insurers.”

4. Subsection 21(1) is amended by adding the following clause:
“(f.1) underwriters or syndicates of underwriters operating on a plan known as The Canadian Insurance Exchange.”
5. The following section is added immediately after section 22:

Compensation associations and membership

“22.1(1) The Commissioner in Executive Council may designate a compensation association for any of the following classes of insurance:

- (a) automobile insurance;
- (b) boiler and machinery insurance;
- (c) fire insurance;
- (d) inland transportation insurance;
- (e) livestock insurance;
- (f) public liability insurance;
- (g) plate glass insurance;
- (h) property damage insurance;
- (i) sprinkler leakage insurance;

- (j) theft insurance;
- (k) weather insurance;
- (l) any other class of insurance as may be designated in the regulations.

(2) Subject to subsection (3), where a compensation association has been designated for a class of insurance under subsection (1), every insurer who is licensed to carry on that class of insurance shall be deemed to be a member of that compensation association during the period the insurer is licensed to carry on that class of insurance and for 183 days after ceasing to be so licensed.

(3) Subsection (2) does not apply to an insurer that is designated under paragraph 44(b.2), or whose business is limited to the business of reinsurance.

(4) Every member of a compensation association is bound by the by-laws and memorandum of operation of the compensation association.

(5) A member of a compensation association shall pay to the compensation association all assessments and levies made against the member by the compensation association.

(6) Where a member of a compensation association fails to pay an assessment or levy within 30 days of the mailing of the notice of the assessment or levy to the member,

- (a) the compensation association may claim the amount of the assessment or levy, with interest, as a debt due from the member, and
- (b) the superintendent may cancel the member's licence.

(7) A debt due under paragraph (6)(a), does not cease to be due upon termination of the member's membership in the compensation association."

6. The following section is added immediately after section 26:

Licensing in other jurisdictions required

"**26.1(1)** For the purpose of this section "province" does not include the Yukon or the Northwest Territories.

- (2) An insurer that is not licensed by a province for the business of insurance or is not registered under the Canadian and British Insurance Companies Act (Canada) or the Foreign Insurance Companies Act (Canada), is not eligible to be licensed under this Act.
- (3) Subsection (2) does not apply to an underwriter or syndicate of underwriters that is a member of the society known as Lloyds, or operating on a plan known as the Canadian Insurance Exchange."

7. Section 44 is amended by adding the following paragraphs immediately after paragraph (b):

- "(b.1) designating as compensation associations, bodies corporate or unincorporated associations, whose purposes are to provide compensation to policy holders of and eligible claimants on insolvent insurers;

- (b.2) designating insurers as being adequately covered by a plan of compensation other than that provided by reason of membership in a compensation association;”.**

CHAPTER 13

(RSY 1986, Supplement)

INTERIM SUPPLY APPROPRIATION ACT, 1987-88

(enacted as SY 1987, c. 13, assented to on March 31, 1987)

Whereas it appears by message from the Commissioner and in the estimates accompanying the message that the sums mentioned in Schedule "A" of this Act are required for the purpose of defraying certain expenses of the public service of the Yukon and for related purposes for the period from April 1, 1987 to May 31, 1987.

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act may be cited as the Interim Supply Appropriation Act, 1987-88.

2. In addition to the sum of \$114,302,000 provided for in the First Appropriation Act, 1987-88, from and out of the Yukon Consolidated Revenue Fund there may be paid and applied a sum not exceeding in the whole \$33,166,000 for defraying the several charges and expenses of the public service of the Yukon for the period from April 1, 1987 to May 31, 1987, as set forth in Schedule "A" of this Act and that sum shall not be paid or applied except in accordance with Schedule "A" and the Financial Administration Act and, subject to the said Act, the estimates accompanying the message from the Commissioner.

3. This Act shall be deemed to have come into force April 1, 1987.

INTERIM SUPPLY APPROPRIATION ACT, 1986-87

SCHEDULE A

\$ (Dollars in 000's)

Operation and Maintenance Votes	Total
Yukon Legislative Assembly	319
Executive Council Office	775
Community and Transportation Services	9,000
Economic Development; Mines and Small Business	410
Education	7,000
Finance	487
Government Services	2,110
Health and Human Resources	7,295
Justice	3,128
Public Service Commission	628
Renewable Resources	1,206
Tourism	550
Women's Directorate	40
Yukon Housing Corporation	218
Total	33,166

CHAPTER 14

(RSY 1986, Supplement)

INTERNATIONAL COMMERCIAL ARBITRATION ACT

(enacted as SY 1987, c. 14, assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Interpretation

1.(1) In this Act,

“International Law” means the Model Law On International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on June 21, 1985, as set out in Schedule A.

(2) Words and expressions used in this Act have the same meanings as the corresponding words and expressions in the International Law.

Application of International Law

2.(1) Subject to this Act, the International Law applies in the Yukon.

(2) The International Law applies to international commercial arbitration agreements and awards, whether made before or after the coming into force of this Part.

Conciliation and other proceedings

3. For the purpose of encouraging settlement of a dispute, an arbitral tribunal may, with the agreement of the parties, employ mediation, conciliation or other procedures at any time during the arbitration proceedings and, with the agreement of the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure.

Removal of arbitrator

4.(1) Unless the parties otherwise agree, if an arbitrator is replaced or removed in accordance with the International Law, any hearing held prior to the replacement or removal shall be repeated.

(2) With respect to article 15 of the International Law, the parties may remove an arbitrator at any time prior to the final award, regardless of how the arbitrator was appointed.

Rules applicable to substance of dispute

5. Notwithstanding article 28(2) of the International Law, if the parties fail to make a designation pursuant to article 28(1) of the International Law, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances respecting the dispute.

Consolidation of proceedings

6.(1) The Supreme Court, upon application of the parties to two or more arbitration proceedings, may order

- (a) the arbitration proceedings to be consolidated, on terms it considers just;
- (b) the arbitration proceedings to be heard at the same time, or one immediately after another;
- (c) any of the arbitration proceedings to be stayed until after the determination of any other of them.

(2) Where the Court orders arbitration proceedings to be consolidated pursuant to paragraph (1)(a) and all the parties to the consolidated arbitration proceedings are in agreement as to the choice of the arbitral tribunal for that arbitration proceeding, the arbitral tribunal shall be appointed by the Court, but if all the parties cannot agree, the Court may appoint the arbitral tribunal for that arbitration proceeding.

(3) Nothing in this section shall be construed as preventing the parties to two or more arbitration proceedings from agreeing to consolidate those arbitration proceedings and taking such steps as are necessary to effect that consolidation.

Court

7.(1) The functions referred to in article 6 of the International Law shall be performed by the Supreme Court.

(2) For the purposes of the International Law, a reference to “court” or “competent court”, where in the context it means a court in the Yukon, means the Supreme Court.

Stay of proceedings

8. Where, pursuant to article 8 of the International Law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates.

Crown bound

9.(1) This Act binds the Crown.

(2) An award recognized pursuant to this Act is enforceable against the Crown in the same manner and to the same extent as a judgment is enforceable against the Crown.

Aids in interpretation

10.(1) This Act shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Act in their context and in the light of its objects and purposes.

(2) In applying subsection (1) to the International Law, recourse may be had to

- (a) the Report of the United Nations Commission on International Trade Law on the work of its 18th session (June 3-21, 1985), and
- (b) the International Commercial Arbitration Commentary on Draft Text of a Model Law on International Commercial Arbitration.

Regulations

13. The Commissioner in Executive Council may

- (a) cause to be published in the Yukon Gazette the names of Contracting States to the Convention;
- (b) prescribe rules of court for implementation of this Act.

SCHEDULE A

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

(As adopted by the United Nations Commission on International Trade Law on 21 June 1985)

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

(1) This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(3) An arbitration is international if:

- (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
- (b) one of the following places is situated outside the State in which the parties have their places of business:
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
- (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this article:

- (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
- (b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

- (a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
- (b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
- (c) “court” means a body or organ of the judicial system of a State;
- (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Law, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
- (b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet

proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by...[Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II. ARBITRATION AGREEMENTS

Article 7. Definition and form of arbitration agreement

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of tele-communication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL**Article 10. Number of arbitrators**

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

- (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;
- (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

- (a) a party fails to act as required under such procedure, or
- (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
- (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provided other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for Challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his im-

partiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17. Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

- (a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

- (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
- (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* as or *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and contents of award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when

- (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings;

- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

- (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
- (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

- (a) the party making the application furnishes proof that:
 - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
- (b) the court finds that:
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

- (a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
 - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (b) if the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

CHAPTER 15

(RSY 1986, Supplement)

AN ACT TO AMEND THE LEGAL SERVICES SOCIETY ACT

(enacted as SY 1986, c. 23, assented to on Dec. 18, 1986)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Legal Services Society Act.
2. In subsection 16(1), the expression "subject to the approval of the Commissioner in Executive Council" is substituted for the expression "subject to this Act".

CHAPTER 16

(RSY 1986, Supplement)

AN ACT TO AMEND THE LEGISLATIVE ASSEMBLY ACT AND THE LEGISLATIVE ASSEMBLY RETIREMENT ALLOWANCES ACT

(enacted as SY 1987, c. 15, assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

PART 1

LEGISLATIVE ASSEMBLY ACT

1. This Part amends the Legislative Assembly Act.

2.(1) In subsections 39(1), (2) and (3), the figure "\$24,512" is substituted for the figure "\$22,854".

(2) In subsection 39(1) and (2), the figure "\$12,256" is substituted for the figure "\$11,427".

(3) In subsection 39(3), the figure "\$10,701" is substituted for the figure "\$8,979".

(4) The following subsection is added immediately after subsection 39(3):

"(3.1) The indemnities and expense allowances of members of the Legislative Assembly shall be adjusted on April 1 of each year after this subsection comes into force in accordance with the percentage change in the average annual Consumer Price Index for Canada over the previous two calendar years."

3.(1) In paragraph 40(1)(a), the figure "\$7,420" is substituted for the figure "\$6,678".

(2) In paragraph 40(1)(b), the figure "\$5,565" is substituted for the figure "\$3,339".

(3) Paragraph 40(1)(c) is deleted.

4. In subsection 42(1), the figure "\$8,236" is substituted for the figure "\$5,565".

5.(1) In subsection 43(1), the figure "\$22,260" is substituted for the figure "\$2,783".

(2) In subsection 43(2), the figure "\$4,452" is substituted for the figure "\$1,113".

6.(1) In subsection 45(3), the figure "\$8,800" is substituted for the figure "\$4,400".

(2) In subsection 45(5), the figure "48" is substituted for the figure "24".

7.(1) In subsection 46(1),

- (a) the expression "Notwithstanding subsections 45(1), 45(2) and 45(6)," is deleted, and
- (b) the expression "section 45 or 47" is substituted for the expression "section 45".

(2) The following subsection is substituted for subsection 46(2):

"(2) Where a member is reimbursed under this section the member is entitled to receive the amount certified to have been paid by him or her to the maximum prescribed by the Commissioner in Executive Council upon the recommendation of the Members Services Board of the Legislative Assembly."

(3) In subsection 46(3), the figure "\$4,400" is substituted for the figure "\$2,200".

8.(1) In subsection 47(2), the figure "\$4,400" is substituted for the figure "\$2,200".

(2) In subsection 47(4), the figure "24" is substituted for the word "twelve".

9. The following section is inserted immediately after section 47:

"47.1 A member may be paid an allowance in respect of travelling expenses for more than the number of return trips allowed by subsections 45(5) and 47(4), but the allowance for the excess trips must be deducted from the amount the member would otherwise be entitled to under subsections 45(2) and 47(1)."

10. The following section is added immediately after section 49:

"49.1(1) In respect of travel within the Yukon in the performance of their parliamentary duties as recognized leaders, the Government Leader, the Leader of the Official Opposition and the leader of a party receiving a salary pursuant to subsection 43(2) shall be paid an allowance for meals and incidental expenses at the rate in force at the time for the public service, and shall be reimbursed for actual expenditures for accommodation.

(2) The maximum amount payable to a recognized leader under subsection (1) in each fiscal year is \$2,200.

(3) A recognized leader who is absent from his or her normal place of residence under subsection (1) shall be paid an allowance in respect of travelling expenses incurred at the rate in force at the time for the public service.

(4) An allowance may be paid to a recognized leader pursuant to subsection (3) in respect of not more than 12 return trips in each fiscal year."

11.(1) Part 1 of this Act, except for section 2, shall be deemed to have come into force on April 1, 1987.

(2) Section 2 of this Act shall be deemed to have come into force on April 1, 1986.

PART 2

LEGISLATIVE ASSEMBLY RETIREMENT ALLOWANCES ACT

12. This part amends the Legislative Assembly Retirement Allowances Act.

13. The following section is substituted for section 3:

“3.(1) In this section, “pensionable salary” means the average of the annual aggregates of the member’s salary, indemnity, and expense allowance in the three consecutive years of the member’s service that produce the highest average.

(2) A person who has been a member for at least six years and who ceases to be a member is entitled for the rest of his or her life to an annual retirement allowance in an amount equal to two and one-half per cent of his or her pensionable salary multiplied by the number of years of service as a member, payment of the allowance to commence when the person reaches 55 years of age.

(3) A person who is entitled to a retirement allowance under subsection (2) and who has reached 50 years of age may elect to receive the allowance in a reduced annual amount that, having regard to the person’s life expectancy, is actuarially equivalent to the allowance the person would receive if no allowance were to be paid until the person reaches 55 years of age.”

14.(1) In subsection 4(1), the expression “one year” is substituted for the expression “six years”.

(2) In subsection 4(2), the expression “one year” is substituted for the expression “six years”.

15. The following section is added immediately after section 5:

“5.1(1) A severance allowance is payable to a member when that person ceases to be a member of the Legislative Assembly.

(2) The amount payable under this section shall be 25 percent of the aggregate of the salary, indemnity, and expense allowance received by the member during the preceding year under the Legislative Assembly Act.”

16. The following section is substituted for section 7:

“7.(1) Upon the recommendation of the Members Services Board of the Legislative Assembly, the Commissioner in Executive Council may make regulations

(a) adjusting the amounts payable as annual retirement allowances so that the change is in approximate parity with changes in the cost of living,

(b) providing for the payment of the annual retirement allowance through installments payable at intervals of less than one year, and

(c) for any other purpose necessary to give effect to this Act.”

CHAPTER 17

(RSY 1986, Supplement)

LOTTERY LICENSING ACT

(enacted as SY 1987, c. 16, assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Interpretation

1. In this Act,

“board” means the Yukon Lottery Licensing Board established under section 2;

“charitable organization” means an organization that does not carry on any business or activity for direct or indirect pecuniary gain to its members and whose sole or predominant objects or purposes and activities are (a) relief of poverty or disease,

(b) the advancement of education,

(c) the advancement of religion, or

(d) the advancement of any cultural, recreational, athletic, or other activity or program which is beneficial to a Yukon community;

“lottery scheme” means a lottery scheme as defined in subsection 190(4) of the Criminal Code (Canada).

Yukon Lottery Licensing Board

2.(1) There shall be a Yukon Lottery Licensing Board consisting of three or more members appointed by the Commissioner in Executive Council.

(2) The term of membership in the board is three years or such lesser term as the Commissioner in Executive Council may specify at the time of the appointment, and a member is eligible for reappointment.

(3) Where any member of the board is prevented, at any time for any reason from performing his or her duties, the Commissioner in Executive Council may appoint a substitute member for a term, such term not to exceed the unexpired portion of the term of the member being replaced, as the Commissioner in Executive Council considers appropriate.

Chairperson

3.(1) The Commissioner in Executive Council shall appoint one of the members of the board to be the chairperson.

(2) The chairperson shall supervise and direct the work of the board and shall preside at all sittings of the board.

(3) Where the chairperson is unable, at any time for any reason to exercise the powers and perform the duties of that office, one of the other members shall act in the chairperson's place.

(4) The board shall meet at the call of the chairperson, who shall convene such meetings as the chairperson considers necessary for the conduct of the business of the board.

Quorum

4.(1) A majority of the members of the board is a quorum.

(2) A decision of the majority of the members present at a meeting of the board is a decision of the board.

(3) A vacancy in the membership of the board does not impair the right of other members to act.

Rules of procedure

5. The board may make rules of procedure consistent with this Act and the regulations respecting

- (a) the conduct of its meetings and business,
- (b) the records to be kept in respect of the business of the board under this Act,
- (c) the custody and provision of access to the records referred to in paragraph (b), and
- (d) any other matter that is reasonably necessary and advisable for the effective and orderly conduct of the duties of the board.

Licences

6.(1) Any charitable organization is eligible to receive a licence under subsection (2).

(2) The board may, upon application, issue a licence to a charitable organization to conduct a lottery scheme subject to the prescribed terms and conditions.

Suspension or revocation of licence

7.(1) The chairperson of the board may suspend or revoke a licence if the chairperson believes that this Act or any term or condition of a licence has not been complied with.

(2) Where the chairperson suspends or revokes a licence, the chairperson may require an officer of the charitable organization to deliver the licence to the board or a peace officer.

(3) Where the chairperson suspends or revokes a licence, the persons having charge of the related cash, negotiable instruments, tickets, documents and equipment shall, on demand of the chairperson, transfer all of those items to the board.

Reasons for decisions of board

8.(1) Where an application by a charitable organization for a licence to conduct a lottery scheme has been reviewed by the board and the board has refused to issue a licence, the board shall, within 7 days, provide written reasons of the decision to the charitable organization.

Reporting

9. At the request of the Executive Council Member and at such other times as the board considers appropriate, the board shall make reports to the Executive Council Member respecting the business of the board.

Support services and expenses

10.(1) Subject to the Public Service Commission Act the Executive Council Member may make provision for a secretary and other administrative support services for the board.

(2) A member of the board may be paid transportation, accommodation and living expenses incurred in connection with the performance of his or her duties as a member of the board away from his or her ordinary place of residence but, except as otherwise provided by the regulations, the payment of such expenses shall conform as nearly as possible in all respects to payment of such expenses for members of the public service of the Yukon.

Regulations

11. Subject to the provisions of the Criminal Code (Canada), the Commissioner in Executive Council may make regulations respecting:

- (a) the conduct and management of lottery schemes;
- (b) the terms and conditions subject to which licences may be issued for lottery schemes;
- (c) the purposes for which the profits of lottery schemes may be paid and the allocation of profits for those purposes and in payment of expenses;
- (d) any other matter necessary to carry the purposes and provisions of this Act and the purposes and provisions of section 190 of the Criminal Code (Canada) into effect.

Commencement

12. This Act comes into force on a day to be fixed by the Commissioner in Executive Council.

CHAPTER 18

(RSY 1986, Supplement)

AN ACT TO AMEND MEDICAL PROFESSION ACT

(enacted as SY 1987, c. 4, assented to on Feb. 12, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Medical Profession Act.
2. The following sections are added after section 23:

Appointment of committee by council

“23.1(1) Notwithstanding any other provisions of this Act, where the council determines that it has a conflict of interest, or, for any other reason, it is of the opinion that it should not act in any investigation, inquiry or proceeding under this Act, the council may appoint a committee consisting of not less than three members of the medical profession, who have been recommended for appointment by a College of Physicians and Surgeons from another province, to act in its place and stead and shall refer the investigation, inquiry or proceeding to the committee.

- (2) A committee appointed under subsection (1) shall appoint one of its members as the chairperson.
- (3) A majority of the members of a committee appointed under subsection (1) constitutes a quorum.

Powers and duties of committee

23.2(1) Subject to subsection (2), a committee appointed under subsection 23.1(1) shall have the full power, authority and duties of the council under this Act.

- (2) The powers, authority and duties of the committee appointed under subsection 23.1(1) shall be restricted to the matter of the investigation, inquiry or proceeding referred to it by the council.
- (3) The persons appointed to the committee shall hold office until such time as the investigation, inquiry or proceeding referred to it has been dealt with in its entirety.
- (4) Any order or decision of a committee appointed under subsection 23.1(1) shall be deemed to be an order or decision of the council for the purposes of this Act.
- (5) Subsection 5(2) does not apply to a committee appointed under this section.”

CHAPTER 19

(RSY 1986, Supplement)

AN ACT TO AMEND MOTOR VEHICLES ACT

(enacted as SY 1987, c. 17, assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. The following sections are added immediately after section 186 of the Motor Vehicles Act:

Child restraint systems

“186.1(1)In this section

“child” means a child under the age of six years;

“motor vehicle” does not include a bicycle, motorcycle, moped, snowmobile, or all terrain vehicle.

- (2) No person shall operate, on a highway, a motor vehicle in which a child is a passenger unless
 - (a) the motor vehicle is equipped with a prescribed child restraint system,
 - (b) the child restraint system is properly installed in the motor vehicle in accordance with the regulations, and
 - (c) the child is occupying and is properly secured in the child restraint system in accordance with the regulations.
- (3) Subsection (2) does not apply if, in respect of the child, there is a certificate signed by a qualified medical practitioner certifying that the child
 - (a) is, for the period stated in the certificate, unable for medical reasons to be secured in a child restraint system, or
 - (b) is, because of physical characteristics, unable to be secured in a child restraint system.

Child seating assemblies offences

186.2(1) A person who contravenes subsection 186.1(2) is guilty of an offence and is liable to a fine not more than \$100.

- (2) Where a person is convicted of an offence under subsection 186.1(2) because a motor vehicle was not equipped with the prescribed child restraint system, the judge may waive the payment of the penalty if the person, at the time of sentencing, satisfies the judge that the motor vehicle has been equipped with a prescribed child restraint system.

- (3) Where a person has been charged or is to be charged with having committed an offence under subsection 186.1(2) because a motor vehicle was not equipped with the prescribed child restraint system, no further proceedings with respect to the offence shall be taken if, within 15 days after the offence was committed, the peace officer who investigated the matter is satisfied that the motor vehicle has been equipped with a prescribed child restraint system.

Regulations for child restraint systems

186.3 The Commissioner in Executive Council may make regulations

- (a) prescribing the types of child restraint systems required for the purposes of this Act;
- (b) prescribing the weights or size of children for the different types of child restraint systems;
- (c) exempting persons or motor vehicles from the operation of sections 186.1 and 186.2.”

2. This Act comes into force on September 1, 1987.

CHAPTER 20

(RSY 1986, Supplement)

AN ACT TO AMEND MOTOR VEHICLES ACT, (No. 2)

(enacted as SY 1987, c. 18, assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Motor Vehicles Act.
2. The following paragraph is added to section 113.
 “(n) prescribing highways for the purposes of subsection 171(3)”.
3. The following subsections are added to section 171:
 “(3) No person shall operate a motor vehicle upon a prescribed highway at anytime unless both headlamps are alight.
 (4) For the purposes of subsection (3) “headlamps” include daytime driving lights installed in accordance with the regulations.”
4. This Act comes into force on July 1, 1987.

CHAPTER 21

(RSY 1986, Supplement)

MUNICIPAL AND COMMUNITY INFRASTRUCTURE GRANTS ACT

(enacted as SY 1986, c. 24, assented to on Dec. 18, 1986)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Interpretation

1.(1) In this Act,

“community” means a hamlet or any other settlement designated as a community in the regulations;

“community authority” means a community organization appointed pursuant to section 10;

“fiscal year” means the fiscal year of the Government of the Yukon under the Financial Administration Act;

“local improvement” has the same meaning as in the Assessment and Taxation Act;

“infrastructure project” means a project for the provision or improvement of

- (a) water delivery or supply facilities,
- (b) drainage and sewage facilities,
- (c) fire protection facilities,
- (d) official community plans,
- (e) roads, streets, bridges and sidewalks,
- (f) recreation facilities,
- (g) trail systems,
- (h) garbage facilities,
- (i) municipal buildings,
- (j) landscaping,
- (k) parking facilities,
- (l) street lighting,
- (m) parks,
- (n) cemeteries, or
- (o) such other infrastructure facilities or services as may be prescribed;

“municipal infrastructure grant” includes an extraordinary infrastructure grant under section 8.

(2) Terms used in this Act have the same meaning as in the Municipal Act, except where the context in which they are used requires otherwise.

Municipalities

Municipal infrastructure grant

2.(1) At the prescribed time each fiscal year, a municipal infrastructure grant shall be paid to each municipality.

(2) The Commissioner in Executive Council may make regulations establishing a formula for determining the amount of the municipal infrastructure grant to be paid to each municipality.

(3) The formula under subsection (1) may

- (a) establish or recognize classes of municipalities or recognize individual municipalities, and
- (b) provide for the payment of municipal infrastructure grants of different amounts to different municipalities or classes of municipalities.

(4) Except as provided by section 8, only one municipal infrastructure grant may be paid to each municipality in each year.

Infrastructure reserve account

3.(1) Every municipality shall establish and maintain in a chartered bank in the Yukon an infrastructure reserve account for the purposes of this Act.

(2) All money received by a municipality as an infrastructure grant under this Act shall be deposited to its infrastructure reserve account, and disbursements may be made from the account only for

- (a) expenditures authorized under section 4, and
- (b) the investment of surplus funds under section 5.

Expenditures

4.(1) Except as provided by subsections 6(2) and 7(2), money may be disbursed from the infrastructure reserve account of a municipality only for the payment of authorized capital expenses in relation to infrastructure projects in accordance with the capital expenditure program of the municipality under section 217 of the Municipal Act.

(2) For the purposes of subsection (1), the following shall be deemed to be authorized capital expenditures in addition to the actual costs of carrying out any infrastructure project:

- (a) the cost of feasibility and preliminary design studies;
- (b) engineering and architectural costs incurred in the development of plans and specifications;
- (c) the payment of principal and interest on debentures issued before or after this Act comes into force by the municipality in respect of municipal in-

frastructure projects, including such projects undertaken before this Act comes into force;

- (d) the cost of purchasing and installing fixtures;
- (e) such other costs as may be prescribed.

Investments

5.(1) Surplus funds held by a municipality in its infrastructure reserve account may be invested in accordance with section 215 of the Municipal Act.

(2) Upon the maturation or realization of investments under subsection (1), the principal shall be re-deposited in the infrastructure reserve account of the municipality.

Interest

6.(1) Interest earned by a municipality on funds in its infrastructure reserve account or on investments under section 5 shall be paid into the infrastructure reserve account.

(2) Interest under subsection (1) may, upon resolution of the council of the municipality, be disbursed from the infrastructure reserve account for the payment of any expenses of the municipality.

Exceptions

7.(1) Subject to subsection (2) and the regulations, money received by a municipality as an infrastructure grant shall not be used for

- (a) the payment of operation and maintenance expenses of the municipality, or
- (b) the purchase of mobile machinery or equipment, or office equipment.

(2) In any fiscal year a municipality may make an application to the Executive Council Member for permission to apply not more than ten percent of its infrastructure grant for that year to the payment of operation and maintenance expenses.

(3) The Executive Council Member shall not approve an application under subsection (2) unless he or she is satisfied that the approval does not jeopardize the carrying out of the capital expenditure program of the municipality under section 217 of the Municipal Act.

Extraordinary circumstances

8. The Executive Council Member may, on application from a municipality, pay an extraordinary infrastructure grant to the municipality out of a sum specifically appropriated for the purpose, to assist it to pay the cost of an infrastructure project the total cost of which exceeds two and one-half times the infrastructure grant payable under section 2 for the fiscal year in respect of which the application is made.

Reports

9.(1) On or before May 15 in each year, each municipality shall provide to the Executive Council Member a report on the operation of its infrastructure reserve account in the immediately preceding fiscal year.

- (2) The report under subsection (1) shall include

- (a) a brief description of the projects in respect of which money from the account has been disbursed,
- (b) for each project referred to in paragraph (a), a statement as to the total cost of the project, the amount expended out of the account in the fiscal year, and the sources of funding for the project, and
- (c) such other information as may be prescribed.

Communities

Community infrastructure grant

10.(1) The Executive Council Member may, from time to time, pay a community infrastructure grant to a community authority, or the Executive Council Member may, from time to time, expend all or part of the grant for the benefit of the community.

(2) A community infrastructure grant shall be of such amount as the Executive Council Member considers appropriate.

(3) In determining whether to pay or expend a community infrastructure grant, the Executive Council Member shall take into consideration the provisions that are in effect or that may be put into effect by the community for the payment of the anticipated operation and maintenance costs of the facility or service in respect of which the grant may be provided.

Community authorities

11. The Executive Council Member may, in accordance with the regulations and upon the request of any community organization, appoint the organization to be a community authority for the community in relation to one or more infrastructure projects for the purposes of this Act.

Community contribution

12.(1) The Commissioner in Executive Council may make regulations prescribing the contribution required of a community for carrying out any infrastructure project.

(2) Subject to the regulations, where a community contribution is required under subsection (1),

- (a) all or part of the community contribution may be satisfied through the provision of volunteer labour or donated money, services or materials, and
- (b) no part of the community contribution shall be satisfied with labour, money, services or materials provided in whole or in part by the Government of the Yukon or the Government of Canada.

(3) The cost of carrying out a community infrastructure project that is a local improvement may be satisfied in whole or in part out of funds raised in accordance with the Assessment and Taxation Act through the imposition of a local improvement tax.

Expenditures

13.(1) Money in the form of a community infrastructure grant may be paid to a community authority or for the benefit of a community under section 9 only for the payment of authorized capital expenses in relation to infrastructure projects in the community.

(2) For the purposes of subsection (1), the following shall be deemed to be authorized capital expenses in relation to a community infrastructure project in addition to the actual costs of carrying out the project:

- (a) the cost of feasibility and preliminary design studies;
- (b) engineering and architectural costs incurred in the development of plans and specifications;
- (c) the cost of purchasing and installing fixtures;
- (d) such other costs as may be prescribed.

Exceptions

14. Subject to the regulations, money received by a community authority or applied for the benefit of a community as an infrastructure grant shall not be used for

- (a) the payment of operation and maintenance expenses of the community or any facilities or services in the community, or
- (b) the purchase of mobile machinery or equipment, or office equipment.

General

Appropriation requirement

15. Money required for the purposes of this Act shall be paid out of sums appropriated for that purpose.

Regulations

16. The Commissioner in Executive Council may make regulations

- (a) prescribing expenses that are or are not authorized capital expenses for the purposes of section 4 or 12;
- (b) prescribing terms and conditions upon which infrastructure grants may be paid to community authorities;
- (c) prescribing anything required in this Act to be prescribed, or providing for anything required in this Act to be provided for in the regulations;
- (d) generally, providing for carrying the purposes and provisions of this Act into effect.

Repeal

17. The Community Assistance Act is repealed.

Commencement

18. This Act comes into force on a day to be fixed by the Commissioner in Executive Council.

CHAPTER 22

(RSY 1986, Supplement)

AN ACT TO AMEND THE MUNICIPAL FINANCE ACT

(enacted as SY 1986, c. 25, assented to on Dec. 18. 1986)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. The following section is added to the Municipal Finance Act immediately after Section 10:

“10.1(1) Subject to subsection (2), a municipal operating grant paid to a municipality shall not be less than 90 percent of the amount of the municipal operating grant paid to the municipality in the immediately preceding year.

(2) Where the amount of money appropriated for the municipal operating grant in a year is less than the amount of money appropriated for that purpose in the immediately preceding year, subsection (1) does not apply.”

CHAPTER 23

(RSY 1986, Supplement)

NURSING ASSISTANTS REGISTRATION ACT

(enacted as SY 1987, c. 19, assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Interpretation

1. In this Act,

“advisory committee” means the Nursing Assistants Advisory Committee established under section 2;

“registered nursing assistant” means a person registered under this Act;

“registrar” means the Registrar of Nursing Assistants appointed under section 4.

Nursing Assistants Advisory Committee

2.(1) There is hereby established a committee of not more than five members called the Nursing Assistants Advisory Committee.

(2) The members of the advisory committee shall be appointed by the Commissioner in Executive Council and at least three of them shall be registered nursing assistants.

(3) The Commissioner in Executive Council shall appoint one of the members as chairperson.

(4) Appointments shall be for a maximum of three years and shall, on initial formation of the committee, be so staggered as to establish a rotation.

(5) A majority of the members constitutes a quorum but a vacancy in the membership does not impair the capacity of the remaining members.

(6) The advisory committee shall meet at the call of the chairperson.

(7) For the purposes of constituting the first advisory committee a “registered nursing assistant” includes a person who is eligible to be registered under this Act.

Functions of the Committee

3. The functions of the advisory committee are

- (a) to advise the Government of Yukon about
 - (i) educational standards to be set for registered nursing assistants,
 - (ii) training programs for nursing assistants,
 - (iii) qualifications for registration, and

- (iv) registration fees, annual fees and reinstatement fees payable under this Act,
- (b) to review applications for registration,
- (c) to develop and publicize the functions and areas of competence of and standards of practice for registered nursing assistants,
- (d) to monitor registered nursing assistants manpower needs, and
- (e) to perform such other tasks in keeping with the purposes of this Act as may be requested by the Executive Council Member.

Registrar of nursing assistants

4. The Executive Council Member shall designate a member of the public service as registrar of nursing assistants.

Registration

5.(1) A person who is eligible for registration as a nursing assistant is one who

- (a) has applied in the prescribed manner,
- (b) has paid the prescribed registration fee,
- (c) has completed a prescribed program of education for nursing assistants, and
- (d) meets the other prescribed qualifications.

(2) Notwithstanding subsection (1) anyone who has applied in the prescribed manner and paid the prescribed registration fee is eligible for registration if they (a) have the prescribed combination of training and work experience, and

(b) apply to be registered within one year of the coming into force of this Act.

Duties of the registrar

6. The registrar shall

- (a) register as a nursing assistant any person who is eligible for such registration,
- (b) issue certificates of registration,
- (c) keep and maintain a register of nursing assistants registered under this Act,
- (d) collect the prescribed fees,
- (e) suspend or cancel registrations according to the decision of inquiry committees, and
- (f) perform such other duties as are set out in this Act.

Discipline Panel

7.(1) The Commissioner in Executive Council shall appoint a discipline panel of no less than 10 persons, at least five of whom shall be registered nursing assistants.

(2) For the purposes of this section and subsection 9(2) registered nursing assistant includes a nursing assistant registered in another province.

Complaints

8.(1) A person who has a complaint respecting the skill or judgement of a registered nursing assistant in a professional respect may make their complaint to the registrar.

(2) Upon receiving a complaint the registrar shall refer the matter to the advisory committee.

(3) The advisory committee shall review every complaint referred to it by the registrar and shall

- (a) reject the complaint if the complaint is frivolous, or
- (b) refer the complaint to a committee of inquiry if there are reasonable grounds for the complaint.

(4) A copy of the complaint and the decision of the advisory committee under subsection (3) must be served on the registered nursing assistant concerned within 15 days after the decision was made and it may be served by registered or certified mail .

Committee of Inquiry

9.(1) If the advisory committee refers a complaint to a committee of inquiry for a hearing the chairperson of the advisory committee shall appoint at least three members of the discipline panel to be the committee of inquiry for the purposes of hearing that complaint.

(2) At least one half of the members appointed to a committee of inquiry shall be chosen from those panel members who are registered nursing assistants.

(3) The committee of inquiry shall investigate, hear, and determine the complaint.

(4) Notice of the date of any hearing shall be served by registered or certified mail on the registered nursing assistant concerned and the complainant at least 30 days before the date set for the hearing.

(5) A committee of inquiry has the same powers as a board of inquiry under the Public Inquiries Act.

(6) If a committee of inquiry determines that a complaint is justified, the committee of inquiry may reprimand the person complained against or suspend or cancel the registration of that person.

(7) A complaint is justified when it is shown that the registered nursing assistant

- (a) displayed a lack of the knowledge, skill, or judgement in the care of a patient that it is reasonable to expect of a registered nursing assistant, or
- (b) failed to take reasonable care in the performance of duties as a registered nursing assistant.

(8) Notice of the decision of a committee of inquiry shall be sent by registered or certified mail to the registered nursing assistant concerned and the complainant forthwith after the decision is rendered.

Appeal

10.(1) A decision of a committee of inquiry may be appealed to the Supreme Court.

(2) An appeal under subsection (1) shall be made by way of originating notice filed in the Supreme Court within 30 days of the date of service of the decision on the registered nursing assistant.

(3) The originating notice shall be served on the registrar within 30 days of the date of service of the decision on the registered nursing assistant.

(4) An appeal under this section shall be a rehearing of the matter on the merits.

Prohibition

11. No person shall act as or claim to be a registered nursing assistant unless that person is registered under this Act.

Offence

12. A person who contravenes this Act is guilty of an offence and liable on conviction to a fine not exceeding \$1000 and to imprisonment for a term not exceeding six months or both.

Regulations

13. The Commissioner in Executive Council may make regulations

- (a) approving schools and educational programs for registered nursing assistants;
- (b) respecting the content and standards of schools and educational programs for registered nursing assistants;
- (c) providing for the examination of persons who wish to be registered nursing assistants;
- (d) prescribing qualifications for registration, including temporary registration and re-registration, of persons as registered nursing assistants;
- (e) prescribing fees;
- (f) providing for the holding and procedure of meetings;
- (g) respecting the disciplining of registered nursing assistants; and
- (h) establishing procedures for the conduct of hearings under this Act.

Exemption

14. This Act shall not be construed to affect or apply to nursing care that is provided

- (a) by a member of the family of a patient,
- (b) by a registered nurse, or
- (c) by a person enrolled in a school or course of training for the purpose of becoming a registered nurse or registered nursing assistant.

Commencement

15. This Act comes into force on a day to be fixed by the Commissioner in Executive Council.

CHAPTER 24

(RSY 1986, Supplement)

AN ACT TO AMEND THE PUBLIC SERVICE COMMISSION ACT

(enacted as SY 1987, c. 5, assented to on Feb 2, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Public Service Commission Act.
2. The title of the Act is amended by striking out the word "Commission".
- 3.(1) Subsection 1(1) is amended by striking out the definitions of "casual employee", "class", "class of positions", "established position", "establishment" and "single position class".

(2) The following definitions are added to subsection 1(1):

“ ‘auxiliary employee’ means an employee

- (a) who has one work assignment, whether full or part-time, that normally reoccurs, depending upon the call of the employer, on a seasonal basis each year for a continuous period of time of more than three but less than ten consecutive months, or
- (b) who normally has one or more work assignments each year, whether full or part-time, determined from time to time on an hourly, daily or other periodic basis by the call of the employer;

‘casual’ means a person engaged on a casual or temporary basis

- (a) whose employment, whether full or part-time, does not reoccur on a seasonal basis from year to year and is not intended to exceed six consecutive and continuous months, or
- (b) whose employment may reoccur on a seasonal basis from year to year and, if full time, is not intended to exceed three consecutive or continuous months or, if part time, is not intended to exceed 500 hours in any 12 month period;”.

‘class’ means a class as set out in a classification plan pursuant to section 19;

‘group’ means a group as set out in a classification plan pursuant to section 19;

‘level’ means a level as set out in a classification plan pursuant to section 19;

‘merit’ means the knowledge, abilities and suitability of a person in relation to the requirements for a position or for employment as a casual, as the case may be;

‘working days’ means days on which the offices of the Government of the Yukon normally are open;”.

(3) The following is substituted for the definition of “department or branch” in subsection 1(1):

“ ‘department’ means a department in the public service and includes an agency, branch, commission, board or corporation of the Government of Yukon;”.

(4) The definition of “deputy head” in subsection 1(1) is amended by striking out the expression “or branch” and by substituting the word “regulations” for the word “Schedule”.

(5) The following is substituted for the definition of “employee” in subsection 1(1):

“ ‘employee’ means a person appointed to a position in the public service, and includes an auxiliary employee but does not include a casual;”.

(6) The definition of “lay-off” in subsection 1(1) is amended by adding to the end of it the expression “but does not include an auxiliary employee during the period when the employee has no work assignment or an auxiliary employee who has received notice of the termination of the employee’s work assignment”.

(7) The following is substituted for the definition of “position” in subsection 1(1):

“ ‘position’ means a position established by the commission as a Position in the public service;”.

(8) The definition of “public service” in subsection 1(1) is amended by striking out the expression “or branches”.

(9) In the definition of “unit” in subsection 1(1), the expression “public service commissioner” is substituted for the word “Commissioner”.

4.(1) Paragraph 8(1)(g) is amended by striking out the expression “or branch”.

(2) Paragraph 8(1)(i) is amended by striking out the word “a”, and by substituting the word “systems” for the word “system.”

(3) Subsection 8(3) is amended by striking out the expression “branch or division”.

5. Subsection 9(2) is amended by striking out the expressions “branch or division” and “or branch”.

6. Section 13 is repealed.

7. Section 15 is amended by striking out the expression “or branch”.

8. Section 18 is amended by striking out the expression “or branch”.

9.(1) In section 19, the expression “one or more classification plans for” is substituted for the expression “a Classification Plan for all”.

(2) The following subsections are added to section 19:

“(2) Every classification plan shall establish one or more systems of classes, groups and levels to which positions may be allocated.

(3) Every classification plan shall set out

(a) the evaluation techniques to be used in classifying positions, and

- (b) the classification standards or specifications to be applied in classifying positions.
- (4) The commission may establish one or more classification plans respecting casuals, and subsections (2) and (3), and sections 23 to 33, with the necessary changes, apply to such plans.
- (5) Except as expressly provided by subsection (4), nothing in this section renders any other provision of this Act applicable to casuals.”

10. Sections 20 and 21 are repealed.

11. The following is substituted for section 22:

Creation of and changes to classes, groups and levels

“22. The commission may create, divide, combine, alter or abolish classes, groups and levels.”

12. In section 23, the expression “classes, groups and levels” is substituted for the word “classes”.

13. In section 24, the expression “in whole or in part” is substituted for the expression “or any class or any positions within a class series”, and by substituting the expression “to any class, group and level” for the expression “to any class”.

14. The following new section is added immediately after section 25:

Effective date of classification or reclassification

“25.1 Except as otherwise provided by this Act, the classification or reclassification of a position takes effect on a date determined in accordance with regulations.”

15. In section 25, the expression “class or group” is substituted for the word “class”.

16. Sections 26 and 27 are repealed.

17. The following is substituted for section 28:

Classification techniques and standards

“28. The evaluation techniques to be used in classifying positions, and the classification standards and specifications to be applied in classifying positions, shall be determined solely by the commission.”

18. Sections 29 to 31 are repealed.

19. In section 32, the expression “in his or her department” is substituted for the expression “under his direction”.

20. In section 33, the expression “in his or her department” is substituted for the expression “on his establishment”, and the expression “for his or her department” is substituted for the expression “for his establishment”.

21. The following new subsection is added to section 34:

“(2) A review under subsection (1) shall be discontinued if the employee leaves the employ of the government for a reason other than death or lay-off prior to completion of the review.”

22. In section 35, the word “department” is substituted for the word “establishment”.

23.(1) In subsection 36(1), the expression “section 34 or 35” is substituted for the expression “sections 34 or 35”.

(2) The following new subsections are added to section 36.

“(2) Where a change in the classification of a position results from a review under section 34 or 35, the change shall be deemed to have taken effect on the date on which the request for review was received by the commission.

(3) Notwithstanding subsection (2), an employee is not entitled to a retroactive or other increase of pay or other benefits in respect of the reclassification of a position under this section unless

(a) the employee held the position at the time when the review was requested under section 35 or 36 and

(i) the employee continued to hold the position at the time of the completion of the review, or

(ii) the employee died, was laid off or was transferred by the employer to another position prior to the completion of the review, or

(b) the employee was appointed to the position after the time when the review was requested at a rate of pay lower than the minimum rate of pay for the position as reclassified, and the employee continued to hold the position at the time of the completion of the review.

(4) The rate of pay of an employee to whom paragraph (3)(b) applies shall not, as a result of the reclassification of the position, be increased beyond the minimum rate of pay for the position as reclassified, whether or not the appointment of the person to the position was made under subsection 74(1).

(5) The rate of pay of an employee shall not be reduced as the result of a reclassification of the employee’s position under this section.

(6) The salary range of an employee may be changed as the result of a reclassification of the employee’s position under this section.”

24. Section 37 is amended by substituting the expression “in respect of substantially the same matter” for the expression “within six months from the date of the decision”.

25. In section 39, the expression “subject to the regulations” is added immediately after the word “appointed”.

26. In section 41, the expression “in his or her department” is substituted for the expression “on his establishment”.

27. Section 42 is amended by adding the expression “or in respect of a casual” to the end of the section.

28. In section 43, the expression “as may be prescribed” is substituted for the expression “as may be required to enable the appeal to be determined”.

29. In section 44, the expression “class, group and level” is substituted for the word “class”.

30. In section 45, the expression “20 working days after notice of the classification decision is received by the employee” is substituted for the expression “fifteen working days after the receipt of the classification decision by the Deputy Head”.

31. In section 49, the expression “subject to the regulations” is added immediately after the word “right”.

32. In section 55, the expression “class, group or level” is substituted for the word “class”.

33. The following is substituted for section 56:

Restriction of powers of the board

“56. The Classification Appeal Board shall not have the authority

- (a) to apply evaluation techniques different from those established under paragraph 19(3)(a),
- (b) to apply classification standards or specifications different from those established under paragraph 19(3)(b),
- (c) to make decisions or recommendations regarding rates of pay, other benefits or terms or conditions of employment applicable to any class, group or level, or
- (d) to create, divide, combine, alter or abolish any class, group or level.”

34. The following is substituted for section 57:

Limitation

“57. The Classification Appeal Board shall not conduct a second or further appeal in respect of substantially the same matter.”

35.(1) In subsection 58(2), the expression “an advisor for the bargaining agent” is substituted for the expression “an advisor”.

(2) The following subsections are added to section 58:

“(4) Where an advisor is appointed for a bargaining agent under subsection (2), the Public Service Commissioner may appoint an additional advisor to act as the commission’s advisor.

(5) This section does not apply to an appeal of a classification decision with respect to a position allocated to a class excluded from a collective agreement.”

36. The following is substituted for section 59:

Employee representative

“59. Where an appeal to the Classification Appeal Board is initiated by an employee, the employee may appoint a representative to appear before the board and make representations on behalf of the employee.”

37. Section 62 is amended by adding the expression “subject to the regulations” immediately after the word “scheduled”.

38. The following is substituted for section 63:

Result of Appeal

- “63.(1) Where a change in the classification of a position results from an appeal to the board, the change shall be deemed to have taken effect on the date on which the request for the review of the classification of the position was received by the commission under section 34 or 35.
- (2) Notwithstanding subsection (1), an employee is not entitled to a retroactive or other increase of pay or other benefits in respect of the reclassification of a position under this section unless
- (a) the employee held the position at the time when the review of the classification of the position was requested under section 34 or 35 and
- (i) the employee continued to hold the position at the time of the completion of the appeal, or
- (ii) the employee died, was laid off or was transferred by the employer to another position prior to the completion of the appeal, or
- (b) the employee was appointed to the position after the time when the review of the classification of the position was requested under section 34 or 35 at a rate of pay lower than the minimum rate of pay for the position as reclassified on appeal, and the employee continued to hold the position at the time of the completion of the appeal.
- (3) The rate of pay of an employee to whom paragraph (2)(b) applies shall not, as a result of the reclassification of the position, be increased beyond the minimum rate of pay for the position as reclassified, whether or not the appointment of the person to the position was made under subsection 74(1).
- (4) The rate of pay of an employee to whom paragraph (2)(a) applies shall not, as the result of a reclassification of the employee’s position under this section, be reduced below the rate paid to the employee at the time when the review of the classification of the position was requested under section 34 or 35.
- (5) The rate of pay of an employee to whom paragraph (2)(b) applies, shall not, as the result of a reclassification of the employee’s position under this section, be reduced below the rate of pay at which the employee was appointed to the position.

- (6) The salary range of an employee may be changed as the result of a reclassification of the employee's position under this section."

39. Section 64 is repealed.

40. In section 65, the expression "class, group or level" is substituted for the expression "classes of employment".

41. In section 66, the expression "class, group or level" is substituted for the expression "classes of employment", and the expression "classes, groups and levels" is substituted for the word "classes".

42. In sections 67 and 68, the expression "classes, groups or levels" is substituted for the expression "classes of employment".

43. In section 69, the expression "deputy head" is substituted for the expression "class of employment listed in the Schedule".

44. In section 70, the expression "classes, groups and levels" is substituted for the word "classes".

45. In section 71, the expression "classes, groups and levels" is substituted for the expression "classes of employment".

46. The following subsections are added to section 74:

"(2) Notwithstanding section 73, the public service commissioner may, in accordance with the regulations, make an appointment to a position in a class at a rate of pay lower than the minimum rate for the class where the person appointed does not have all the required qualifications for the position.

(3) Where an appointment is made under subsection (2), the person appointed to the position may be dismissed from the position not later than three years after the date of the appointment unless the person acquires all the required qualifications for the position during that time."

47. The following is substituted for section 78:

Information to be supplied to the commission

"78. Every deputy head shall, on the request of the commission, provide such information as the commission may require regarding employees and positions in the department of the deputy head, including casuals."

48. Section 79 is amended by substituting the word "positions" for the word "employees", and by striking out the expression "branch or division".

49. Subsection 80(2) is repealed.

50. Section 81 is amended by striking out the expression "branch or division".

51. The following is substituted for section 82:

Limits to staff establishment

"82.(1) The establishment of a department shall not, except with the approval of the management board under the Financial Administration Act, exceed the establishment approved by the management board for the department.

(2) Auxiliary positions shall not be included in the staff establishment of a department for the purposes of subsection (1)."

52. Section 83 is amended by striking out the expression "branch or division".

53. In section 84, the word "commission" is substituted for the word "Commissioner".

54. In section 85, the expression "a person" is substituted for the expression "an employee", and the expression "subsection 84(2)" is substituted for the expression "section 84(2)".

55. In sections 86 to 88, the word "casual" is substituted for the expression "casual employee".

56. Sections 89 to 94 are repealed.

57.(1) The following is substituted for the heading immediately preceding section 95: "Appointment and Termination".

(2) Section 95 is amended by adding the expression "Subject to section 10" to the beginning, and by striking out the expression "branch or division".

58. Section 98 is amended by striking out the expression "or class".

59. The following section is added immediately after section 99:

Affirmative action

"99.1 Notwithstanding any other provision of this Act, the commission may implement programs that have as their object the amelioration of conditions of disadvantaged individuals or groups, and may for that purpose employ such individuals or members of such groups as the commission considers appropriate."

60. In section 100, the word "casuals" is substituted for the expression "persons to perform work of a casual or temporary nature".

61. In section 104, the word "occupations" is substituted for the expression "classes of positions", and the expression "those occupations" is substituted for the expression "those positions".

62. Section 107 is amended

- (a) by substituting the word "in the department of the deputy head" for the expression "on the establishment of his department or branch", and
- (b) by substituting the expression "within a division of the public service defined by the commission" for the expression "within the department, branch or division".

63. Section 109 is amended by striking out the expressions "branch or division" and "branches or divisions".

64. Paragraph 110(a) is amended by striking out the expression "of positions".

65. The following subsections are added to section 115:

- “(2) Notwithstanding subsection (1), the probationary period for an auxiliary employee is 1000 working hours, exclusive of overtime hours.
- (3) Where a person is transferred or demoted to a position, the commission shall determine whether the person shall serve a probationary period having regard to the circumstances surrounding the transfer or demotion and such other factors as the commission considers relevant.”

66.(1) Section 116 is amended by substituting the expression “other than an auxiliary employee, for further periods” for the expression “for a further period”.

(2) The following subsection is added to section 116:

- “(2) A deputy head may extend the probationary period of an auxiliary employee for a further period of 1000 working hours, exclusive of overtime hours.”

67. The following subsection is added to section 119:

- “(2) Subsection (1) does not apply to auxiliary employees.”

68.(1) Section 121 is amended by striking out the expression “or temporary” and the word “permanent”.

(2) The following subsection is added to section 121:

- “(2) Service as an auxiliary employee shall not be considered as part of a probationary period in respect of an appointment to a position other than an auxiliary position.”

69. Sections 122 to 124 are repealed.

70. In section 127, the expression “evidence satisfactory” is substituted for the expression “satisfactory evidence”.

71. In subsection 130(3), the word “adjudication” is substituted for the expression “the adjudication”.

72. In section 131, the expression “the last working day of the employee” is substituted for the expression “his last working day”.

73.(1) In subsection 132(1), the expression “five consecutive working days of the employee” is substituted for the expression “a period of five consecutive working days”.

(2) The following subsections are added to section 132:

- “(4) The position of an auxiliary employee may also be declared to have been abandoned under subsection (1) where the employee has failed to comply with three consecutive calls by the employer to accept a work assignment.
- (5) Only calls given to the employee in accordance with subsection 191(3) shall be effective for the purposes of subsection (4).”

74. In section 133, the expression “position at the same level performing similar functions and requiring similar qualifications” is substituted for the expression “in the same class or to an alternative work location”.

75.(1) The following is substituted for subsection 135(1):

- “135.(1) Subject to the regulations, where operational requirements so necessitate, a Deputy Head may, at any time, with the prior approval of the commission, transfer an employee from one position to another position at the same level, performing similar functions and requiring similar qualifications in the department of the deputy head,
- (a) within the same work location, or
 - (b) between different work locations.”
- (2) The following subsections are added to section 135:
- “(1.1) A transfer under subsection (1) shall be effected by the giving of a written notice to the employee in accordance with section 191, specifying the effective date of the transfer.
 - (1.2) A copy of the notice under subsection (1.1) shall be sent to the commission.
 - (10) Subsections (3) to (9) do not apply to auxiliary employees.
 - (11) An employee shall not be required to serve a probationary period solely as a result of a transfer under this section.”
- 76. The following is substituted for section 136:**
- Transfer by the public service commissioner**
- “136.(1) The public service commissioner may transfer an employee from one position to another at the same level performing similar functions and requiring similar qualifications within the same department
- (a) within the same work location, or
 - (b) between different work locations.
- (2) A transfer under subsection (1) shall not be made except with the consent of the employee and the deputy head of the department within which the transfer is made.
 - (3) The public service commissioner may transfer an employee from one position to another at the same level performing similar functions and requiring similar qualifications between departments
 - (a) within the same work location, or
 - (b) between different work locations.
 - (4) A transfer under subsection (3) shall not be made except with the consent of the employee and the Deputy Head of the department to which the transfer is made.”
- 77. The following subsection is added to section 146:**
- “(2) Subsection (1) does not apply to an employee who is not a member of a bargaining unit under the Public Service Staff Relations Act.”

78. The following subsection is added to section 152:

“(3) Subsection (1) does not apply to an employee who is not a member of a bargaining unit under the Public Service Staff Relations Act.”

79. The following is substituted for section 161:

Leave for employees seeking election

“161.(1) An employee who proposes to become a candidate in an election shall apply in writing to his or her deputy head to be placed on leave without pay, commencing

- (a) upon the issuance of the writ of election, where the person is nominated by a political party prior to the issuance of the writ,
- (b) upon the nomination of the person by a political party, where the person is nominated after the issuance of the writ of election but before being nominated pursuant to the Canada Elections Act or the Elections Act (Yukon) to be a candidate in an election, or
- (c) upon being nominated pursuant to the Canada Elections Act or the Elections Act (Yukon) to be a candidate in an election, where paragraphs (a) and (b) do not apply.

(2) Leave without pay under this section shall terminate on the earlier of

- (a) the official declaration of the result of the election, or
- (b) the withdrawal of the candidate pursuant to the Canada Elections Act or the Elections Act (Yukon).”

80. In section 164, the expression “has been placed on leave without pay under section 161” is substituted for the expression “has been granted leave of absence without pay to seek nomination as a candidate or to be a candidate as a member of the House of Commons or the Council of the Yukon Territory”.

81.(1) Section 165 is amended by striking out the expression “or by-election” and by adding the expression “whether or not a writ for the holding of the election has been issued” to the end of the section.

(2) The following new definition is added to section 165:

“‘election’ includes a by-election;”.

82.(1) Subsection 166(1) is amended by substituting the expression “Except as otherwise provided by this Act” for the expression “Except as provided by section 167” and by striking out the expression “or by-election”.

(2) Subsection 166(2) is amended by substituting the expression “Except as otherwise provided by this Act” for the expression “Except as provided by section 167” and by striking out the expression “or by-election”.

(3) The following subsection is added to section 166:

“(3) This section applies whether or not a writ for the holding of an election has been issued.”

83. The following subsections are added to section 167:

“(3) No employee shall so conduct himself or herself during his or her working hours so as to promote or oppose a political party, or a candidate or person who is seeking nomination as a candidate in an election, whether or not a writ for the holding of the election has been issued.”

84. Subsections 168(1) and (3) are amended by striking out the expression “or by-election”.

85.(1) Subsection 168(1) is amended by adding the expression “whether or not a writ for the holding of an election has been issued” to the end of the subsection.

(2) Subsection 168(2) is amended by adding the expression “open to the general public” to the end of the subsection.

86. The following subsection is added to section 170:

“(2) Subsection (1) does not apply to an employee who is not a member of a bargaining unit under the Public Service Staff Relations Act.”

87. Section 171 is amended by striking out the expression “branch or division”.

88. In section 172, the word “rate” is substituted for the word “rates”.

89. In section 173, the expression “after receiving notice of lay-off under section 191” is substituted for the expression “after he was laid off”.

90. In section 174, the word “rate” is substituted for the word “rates”.

91. In section 175, the expression “after receiving notice of lay-off under section 191” is substituted for the expression “from the date on which he became a lay-off”, and by substituting the word “rate” for the word “rates”.

92.(1) In section 176, the expression “Subject to subsections (2) and (3), where two or more employees, other than auxiliary employees, in positions in the same group, at the same level, performing similar functions and requiring similar qualifications in the same unit are to be laid off, or where one such employee is to be laid off and there are other such employees holding positions in the same group, at the same level, performing similar functions and requiring similar qualifications in the same unit,” is substituted for all the words preceding the expression “the deputy head”.

(2) The following subsection is added to section 176:

“(2) Where two or more auxiliary employees in positions in the same group, at the same level, performing similar functions and requiring similar qualifications in the same unit are to be laid off, or where one auxiliary employee is to be laid off and there are other auxiliary employees holding positions in the same group, at the same level, performing similar functions and requiring similar qualifications in the same unit, the deputy head shall prepare and forward a report listing the employees in order of their merit to the public service commissioner and such employees, if approved by the public service commissioner, shall be laid off in order beginning with the auxiliary employee lowest on the list.

- (3) An employee other than an auxiliary employee shall not be laid off until all auxiliary employees in positions in the same group, at the same level, performing similar functions and requiring similar qualifications in the same unit have been laid off."

93. The following subsection is added to section 181:

"(2) Subsection (1) does not apply to auxiliary employees."

94. Section 182 is amended

- (a) by substituting the word "casual" for the expression "casual employee",
- (b) by substituting the expression "an employee" for the expression "a permanent employee", and
- (c) by substituting the expression "any employee" for the expression "any permanent employee".

95. Section 183 is amended by striking out the word "employee".

96. Section 184 is amended by adding to the beginning of the section the expression "Subject to the regulations".

97. In section 185, the expression "for approval" is added immediately before the word "together".

98. Section 186 is repealed.

99.(1) Subsection 191(2) is amended

- (a) by adding the expression "Except as provided by subsection (3)" to the beginning of the subsection,
- (b) by substituting the word "ten" for the word "five", and
- (c) by substituting the expression "registered or certified mail" for the expression "registered mail".

(2) The following subsection is added to section 191:

- "(3) A notice calling upon an auxiliary employee to accept a work assignment may be given personally either orally or in writing, or it may be sent by registered or certified mail addressed to the address provided under subsection (1), in which case it shall be deemed to have been received ten working days after the date of mailing."

100. Section 193 is amended by substituting the expression "Except as otherwise provided by the regulations, no employee or casual" for the expression "No employee", and by adding the word "renew" immediately before the word "accept".

101. Section 195 is amended by striking out the word "or branch".

102. Section 196 is amended by striking out the expression "The Commission shall have the exclusive right and authority to select training courses for the retention, development and advancement of employees in the Public Service of for such other purposes as the Commission deems appropriate and".

103. Section 197 is repealed.

104. In section 200, the word “be” is substituted for the expression “replace the Commissioner as”.

105. In section 202, the expression “With the prior approval of the public service commissioner and the consent of the employee, a deputy head may lend any employee to another department, to another government or an agency thereof, or to any body corporate” is substituted for all of the words preceding the expression “for such period”.

106. In section 203, the word “transfer” is added immediately after the word “appointment”, and the expression “under this Act” is substituted for the expression “to a position”.

107.(1) In subsection 204(1), the word “person” is substituted for the word “employee”, and the word “transfer” is added immediately after the word “promotion”.

(2) The following subsection is added to section 204:

“(1.1) The public service commission may, without further cause, suspend or dismiss a person who is appointed to a position as a result of improper influence under section 203.”

(3) In subsection 204(2),

- (a) the word “person” is substituted for the word “employee”,
- (b) the word “person’s” is substituted for the word “employee’s”, and
- (c) the word “transfer” is added immediately after the word “promotion”.

108. The following subsection is added to section 205:

“(2) Subsection (1) does not apply to an employee who is not a member of a bargaining unit under the Public Service Staff Relations Act.”

109.(1) In paragraph 208(2)(f), the word “casuals” is substituted for the expression “employees performing duties of a casual or temporary nature”, and the expression “and casuals” is substituted for the expression “and employees”.

(2) Paragraphs 208(2)(n) and (t) are repealed.

110. A person who is an auxiliary employee pursuant to the personnel policies of the Government of the Yukon when this Act comes into force shall be deemed to be an auxiliary for the purposes of the Public Service Commission Act as amended by this Act, and no such person shall be required to serve a probationary period after this Act comes into force.

111. This Act comes into force on a day to be fixed by the Commissioner in Executive Council.

CHAPTER 25

(RSY 1986, Supplement)

AN ACT TO AMEND THE PUBLIC SERVICE STAFF RELATIONS ACT

(enacted as SY 1987, c. 6, assented to on Feb. 12, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Public Service Staff Relations Act.

2. (1) The following definition is added to section 1:

“ ‘auxiliary employee’ has the same meaning as in the Public Service Act;”.

(2) The following is substituted for paragraphs (d) and (e) of the definition of “employee” in section 1:

“(d) a person who is a casual within the meaning of the Public Service Act;”.

(3) The following is substituted for the definition of “person employed in a managerial or confidential capacity” in subsection 1(2):

“ ‘person employed in a managerial or confidential capacity’ means a person

- (a) who is employed in a confidential capacity to the Commissioner, a member of the Executive Council, a deputy head, a judge of the Supreme Court or the Territorial Court, or a chief executive officer of an agency of the Government of the Yukon,
- (b) who is employed in a capacity confidential to the Executive Council or a committee of the Executive Council,
- (c) who has or exercises managerial duties and responsibilities in relation to the formulation, development and administration of policies and programs,
- (d) who is required by reason of the person’s duties to deal formally on behalf of the employer with a grievance presented in accordance with the grievance process provided for in this Act,
- (e) who is a unit head as defined in the Public Service Act,
- (f) who is employed in the Department of Finance
 - (i) in the formulation of budgets of the Government of the Yukon,
 - (ii) in the conduct of fiscal relations, or
 - (iii) in a capacity confidential to the management board,
- (g) who is employed in the Public Service Commission,

- (h) who is employed in a confidential capacity to a person described in paragraphs (b) to (g),
- (i) who is not otherwise described in paragraphs (a) to (h) but who, in the opinion of the board, should not be included in any bargaining unit by reason of the person's duties and responsibilities to the employer;".

3. The following subsection is added to section 20:

- "(2) A bargaining agent for a group of employees may, subject to section 23, apply to the board in the prescribed manner for certification as the bargaining agent for an enlarged bargaining unit the bargaining agent considers appropriate for collective bargaining consisting of the original group of employees and an additional group of employees."

4. The following subsection is added to section 23:

- "(4) This section does not apply in respect of an application under subsection 20(2) for the enlargement of a bargaining unit to include an additional group of employees where no collective agreement or arbitral award that is in force applies to any member of the additional group."

5. The following subsections are added to section 25:

- "(3) Where an application for the enlargement of a bargaining unit is made under subsection 20(2), the board shall, subject to subsection (4), determine the group of employees that constitutes an appropriate addition to the existing bargaining unit.
- (4) Notwithstanding any other provision of this Act, the Board shall not determine a unit of employees including auxiliary employees to constitute a unit appropriate for collective bargaining unless the unit includes all of the auxiliary employees of the employer at the time of the application and does not include any other employees except for any employees in respect of whom the bargaining unit has previously been certified.
- (5) Notwithstanding any other provision of this Act, persons who are auxiliary employees upon the coming-into-force of this subsection shall not be included in a bargaining unit otherwise than upon application under subsection 20(2) and upon compliance with subsection (4), and persons who become auxiliary employees after the coming-into-force of this subsection shall not be included in a bargaining unit that does not include all of the other auxiliary employees."

6. The following new subsection is added to section 27:

- "(2) Where the board
 - (a) has received an application under subsection 20(2),
 - (b) has determined the group of employees that constitutes an appropriate addition to the bargaining unit for collective bargaining in accordance with section 25,

- (c) is satisfied that at the date the application was made a majority of the additional group of employees wished to be represented by the bargaining agent that made the application, and
- (d) is satisfied that the bargaining agent has been duly authorized by the existing bargaining unit to make the application,

the board shall, subject to this Act, certify the enlarged employee organization as bargaining agent for the enlarged bargaining unit in accordance with subsection (3).

- (3) The board shall, upon making a decision to certify an enlarged bargaining unit under subsection (2), issue such transitional directions as may be required for the commencement of the certification with respect to the additional group of employees added to the bargaining unit
 - (a) to provide for the negotiation of a collective agreement to apply to the auxiliary employees until the expiration of any existing collective agreement applying to the rest of the bargaining unit, and
 - (b) to enable bargaining for the enlarged bargaining unit to proceed in an orderly fashion upon expiration of the existing collective agreement.”

7. In subsection 28(1), the expression “paragraphs 27(1)(c) and (d) or 27(2)(c) and (d)” is substituted for the expression “paragraphs (c) and (d) of that section”.

8. The following new subsection is added to section 45:

- “(2) In a collective agreement under subsection (1), the benefits and terms and conditions of employment applicable to auxiliaries need not be the same as for other employees, and such benefits, terms and conditions shall be negotiated and specified separately from those for other employees.”

9. This Act comes into force on a day to be fixed by the Commissioner in Executive Council.

CHAPTER 26

(RSY 1986, Supplement)

SECOND APPROPRIATION ACT, 1987-88

(enacted as SY 1987, c. 20, assented to on April 16, 1987)

Whereas it appears by message from the Commissioner and in the estimates accompanying the message that, in addition to the sums previously appropriated, the sums appearing in Schedule "A" of this Act are required for the purpose of defraying certain expenses of the public service of Yukon and for related purposes for the period of 12 months ending in March 31, 1988.

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act may be cited as the Second Appropriation Act, 1987-88.

2.(1) In addition to the sum of \$114,302,000 provided for in the First Appropriation Act, 1987-88, from and out of the Yukon Consolidated Revenue Fund there may be paid and applied a sum not exceeding in the whole \$186,597,000 for defraying the several charges and expenses of the public service of Yukon payable in the period of 12 months ending on March 31, 1988, as set forth in Schedules "A" and "B" of this Act and that sum shall not be paid or applied except in accordance with Schedules "A", "B", "C" and the Financial Administration Act.

(2) The sum appropriated by subsection (1) includes the sum of \$33,166,000 appropriated by the Interim Supply Appropriation Act, 1987-88.

3. The due application of all monies paid or applied pursuant to section 2 shall be accounted for.

SECOND APPROPRIATION ACT, 1987-88

SCHEDULE A

\$ (Dollars in 000's)

Operation and Maintenance Votes	This Appropriation	Total O&M Voted (Current O&M Spending Authority)
Yukon Legislative Assembly	1,548	1,548
Executive Council Office	4,024	4,024
Community and Transportation Services	42,852	42,852
Economic Development: Mines and Small Business	2,435	2,435
Education	41,158	41,158
Finance	2,539	2,539
Government Services	12,627	12,627
Health and Human Resources	37,957	37,957
Justice	16,280	16,280
Public Service Commission	3,306	3,306
Renewable Resources	7,221	7,221
Tourism	3,288	3,288
Women's Directorate	209	209
Yukon Housing Corporation	1,305	1,305
Yukon Liquor Corporation	ONE DOLLAR	ONE DOLLAR
Yukon Development Corporation	ONE DOLLAR	ONE DOLLAR
Loan Capital	8,000	8,000
Loan Amortization	1,848	1,848
Total Operation and Maintenance	186,597	186,597

SECOND APPROPRIATION ACT, 1987-88

SCHEDULE B GRANTS

		\$ (Dollars in 000's)
OPERATION AND MAINTENANCE VOTES - GRANTS	Purpose/Legislation	GRANT AMOUNT
Executive Council Office	Asia Pacific Foundation Grant	25
Community and Transportation Services	In-Lieu-of Property Taxes	1,468
	Conditional Municipal Grants	347
	Dwelling Unit Grants	2,759
	Home Owner Grants	917
Education	Yukon College - Student Travel	2
	Student Activity Support Programs	15
	Post Secondary Student Grants	1,101
	Adult Education General Training Allowance	550
	Training Allowances - Apprenticeship	3
Health & Human Resources	Day Care	379
	Pioneer Utility Grant	175
	Yukon Senior's Income Subsidy	430
	Home Care	30
Tourism	Museum Grants	70
Women's Directorate	Women's Groups, Conferences, and Special Activities	11
Total		8,282

SECOND APPROPRIATION ACT, 1987-88

SCHEDULE "C"

OBJECTIVES

DEPARTMENTAL OBJECTIVES

YUKON LEGISLATIVE ASSEMBLY

- To enable the Yukon Legislative Assembly and its members to carry out their functions by providing administrative support systems and parliamentary expertise.

EXECUTIVE COUNCIL OFFICE

- To provide the Executive Council and Yukon Government departments with a range of services intended to promote and coordinate activities relevant to the provision of analysis, support and advice on all matters relating to the activities of the Government as a whole.

DEPARTMENT OF COMMUNITY AND TRANSPORTATION SERVICES

- To promote local self-government and to provide support to municipalities to offer the services and facilities which reflect their needs and to provide municipal services in un-organized communities.
- To provide for the planning, development and management of Yukon land and its use and to make land available to meet the needs of the Yukon.
- To plan, develop, maintain and regulate a transportation infrastructure and related services to support the social and economic development of the Yukon.
- To support the development of arts, sports and community recreation throughout the Yukon.
- To foster the development and provision of communication services to enhance the cultural, economic and leisure opportunities of Yukoners.

DEPARTMENT OF ECONOMIC DEVELOPMENT: MINES AND SMALL BUSINESS

- To promote development of self-sustaining Yukon economy, with a balance and diversification of primary, secondary, and service industries, providing an acceptable level of income for Yukon residents in either wage or in kind.
- To increase the participation of Yukoners in employment, management, and ownership of Yukon business: to decrease leakage of wages and profits from the Territory, and increase economic returns, capital accumulation, and local influence on economic decision-making for the Yukon.
- To promote a more equitable distribution of economic benefits throughout all regions and segments of the population.

DEPARTMENT OF EDUCATION

- To ensure that all Yukoners are provided with the learning opportunities to achieve their potential by the department planning, developing, managing and evaluating:
 - Primary, elementary and secondary education for all school age children;
 - French language programs;
 - Adult training and continuing education programs;
 - Manpower planning services, employment development and job retention programs;
 - Library and archival services.
- To provide funds for the development, promotion and evaluation of the Native language program and for the training of local instructors for the program, and provide the required central support.

DEPARTMENT OF FINANCE

- To ensure that the financial resources of the Government of Yukon are planned, utilized and controlled in a manner that meet the priorities of the government and complies with the statutes.

DEPARTMENT OF GOVERNMENT SERVICES

- To provide goods and services to all the Yukon Government's departments and agencies so that the physical resources of the government are acquired, allocated and utilized in an efficient and optimum manner.
- To co-ordinate and facilitate the Yukon Government's relationship with the private sector.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

- To reduce lack of opportunity due to health or social condition and enhance the potential and well-being of all Yukoners while recognizing and respecting age, gender, culture, abilities, and community differences.

DEPARTMENT OF JUSTICE

- To respond to Yukon community needs to provide services designated to reduce crime and to serve and protect victims and potential victims.
- To provide police services designed to preserve law and order.
- To provide court services.
- To provide secure housing and correctional services designed to protect communities from offenders and to provide rehabilitative services to offenders.
- To maintain safe employment, orderly and responsible commercial and professional services in the Yukon and to promote the public interest in labour-management harmony and the consumer interest in commercial and professional activities.
- To provide legal services to the Yukon Government.

PUBLIC SERVICE COMMISSION

- To provide information, systems and services to Management Board and line departments so that the human resources of the public service may be managed equitably and efficiently in accordance with applicable legislation.

DEPARTMENT OF RENEWABLE RESOURCES

- To provide for the planning, development and management of the Yukon's renewable resources.

DEPARTMENT OF TOURISM

- To promote and develop the Yukon as a tourism destination for the economic and social benefit of Yukoners and to assist the private sector in similar efforts.
- To develop, enhance and transmit, for the benefit of all Yukoners and visitors, an appreciation and understanding of the Yukon's heritage as well as to preserve these resources for present and future generations.

WOMEN'S DIRECTORATE

- To improve the economic, social, and legal status of Yukon women to promote equality.

YUKON HOUSING CORPORATION

- To ensure the provision and availability of suitable and affordable accommodation to the Yukon households in need, senior citizens, the disabled and special needs groups.
- To ensure the provision and availability of suitable accommodation to Government of Yukon staff living outside of Whitehorse, and to administer the Government's Employee Housing Buy-Back Program.
- To foster and promote programs that will assist the housing industry to supply adequate housing within Yukon.
- To create and promote an environment of community participation in the design, development and delivery of housing programs.

YUKON LIQUOR CORPORATION

- To provide for and to regulate the purchase, transportation, and sale of alcoholic beverages in the Yukon.

YUKON DEVELOPMENT CORPORATION

- To acquire the assets and carry-on the operations of the Northern Canada Power Commission in the Yukon.
- To facilitate the realization of the economic goals of the Government of Yukon in a cost-effective manner through selective strategic investments.

CHAPTER 27

(RSY 1986, Supplement)

AN ACT TO AMEND THE WORKERS COMPENSATION ACT

(enacted as SY 1986, c. 26, assented to on Dec. 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Workers Compensation Act.
- 2.(1) In paragraph 34(1)(d), the figure "\$1,000" is substituted for the figure "\$650".
- (2) In paragraph 34(1)(e), the figure "\$300" is substituted for the figure "\$165".
- (3) In paragraph 34(1)(f), the figure "\$325" is substituted for the figure "\$180".

CHAPTER 28

(RSY 1986, Supplement)

AN ACT TO AMEND THE WORKERS COMPENSATION ACT

(enacted as SY 1987, c. 21, assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Workers Compensation Act.
2. Section 1 is amended by striking out the definition of "silicosis".
3. The following section is added immediately after section 5:

Amount of compensation in special cases

"5.1 Where an application under subsection 5(1) or (2) is approved, the amount of compensation to be paid shall not exceed 75 percent of the stated sum for which coverage is requested in the application."

4. Subsection 7(2) is amended by striking out the expression "except in the case of silicosis".
5. The following is substituted for paragraph 8(1)(c):
 "(c) a chairperson".
6. Subsection 8(2) is amended by striking out the expression "other than the Chairman".
7. Subsection 8(6) is repealed.
8. The following is substituted for subsection 8(7):
 "(7) The board may appoint one of the members to act as chairperson during the absence of the chairperson."
9. Paragraph 22(1)(b) is amended by striking out the expression "other than silicosis".
10. Paragraph 22(1)(c) is repealed.
11. Paragraph 34(1)(c) is amended by striking out the expression "not exceeding \$105".
12. Paragraph 34(1)(c) is amended by substituting the expression "age of 18 years" for the expression "age of 16 years" throughout.
13. Paragraph 34(1)(g) is amended by
 - (a) substituting the expression "17 or 18 years of age" for the expression "16 or 17 years of age", and

(b) substituting the expression “age of 18 years” for the expression “age of 16 years”.

14. Paragraph 34(1)(h) is amended by substituting the expression “age of 21 years” for the expression “age of 18 years”.

15. The following is substituted for Section 35:

“Where a worker dies leaving no dependent spouse and immediately preceding the death has cohabited with a person of the opposite sex who is dependent on the worker for maintenance and support, the compensation to which the dependent spouse of the worker would have been entitled under this Act may be paid to the person who is dependent upon the worker for maintenance and support in the same manner and subject to the same conditions as it may have been paid to the dependent spouse.”

16. Paragraph 36(1)(a) is amended by substituting the expression “age of 18 years” for the expression “age of 16 years”.

17. Paragraph 36(1)(f) is amended by substituting the expression “age of 21 years” for the expression “age of 18 years”.

18. Subsection 36(2) is amended by substituting the expression “age of 21 years” for the expression “age of 18 years”.

19. Sections 38, 58 and 59 and paragraph 68(1)(c) are repealed.

20. This Act is amended by substituting the word “chairperson” for the word “chairman” throughout.

CHAPTER 29

(RSY 1986, Supplement)

YOUNG PERSONS OFFENCES ACT

(enacted as SY 1987, c. 22, assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Interpretation

1. In this Act,

“director” means the director of juvenile justice appointed under section 3;

“enactment” means an Act or a regulation or any portion of an Act or regulation;

“offence” means an offence created by an enactment or a municipal bylaw;

“parent” has the same meaning as in the Young Offenders Act (Canada);

“pre-disposition report” means a report on the personal and family history and present environment of a young person prepared by a person authorized by the director to prepare such reports;

“young person” means a person who is, or in the absence of evidence to the contrary, appears to be (a) 12 years of age or more, but (b) under 18 years of age at the time an offence is alleged to have been committed;

“youth court” means the Territorial Court or a court designated by the Commissioner in Executive Council as a youth court for the purposes of this Act;

“youth court judge” means a Territorial Court judge or a person appointed or designated to be a judge of a youth court.

“youth worker” includes a youth worker under the Young Offenders Act (Canada).

Declaration of principles

2.(1) It is hereby recognized and declared that:

- (a) while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions;
- (b) society must, although it has the responsibility to take reasonable measures to prevent criminal conduct by young persons, be afforded the necessary protection from illegal behaviour;

- (c) young persons who commit offences require supervision, discipline and control, but, because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance;
- (d) where it is not inconsistent with the protection of society, taking no measures or taking measures other than judicial proceedings under this Act should be considered for dealing with young persons who have committed offences;
- (e) young persons have rights and freedoms in their own right, including those stated in the Canadian Charter of Rights and Freedoms or in the Canadian Bill of Rights, and in particular a right to be heard in the course of, and participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms;
- (f) in the application of this Act, the rights and freedoms of young persons include a right to the least possible interference with freedom that is consistent with the protection of society, having regard to the young persons and the interests of their families;
- (g) young persons have the right, in every instance where they have rights or freedoms that may be affected by this Act, to be informed as to what those rights and freedoms are;
- (h) parents have responsibility for the care and supervision of their children, and, for that reason, young persons should be removed from parental supervision either partly or entirely only when measures that provide for continuing parental supervision are inappropriate.

(2) This Act shall be construed in accordance with the principles set out in subsection (1).

Director of juvenile justice

3. There shall be a director of juvenile justice appointed by the Commissioner in Executive Council who shall have the duties and functions as set out in this Act together with such other duties and functions as may be prescribed.

Alternative measures

4.(1) Alternative measures may be used to deal with a young person alleged to have committed an offence instead of judicial proceedings under this Act only if

- (a) the measures are part of a program of alternative measures authorized by the Commissioner in Executive Council or a delegate of the Commissioner in Executive Council,
- (b) the person who is considering whether to use such measures is satisfied that the measures would be appropriate having regard to the needs of the young person and the interests of society,
- (c) the young person, having been informed of the alternative measures, fully and freely consents to participate therein,

- (d) the young person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel and been given a reasonable opportunity to consult with counsel,
- (e) the young person accepts responsibility for the act or omission that forms the basis of the offence that the young person is alleged to have committed,
- (f) there is, in the opinion of the Executive Council Member with the responsibility as Minister of Justice or the agent of that Executive Council Member, sufficient evidence to proceed with the prosecution of the offence, and
- (g) the prosecution of the offence is not in any way barred at law.

(2) Alternative measures shall not be used to deal with a young person alleged to have committed an offence if the young person

- (a) denies participation or involvement in the commission of the offence, or
- (b) wishes to have the charge dealt with by a youth court.

(3) No admission, confession or statement accepting responsibility for an act or omission made by a young person as a condition of being dealt with by alternative measures shall be admissible in evidence against the young person in any civil or criminal proceedings or in any proceedings for the prosecution of an offence against an enactment or a municipal by-law.

(4) The use of alternative measures in respect of a young person is not a bar to proceeding against the young person under this Act, but

- (a) where the youth court is satisfied on the balance of probabilities that the young person has complied with the terms and conditions of the alternative measures, the youth court shall dismiss any charge against the young person, and
- (b) where the youth court is satisfied on a balance of probabilities that the young person has not complied with the terms and conditions of the alternative measures, the youth court may dismiss any charge against the young person, if, in the opinion of the court, the prosecution of the charge would be unfair, and the youth court may consider the young person's performance with respect to the alternative measures before making a disposition under this Act.

(5) Subject to subsection (4), nothing in this section prevents a person from laying an information, or proceeding with the prosecution of an offence in accordance with the law.

Person under 12

4.1 No one shall be convicted of an offence in respect of an act or omission of that person that occurred while they were under the age of 12 years.

Prosecution procedures

5.(1) Except to the extent that they are inconsistent with this Act or the regulations, the provisions of the Criminal Code of Canada respecting summary convictions, with such modifications as the circumstances require, apply to an offence alleged to have been committed by a young person and to proceedings under this Act.

(2) Proceedings under this Act shall be commenced in a youth court which shall have the powers of a summary conviction court and shall be a court of record.

(3) Proceedings commenced under this Act against a young person may be continued after the young person becomes an adult, as if the young person had remained a young person.

(4) For the purposes of this Act, a judge of a youth court has the powers of a judge of the Territorial Court.

Time limit

6. An information under this Act may not be laid after six months from the day when the matter of the information arose, unless another time limit is provided for in another enactment.

Notice to parent

7.(1) Where a young person is arrested and detained in custody pending an appearance in court, the officer in charge at the time the young person is first detained shall forthwith give to a parent of the young person an oral or written notice of the arrest stating the place of detention and the reason for the arrest.

(2) When a young person is required to appear in court charged with an offence, a parent of the young person shall, before the young person's first court appearance on that offence, be given a notice in writing stating

- (a) the name of the young person in respect of whom it is given,
- (b) the charge against the young person,
- (c) the time and place of the first court appearance for that offence, and
- (d) a statement that the young person has the right to be represented by counsel.

(3) Where the whereabouts of the parents of the young person are not known or it appears that no parent is available, a notice under this section may be given to an adult relative of the young person who is known to the young person and is likely to assist the young person.

(4) If notice cannot be given as required by subsection (2) or (3), the notice may be given to an adult who is known to the young person and is likely to assist the young person.

Notice to spouse

8. Where a young person is married, the notices under subsections 7(1) and (2) may be given to the spouse of the young person instead of a parent.

Court direction

9. Where doubt exists as to the person to whom a notice should be given under section 7 or 8, the youth court judge or, where a youth court judge is not reasonably available, a justice of the peace may give direction about to whom the notice should be given, and a notice given in accordance with such directions is sufficient notice for the purposes of the Act.

Service of notice

10. Notice given in accordance with section 7, 8 or 9 may be served personally or may be sent by registered or certified mail.

Failure to give notice

11. Failure to give a notice in accordance with section 7, 8 or 9 does not affect the validity of proceedings, but where there has been such failure or where none of the persons to whom a notice is given attends the court with the young person, the youth court judge may

- (a) adjourn the proceedings in order that the notice be given in such a manner and to such person as the judge directs, or
- (b) dispense with the notice, where doing so will not prevent a fair hearing.

Failure of parent to attend

12. Where a parent does not attend proceedings before youth court in respect of a young person, the court may, if in the opinion of the judge the presence of a parent is necessary or in the best interests of the young person, by order in writing require a parent to attend at any stage of the proceedings, and if the parent fails to attend and it is proven that a copy of the order was served on the parent, the youth court judge may issue a warrant to compel the attendance of the parent.

Presence of young person at hearing

13.(1) Subject to subsection (2) and section 14 the young person shall be present in the court during the whole of the court proceedings.

(2) The youth court may

- (a) cause the young person to be removed and be kept out of court where the young person misconducts himself or herself by interrupting the proceedings so that to continue the proceedings in the young person's presence would not be feasible,
- (b) permit the young person to be out of court during the whole or any part of the young person's court proceedings on such conditions as the court considers proper, or
- (c) cause the young person to be removed and to be kept out of court during the trial of an issue as to whether the young person is, on account of insanity, unfit to stand trial, where it is satisfied that the failure to do so might have an adverse affect on the mental health of the young person.

(3) A young person is entitled to make full answer and defence personally or by counsel.

Application of summary conviction tickets

14.(1) Sections 9 to 26 of the Summary Convictions Act apply to young persons.

(2) Notwithstanding subsection 18(2) of the Summary Convictions Act, a Notice of Trial under section 18 of the Summary Convictions Act shall be served on a young person in accordance with the provisions of sections 7 to 10 of this Act.

Exemption from section 7 to 12

15. Where a ticket has been issued to a young person sections 7 to 12 of this Act do not apply.

Appearance of young person

16.(1) When a young person against whom an information is laid first appears before a youth court, the court shall

- (a) cause the information to be read to the young person, and
- (b) where the young person is not represented by counsel, inform the young person of the right to be so represented.

(2) If a young person is represented by counsel, the young person may waive the requirement under paragraph (1)(a).

(3) If a young person is not represented by counsel, the youth court shall, before accepting a plea,

- (a) satisfy itself that the young person understands the charge, and
- (b) explain to the young person that a plea of guilty or not guilty may be entered to the charge.

(4) If the youth court is not satisfied that the young person understands the charge as required under paragraph (3)(a), the court shall enter a plea of not guilty on behalf of the young person and shall proceed with the trial in accordance with subsection 17(2).

Adjudication

17.(1) Where a young person pleads guilty to an offence and the youth court is satisfied that the facts support the charge, the court shall find the young person guilty of the offence.

(2) Where a young person pleads not guilty to an offence or where a young person pleads guilty but the youth court is not satisfied that the facts support the charge, the court shall proceed with the trial and shall find the young person guilty or not guilty or make an order dismissing the charge, as the case may be.

(3) This section does not apply where a young person has entered a plea of guilty to an offence under the provisions of sections 9 to 26 of the Summary Convictions Act.

Dispositions

18.(1) Notwithstanding a minimum penalty in an enactment or a regulation or a municipal bylaw, where a youth court finds a young person guilty of an offence, it shall consider any pre-disposition report required by the court, any representations made by the parties to the proceedings or their counsel or agents or by the parents of the young person, and any other relevant information before the court, and the court shall then make any one of the following dispositions or any number thereof that are not inconsistent with each other:

- (a) order that the young person be discharged absolutely if the court considers it to be in the best interests of the young person and not contrary to the public interest;

- (b) impose on the young person a fine not exceeding the amount set out in the enactment or municipal by-law to be paid at such time and on such terms as the court may fix;
- (c) order the young person to pay to any other person at such time and on such terms as the court may fix an amount by way of compensation for loss of or damage to property, for loss of income or support or for special damages or personal injury arising from the commission of the offence where the value thereof is readily ascertainable, but no order shall be made for general damages;
- (d) order the young person to make restitution within such time and in such manner as the court may fix;
- (e) subject to section 19, order the young person to perform a community service at such time and on such terms as the court may fix;
- (f) where a person is found guilty or convicted of an offence, make any order of prohibition, seizure or forfeiture that may be imposed under an enactment or a municipal bylaw or regulation;
- (g) subject to section 20, order that the young person be detained for treatment, subject to such conditions as the court considers appropriate, in a hospital or other place where treatment is available;
- (h) place the young person on probation for a specified period not exceeding two years;
- (i) subject to subsection (8) and section 21, commit the young person to custody, to be served continuously or intermittently, for a specified period not exceeding six months from the date of the committal;
- (j) impose on the young person such other reasonable and ancillary conditions as the court deems advisable and in the best interests of the young person and the public.

(2) A disposition made under this section comes into force on the date on which it is made or on such later date as the youth court specifies.

(3) No disposition under this section, other than an order under paragraph (1)(f), shall continue in force for more than two years and, where the youth court makes more than one disposition at the same time in respect of the same offence, the combined duration of the dispositions shall not exceed two years.

(4) Where more than one disposition is made under this section with respect to different offences committed by a young person, the continuous combined duration of the disposition shall not exceed three years.

(5) A disposition made under this section continues in effect, in accordance with its terms, notwithstanding that the person against whom it is made is or becomes an adult.

(6) Where a youth court makes a disposition under this section, it shall state its reasons in the record of the case and shall, on request, provide a copy of the disposition and a transcript or copy of the reasons for the disposition to

- (a) the young person in respect of whom the disposition is made,
- (b) the young person's counsel,
- (c) the young person's parent, and
- (d) the prosecutor.

(7) No disposition shall be made in respect of a young person that results in a punishment that is greater than the maximum punishment that would be applicable to an adult who has committed the same offence.

(8) Before making an order of committal to intermittent custody under paragraph (1)(i) the youth court shall require the prosecutor to make available to the court for its consideration a report of the director or a delegate of the director as to the availability of a place of custody where an order of intermittent custody can be enforced, and where the report discloses that no such place of custody is available, the court shall not make such an order.

(9) Where a young person fails to comply with a disposition made under this section, the youth court may at any time by notice, summons or warrant cause the young person to be brought before the court, and the court may cancel the disposition and make whatever new dispositions it considers appropriate.

(10) Where a ticket under the provisions of the Summary Convictions Act has been issued to a young person and the young person has paid the fine within the prescribed time, this section does not apply.

Fines or other payment

19.(1) The youth court shall, in imposing a fine on a young person or in making an order against a young person for the payment of money or restitution, have regard to the present and future means of the young person to pay.

(2) Where the Commissioner in Executive Council has established a fine option program under the Fine Option Act, the young person upon whom a fine is imposed may discharge the fine in whole or in part by earning credits for work performed.

(3) No order may be made for a young person to perform services unless the youth court is satisfied that

- (a) the young person against whom the order is made is a suitable candidate for such order, and
- (b) the order does not interfere with the normal hours of work or education of the young person.

(4) No order may be made for a young person to perform personal services or community services unless such services can be completed in 120 hours or less and within six months of the date of the order.

(5) No order may be made for the young person to perform personal services or community services unless the youth court is satisfied that the person or organization for which the services are to be performed has agreed to the services.

Consent to treatment

20.(1) No order may be made directing a young person to be detained for treatment unless the youth court has secured the consent of the young person, the parents of the young person and the place where the young person is to be detained for treatment.

(2) The youth court may dispense with the consent of a parent required under subsection (1) if it appears that the parent is not available or if the parent is not, in the opinion of the court, taking an active interest in the proceedings.

Procedure for custody order

21.(1) Subject to subsection (2), no order may be made committing a young person to custody unless the youth court has received and considered a pre-disposition report.

(2) The youth court may, with the consent of the prosecutor and the young person or the young person's counsel, dispense with the pre-disposition report required under subsection (1) if the youth court is satisfied, having regard to the circumstances, that the report is unnecessary or that it would not be in the best interests of the young person.

(3) A pre-disposition report ordered by a youth court judge may be oral or in writing and shall include investigation and discussion of such matters as the judge directs.

(4) Where a pre-disposition report in respect of a young person is submitted to a youth court in writing, the court

- (a) shall cause a copy of the report to be given to
 - (i) the young person,
 - (ii) a parent of the young person if the parent is in attendance at the proceedings against the young person,
 - (iii) counsel, if any, representing the young person, and
 - (iv) the prosecutor, and
- (b) may cause a copy of the report to be given to a parent of the young person not in attendance at the proceeding against the young person if the parent is, in the opinion of the court, taking an active interest in the proceedings.

Open custody

22. Where a young person is committed to custody under this Act, it shall be open custody as defined in the Young Offenders Act (Canada) and the provisions of that Act dealing with open custody shall apply.

Offence for non-compliance with a disposition of the court

23. A young person who is subject to a disposition made under paragraphs 18(1)(b) to (e) or paragraphs 18(1)(h) to (j) and who refuses or willfully fails to comply with that order is guilty of an offence punishable on summary conviction.

Probation orders

24.(1) The following conditions shall be included in a probation order made under this Act:

- (a) that the young person be bound by the probation order, keep the peace and be of good behaviour;
- (b) that the young person appear before the youth court when required by the court to do so.

(2) A probation order made under this Act may include such of the following conditions as the youth court considers appropriate in the circumstances of the case:

- (a) that the young person bound by the probation order report to and be under the supervision of the director or a person designated by the director or the youth court;
- (b) that the young person remain within the Yukon;
- (c) that the young person make reasonable efforts to obtain and maintain suitable employment;
- (d) that the young person attend school or such other place of learning, training or recreation as is appropriate, if the court is satisfied that a suitable program is available for the young person at such place;
- (e) that the young person reside with a parent, or such other adult as the court considers appropriate and who is willing to provide for the care and maintenance of the young person;
- (f) that the young person reside in such place as the director or the director's delegate may specify;
- (g) that, subject to paragraphs (b) and (f), the young person notify the clerk of the youth court, the director or the youth worker assigned to the young person's case of any change of address or any change in the young person's place of employment, education or training;
- (h) that the young person comply with such other reasonable conditions set out in the order as the court considers desirable, including conditions for securing the good conduct of the young person and for preventing the commission by the young person of other offences.

(3) Where the youth court makes a probation order under this Act it shall

- (a) have the order read by or to the young person bound by the probation order,
- (b) have the purpose and effect of the order explained to the young person and ascertain that the young person understands it, and
- (c) have a copy of the order given to the young person and to a parent of the young person, if the parent has attended at the proceedings against the young person.

(4) Where the youth court makes a probation order under this Act, it may have a copy of the order given to a parent who has not attended at the proceedings against the young person if the parent is, in the opinion of the court, taking an active interest in the proceedings.

(5) After a probation order has been read by or to and explained to a young person, the young person shall endorse on the order acknowledgment of receipt of a copy of the order and of the fact that it has been explained to him or her.

(6) The failure of the young person to endorse the probation order pursuant to subsection (5) does not affect the validity of the order.

(7) A probation order made under this Act comes into force

- (a) on the date on which the order is made, or
- (b) where the young person in respect of whom the order is made is committed to custody, upon the release from custody of the young person.

(8) A young person may be given notice orally or in writing to appear before the youth court pursuant to the probation order.

(9) If a young person to whom notice is given in writing to appear before the youth court does not appear at the time and place named in the notice and it is proved that a copy of the notice was served on the young person, the youth court may issue a warrant to compel the appearance of the young person.

Separation from adults

25.(1) A young person who is charged with an offence and detained prior to trial or committed to custody under this Act shall be held separate and apart from any adult who is charged with or convicted of an offence under an enactment, an act of the Parliament of Canada or a municipal by-law.

(2) Subject to subsection (1), a facility designated as an open custody facility under the Young Offender's Act (Canada) is a facility to which a young person may be committed to serve a period of custody.

Designated place of temporary detention

26.(1) Where a young person

- (a) is arrested and detained prior to the making of a disposition in respect of the young person under section 18, or
- (b) detained pursuant to subsection 24(9), the young person shall, subject to subsection (5) be detained in a place of temporary detention designated as such pursuant to the Young Offender's Act (Canada) or in a place within a class of such places so designated.

(2) A young person who is detained in a place of temporary detention pursuant to subsection (1) may, in the course of being transferred from that place to the court or from the court to that place be held under the supervision and control of a peace officer.

(3) A young person referred to in subsection (1) shall be held separate and apart from any adult who is detained or held in custody unless the youth court judge or a justice is satisfied that

- (a) the young person cannot, having regard to the young person's safety or the safety of others, be detained in a place of detention for young persons, or

- (b) no place of detention for young persons is available within a reasonable distance.

(4) Subsections (1) and (3) do not apply in respect of any temporary detention of a young person under the supervision and control of a peace officer after arrest but a young person who is so detained shall be transferred to a place of temporary detention referred to in subsection (1) as soon as is reasonably practicable, and in no case later than the first reasonable opportunity after the appearance of the young person before a youth court judge or a justice pursuant to this Act.

(5) Where the Commissioner in Executive Council has designated a person or a group of persons whose authorization is required, either in all circumstances or in circumstances specified by the Commissioner in Executive Council, before a young person who has been arrested may be detained in accordance with this section, no young person shall be so detained unless the authorization is obtained.

Placement of young person in care of responsible person

27.(1) Where a youth court judge or a justice is satisfied that

- (a) a young person who has been arrested would be detained in custody,
 - (b) a responsible person is willing and able to take care of and exercise control over the young person, and
 - (c) the young person is willing to be placed in the care of that person,
- the young person may be placed in the care of that person instead of being detained in custody.

(2) A young person shall not be placed in the care of a person under subsection (1) unless

- (a) that person undertakes in writing to take care of and to be responsible for the attendance of the young person in court when required and to comply with such other conditions as the youth court judge or justice may specify, and
- (b) the young person undertakes in writing to comply with the arrangement and to comply with such other conditions as the youth court judge or justice may specify.

(3) Where a young person has been placed in the care of a person under subsection (1) and

- (a) that person is no longer willing or able to take care of or exercise control over the young person, or
- (b) it is, for any other reason, no longer appropriate that the young person be placed in the care of that person,

the young person, the person in whose care the young person has been placed or any other person may, by application in writing to a youth court judge or a justice, apply for an order under subsection (4).

(4) Where a youth court judge or a justice is satisfied that a young person should not remain in the custody of the person in whose care the young person was placed under subsection (1), the youth court judge or justice shall

- (a) make an order relieving the person and the young person of the obligations undertaken pursuant to subsection (2), and
- (b) issue a warrant for the arrest of the young person.

(5) Where a young person is arrested pursuant to a warrant issued under paragraph (4)(b), the young person shall be taken before a youth court judge or justice forthwith and dealt with under section 457 of the Criminal Code.

Non-compliance with section 27

28. Any person who willfully fails to comply with an undertaking entered into pursuant to subsection 27(2), is guilty of an offence.

Transfer between facilities

29. The director or an appointee of the director may transfer a young person in temporary detention or custody from one facility to another.

Temporary release

30.(1) The director or an appointee of the director may, subject to any terms and conditions that may be considered desirable, authorize a young person committed to custody pursuant to a disposition made under this Act

- (a) to be released from custody for a period not exceeding 15 days where, in the opinion of the director or the appointee, it is necessary or desirable that the young person be absent, with or without escort, for medical, compassionate or humanitarian reasons or for the purpose of the rehabilitation or re-integration of the young person into the community, or
- (b) to be released from custody on such date and during such hours as may be specified in order that the young person may better carry out employment or improve education or training.

(2) The director may, at any time, revoke an authorization made under subsection (1).

(3) Where the director revokes an authorization for a young person to be released from custody or where a young person fails to comply with a term or condition of release from custody under this section, the young person may be arrested without warrant and returned to custody.

Transfer

31.(1) Where an agreement has been made between the Yukon and another jurisdiction in Canada, the director may arrange for appropriate authorities in the other jurisdiction to assume supervision of a young person who is subject to an order of the youth court except an order committing the young person to custody.

(2) Where a transfer is made under subsection (1) and the young person complies with the terms and conditions determined by the director, the young person is deemed to have complied with the disposition order of the youth court.

Restriction on publication

32.(1) No person shall publish by any means a report of an offence committed or alleged to have been committed by a young person, or a report of a hearing, adjudication, disposition or appeal concerning a young person who committed or is alleged to have committed an offence in which

- (a) the name of the young person is disclosed,
- (b) the name of a young person aggrieved by the offence or who appeared as a witness in connection with the offence is disclosed, or
- (c) any information serving to identify a person set out in paragraph (a) or (b) is disclosed.

(2) Everyone who contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$500.

Persons excluded

33.(1) Subject to subsection (2) a youth court may exclude any person from all or part of the proceedings if the court deems that the person's presence is unnecessary to the conduct of the proceedings where the youth court is of the opinion

- (a) that any evidence or information presented to the court would be seriously injurious or seriously prejudicial to
 - (i) the young person who is being dealt with in the proceedings,
 - (ii) a child or young person who is a witness in the proceedings, or
 - (iii) a child or young person who is aggrieved by or the victim of the offence charged in the proceedings, or
- (b) that it would be in the interest of public morals, the maintenance of order or the proper administration of justice to exclude any or all members of the public from the courtroom.

(2) The court shall not, pursuant to subsection (1), exclude from proceedings under this Act

- (a) the prosecutor,
- (b) the young person who is being dealt with in the proceedings,
- (c) the parent of the young person,
- (d) the counsel of the young person,
- (e) an adult assisting the young person,
- (f) the director or a representative of the director, or
- (g) a social worker to whom the young person's case has been assigned.

Disclosure of records

34. Records of an investigation or charge concerning an offence by a young person maintained by the police, a court, the director or a government department or agency, shall not be disclosed except in accordance with the provisions of the Young Offenders Act (Canada).

Lapse of conviction

35.(1) Notwithstanding any enactment, including the other provisions of this Act, every conviction of a young person of an offence lapses and ceases to have effect for any purpose when three years have elapsed from the day when the conviction was first entered by a court having original or appellate jurisdiction over the offence.

(2) Nothing in this section affects the liability of the young person convicted of an offence to any disposition imposed by or in respect of the conviction at the date of the conviction.

(3) Where a conviction for an offence has lapsed by virtue of this section, the person who was convicted of the offence is not required to

- (a) disclose the fact that he or she was convicted of the offence, or
- (b) answer affirmatively or negatively any question tending to disclose the fact that the person was convicted of the offence.

(4) Where the provisions of this section conflict with the provisions of any enactment or municipal by-law with respect to the effect of the conviction of an offence, this section prevails.

Regulations

36. The Commissioner in Executive Council may make regulations

- (a) designating a court as a youth court for the purposes of this Act;
- (b) prescribing forms;
- (c) respecting facilities where young persons may be detained in custody;
- (d) designating a person or class of persons whose authorization is required for placing a young person in a place of temporary detention;
- (e) generally for carrying out the purposes and provisions of this Act.

Transitional

37. A person who, before the coming into force of this Act, while a young person, committed an offence in respect of which no proceedings were commenced before the coming into force of this Act, may be dealt with under this Act as if the offence occurred after the coming into force of this Act.

Children's Act amendments

38.(1) The following definition is added to section 104 of the Children's Act.

“director of juvenile justice³⁹ means the director of juvenile justice appointed under the Young Persons Offences Act.”

(2) The following is substituted for section 110 of the Children's Act:

“110. In this division, “diversion”, means alternative measures under the Young Offenders Act (Canada) or the Young Persons Offences Act and diversion schemes, programs or services shall have the same meaning.”

(3) In paragraph 112(e) of the Children’s Act the expression “or the Young Persons Offences Act” is added after the expression “the Young Offenders Act (Canada).

(4) Section 114 of the Children’s Act is repealed.

Corrections Act amendments

39.(1) Section 1 of the Corrections Act is amended by striking out the definition of “Director of Family and Children’s Services”.

(2) The following definition is added to section 1 of the Corrections Act:

“director of juvenile justice’ means the director of juvenile justice appointed under the Young Persons Offences Act.”

(3) In subsections 15(2), 15(4), and section 18 and in paragraph 19(d) of the Corrections Act, the expression “director of juvenile justice” is substituted for the phrase “Director of Family and Children’s Services”.

CHAPTER 30

(RSY 1986, Supplement)

AN ACT TO AMEND THE YUKON DEVELOPMENT CORPORATION ACT

(enacted as SY 1987, c. 23, assented to on April 16, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Yukon Development Corporation Act.

2. Subsection 12(1) is amended by adding the expression “and any wholly owned subsidiary of the corporation established for the purposes of conducting a public utility operation” immediately after the expression “In the conduct of any public utility operations, the corporation”.

3. The following section is added immediately after section 12:

Public Utility Franchise

“12.1(1) Notwithstanding the provisions of any other Act, the corporation is deemed to have been granted a franchise for the production, generation, storage, transmission, sale, delivery and furnishing of electricity at the rates provided for by, and subject to the terms and conditions set out in the purchase and sale agreement made March 31, 1987 among Her Majesty the Queen in Right of Canada, Yukon Power Corporation, the Government of the Yukon and Northern Canada Power Commission.”

(2) The corporation may assign the franchise to a wholly owned subsidiary of the corporation.”

4. This Act comes into force on March 31, 1987.

Revised Statutes of the Yukon, 1986

Appendix

This Appendix is a republication of the Statutes of the Yukon, 1987, chapters 24 to 33. These chapters were originally published in Volume 3 of the SY 1987. They are reproduced here in their original form.

CHAPTER 24

(STATUTES OF THE YUKON, 1987)

AN ACT TO AMEND THE ASSESSMENT AND TAXATION ACT

(Assented to December 3, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Assessment and Taxation Act.

2. In subsection 56(3) of the Act, the expression "electrical utility services or of telephone or other telecommunication services" is substituted for the expression "electrical utility services".

CHAPTER 25
(STATUTES OF THE YUKON, 1987)
CHANGE OF NAME ACT
(Assented to December 3, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Interpretation

1. In this Act,

“child” means a person under 19 years of age;

“cohabitation agreement” has the same meaning as the Family Property and Support Act;

“court” means the Supreme Court;

“father” means the father of a child by birth or by virtue of an adoption order made or recognized under the Children’s Act;

“judge” means a judge of the court;

“mother” means the mother of a child by birth or by virtue of an adoption order made or recognized under the Children’s Act;

“person” does not include a corporation;

“registrar” means the registrar under the Vital Statistics Act;

Application of the Act

2.(1) This Act applies to changes in the legal names of persons.

(2) A change of the legal name of a person may be made only in accordance with this Act, the Vital Statistics Act or Part 3 of the Children’s Act and is effective for all legal purposes.

(3) The name a person adopts under this Act shall include a surname and at least one forename, written in the Roman alphabet and shall not include initials, numbers or other symbols.

Application for change of name

3.(1) An application shall be made to the registrar in the prescribed form and shall include

- (a) the present and proposed names in full,
- (b) the present address and previous addresses for the three months immediately preceding the application of the applicant and the person whose name is proposed to be changed,

- (c) the reason for the proposed change of name, and
 - (d) the date and place of birth of the person whose name is proposed to be changed.
- (2) An application shall be accompanied by
- (a) any consent, notice or court order required under this Act,
 - (b) an affidavit of qualification signed by the applicant, and
 - (c) such other fees, evidence or documents as may be prescribed in the regulations.

Persons applying for changes of their own names

4. A person may apply for a change of his or her legal name where

- (a) the person is at least 19 years of age or married, widowed or divorced, and
- (b) the person is ordinarily resident in the Yukon and has actually resided in the Yukon for the three months immediately preceding the date on which the application is received by the registrar.

Application for change of name of child

5.(1) Subject to the other provisions of this section, any of the following persons who have lawful custody of an unmarried child may apply to the registrar for a change of the legal name of the child:

- (a) the mother;
- (b) the father;
- (c) a person appointed pursuant to section 32 of the Children's Act to exercise the rights of custody.

(2) A change of a child's surname under this section shall be restricted to

- (a) the surname of the mother;
- (b) the surname of the father;
- (c) the surname of any person having lawful custody of the child, or
- (d) a hyphenated surname consisting of two of the surnames of persons named in paragraphs (a) to (c).

(3) Where a person named in subsection (2) has a hyphenated surname, the child's surname shall not be changed to a surname

- (a) containing more than one hyphen, or
- (b) consisting of more than one part of each of the two surnames used for the child's surname.

(4) Subject to subsection (5), where a person makes an application to change the name of a child to a name including the surname of another person different from that of the applicant under this section, the application shall be accompanied by the consent of that person or an order made under section 8.

(5) Where an application under this section has the effect of deleting from the name of a child all or part of the surname of another person, the application shall be accompanied by the consent of that person or an order made under section 8, unless the registrar is satisfied on the basis of affidavit evidence that the other person (a) does not have custody of the child,

(b) is not contributing to the support of the child, and

(c) has severed his or her relationship with the child.

(6) An application under this section shall be accompanied by the written consent of every other person who has lawful custody of the child or who is lawfully entitled to access to the child.

Wards

6. The director of family and children's services under the Children's Act may apply to the registrar for a change of the legal name of a child who has been committed to the permanent care and custody of the director under the Children's Act.

Consent of child

7. An application in respect of a child who is 12 years of age or more shall be accompanied by the consent of the child or an order made under section 8.

Dispensing with consent

8.(1) On the application of any person, a judge may grant an order dispensing with a consent required under section 5, or 7.

(2) Where an application is made under subsection (1) with respect to the legal name of a child, the best interests of the child shall be the primary consideration of the judge in considering the application.

Registration of change of name

9.(1) Subject to subsection (2), the registrar shall register a change of the legal name of a person on receipt of an application.

(2) The register shall not register a change of name if, in the registrar's opinion, the application contains a misrepresentation or the change of name is sought for a fraudulent or unlawful purpose.

(3) The registrar may not register a change of name where the proposed name contains more than one hyphen.

Certificate of change of name

10. On registration of a change of the legal name of a person under section 9, the registrar shall issue to the person a certificate of change of name in the prescribed form.

Vital statistics records

11. On registration of a change of the legal name of a person under section 9, the registrar shall, without charge, alter the records under the Vital Statistics Act with respect to the person, in conformity with the registered change.

Notice of change of name

12. Where a change of the legal name of a person has been registered under section 9, the registrar shall cause the prescribed notice of the change of name to be published in the Yukon Gazette.

Election by married persons

13.(1) A married person who is ordinarily a resident of the Yukon may change his or her surname by electing to use as a legal surname

- (a) the surname of his or her spouse,
- (b) the surname the married person had immediately prior to the marriage, or
- (c) a hyphenated surname comprised of one part from each of the surnames referred to in paragraphs (a) and (b).

(2) A married person may give notice of his or her election under subsection (1) in the prescribed form to the registrar.

(3) On receiving the notice mentioned in subsection (2) and the prescribed fee, the registrar shall

- (a) register the election, and
- (b) issue to the married person a certificate of election indicating the election.

(4) Where a married person who gives notice of his or her election under subsection (2) wishes to effect a further change to his or her surname, the person may apply for a change of name under section 3.

Change of name upon divorce

14.(1) Upon a divorce, or an annulment of a person's marriage, the person may revoke an election made under section 13 by filing with the registrar a notice of revocation in the prescribed form together with a certified copy of the decree absolute or annulment;

(2) On receiving the documents in accordance with subsection (1) the registrar shall

- (a) register the change of name according to the order, and
- (b) issue to the person whose name is to be changed a certificate of change of name showing as the person's legal surname the surname the person had immediately prior to making the election under section 13.

Searches of change of name records

15. The registrar may, on application in the prescribed form,

- (a) conduct a search of the records kept under this Act with respect to the name of any person, and
- (b) provide a duplicate of a certificate issued under this Act with respect to the name of any person.

Substitution of new name in documents

16.(1) A person whose legal name has been changed in accordance with this Act shall, upon production of a certificate or duplicate certificate issued under this Act and on satisfac-

tory proof of identity, be entitled to have the new name substituted for the former name in any record, certificate, instrument, document, contract or writing whatever, whether public or private, upon payment of such fees, as may be prescribed by any Act.

(2) Notwithstanding subsection (1), no changes shall be made to records under the Vital Statistics Act on the basis of an election made under section 13 nor shall any changes or substitutions be made to those records that would delete the record of registrations and change of name.

Evidence

17.(1) A certificate or duplicate certificate purporting to have been issued under this Act is, for all purposes, prima facie proof of its contents without proof of the appointment or signature of the registrar.

(2) Where the signature of the registrar is required for any purposes of this Act, the signature may be written, engraved, lithographed or reproduced by any other mode of reproducing words in visible form.

(3) Every document issued under this Act under the signature of the registrar is and remains valid, notwithstanding that the registrar has ceased to hold office before the issue of the document.

Fraud or misrepresentation

18.(1) The registrar may, if satisfied that a change of name has been obtained by fraud or misrepresentation under this Act, annul the registration of the change of name effective from a date the registrar considers appropriate.

(2) Where the registrar annuls a registration under subsection (1), the registrar shall endorse on the registration a notice of the annulment, and shall publish a notice of the annulment in the Yukon Gazette.

(3) Where an annulment is made under subsection (1), the registrar shall make such alterations in the records under the Vital Statistics Act as are necessary.

(4) The registrar shall file a notice of an annulment made under subsection (1) in the land titles office, in the office of the registrar under the Personal Property Security Act, in the office of the clerk of the Supreme Court, in the office of the clerk of the Territorial Court and in the office of the sheriff.

(5) Where an annulment has been made under subsection (1), the registrar may require any person to whom a certificate or duplicate certificate affected thereby has been issued under this Act to return the certificate or duplicate certificate to the registrar.

(6) Every person who wilfully fails to comply with an order under subsection (5) commits an offence.

Appeal from registrar's decision

19.(1) A person whose application is rejected by the director may, within 30 days after receiving notice of the registrar's decision, appeal to the court.

(2) The court may consider any relevant evidence and make any appropriate order.

(3) On receiving a certified copy of the order, the registrar shall treat it as if it were his or her own decision and shall make all necessary changes in the records under this Act and the Vital Statistics Act.

Revocation of change of name

20. (1) Any person with a substantial interest in the matter may apply to the court for the revocation of a change of name made under this Act.

(2) If the court is satisfied that the change of name ought not to have been made, the court may revoke it.

Registrar's signature on documents

21. Section 31 of the Vital Statistics Act applies with necessary modifications to documents issued under this Act.

Regulations

22. The Commissioner in Executive Council may make regulations respecting

- (a) forms;
- (b) fees;
- (c) information and documents for the purpose of applications and supporting material.

Repeal

23. The Change of Name Act is repealed.

CHAPTER 26

(STATUTES OF THE THE YUKON, 1987)

AN ACT TO AMEND THE INCOME TAX ACT

(Assented to December 3, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Income Tax Act.

2.(1) The following subsection is added to section 1 of the Act:

“(6) Interest computed under any of subsections 20(1), (2), and (9), 23(3), (4), and (5), and 41(6) and (7) shall be compounded daily, and, where interest is computed on an amount under any of those provisions and is unpaid on the day it would, but for this subsection have ceased to be computed under that provision, interest at the rate provided by the provision shall be computed and compounded daily on the unpaid interest from that day to the day it is paid.”

(2) The amendment made by subsection (1) shall be deemed to have come into force on January 1, 1987, and interest computed in respect of a period ending before that day shall be compounded on or after that day.

3.(1) Clause 3(7)(b)(i) of the Act is amended by deleting the word “and” at the end of subparagraph (C), by adding the word “and” at the end of subparagraph (D), and by adding the following subparagraph immediately after clause (D):

“(E) his income from employment in that country was not from a source in that country to the extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3(1)(c) and (d) of the federal Act for the year.”

(2) The amendment made by subsection (1) is applicable to the 1984 and subsequent taxation years.

(3) The following expression is substituted for all that portion of clause 3(7)(b)(ii) of the Act next after subparagraph (B):

“minus any amounts deductible under paragraph 110(1)(d), section 110.1, paragraph 111(1)(b), or section 112 of the federal Act for the year or such period or periods, as the case may be”

(4) The amendment made by subsection (3) is applicable to the 1984 and subsequent taxation years.

4.(1) The following expression is substituted for all that portion of subsection 10(1) of the Act preceding paragraph (a):

“(1) A return for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) and for each taxation year for which a tax is payable, or would be payable if this Part were read without reference to sections 127.2 and 127.3 of the federal Act, in the case of an individual shall, without notice or demand therefor, be filed with the Commissioner in prescribed form and containing prescribed information,”

(2) The amendment made by subsection (1) is applicable to the 1983 and subsequent taxation years.

5.(1) The following clause is substituted for clause 12(6)(a)(ii) of the Act:

“(ii) has filed with the Minister a waiver in the prescribed form within three years from the day of the mailing of a notice of an original assessment or of a notification that no tax is payable for a taxation year, and”

(2) The following paragraph is substituted for paragraph 12(6)(b) of the Act:

“(b) within three years from the day referred to in subparagraph (a)(ii), in any other case,”

(3) The following subsection is added to section 12 of the Act:

“(6.1) Where the Commissioner would, but for this subsection, be entitled to reassess, make an additional assessment, or assess tax, interest, or penalties by virtue only of the filing of a waiver under subparagraph (6)(a)(ii), the Commissioner may not make such reassessment, additional assessment or assessment after the day that is six months after the date on which a notice of revocation of the waiver in prescribed form is filed.”

(4) The following expression is substituted for all that portion of subsection 12(7) preceding paragraph (a):

“(7) Notwithstanding subsection (6), there shall not be included in computing the income of a taxpayer, for the purposes of any reassessment, additional assessment, or assessment of tax, interest, or penalties under this part that is made after the expiration of three years from the day referred to in subparagraph (6)(a)(ii), any amount that was not included in his income for the purposes of an assessment of tax under this Part made before the expiration of three years from that day and”

(5) The amendments made by subsections (1), (2), and (4) are applicable to the 1983 and subsequent taxation years.

(6) The amendment made by subsection (3) is applicable after February 15, 1984.

6.(1) The following subsection is added to section 17 of the Act:

“(3.1) Where the tax payable under this Part (computed without reference to sections 127.2 and 127.3 of the federal Act) by a corporation for a taxation year or its first instalment base for the year is not more than \$1000, the corporation may, instead of paying the instalments required by paragraph (1)(a) for the year, pay to the Commissioner, pursuant to paragraph (1)(b), all of its tax as estimated by it under section 11 for the year.”

(2) The amendment made by subsection (1) is applicable to the 1984 and subsequent taxation years.

7.(1) The following subsection is substituted for subsection 20(1) of the Act:

“(1) Where at any time after the day on or before which a return of a taxpayer’s income was required to be filed under this Act for a taxation year

- (a) the amount of his tax payable for the year under this Act exceeds
- (b) the aggregate of all amounts each of which is an amount paid at or before that time on account of his tax payable and applied as at that time by the Commissioner against the taxpayer’s liability for an amount payable under this Act for the year,

the person liable to pay the tax shall pay interest of such excess, for the period after April 19, 1983 during which it is outstanding, at such rates per annum as are prescribed and are in effect from time to time during the period for the purposes of subsection 161(1) of the federal Act.”

(2) The amendment made by subsection (1) is applicable after April 19, 1983.

(3) The following subsection is added to section 20 of the Act:

“(2.1) Where the aggregate of all amounts each of which is an amount of interest payable by a taxpayer under subsection (2) or under subsection 161(2) of the federal Act does not exceed \$25 for a taxation year, the Commissioner shall not assess such interest.”

(4) The amendment made by subsection (3) is applicable to the 1984 and subsequent taxation years.

(5) The following subsection is added to section 20 of the Act:

“(10) Where a taxpayer is required by this Part to pay a penalty and fails to pay all or any part thereof as required, he shall pay to the Commissioner interest at the rate prescribed for the purposes of subsection 161(11) of the federal Act on the amount he failed to pay computed:

- (a) in the case of a penalty payable by virtue of subsection 21(1), (2) or (3), or subsection 22(1) or (2) from the day on or before which the taxpayer’s return of income for the taxation year in respect of which the penalty is payable was, or would have been if tax under this Part were payable by him for the year, required to be filed to the day of payment; and
- (b) in the case of a penalty payable by virtue of any other provision of this Part, from the day of mailing of the notice of original assessment of the penalty to the day of payment.”

(6) The amendment made by subsection (5) shall be deemed to have come into force on January 1, 1987, except that no interest is payable under that amendment for any part of a period before January 1, 1987.

8.(1) The following subsections are substituted for subsections 23(1) and (2) of the Act:

- “(1) Where the return of a taxpayer’s income for a taxation year is made within three years from the end of the year, the Commissioner
- (a) may, on or after mailing the notice of assessment for the year, refund, without application therefor, any overpayment made on account of the tax, and
 - (b) shall make such a refund after mailing the notice of assessment if application therefor has been made in writing by the taxpayer within three years from the end of the year.

(2) Instead of making a refund or repayment that might otherwise be made under this section, the Commissioner may, where the taxpayer is liable or about to become liable to make any payment under this Act, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.”

(2) The amendment made by subsection (1) is applicable to refunds for the 1983 and subsequent taxation years.

(3) The following subsections are substituted for subsection 23(3) of the Act:

- “(3) Where an amount in respect of an overpayment for a taxation year is refunded, or applied under this section on another liability, interest at the rate per annum prescribed for the purpose of subsection 164(3) of the federal Act shall be paid or applied thereon for the period beginning with the latest of
- (a) the day when the overpayment arose,
 - (b) the day on or before which the return of income for the year was required to be filed or would have been required to be filed if tax were payable for the year, and
 - (c) the day when the return of income for the year was actually filed,
- and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection.

(3.1) Where, at any particular time, interest has been paid to, or applied to a liability of, a taxpayer pursuant to subsection (3) in respect of an overpayment and it is determined at a subsequent time that the actual overpayment was less than the overpayment in respect of which interest was paid or applied, the following rules apply:

- (a) the amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the actual overpayment shall be deemed to be an amount (in this subsection referred to as “the amount payable”) that became payable under this Act by the taxpayer at the particular time;
- (b) the taxpayer shall pay interest, at the rate prescribed for the purposes of subsection 161(1) of the federal Act, on the amount payable for the

period beginning at the particular time and ending on the date of payment; and

- (c) the Commissioner may at any time assess the taxpayer in respect of the amount payable and, where the Commissioner makes such an assessment, the provisions of this Act are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 12 of this Act.”

(4) The amendment made by subsection (3) is applicable to interest paid or applied after April 19, 1983.

(5) The following subsection is added to section 23 of the act:

“(4.1) Where the Yukon Supreme Court, the Yukon Court of Appeal, or the Supreme Court of Canada has, on the disposition of an appeal in respect of taxes, interest, or a penalty under this Act by a taxpayer resident in Canada,

- (a) referred an assessment back to the Commissioner for reconsideration and reassessment,
 - (b) varied or vacated an assessment, or
 - (c) ordered the Commissioner to repay tax, interest, or penalties,
- the Commissioner shall with all due dispatch, whether or not an appeal from the decision of the Court has been or may be instituted,
- (d) where the assessment has been referred back to him, reconsider the assessment and make a reassessment in accordance with the decision of the Court, unless otherwise directed in writing by the taxpayer,
 - (e) refund any overpayment resulting from the variation, vacation or reassessment, and
 - (f) where paragraph (c) is applicable, repay any tax, interest, or penalties as ordered,

and the Commissioner may repay any tax, interest, or penalties or surrender any security accepted therefore by him to any other taxpayer who has filed an objection or instituted an appeal if, having regard to the reasons given on the disposition of the appeal, he is satisfied that it would be just and equitable to do so, but for greater certainty, the Commissioner may, in accordance with the provisions of this Act, the Judicature Act, the Court of Appeal Act, or the Supreme Court Act (Canada) as they relate to appeals from decisions of the Supreme Court of the Yukon Territory, appeal from the decision of the Yukon Supreme Court notwithstanding any variation or vacation of any assessment by the Court or any reassessment made by the Commissioner under paragraph (d), and any such appeal from a decision of the Supreme Court of the Yukon Territory shall proceed as if it were an appeal from the assessment that was referred back, varied or vacated.”

(6) The amendment made by subsection (5) is applicable after February 15, 1984.

(7) The following subsection is substituted for subsection 23(6) of the Act:

“(6) In this section, “overpayment” of a taxpayer for a taxation year means the aggregate of all amounts paid on account of his tax under this Act for the year minus all amounts payable by him under this Act for the year.”

(8) The amendment made by subsection (7) is applicable to the 1983 and subsequent taxation years.

9.(1) The following subsection is substituted for subsection 24(5) of the Act:

“(5) A reassessment made by the Commissioner pursuant to subsection (3) is not invalid by reason only of not having been made within three years from the day of mailing of a notice of an original assessment or of a notification described in subsection 12(6).”

(2) The amendment made by subsection (1) is applicable to the 1983 and subsequent taxation years.

10.(1) The following paragraph is substituted for paragraph 25(1)(b) of the Act:

“(b) 90 days have elapsed after service of the notice of objection and the Commissioner has not notified the taxpayer that he has vacated or confirmed the assessment or reassessed,”

(2) The amendment made by subsection (1) is applicable only to notices of objection served after the day on which this amending Act comes into force.

11.(1) The following subsections are substituted for subsection 31(3) of the Act:

“(3) The Commissioner may, if he considers it advisable in a particular case, accept security for payment of any amount that is or may become payable under this Act.

(3.1) Where at any time a taxpayer requests in writing that the Commissioner surrender any security accepted by the Commissioner under subsection (3), the Commissioner shall surrender the security to the extent that the amount thereof exceeds the amount for which the security was accepted that is payable at that time.”

(2) The amendment made by subsection (1) is applicable after February 15, 1984.

12.(1) The following expression is substituted for all that portion of subsection 41(6) of the Act coming after paragraph (b):

“together with interest on the amount that should have been deducted or withheld, at the rate per annum prescribed for the purposes of subsection 227(8) of the federal Act.”

(2) The amendment made by subsection (1) is applicable after February 15, 1984.

CHAPTER 27

(STATUTES OF THE YUKON, 1987)

AN ACT TO AMEND THE LEGAL PROFESSION ACT

(Assented to December 17, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Legal Profession Act.
2. Section 110 is repealed.
3. This Act comes into force on January 1, 1988.

CHAPTER 28

(STATUTES OF THE YUKON, 1987)

MISCELLANEOUS STATUTE LAW AMENDMENT ACT, 1987

(Assented to December 17, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Elevator and Fixed Conveyances Act

1. In subsection 2(1) of the Elevator and Fixed Conveyances Act, the expression "amusement rides" is inserted immediately after the expression "ski tows".

Fine Option Act

2. The following definition is added to section 1 of the Fine Option Act:

"'fine' includes court costs;".

Health Care Insurance Plan Act

3. In subsection 15(1) of the Health Care Insurance Plan Act, the expression "insured services" is substituted for the expression "insurance services".

Insurance Act

4.(1) Section 4 of the Act to Amend the Insurance Act assented to on April 16, 1987 and published as chapter 12 of the Statutes of Yukon, 1987 is repealed.

(2) Subsection 21(1) is amended by adding the following paragraph:

"(f.1) underwriters or syndicates of underwriters operating on a plan known as The Canadian Insurance Exchange."

Interim Supply Appropriation Act, 1986-87

5. In section 2 of the Interim Supply Appropriation Act, 1986-87 the word "charges" is substituted for the word "changes".

Legislative Assembly Retirement Allowances Act

6.(1) In subsection 4(3) of the Legislative Assembly Retirement Allowances Act, the reference here being to that Act as it stood before the coming into force of the Revised Statutes of Yukon 1986, the expression "A person who is entitled to a retirement allowance under subsection (2) or under the section for which this section is substituted" is substituted for the expression "A person who is entitled to a retirement allowance under subsection (2)."

(2) Subsection (1) shall be deemed to have come into force on April 16, 1987.

Motor Vehicles Act

7. In subsection 232(1) of the Motor Vehicles Act, the expression “believes on reasonable grounds” is substituted for the word “suspects”.

Municipal and Community Infrastructure Grant Act

8. In subsection 2(5) of the Municipal and Community Infrastructure Grants Act the expression “by way of a supplement to the municipal infrastructures grants, except an extraordinary infrastructure grant under section 8” is substituted for the expression “by way of a supplement to the municipal grant under section 8”.

Public Service Commission Act

9. In the definition of “auxiliary employec” in subsection 1(1) of the Public Service Commission Act, the word “recurs” is substituted for the word “reoccurs”.

An Act to Amend the Public Service Commission Act

10. In paragraph 62(a) of An Act to Amend the Public Service Commission Act, assented to on February 2, 1987, the expression “substituting the expression” is substituted for the expression “substituting the word”.

Revised Statutes Act

11.(1) In section 4 of the Revised Statutes Act, the expression “or of the application of any of those Acts or portions of Acts,” is inserted immediately after the expression “the effect of any saving clause in any of those Acts or portions of Acts,”.

(2) Subsection (1) shall be deemed to have come into force on March 13, 1986.

Supreme Court Act

12. The following section is added to the Supreme Court Act:

“10. If, in a proceeding in the Court, the plaintiff recovers a sum within the jurisdiction of the Small Claims Court, the plaintiff is not entitled to any costs, other than disbursements, unless the Court certifies on the record that there was sufficient reason for bringing the proceeding in the Court, or unless the Court, by order, allows costs.”

Yukon Development Corporation Act

13.(1) Section 12 of the Yukon Development Corporation Act is amended by substituting the expression “and any wholly owned subsidiary” for the expression “and wholly owned subsidiary”.

(2) In subsection 16(1) of the Yukon Development Corporation Act, the expression “investment of money by” is substituted for the expression “investment of money in”.

Workers Compensation Act

14. In subsection 8(3) the word “three” is substituted for the word “five”.

CHAPTER 29

(STATUTES OF THE YUKON, 1987)

AN ACT TO AMEND THE MUNICIPAL ACT

(Assented to December 3, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the Municipal Act.
2. The following subsection is added to section 245 of the Act:

“(4) Before making a request under subsection (1), the Executive Council Member shall consult with the municipality”
3. The following paragraph is substituted for paragraph 254(1)(i) of the Act:

“(i) authorize encroachment on a highway, delegate the power to authorize encroachment on a highway, and set a periodic or single fee for encroaching on a highway;”

CHAPTER 30
(STATUTES OF THE YUKON, 1987)
PUBLIC LIBRARIES ACT
(Assented to December 3, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Central library

1. There shall be a central library containing the books, recordings, films, documents and other materials that are provided out of public revenue, or gifts or grants from other persons.

Director of libraries

2. There shall be a director of libraries who shall be responsible for the administration of the central library and of public libraries in the Yukon.

Whitehorse Public Library Board

3.(1) There shall be a Whitehorse Public Library Board consisting of no more than seven members appointed by the Executive Council Member.

(2) The function of the Whitehorse Public Library Board is to advise the director on the delivery of library services regarding the Whitehorse Public Library and to perform such other advisory duties with respect to that library as may be requested by the director.

Community libraries

4.(1) After receiving an application, the Executive Council Member may designate an association of persons in an area where library services are not provided, or are provided by way of a volunteer branch library, as a community library authorized to provide library services in a specified area.

(2) All public libraries outside the City of Whitehorse in existence at the date of coming into force of this Act, except volunteer branch libraries, are deemed to be designated as community libraries.

Community Library boards

5.(1) A community library board, when organized in the prescribed manner, is a corporation and shall be known as "The (designated name of library) Community Library Board", unless cancelled in accordance with the regulations.

(2) Subject to the regulations and the approval of the director, a community library board has charge of the business of the library.

Volunteer Branch Library

6.(1) Subject to the regulations, after receiving a written request the Executive Council Member may establish a volunteer branch library for any area where there is not a community library.

(2) Subject to the regulations the Executive Council Member may, by order, dissolve a volunteer branch library.

Regulations

7. The Commissioner in Executive Council may make regulations

- (a) providing for the establishment, maintenance, and operation of public libraries;
- (b) establishing advisory boards for the purposes of advising the director and setting out their duties and functions;
- (c) prescribing the duties of the director;
- (d) prescribing the powers and duties of community libraries;
- (e) prescribing for the appointment of volunteer librarians and their powers and duties;
- (f) respecting the terms and conditions for the termination or dissolution of community libraries and volunteer libraries;
- (g) respecting matters relating to applications for community or volunteer branch libraries;
- (h) generally for carrying out the purposes and provisions of this Act.

CHAPTER 31

(STATUTES OF THE YUKON, 1987)

SIXTH APPROPRIATION ACT, 1986-87

(Assented to December 17, 1987)

Whereas it appears by message from the Commissioner and in the estimates accompanying the message that, in addition to the sums previously appropriated, the sums not appearing in parenthesis in Schedule "A" of this Act are required for the purpose of defraying certain expenses of the public service of the Yukon and for related purposes for the period of 12 months ending in March 31, 1987;

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act may be cited as the Sixth Appropriation Act, 1986-87.

2.(1) In addition to the sum of \$80,935,000 provided for in the First Appropriation Act, 1986-87, the sum of \$173,940,000 provided for in the Second Appropriation Act, 1986-87, the sum of \$21,359,000 provided for in the Third Appropriation Act, 1986-87, the sum of \$7,247,000 provided for in the Fourth Appropriation Act, 1986-87 and the sum of \$234,000 provided for in the Fifth Appropriation Act 1986-87, from and out of the Yukon Consolidated Revenue Fund there may be paid and applied a sum not exceeding in the whole \$4,134,000 for defraying the several charges and expenses of the public service of the Yukon payable in the period of 12 months ending on March 31, 1987, as set forth in Schedule "A" of this Act and that sum shall not be paid or applied except in accordance with Schedule "A", the Financial Administration Act and, subject to that Act, the estimates accompanying the message from the Commissioner.

(2) The sums previously appropriated to a vote or item that is listed in Schedule "A" and that has a sum appearing in parenthesis after it are reduced by the amount of the sum appearing in parenthesis.

(3) The 1986-87 grant to the Yukon Housing Corporation pursuant to subsection 17(2) of the Housing Corporation Act shall be \$1,805,000 for operational costs and \$1,300,000 for capital costs.

3. The due application of all monies paid or applied pursuant to section 2 shall be accounted for.

SCHEDULE A

		\$ (Dollars in 000's)		
Sums required this appropriation		Voted to Date	This Appropriation	Total Voted (Current Spending Authority)
Operation and maintenance votes				
09	Community and Transportation Services	41,771	592	42,363
15	Health & Human Resources	36,396	1,286	37,682
10	Public Service Commission	3,390	818	4,208
Subtotal Operation and Maintenance		<u>81,557</u>	<u>2,696</u>	<u>84,253</u>
Capital votes				
03	Education	<u>19,911</u>	<u>1,438</u>	<u>21,349</u>
Total sums required		<u>101,468</u>	<u>4,134</u>	<u>105,602</u>

Sums not required this appropriation**Operation and maintenance votes**

01	Yukon Legislative Assembly	1,546	(74)	1,472
02	Executive Council Office	3,870	(378)	3,492
07	Economic Development: Mines and Small Business	4,501	(571)	3,930
03	Education	40,371	(655)	39,716
12	Finance	3,439	(219)	3,220
16	Government Services	12,749	(50)	12,699
08	Justice	16,408	(487)	15,921
14	Renewable Resources	6,321	(278)	6,043
13	Tourism	3,947	(330)	3,617
11	Women's Directorate	213	(30)	183
	Loan Capital	1,000	(800)	200
	Loan Amortization	1,875	(143)	1,732
	Subtotal operation and maintenance	96,240	(4,015)	92,225

Capital votes

02	Executive Council Office	21	(2)	19
09	Community and Transportation Services	49,357	(5,727)	43,630
07	Economic Development: Mines and Small Business	12,220	(5,344)	6,876
16	Government Services	6,801	(289)	6,512
15	Health and Human Resources	1,962	(181)	1,781
08	Justice	6,067	(1,225)	4,842
14	Renewable Resources	2,092	(473)	1,619
13	Tourism	5,487	(1,077)	4,410
	Sub total capital	84,007	(14,318)	69,689
	Total sums not required	180,247	(18,333)	161,914
	Net Total	281,715	(14,199)	267,516

CHAPTER 32
(STATUTES OF YUKON, 1987)
SOCIETIES ACT
(Assented to December 17, 1987)

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Interpretation

1. In this Act;

“director” means a director or officer of a society;

“registrar” means the registrar of societies appointed under section 2;

“society” means a society incorporated or continued under this Act;

“special resolution” means

- (i) a resolution passed by the vote of not less than 75% of the members voting at a general meeting of which not less than 21 days notice of the resolution has been given, or
- (ii) a resolution agreed to in writing by all the members who would have been entitled to vote at a general meeting.

Registrar

2. There shall be a registrar of societies.

Application to existing societies

3.(1) A society incorporated or registered in the Yukon when this Act comes into force is continued as a society under this Act.

(2) The by-laws of a society referred to in subsection (1) shall continue in force except those parts that are contrary to this Act.

(3) If, at the time this Act comes into force the by-laws of a society do not comply with this Act, the society shall, within 30 days after its second annual general meeting following the coming into force of this Act, file amended by-laws with the registrar.

Incorporation

4. Five or more persons may incorporate under this Act for any lawful purpose other than carrying on a trade or business.

No share capital

5.(1) No society shall have capital divided into shares, declare a dividend, or distribute its assets among its members.

(2) The interest of a member in a society is non-transferable.

(3) Notwithstanding subsection (1), a society may distribute its assets on dissolution, in accordance with the regulations.

Application for incorporation

6. Persons wishing to incorporate a society under this Act shall deliver to the registrar an application in the prescribed form, together with the prescribed fee.

Incorporation certificate

7. Upon receipt of an application and the prescribed fee the registrar may issue a certificate that the society is incorporated.

By-laws

8.(1) The by-laws prescribed in the regulations shall be the by-laws of a society except to the extent that by-laws providing otherwise have been filed with the registrar at the time of application or in accordance with section 9.

(2) The by-laws of a society shall contain provisions about:

- (a) the terms of admission of members and their rights and obligations;
- (b) the conditions of withdrawal of members and the manner of expulsion, if any, of members;
- (c) the manner, and time of calling general and special meetings, the number constituting a quorum at a meeting, and rights of voting;
- (d) the appointment and removal of directors;
- (e) directors' duties, powers and remuneration;
- (f) the exercise of borrowing powers;
- (g) the appointment of accountants;
- (h) the custody and use of the society's seal, if any;
- (i) the preparation and custody of minutes of meetings and records;
- (j) the time and place where records may be examined by members;
- (k) the manner of making, altering or rescinding by-laws;
- (l) the arbitration or mediation of disputes;
- (m) the winding up and distribution of assets.

Change of by-laws

9. A society may change its by-laws by special resolution but the change is not effective until filed with and approved by the registrar.

Change of purposes

10. A society may change its purposes by special resolution but the change is not effective until filed with and approved by the registrar.

Name of society

11.(1) A society shall not, have, use or identify itself with a name that is

- (a) identical or similar to the name of an existing, recently dissolved or proposed society, corporation, partnership or firm,
- (b) prohibited by the regulations, or
- (c) rejected by the registrar pursuant to subsection (2).

(2) The registrar may reject the name or proposed name of a society if, in the registrar's opinion, the name

- (a) is objectionable, or
- (b) is similar to the name of an existing, recently dissolved or proposed society, corporation, partnership or firm known to the registrar and is likely to mislead or confuse.

Effect of certificate

12.(1) Upon the issuance of the certificate of incorporation the members of the society are established as a corporation.

(2) A society has all the rights, powers, and privileges of a natural person.

Limitation of liability of members

13. No member of a society is, because of their membership, liable for a debt or liability of the society in their individual capacity.

Debentures

14. A society may only issue debentures if the issue is approved by a special resolution.

Registered Office

15.(1) Every society shall have a registered office in the Yukon to which all communications may be sent and at which all documents may be served.

(2) A society may change its registered office but the change is not effective until a notice of the new location of the registered office, including postal code, is filed with the registrar.

Annual general meeting

16.(1) Every society shall hold an annual general meeting in the Yukon at which it shall present to its members the financial statements in accordance with the regulations.

(2) Notwithstanding subsection (1), upon application by a society, the registrar may permit a society to hold an annual general meeting outside the Yukon.

Annual reports

17. A society shall file such reports as required by and in the time and manner prescribed by the regulations.

Branch Societies

18.(1) A society may have one or more branch societies.

(2) When a society establishes a branch society, it shall immediately send to the registrar a notice setting out

- (a) the date the branch society was established, and
- (b) the title and location of the branch society.

(3) A society shall immediately notify the registrar in writing when a branch society ceases to exist.

Voluntary winding up

19.(1) A society may surrender its certificate of incorporation by special resolution upon giving not less than 21 days notice to all members and creditors.

(2) Where the registrar is satisfied that no debts or liabilities of the society are outstanding, the registrar may accept the surrender of the certificate and dissolve the society.

Dissolution

20.(1) Where the registrar believes, on reasonable and probable grounds that a society is conducting itself in a manner contrary to this Act or an order of the registrar, the registrar may

- (a) cancel the incorporation of the society, and
- (b) declare the society to be dissolved subject to such conditions as the registrar deems proper.

(2) Upon cancelling an incorporation of a society under subsection (1), the registrar shall immediately send notice by certified mail to

- (a) the society, and
- (b) to each of the directors of the society as set out in the registrar's records.

(3) Upon the cancellation of the incorporation of a society the registrar may appoint a liquidator to wind up the affairs of the society.

Default in filing and dissolution of society

21.(1) Where a society has failed to make a filing required by this Act or the regulations, the registrar may send a notice by certified mail to the society setting out that the society has 120 days from the date of mailing of the notice to make the required filing, failing which, the society may be dissolved.

(2) If within 120 days of the date of mailing of the notice under subsection (1) the society has not made the required filings, the registrar may

- (a) appoint a liquidator to wind up the the affairs of the society, and
- (b) dissolve the society.

Notice of Breach

22.(1) Upon receiving a complaint in writing that a breach of this Act, the regulations or a society's by-laws has been committed, the registrar may appoint an investigator to review the matter and report to the registrar.

(2) Where a society has received notification from the registrar that a complaint is being investigated, the society shall allow the investigator access to its records for the purpose of making the investigation.

(3) Where, after reviewing the report of an investigator, the registrar is of the opinion that there has been a breach of the Act, the regulations, or a society's by-laws, the registrar may order the society to rectify the breach.

Register of members

23.(1) Every society shall keep a register of all its members containing the following for each person

- (a) the person's name and address,
- (b) the date the person was admitted as a member,
- (c) the date the person ceased to be a member, and
- (d) the class of membership if any.

(2) The society shall keep the register at its registered office and shall permit a member to inspect the register at any reasonable time.

Offence

24.(1) A society that contravenes this Act, the regulations or an order by the registrar is guilty of an offence.

(2) Any person who knowingly makes a false statement on an application or filing required under this Act is guilty of an offence.

(3) A prosecution for an offence under this Act may be commenced at any time within 2 years after the time when the subject matter of the offence arose.

Regulations

25. The Commissioner in Executive Council may make regulations

- (a) prescribing forms;
- (b) prescribing fees to the registrar for incorporation and for service under this Act;
- (c) prescribing information to be provided to the registrar with applications;
- (d) prescribing by-laws;
- (e) prescribing returns to be made by societies;
- (f) respecting names of societies, including prohibiting the use of any names or any words or expressions in names;
- (g) respecting procedures for reserving names;
- (h) prescribing different classes of societies for the purposes of financial statement filings;
- (i) respecting the financial statement filing requirement for different classes of societies;

(j) for carrying out the purposes of this Act.

Repeal

26. The Societies Act is repealed.

CHAPTER 33

(STATUTES OF YUKON, 1987)

THIRD APPROPRIATION ACT, 1987-88

(Assented to December 17, 1987)

Whereas it appears by message from the Commissioner and in the estimates accompanying the message that, in addition to the sums previously appropriated, the sums not appearing in parenthesis in Schedule "A" of this Act are required for the purpose of defraying certain expenses of the public service of the Yukon and for related purposes for the period of 12 months ending in March 31, 1988;

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act may be cited as the Third Appropriation Act, 1987-88.

2.(1) In addition to the sum of \$114,302,000 provided for in the First Appropriation Act, 1987-88, the sum of \$176,749,000 provided for in the Second Appropriation Act, 1987-88, from and out of the Yukon Consolidated Revenue Fund there may be paid and applied a sum not exceeding in the whole \$9,711,000 for defraying the several charges and expenses of the public service of the Yukon payable in the period of 12 months ending on March 31, 1988, as set forth in Schedule "A" of this Act and that sum shall not be paid or applied except in accordance with Schedule "A", the Financial Administration Act and, subject to that Act, the estimates accompanying the message from the Commissioner.

(2) The sums previously appropriated to a vote or item that is listed in Schedule "A" and that has a sum appearing in parenthesis after it are reduced by the amount of the sum appearing in parenthesis.

3. The due application of all monies paid or applied pursuant to section 2 shall be accounted for.

SCHEDULE A

Sums required this appropriation		Voted This to Date	\$ (Dollars in 000's)	
			Total Appropriation	Voted (Current Spending Authority)
Operation and maintenance Votes				
01	Yukon Legislative Assembly	1,548	231	1,779
09	Community and Transportation Services	42,852	214	43,066
03	Education	41,158	302	41,460
16	Government Services	12,627	970	13,597
08	Justice	16,280	233	16,513
14	Renewable Resources	7,221	129	7,350
11	Women's Directorate	209	34	243
Subtotal operation and maintenance		<u>121,895</u>	<u>2,113</u>	<u>124,008</u>
Capital votes				
09	Community and Transportation Services	56,291	2,947	59,238
03	Education	22,618	4,569	27,187
08	Justice	178	82	260
Subtotal Capital		<u>79,087</u>	<u>7,598</u>	<u>86,685</u>
Total Sums required		<u>200,982</u>	<u>9,711</u>	<u>210,693</u>

Sums not required this appropriation**Operation and maintenance votes**

02	Executive Council Office	4,024	-	4,024
07	Economic Development: Mines and Small Business	2,435	-	2,435
12	Finance	2,539	-	2,539
05	Health and Human Resources	37,957	-	37,957
10	Public Service Commission	3,306	-	3,306
13	Tourism	3,288	-	3,288
18	Yukon Housing Corporation	1,305	-	1,305
	Loan Capital	8,000	-	8,000
	Loan Amortization	1,848	-	1,848
	Subtotal operation and maintenance	64,702	-	64,702

Capital votes

02	Executive Council Office	44	-	44
07	Economic Development: Mines and Small Business	12,652	-	12,652
16	Government Services	9,068	(32)	9,036
05	Health and Human Resources	5,996	(1,271)	4,725
14	Renewable Resources	1,747	(129)	1,618
13	Tourism	2,842	-	2,842
18	Yukon Housing Corporation	2,740	-	2,740
19	Yukon Liquor Corporation	126	-	126
	Subtotal capital	35,215	(1,432)	33,783
	Total sums not required	99,917	(1,432)	98,485
	Net Total	300,899	8,279	309,178

TABLE OF PUBLIC STATUTES

RSY 1986, SUPPLEMENT

Part 1

This table lists all Acts in the Revised Statutes of the Yukon 1986 plus all Acts enacted by the Legislative Assembly of the Yukon Territory between May 28, 1986, the cut-off date for inclusion in the RSY 1986, and October 12, 1987, the date on which the RSY 1986 came into force. Unless otherwise noted below, Acts that were enacted after the cut-off date for inclusion in the RSY 1986 came into force on the day they received assent. The information about coming into force is current to the end of December 31, 1988.

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
Access to Information	RSY 1986, c. 1		
Age of Majority	RSY 1986, c. 2		
Agricultural Products	RSY 1986, c. 3		
Agricultural Development	RSY 1986, c. 4		
Animal Protection	RSY 1986, c. 5		
Apprentice Training	RSY 1986, c. 6		
Appropriation	SY 1986, c. 21 (RSY 1986, Supp., c. 4) SY 1987, c. 9 (RSY 1986, Supp., c. 5) SY 1987, c. 1 (RSY 1986, Supp., c. 7) SY 1987, c. 2 (RSY 1986, Supp., c. 8) SY 1987, c. 13 (RSY 1986, Supp., c. 13) SY 1987, c. 20 (RSY 1986, Supp., c. 26)		
Arbitration	RSY 1986, c. 7		
Archives	RSY 1986, c. 8		
Area Development	RSY 1986, c. 9		
Assessment and Taxation	RSY 1986, c. 10	s. 1 s. 25.1 s. 36 s. 49	SY 1986, c. 20, s. 2 and s. 3 which came into force Jan 1/87 (RSY 1986, Supp., c. 1) Added by SY 1986, c. 20, s. 4 (RSY 1986, Supp., c. 1) SY 1986, c. 20, s. 5 (RSY 1986, Supp., c. 1) SY 1986, c. 20, s. 6 (RSY 1986, Supp., c. 1)
Boiler and Pressure Vessels	RSY 1986, c. 11		

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS. REMARKS ON COMING INTO FORCE
Brands	RSY 1986, c. 12	s. 1	SY 1987, c. 7, s. 1 (RSY 1986, Supp., c. 2)
		s. 9	SY 1987 c. 7, s. 1 (RSY 1986, Supp., c. 2)
Building Standards	RSY 1986, c. 13		
Bulk Sales	RSY 1986, c. 14		
Business Corporations	RSY 1986, c. 15		
Business Development Assistance	RSY 1986, c. 16	s. 5	SY 1987, c. 8, s. 2 (RSY 1986, Supp., c. 3)
		s. 22	Added by SY 1987, c. 8, s. 3 (RSY 1986, Supp., c. 3)
Business Licence	RSY 1986, c. 17		
Cemeteries and Burial Sites	RSY 1986, c. 18		
Certified General Accountants	RSY 1986, c. 19		
Change of Name	RSY 1986, c. 20		
Chartered Accountants	RSY 1986, c. 21		
Children's	RSY 1986, c. 22	s. 104	SY 1987, c. 22, s. 38 (RSY 1986, Supp., c. 29)
		s. 110	SY 1987, c. 22, s. 38 (RSY 1986, Supp., c. 29)
		s. 112	SY 1987, c. 22, s. 38 (RSY 1986, Supp., c. 29)
		s. 114	Repealed by SY 1987, c. 22, s. 38 (RSY 1986, Supp., c. 29)
Chiropractors	RSY 1986, c. 23		
Choses in Action	RSY 1986, c. 24		
Civil Emergency Measures	RSY 1986, c. 25		
Collection	RSY 1986, c. 26		
Compensation for Victims of Crime	RSY 1986, c. 27		
Condominium	RSY 1986, c. 28		
Conflict of Laws (Traffic Accidents)	RSY 1986, c. 29		
Constitutional Questions	RSY 1986, c. 30		
Consumers Protection	RSY 1986, c. 31		
Contributory Negligence	RSY 1986, c. 32		
Controverted Elections	RSY 1986, c. 33		
Cooperative Association	RSY 1986, c. 34		
Coroners	RSY 1986, c. 35		
Corrections	RSY 1986, c. 36	s. 1	SY 1987, c. 22, s. 39 (RSY 1986, Supp., c. 29)
		s. 15	SY 1987, c. 22, s. 39 (RSY 1986, Supp., c. 29)
		s. 18	SY 1987, c. 22, s. 39 (RSY 1986, Supp., c. 29)
		s. 19	SY 1987, c. 22, s. 39 (RSY 1986, Supp., c. 29)
Court of Appeal	RSY 1986, c. 37		
Creditors Relief	RSY 1986, c. 38		

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
Dangerous Goods			
Transportation	RSY 1986, c. 39		
Day Care	RSY 1986, c. 40		
Defamation	RSY 1986, c. 41		
Dental Profession	RSY 1986, c. 42		
Denture Technicians	RSY 1986, c. 43		
Dependants Relief	RSY 1986, c. 44		
Devolution of Real Property	RSY 1986, c. 45		
Distress	RSY 1986, c. 46		
Dog	RSY 1986, c. 47		
Elections	RSY 1986, c. 48		
Electoral District Boundaries	RSY 1986, c. 49		
Electrical Protection	RSY 1986, c. 50	s. 19	SY 1987, c. 11, proclaimed in force Oct. 26/87, (RSY 1986, Supp., c. 9)
Elevator and Fixed Conveyances	RSY 1986, c. 51		
Emergency Medical Aid	RSY 1986, c. 52		
Employment Agencies	RSY 1986, c. 53		
Employment Standards	RSY 1986, c. 54		
Energy Conservation Assistance	RSY 1986, c. 55		
Engineering Profession	RSY 1986, c. 56		
Evidence	RSY 1986, c. 57		
Executions	RSY 1986, c. 58		
Exemptions	RSY 1986, c. 59		
Expropriation	RSY 1986, c. 60		
Factors	RSY 1986, c. 61		
Fair Practices	RSY 1986, c. 62	Whole Act	Repealed by SY 1987, c. 3, proclaimed in force July 1/87 except s. 14 which came into force Dec. 10/87, (RSY 1986, Supp., c. 11)
Family Property and Support	RSY 1986, c. 63		
Fatal Accidents	RSY 1986, c. 64		
Financial Administration	RSY 1986, c. 65	Whole Act affected	SY 1987, c. 10, s. 2 (RSY 1986, Supp., c. 6)
		s. 1	SY 1987, c. 10, s. 2 (RSY 1986, Supp., c. 6)
		s. 3	SY 1987, c. 10, s. 3 (RSY 1986, Supp., c. 6)
		s. 42	SY 1987, c. 10, s. 4 (RSY 1986, Supp., c. 6)
		s. 44	SY 1987, c. 10, s. 5 (RSY 1986, Supp., c. 6)
		s. 44.1	Added by SY 1987, c. 10, s. 6 (RSY 1986, Supp., c. 6)
		s. 72	SY 1987, c. 10, s. 7 (RSY 1986, Supp., c. 6)
		s. 75	SY 1987, c. 10, s. 8 (RSY 1986, Supp., c. 6)
Fine Option	RSY 1986, c. 66		

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
Fire Prevention	RSY 1986, c. 67		
Flag	RSY 1986, c. 68		
Floral Emblem	RSY 1986, c. 69		
Foreign Arbitral Awards	RSY 1986, c. 70		
Forest Protection	RSY 1986, c. 71		
Fraudulent Preferences and Conveyances	RSY 1986, c. 72		
Frustrated Contracts	RSY 1986, c. 73		
Fuel Oil Tax	RSY 1986, c. 74		
Funeral Directors	RSY 1986, c. 75		
Goals	RSY 1986, c. 76		
Garbage Keepers Lien	RSY 1986, c. 77		
Garnishce	RSY 1986, c. 78		
Gas Burning	SY 1987, c. 11 (RSY 1986, Supp., c. 9)		Proclaimed in force Oct 26/88
Gasoline Handling	RSY 1986, c. 79		
Government Employee Housing Plan	RSY 1986, c. 80		
Health Care Insurance Plan	RSY 1986, c. 81		
Highways	RSY 1986, c. 82	s. 29.1 s. 29.2	Added by SY 1987, c. 7, s. 2, proclaimed in force Oct 3/88. (RSY 1986. Supp., c. 2) Added by SY 1987, c. 7, s. 2, proclaimed in force Oct 3/88. (RSY 1986. Supp., c. 2)
Historic Sites and Monuments	RSY 1986, c. 83		
Home Owners Grant	RSY 1986, c. 84	s. 3	SY 1986, c. 22, s. 2, para.(a) of which did not come into force until Apr. 1/87, (RSY 1986, Supp., c. 10)
Hospital Insurance Services	RSY 1986, c. 85		
Hotels and Tourist Establishments	RSY 1986, c. 86		
Housing Corporation	RSY 1986, c. 87		
Housing Development	RSY 1986, c. 88		
Human Rights	SY 1987, c. 3 (RSY 1986, Supp., c. 11)		Proclaimed in force July 1/87 except s. 14 which came into force Dec. 10/87
Human Tissue Gift	RSY 1986, c. 89		
Income Tax	RSY 1986, c. 90		
Insurance Act	RSY 1986, c. 91	s. 1 s. 1.1 s. 21 s. 22.1 s. 26.1 s. 44	SY 1987, c. 12, s. 2 (RSY 1986, Supp., c. 12) Added by SY 1987, c. 12, s. 3 (RSY 1986, Supp., c. 12) SY 1987, c. 12, s. 4 (RSY 1986, Supp., c. 12) Added by SY 1987, c. 12, s. 5 (RSY 1986, Supp., c. 12) Added by SY 1987, c. 12, s. 6 (RSY 1986, Supp., c. 12) SY 1987, c. 12, s. 7 (RSY 1986, Supp., c. 12)
Insurance Premium Tax	RSY 1986, c. 92		

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
International Commercial Arbitration	SY 1987, c. 14 (RSY 1986, Supp., c. 14)		
Interpretation	RSY 1986, c. 93		
Interprovincial Subpoena	RSY 1986, c. 94		
Intestate Succession	RSY 1986, c. 95		
Judicature	RSY 1986, c. 96		
Jury	RSY 1986, c. 97		
Landlord and Tenant	RSY 1986, c. 98		
Lands	RSY 1986, c. 99		
Legal Profession	RSY 1986, c. 100		
Legal Services Society	RSY 1986, c. 101	s. 16	SY 1986, c. 23 (RSY 1986, Supp., c. 15)
Legislative Assembly	RSY 1986, c. 102	s. 39	SY 1987, c. 15, s. 2, retroactive to April 1/86, (RSY 1986, Supp., c. 16)
		s. 40	SY 1987, c. 15, s. 3, retroactive to April 1/87, (RSY 1986, Supp., c. 16)
		s. 42	SY 1987, c. 15, s. 4, retroactive to April 1/87, (RSY 1986, Supp., c. 16)
		s. 43	SY 1987, c. 15, s. 5, retroactive to April 1/87, (RSY 1986, Supp., c. 16)
		s. 45	SY 1987, c. 15, s. 6, retroactive to April 1/87, (RSY 1986, Supp., c. 16)
		s. 46	SY 1977, c. 15, s. 7, retroactive to April 1/87, (RSY 1986, Supp., c. 16)
		s. 47	SY 1987, c. 15, s. 8, retroactive to April 1/87, (RSY 1986, Supp., c. 16)
		s. 47.1	Added by SY 1987, c. 15, s. 9, retroactive to April 1/87, (RSY 1986, Supp., c. 16)
		s. 49.1	Added by SY 1987, c. 15, s. 10, retroactive to April 1/87, (RSY 1986, Supp., c. 16)
Legislative Assembly Retirement Allowances	RSY 1986, c. 103	s. 3	SY 1987, c. 15, s. 13 (RSY 1986, Supp., c. 16)
		s. 4	SY 1987, c. 15, s. 14 (RSY 1986, Supp., c. 16)
		s. 5.1	SY 1987, c. 15, s. 15 (RSY 1986, Supp., c. 16)
		s. 7	SY 1987, c. 15, s. 16 (RSY 1986, Supp., c. 16)
Limitation of Actions	RSY 1986, c. 104		
Liquor	RSY 1986, c. 105		
Liquor Tax	RSY 1986, c. 106		
Lord's Day	RSY 1986, c. 107		
Lottery Licensing	SY 1987, c. 16 (RSY 1986, Supp., c. 17)		Proclaimed in force Dec. 31/87
Maintenance and Custody Orders Enforcement	RSY 1986, c. 108		
Management Accountants	RSY 1986, c. 109		
Marriage	RSY 1986, c. 110		
Married Women's Property	RSY 1986, c. 111		
Mechanics Lien	RSY 1986, c. 112		
Mediation Board	RSY 1986, c. 113		

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
Medical Profession	RSY 1986, c. 114	s. 23.1 s. 23.2	Added by SY 1987, c. 4, s. 2 (RSY 1986, Supp., c. 17) Added by SY 1987, c. 4, s. 2 (RSY 1986, Supp., c. 17)
Mental Health	RSY 1986, c. 115		
Miners Lien	RSY 1986, c. 116		
Motor Transport	RSY 1986, c. 117		
Motor Vehicles	RSY 1986, c. 118	s. 113 s. 171 s. 186.1 to 186.3	SY 1987, c. 18, s. 2, which came into force July 1/87, (RSY 1986, Supp., c. 20) SY 1987, c. 18, s. 3, which came into force July 1/87. (RSY 1986, Supp., 20) Added by SY 1987, c. 17, s. 1, which came into force Sept. 1/87, (RSY 1986, Supp., c. 19)
Municipal	RSY 1986, c. 119		
Municipal and Community Infrastructure Grants	SY 1986, c. 24 (RSY 1986, Supp. c. 21)		Proclaimed in force Feb. 1/88
Municipal Finance	RSY 1986, c. 120	s. 10.1	Added by SY 1986, c. 25, s. 1 (RSY 1986, Supp., c. 22)
Noise Prevention	RSY 1986, c. 121		
Notaries	RSY 1986, c. 122		
Nursing Assistants Registration	SY 1987, c. 19 (RSY 1986, Supp., c. 23)		Proclaimed in force Dec. 31/87
Occupational Health and Safety	RSY 1986, c. 123		
Occupational Training	RSY 1986, c. 124		
Optometrists	RSY 1986, c. 125		
Parks	RSY 1986, c. 126		
Partnership	RSY 1986, c. 127		
Pawnbrokers and Second Hand Dealers	RSY 1986, c. 128		
Perpetuities	RSY 1986, c. 129		
Personal Property Security	RSY 1986, c. 130		
Pharmacists	RSY 1986, c. 131		
Pioneer Utility Grant	RSY 1986, c. 132		
Plebiscite	RSY 1986, c. 133		
Pounds	RSY 1986, c. 134	s. 7.1 s. 8.1 s. 11.1 s. 22 s. 22.1	Added by SY 1987, c. 7, s. 3 (RSY 1986, Supp., c. 2) Added by SY 1987, c. 7, s. 3 (RSY 1986, Supp., c. 2) Added by SY 1987, c. 7, s. 3 (RSY 1986, Supp., c. 2) SY 1987, c. 7, s. 3 (RSY 1986, Supp., c. 2) Added by SY 1987, c. 7, s.3 (RSY 1986, Supp., c. 2)
Presumption of Death	RSY 1986, c. 135		
Public Health	RSY 1986, c. 136		
Public Inquiries	RSY 1986, c. 137		
Public Lotteries	RSY 1986, c. 138		
Public Printing	RSY 1986, c. 139		

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
Public Servants Superannuation Public Service	RSY 1986, c. 140 RSY 1986, c. 141	Title	SY 1987, c. 5, s. 2, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 1	SY 1987, c. 5, s. 3, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 8	SY 1987, c. 5, s. 4, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 9	SY 1987, c. 5, s. 5, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 13	Repealed by SY 1987, c. 5, s. 6, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 15	SY 1987, c. 5, s. 7, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 18	SY 1987, c. 5, s. 8, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 19	SY 1987, c. 5, s. 9, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 20 and 21	Repealed by SY 1987, c. 5, s. 10, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 22	SY 1987, c. 5, s. 11, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 23	SY 1987, c. 5, s. 12, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 24	SY 1987, c. 5, s. 13, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 25.1	Added by SY 1987, c. 5, s. 14, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 25	SY 1987, c. 5, s. 15, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 26 and 27	Repealed by SY 1987, c. 5, s. 16, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 28	SY 1987, c. 5, s. 17, proclaimed in force April 6/87, (RSY 1987, Supp., c. 24)
		s. 29 to 31	Repealed by SY 1987, c. 5, s. 18, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 32	SY 1987, c. 5, s. 19, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 33	SY 1987, c. 5, s. 20, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 34	SY 1987, c. 5, s. 21, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 35	SY 1987, c. 5, s. 22, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 36	SY 1987, c. 5, s. 23, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 37	SY 1987, c. 5, s. 24, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
		s. 39	SY 1987, c. 5, s. 25, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 41	SY 1987, c. 5, s. 26, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 42	SY 1987, c. 5, s. 27, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 43	SY 1987, c. 5, s. 28, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 44	SY 1987, c. 5, s. 29, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 45	SY 1987, c. 5, s. 30, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 49	SY 1987, c. 5, s. 31, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 55	SY 1987, c. 5, s. 32, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 56	SY 1987, c. 5, s. 33, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 57	SY 1987, c. 5, s. 34, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 58	SY 1987, c. 5, s. 35, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 59	SY 1987, c. 5, s. 36, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 62	SY 1987, c. 5, s. 37, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 63	SY 1987, c. 5, s. 38, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 64	Repealed by SY 1987, c. 5, s. 39, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 65	SY 1987, c. 5, s. 40, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 66	SY 1987, c. 5, s. 41, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 67	SY 1987, c. 5, s. 42, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 68	SY 1987, c. 5, s. 42, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 69	SY 1987, c. 5, s. 43, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 70	SY 1987, c. 5, s. 44, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 71	SY 1987, c. 5, s. 45, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 74	SY 1987, c. 5, s. 46, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 78	SY 1987, c. 5, s. 47, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 79	SY 1987, c. 5, s. 48, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 80	SY 1987, c. 5, s. 49, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
	s. 81		SY 1987, c. 5, s. 50, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 82		SY 1987, c. 5, s. 51, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 83		SY 1987, c. 5, s. 52, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 84		SY 1987, c. 5, s. 53, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 85		SY 1987, c. 5, s. 54, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 86		SY 1987, c. 5, s. 55, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 87		SY 1987, c. 5, s. 55, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 88		SY 1987, c. 5, s. 55, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 89 to 94		Repealed by SY 1987, c. 5, s. 56, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 95		SY 1987, c. 5, s. 57, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 98		SY 1987, c. 5, s. 58, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 99.1		Added by SY 1987, c. 5, s. 59, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 100		SY 1987, c. 5, s. 60, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 104		SY 1987, c. 5, s. 61, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 107		SY 1987, c. 5, s. 62, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 109		SY 1987, c. 5, s. 63, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 110		SY 1987, c. 5, s. 64, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 115		SY 1987, c. 5, s. 65, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 116		SY 1987, c. 5, s. 66, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 119		SY 1987, c. 5, s. 67, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 121		SY 1987, c. 5, s. 68, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 122 to 124		Repealed by SY 1987, c. 5, s. 69, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 127		SY 1987, c. 5, s. 70, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 130		SY 1987, c. 5, s. 71, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 131		SY 1987, c. 5, s. 72, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
	s. 132		SY 1987, c. 5, s. 73, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 133		SY 1987, c. 5, s. 74, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 135		SY 1987, c. 5, s. 75, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 136		SY 1987, c. 5, s. 76, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 146		SY 1987, c. 5, s. 77, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 152		SY 1987, c. 5, s. 78, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 161		SY 1987, c. 5, s. 79, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 164		SY 1987, c. 5, s. 80, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 165		SY 1987, c. 5, s. 81, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 166		SY 1987, c. 5, s. 82, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 167		SY 1987, c. 5 s. 83, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 168		SY 1987, c. 5, s. 84 and 85, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 170		SY 1987, c. 5, s. 86, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 171		SY 1987, c. 5, s. 87, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 172		SY 1987, c. 5, s. 88, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 173		SY 1987, c. 5, s. 89, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 174		SY 1987, c. 5, s. 90, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 175		SY 1987, c. 5, s. 91, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 176		SY 1987, c. 5, s. 92, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 181		SY 1987, c. 5, s. 93, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 182		SY 1987, c. 5, s. 94, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 183		SY 1987, c. 5, s. 95, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 184		SY 1987, c. 5, s. 96, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 185		SY 1987, c. 5, s. 97, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
	s. 186		Repealed by SY 1987, c. 5, s. 98. proclaimed in force April 6/87. (RSY 1986, Supp., c. 24)

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
		s. 191	SY 1987, c. 5, s. 99, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 193	SY 1987, c. 5, s. 100, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 195	SY 1987, c. 5, s. 101, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 196	SY 1987, c. 5, s. 102, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 197	Repealed by SY 1987, c. 5, s. 103, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 200	SY 1987, c. 5, s. 104, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 202	SY 1987, c. 5, s. 105, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 203	SY 1987, c. 5, s. 106, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 204	SY 1987, c. 5, s. 107, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 205	SY 1987, c. 5, s. 108, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
		s. 208	SY 1987, c. 5, s. 109, proclaimed in force April 6/87, (RSY 1986, Supp., c. 24)
Public Service Commission Public Service Staff Relations	RSY 1986, c. 142		See Public Service
		s. 1	SY 1987, c. 6, s. 2, proclaimed in force April 6/87, (RSY 1986, Supp., c. 25)
		s. 20	SY 1987, c. 6, s. 3, proclaimed in force April 6/87, (RSY 1986, Supp., c. 25)
		s. 23	SY 1987, c. 6, s. 4, proclaimed in force April 6/87, (RSY 1986, Supp., c. 25)
		s. 25	SY 1987, c. 6, s. 5, proclaimed in force April 6/87, (RSY 1986, Supp., c. 25)
		s. 27	SY 1987, c. 6, s. 6, proclaimed in force April 6/87, (RSY 1986, Supp., c. 25)
		s. 28	SY 1987, c. 6, s. 7, proclaimed in force April 6/87, (RSY 1986, Supp., c. 25)
		s. 45	SY 1987, c. 6, s. 8, proclaimed in force April 6/87, (RSY 1986, Supp., c. 25)
Public Utilities	RSY 1986, c. 143		
Raven	RSY 1986, c. 144		
Real Estate Agents	RSY 1986, c. 145		
Reciprocal Enforcement of Judgments	RSY 1986, c. 146		

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
Reciprocal Enforcement of Judgments (U.K.)	RSY 1986, c. 147		
Reciprocal Enforcement of Maintenance Orders	RSY 1986, c. 148		
Recording of Evidence	RSY 1986, c. 149		
Recreation	RSY 1986, c. 150		
Regulations	RSY 1986, c. 151		
Rehabilitation Services	RSY 1986, c. 152		
Retirement Plan Benefits	RSY 1986, c. 153		
Sale of Goods	RSY 1986, c. 154		
School	RSY 1986, s. 155		
School Trespass	RSY 1986, c. 156		
Scientists and Explorers	RSY 1986, c. 157		
Securities	RSY 1986, c. 158		
Seniors Income Supplement	RSY 1986, c. 159		
Small Claims Court	RSY 1986, c. 160		
Social Assistance	RSY 1986, c. 161		
Societies	RSY 1986, c. 162		
Students Financial Assistance	RSY 1986, c. 163		
Summary Convictions	RSY 1986, c. 164		
Supreme Court	RSY 1986, c. 165		
Survival of Actions	RSY 1986, c. 166		
Survivorship	RSY 1986, c. 167		
Tenants in Common	RSY 1986, c. 168		
Territorial Court	RSY 1986, c. 169		
Tobacco Tax	RSY 1986, c. 170		
Trade Schools Regulation	RSY 1986, c. 171		
Travel for Medical Treatment	RSY 1986, c. 172		
Trustee	RSY 1986, c. 173		
Variation of Trusts	RSY 1986, c. 174		
Vital Statistics	RSY 1986, c. 175		
Warehouse Keepers Lien	RSY 1986, c. 176		
Warehouse Receipts	RSY 1986, c. 177		
Wildlife	RSY 1986, c. 178		
Wills	RSY 1986, c. 179		
Workers Compensation	RSY 1986, c. 180	Whole Act affected	SY 1987, c. 21, s. 20 (RSY 1986, Supp., c. 28)
		s. 1	SY 1987, c. 21, s. 2 (RSY 1986, Supp., c. 28)
		s. 5.1	Added by SY 1987, c. 21, s. 3 (RSY 1986, Supp., c. 28)
		s. 7	SY 1987, c. 21, s. 4 (RSY 1986, Supp., c. 28)
		s. 8	SY 1987, c. 21, s. 5 to 8 (RSY 1986, Supp., c. 28)
		s. 22	SY 1987, c. 21, s. 9 and 10 (RSY 1986, Supp., c. 28)
		s. 34	SY 1986, c. 26, s. 2 (RSY 1986, Supp., c. 27); SY 1987, c. 21, s. 11 to 14 (RSY 1986, Supp., c. 28)

TITLE	CITATION	PROVISION AMENDED, REPEALED OR ADDED	CITATION OF AMENDMENTS, REPEALS AND ADDITIONS, REMARKS ON COMING INTO FORCE
		s. 35	SY 1987, c. 21, s. 15 (RSY 1986, Supp., c. 28)
		s. 36	SY 1987, c. 21, s. 16 to 18 (RSY 1986, Supp., c. 28)
		s. 38	Repealed by SY 1987, c. 21, s. 19 (RSY 1986, Supp., c. 28)
		s. 58	Repealed by SY 1987, c. 21, s. 19 (RSY 1986, Supp., c. 28)
		s. 59	Repealed by SY 1987, c. 21, s. 19 (RSY 1986, Supp., c. 28)
		s. 68	SY 1987, c. 21, s. 19 (RSY 1986, Supp., c. 28)
Young Persons Offences (RSY 1986, Supp., c. 29) Yukon Development Corporation	SY 1987, c. 22		
	RSY 1986, c. 181	s. 12	SY 1987, c. 23, s. 2, which came into force March 31/87, (RSY 1986, Supp., c. 30)
		s. 12.1	Added by SY 1987, c. 23, s. 3, which came into force March 31/87, (RSY 1986, Supp., c. 30)
Yukon Tartan	RSY 1986, c. 182		

TABLE OF PUBLIC STATUTES

RSY 1986, SUPPLEMENT

Part 2

STATUTES NOT CONSOLIDATED, NOT REPEALED

This table is derived from Appendix A of the RSY 1986; it lists all the Statutes of the Yukon Territory, or provisions of them, that remained in force as of May 28, 1986, the cut-off date for inclusion in the RSY 1986, but which were not consolidated in the RSY 1986, and it shows amendments to or repeals of those Acts made subsequently to May 28, 1986.

Session	Chap.	Title	Remarks
1915	2	An Ordinance to Incorporate the Sisters of Saint Ann	In force
1963(1st)	2	Synod of the Diocese of Yukon Ordinance	In force
R.O. 1971	H-5	Housing Ordinance	In force
R.O. 1971	L-11	Low Cost Housing Ordinance	In force
1972	25	Rental-Purchase Housing Ordinance	In force
1972	30	Faro General Purposes Loan Ordinance	In force
1972	31	Dawson General Purposes Loan Ordinance	In force
1972	32	Whitehorse General Purposes Loan Ordinance	In force
1973	7	Workmen's Compensation Supplementary Benefits Ordinance	In force
1973	25	City of Dawson General Purposes Loan Ordinance	In force
1973	27	Faro General Purposes Loan Ordinance	In force
1973	28	Financial Agreement Ordinance, 1973	In force
1973	33	Territorial-Municipal Employment Loans Ordinance	In force
1973	34	Whitehorse General Purposes Loan Ordinance	In force
1974(2nd)	22	Financial Agreement Ordinance, 1974	In force
1974(2nd)	25	Municipal General Purposes Loan Ordinance	In force
1975(1st)	1	Community Assistance Ordinance	Repealed by SY 1986, c. 24, which was proclaimed in force Feb. 1/88
1975(1st)	5	Government Employee Housing Plans Ordinance	In force
1975(1st)	9	Young Voyageur Agreement Ordinance	In force
1975(1st)	21	Financial Agreement Ordinance, 1975	In force
1975(1st)	23	Municipal General Purposes Loans Ordinance	In force
1976(1st)	10	Financial Agreement Ordinance, 1976	In force
1976(1st)	15	Municipal General Purposes Loan Ordinance	In force
1977(1st)	4	General Development Agreement Ordinance	In force
1977(1st)	14	Financial Agreement Ordinance, 1977	In force
1977(1st)	20	Municipal General Purposes Loan Ordinance	In force
1978(1st)	13	An Ordinance to Open a Certain Portion of Land in the City of Whitehorse	In force
1978(1st)	14	Dawson City Utilities Replacement Ordinance	In force
1978(1st)	19	Financial Agreement Ordinance, 1978	In force
1978(1st)	21	Municipal General Purposes Loan Ordinance	In force
1979(1st)	8	Financial Agreement Ordinance, 1979	In force

Session	Chap.	Title	Remarks
1979(1st)	10	Municipal General Purposes Loan Ordinance, 1979	In force
1980(1st)	6	Energy Conservation Agreement Ordinance	In force
1980(1st)	10	Financial Agreement Ordinance, 1980	In force
1980(1st)	22	Municipal General Purposes Loan Ordinance, 1980	In force
1980(2nd)	16	Miscellaneous Statute Law Amendment Ordinance, 1980 (No. 2)	s. 3 in force
1980(2nd)	18	An Ordinance to Amend the Municipal General Purposes Loan Ordinance, 1980	In force
1981(1st)	1	Financial Agreement Ordinance, 1981	In force
1981(1st)	12	Municipal General Purposes Loan Ordinance, 1981	In force
1981(2nd)	11	Miscellaneous Statute Law Amendment Ordinance, 1981 (No. 2)	s. 1 in force
1982	10	Financial Agreement Act, 1982	In force
1982	22	Land Planning Act	In force
1983	1	Employment Expansion and Development Act	In force
1983	2	Financial Agreement Act, 1983	In force
1983	17	Economic and Regional Development Agreement Act	In force
1984	2	Children's Act	s. 185(2)-(3) in force
1984	10	Financial Agreement Act, 1984	In force
1984	12	Government Employees Unemployment Insurance Agreement Act	In force
1984	17	Legal Profession Act	ss. 117-119
1984	32	Young Offenders Agreement Act	In force
1985	10	Central Trust Company and Crown Trust Company Act	In force
1985	18	Financial Agreement Act, 1985-88	In force
1985	20	First Appropriation Act, 1986-87	Spent
1985	24	An Act to Amend the Income Tax Act	ss. 2(1)(part), 2(5), 2(6), 3(2), 4(5)-(7), 6(2), 7(4), 8(2), 9(2), and 10(2) in force
1985	27	Loan Guarantee Act, 1985	In force
1986	13	Municipal General Purposes Loan Act, 1986	In force
1986	14	Revised Statutes Act	In force
1986	15	Second Appropriation Act, 1986-87	Spent
1986	18	Third Appropriation Act, 1986-87	Spent

