File No. 33718

IN THE SUPREME COURT OF CANADA

IN THE MATTER OF Section 53 of the *Supreme Court Act*, R.S.C. 1985, c. S-26;

AND IN THE MATTER OF a Reference by the Governor in Council concerning the proposed Canadian *Securities Act*, as set out in Order in Council P.C. 2010, dated May 26, 2010

FACTUM OF THE ATTORNEY GENERAL OF CANADA

(Pursuant to Rule 42 of the Supreme Court of Canada Rules)

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PART I – OVERVIEW AND STATEMENT OF THE FACTS

1) Overview of the Position

1. The question posed to this Court asks whether Parliament has the jurisdiction to enact the proposed Canadian *Securities Act* ("the *Act*"). The question does not invite a discussion of whether the *Act* is sound policy; that issue is the exclusive preserve of Parliament. Nor does it involve a performance assessment of the existing thirteen provincial and territorial regulators, which much of the material filed by the Attorneys General of Alberta and Quebec ("Alberta" and "Quebec") appears to invite. The issue before this Court is not whether Parliament should create a single national securities regulator, but whether it is constitutionally able to do so.

2. The answer to the legal question is that Parliament does have the jurisdiction. The proposed *Act* is a law that is, in pith and substance, designed to establish a comprehensive regime of securities regulation administered by a single national regulator. Such a regime is a valid exercise of the general branch of the trade and commerce power in s. 91(2) of the *Constitution Act, 1867*, as interpreted in cases such as *General Motors v. City National Leasing*[1] and *Kirkbi AG v. Ritvik Holdings Inc.*[2] Those cases do not establish a formal test of constitutional validity; rather they ask the Court to assess the legislation against five indicators. The proposed legislation establishes a regulatory scheme (first indicator) under the continuing oversight of a regulatory agency, the Canadian Securities Regulatory Authority (second indicator).

3. The third indicator asks whether the legislation is concerned with trade as a whole and not a particular industry. In this case the legislation regulates not

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[1] *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641 at pp. 671-672 ("*General Motors*"). [AGC Book of Authorities, Tab 13]

[2] *Kirkbi AG v. Ritvik Holdings Inc.*, [2005] 3 S.C.R. 302 ("*Kirkbi AG*"). [AGC Book of Authorities, Tab 16]

only the persons and businesses involved in securities-related activities, but also mandates broad-based economic policy-making and enforcement throughout the country. More specifically, the legislation applies not only to the "securities industry"--the dealers, advisers and managers who act as intermediaries in securities transactions--but also to public companies and investors in every sector of the economy. Not only does the *Act* regulate the primary market (the issue of new securities), but it also regulates the trading of securities on the secondary market. The legislation will also regulate important corporate practices including disclosure and governance, requirements that are imposed on public companies to preserve investor confidence in the secondary market. Like federal competition law, which forbids unfair competitive practices across all industries, comprehensive securities regulation is concerned with trade as whole and not a particular industry.

4. The fourth indicator asks whether the provinces, acting alone or jointly, would be constitutionally capable of enacting the legislation. Individual provinces, acting alone, are subject to constitutional limitations on their legislative powers that preclude them from enacting comprehensive national legislation. Nine of the provinces, acting jointly, have created the "passport system", which was designed to achieve greater regulatory coordination, but which demonstrates that even joint action cannot constitutionally replicate a comprehensive national regime of securities regulation monitored by a single national agency. The proposed legislation will apply to a capital market that is fundamentally interprovincial and international. It will bring national resources to bear on enforcement without regard for provincial boundaries, and with criminal as well as administrative sanctions. The national regulator will cooperate with other federal agencies to play its role in reducing systemic risk to Canada's financial system. And the national regulator will speak for, and make commitments for, Canada at the international level, a role that has become increasingly important in this globally interconnected field.

5. With respect to the fifth and final *General Motors* indicator, which concerns the need for a national regime, the *Act* seeks to achieve its goal of a single national securities regulator through progressive implementation. Provinces and territories may join the regulatory regime on a voluntary basis. While this may render the goal of a single regulator more difficult to attain quickly, attempting to attain a single national regulator through cooperation rather than coercion should not affect the constitutional validity of the regime.

6. Finally, the constitutionality of the proposed legislation is in no way diminished by the concurrency of its subject matter; rather, it is a classic application of the constitutional "double aspect" doctrine. Securities regulation has a "trade and commerce" aspect to it, just as it has a "property and civil rights" aspect to it. Securities regulation is no different in this respect from other important matters that are not specifically referred to in the constitution like "the environment," "consumer protection," and "health." The cases that have upheld provincial jurisdiction over securities regulation in no way justify the conclusion that provincial jurisdiction is exclusive in an area of such critical importance to the economy as a whole.

2) Background

7. On May 26, 2010, the Minister of Finance tabled the proposed Canadian *Securities Act* in the House of Commons, and a reference to this Court was initiated. The single question posed is this: is the annexed proposed Canadian *Securities Act* within the legislative authority of the Parliament of Canada?

8. Slightly differently-worded versions of this question are also the subjects of references to the Courts of Appeal of Quebec and Alberta.[3] Each of those

[3] Gouvernement du Québec, Décret 720-2010 (25 August, 2010); Province of Alberta, Order in Council 181/2010, amending O.C. 20/2010. [ACG Book of Authorities, Tab 60]

references has posed additional questions; for example, each has a question concerning Parliament's authority to enact certain provisions of the *Budget Implementation Act, 2009*, which established the Canadian Securities Transition Office, a body designed to assist in the establishment of the national regulator. However, the focus of all parties' filings in the provincial appellate courts has been the overarching jurisdictional question.

9. While the *Securities Act* itself is the critical "fact" relevant to the resolution of the division of powers issue before this Court, context is often significant in constitutional adjudication.[5] In this case, some understanding of the past and present nature of capital markets and the historical background to the *Act* is necessary to inform the issue before this Court.

3) Current Challenges in Canadian Securities Regulation

a) Evolution of Capital Markets

10. Capital markets have undergone a profound transformation over the last century. Initially, these markets involved an important local component, but they have evolved to be primarily national and international in character. The point has been made consistently by the many blue ribbon committees that have examined securities regulation reform.[6] Indeed this Court has subscribed to the same view.[7]

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[5] *Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, [2002] 2 S.C.R. 146 at para. 51; *Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters*, [2009] 3 S.C.R. 407 at para. 32. [AGC Book of Authorities, Tabs 17, 11]

[6] See Reference Record, Attorney General of Canada Materials ("Record (AGC)"), Vol. II, Ontario Securities Commission, CANSEC: Legal and Administrative Concepts Nov. 1967 08CB 61, pp. 32-33 ("CANSEC Proposal"); Proposals for a Securities Market Law for Canada, pp. 42-43 ("1979 Proposals"); Draft Memorandum of Understanding Regarding the Regulation of Securities in Canada, p. 1 ("Atlantic Premiers' Proposal"); Committee to Review the Structure of Securities Regulation in Canada ("Wise Persons Committee Report,") p. 67; Crawford Panel on a Single Canadian Securities Regulator ("Crawford Panel Report"), p. 111.

[7] *Global Securities Corp. v. British Columbia (Securities Commission),* [2000] 1 S.C.R. 494 at para. 28 ("*Global Securities*"); *Multiple Access Ltd. v. McCutcheon,* [1982] 2 S.C.R. 161 at 173 ("*Multiple Access*"). [AGC Book of Authorities, Tabs 14, 21]

11. One of the initial strengths of stock markets that emerged in the 19th century was their "localness": individuals trusted local knowledge about enterprises and their owners to help weed out the corrupt and the fraudulent.[8] Over time, as communication of information became faster, cheaper and more complete, local markets gave way to regional ones that provided more trading possibilities and economies of scale.[9] In Canada, this process of aggregation and specialization resulted in the consolidation of stock exchanges. The number of exchanges dwindled, and specialization permitted the survival of the remaining exchanges.[10] The nature of trading in such markets changed too, as handshake deals on trading floors gave way to fully automated transactions.[11]

12. The increasingly national and international character of capital markets is evidenced in the behaviour of market participants, including the issuers of securities, financial institutions, and intermediaries involved in the trading of securities. A 2002 study found that only a very small number of companies sought to raise capital primarily in their home province;[12] this is true even for the oil and gas industry largely centred in Alberta.[13] However, the costs associated with complying with the requirements of multiple regulators have led some issuers of securities to limit their public offerings to larger provinces.[14] Most, if not all, of the companies listed on the Toronto Stock Exchange ("TSX") "carry out their capital market activities on a trans-provincial basis."[15] At the end of 2008, most of the sixty largest issuers of securities on the TSX were inter-listed on U.S.

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[8] Record (AGC), Vol. I, Report of Frank Milne (The Impact of Innovation and Evolution on the Regulation of Capital Markets) ("Milne"), paras. 3.2, 6.3 at pp. 186, 197.
[9] Record (AGC), Vol. I, Milne, para. 3.2 at p. 186.
[10] Record (AGC), Vol. I, Milne, para. 6.3 at p. 186; Record of the Attorney General of Quebec ("Record (Quebec)"), Vol. XII, Jonathan Macey (An Analysis of the Canadian Federal Government's Initiative to Create a National Securities Regulator), June 2010 ("Macey #1"), pp. 47-48.
[11] Record (AGC), Vol. I, Milne, para. 3.2, 6.3 at pp. 186, 197.
[12] Record (AGC), Vol. I, Milne, para.3.5 at pp. 187-188.
[13] Record of the Intervener, Canadian Bankers Association ("Record (CBA)"), Vol. XXVIII, Affidavit of Marion G. Wrobel sworn August 26, 2010 ("Wrobel"), para.17, pp. 13-14.
[14] Record (CBA), Vol XXVIII, Wrobel, para.29, p. 20.
[15] Record (AGC), Vol. I, Milne, para. 3.4 at p. 187.

exchanges.[16] The net effect is that "autonomous provincial regulation almost never corresponds to the scope of capital activities of the firms being regulated".[17] Issuers of securities, financial institutions and intermediaries need to have a presence in international financial centres.[18]

13. Finally, the self-regulatory organizations created to regulate market participants, such as the Investment Industry Regulatory Organization of Canada, and the Mutual Fund Dealers Association of Canada, are national, not provincial, organizations.[19]

b) Evolution of the Investment Community

14. As the markets have changed, so too has the investment community. Most Canadians are now participants in the securities markets, either through direct investment or through intermediaries such as mutual funds and pension funds.[20] The local investor wishing to buy a part of a local company of which he has some personal knowledge is the exception, having given way to large institutional investors such as pension and mutual funds.[21] The institutional investor is not exclusively interested in local, or even national, companies but mitigates risk through geographic diversification.[22] At the same time, the creation of larger and more efficient Canadian markets has heightened their appeal to foreign investors. By the end of 2009, Canadian investment in foreign securities, and foreign investment in Canadian securities, had reached all-time highs.[23]

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[16] Record (AGC), Vol. I, Milne, para. 3.9 at p. 189.
[17] Record (AGC), Vol. I, Report of Michael J. Trebilcock (National Securities Regulator Report) ("Trebilcock #1"), para. 37 at p. 247.
[18] Record (AGC), Vol. I, Milne, para. 3.2, 3.13 at pp. 186, 191.
[19] Record (Quebec), Vol. XII, Macey #1, at pp. 45-46; Record of the Government of Alberta ("Record (Alberta)"), Vol. XIX, Eric Spink (Securities Regulation as Property Law), June 28, 2010 ("Spink #1"), at para. 17, p. 9;Record (Alberta), Vol. XVIII, Affidavit of William S. Rice dated June 29, 2010 ("Rice") paras. 59-64 at pp. 24-26.
[20] Record (AGC), Vol. I, Milne, paras. 6.5-6.6,12.1 at pp. 198-199, 217.
[21] Record (AGC), Vol. I, Milne, para. 3.14 at p. 191.
[22] Record (AGC), Vol. I, Milne, paras. 3.14, 6.4 at pp. 191, 198.
[23] Record (AGC), Vol. I, Milne, para. 3.8 at p. 188.

15. The rise of large institutional investment vehicles such as mutual and pension funds has allowed small investors to lower the transaction costs associated with diversifying their domestic and foreign holdings. Because Canadians' investments are diversified in this way, those same Canadians are exposed to financial risk when capital markets are in crisis here or abroad.[24] Many members of pension funds are unaware of their exposure to these risks because they are unaware of where their funds are invested.[25]

16. The rise of the institutional investor has had important implications for securities regulation. Investor protection has always been at the forefront of all systems of securities regulation.[26] Sophisticated investment advisors have become necessary to act as intermediaries in transactions that may involve novel types of securities. Confidence in the markets has become increasingly dependent on the ability of regulators to monitor the competence and integrity of those who facilitate transactions.[27]

c) Evolution of Securities Products

17. Another major development in the field of capital markets has been the proliferation of securities products. The array of derivatives and increasingly esoteric products is stunningly diverse.[28] The complexity of these products, often based on advanced mathematical modelling, has heightened the need for investors to employ sophisticated advisors.[29] Complexity may mask the risks inherent in these products such that even the "sophisticated" advisor may be caught unaware.[30] Automated trading may exacerbate volatility by enabling high

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[24] Record (AGC), Vol. I, Milne, para. 3.14 at p. 191.
[25] Record (AGC), Vol. I, Milne, para.6.5 at p. 198.
[26] Record (AGC), Vol. I, Trebilcock #1, para. 25 at pp. 239-240.
[27] Record (AGC), Vol. I, Milne, para. 4.4 at p. 193.
[28] Record (AGC), Vol. I, Milne, paras. 4.2, 8.1-8.6 at pp. 192, 203-205 .
[29] Record (AGC), Vol. I, Milne, paras.4.4, 4.8 at pp. 193-194.
[30] Record (AGC), Vol. I, Milne, paras. 4.4, 4.8, 5.2 at pp. 193-194,196.

volumes of transactions in very short periods of time.[31] The increased risk is significant even to small investors, who in recent years have shifted much of their savings from bank deposits to mutual funds.[32]

18. The rapidly changing nature and creative design of new securities products has posed significant challenges to securities and banking regulators both here and abroad. Innovation has led to the danger of "regulatory arbitrage," which may be described as the potential for "financial actors [to] structure instruments and transactions to avoid regulatory regimes they consider unduly onerous or invasive."[33]

d) The Recent Financial Crisis

19. The history of securities regulation reform has been one largely driven by response to crisis.[34] The widespread and often devastating consequences of market crises highlight the challenges faced by regulators, and the regulators' own shortcomings.

20. While the global financial crisis became a banking crisis, its roots can be found in the capital markets, specifically credit securitization, where there was inadequate risk management and reckless lending practices.[35] A massive volume of securities backed by subprime mortgages originated in the United States were sold to financial institutions and other investors around the world. As housing prices fell in the United States, the market for these securities became illiquid and financial institutions that invested in them found themselves in trouble after defaults (or fear thereof) had caused the value of the securities to fall dramatically. As a result, lenders tightened credit conditions and restricted

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[31] U.S. Commodity Futures Trading Commission and U.S.Securities and Exchange Commission, *Findings Regarding the Market Events of May 6, 2010*, pp. 2-3 (http://www.sec.gov/news/studies/2010/marketevents-report.pdf). [AGC Book of Authorities, Tab 82]
[32] Record(CBA), Vol. XXVIII, Wrobel, para.20, pp. 14-15
[33] Record (AGC), Vol. I, Milne, para. 4.1 at pp. 191-192.
[34] Record (AGC), Vol. I, Milne, para. 1.5 at pp. 181-182.
[35] Record (AGC), Vol. I, Milne, para. 10.6 at p. 210.

borrowers' access to credit. The disruption in the normal provision of credit led to severe economic downturns in many countries and a global recession. In Canada, parts of the market for a security called Asset-Backed Commercial Paper (ABCP) froze in mid-2007, creating severe problems for many families, small businesses, and some financial intermediaries.[36] Massive and costly government intervention on a global basis was necessary to address the effects of the crisis.[37]

4) Models for Securities Regulation

21. The question posed on this Reference does not invite this Court's views on the optimal form of securities regulation in this country, nor is such a policy issue an appropriate one for the courts.[38] Nevertheless, some description of the various models of securities regulation assists in understanding the respective interests of the provincial and federal governments.

22. As noted by Quebec's expert, Professor Macey, Canada is "the only major industrialized nation without a national securities regulator."[39] In the nearly 50 years of debate as to how best to structure securities regulation, there has been a considerable degree of consensus as to the goals of regulation and the desirability of reform, but less consensus as to what the "best" form of regulation should be. Professor Trebilcock's paper analyzes the strengths and weaknesses of the proposals made both by the various government-appointed panels and other experts in the field.[40]

23. All experts agree that greater integration of, or coordination among, regulators is necessary, in large measure to increase investor protection while

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[36] Record (AGC), Vol. I, Milne, para. 11.3 at p. 213.
[37] Record (AGC), Vol. I, Milne, paras. 10.6-10.9 at pp. 210-212.
[38] *Reference Re Firearms Act* (Can.), [2000] 1 S.C.R. 783 at 797 ("*Firearms Reference*"). [AGC Book of Authorities, Tab 37]
[39] Record (Quebec), Vol. XII, Macey #1, p. 40.
[40] Record (AGC), Vol. I, Trebilcock #1, paras. 31-67 at pp. 244-266.

minimizing regulatory burdens on market participants.[41] The current debate in Canada tends to focus on two general models: a "passport" system, and a single national regulator. A "passport" system is one in which the provincial and territorial regulators agree to harmonize some of their regulatory requirements, and to accept the decision of the "principal regulator" when regulatory approvals are needed in the harmonized fields. The idea is that a market participant need make only one application, which will be to the regulator in its home province, and the decision of that regulator will then function as a "passport" to the other provinces and territories. In harmonized areas of securities law, the passport system eliminates the need for a separate decision in every province or territory where the applicant needs regulatory approval. This reduces the cost of compliance with multiple regulatory regimes and thereby facilitates the interprovincial activity of market participants,[42] although it does not eliminate the necessity of paying fees to multiple jurisdictions.[43]

24. A passport system now exists to some extent in Canada, prompted in part by an accord provincial Ministers signed in 2004. Cooperation among regulators is facilitated by the Canadian Securities Administrators ("CSA"), a forum for provincial and territorial regulators. Numerous initiatives have been undertaken, including: adoption of national rules and policies; enhancement of the previous Mutual Reliance Review System ("MRRS") which instituted (in 1999) mutual recognition of the decisions of a "principal regulator" for designated purposes; and the creation of internet-based systems for filing of disclosure documents and insider filings.[44] Significantly however, Ontario, while a member of the CSA, did not sign the 2004 accord and remains outside the passport system. The result

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[41] Record (AGC), Vol. I, Trebilcock #1, para. 63 at pp. 262-263; Record (Quebec), Vol. XII, Macey #1, p. 49; Record (Quebec), Vol. XI, Stephen Choi (The Benefits of Securities Regulation in Canada) June 2010 ("Choi #1"), para. 3 at pp. 11-13, paras. 60-62, pp. 51-53; Record (Alberta), Vol. XVIII, Rice #1, paras. 95-111, pp. 35-39.

[42] Record (AGC), Vol. I, Trebilcock #1, paras 59-61 at pp. 259-262; Record (Alberta), Vol. XX, Affidavit of Dennis Gartner, dated July 7, 2010 ("Gartner"), Exhibit "L", Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation , p. 228.

[43] Reference Record, Record of the Attorney General of Ontario ("Record (Ontario)"), Vol. XXIV, Affidavit of Robert Christie, para. 42, p.18.

[44] Record (AGC), Vol. II, Wise Persons Committee Report, p.81.

has been a lack of reciprocity: passport system adherents have chosen to accept Ontario decisions as if Ontario were part of the system, while Ontario may, but does not have to, accept the decisions of passport jurisdictions.[45] In other words, in the limited area covered by the passport system, only the obtaining of approval in Ontario is equivalent to a national approval, because it provides access to all other provincial markets.

25. One of the ironies of the passport system is that the more effectively it achieves the goal of greater integration, the more it diminishes two of the theoretical strengths of having multiple regulators: responsiveness to distinct local issues; and regulatory experimentation and innovation.[46]

26. Also instructive is a description of regulatory models abroad. Among the 109 members of the International Organization of Securities Commissions ("IOSCO"), whose members regulate more than 95% of the world's securities markets,[47] only Canada lacks a national regulator, and most have single national regulators.[48] The only representation from Canada at IOSCO as an "Ordinary" (i.e. full-voting) member is by two provincial securities regulators, Ontario and Quebec.[49]

27. IOSCO plays a significant role in helping regulators achieve consensus on regulatory issues. IOSCO has stated that three policy objectives should animate securities regulation: protecting investors; promoting fair and efficient capital

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[45] Record (Alberta), Vol. XVIII, Rice #1, para. 105 at p. 38; Record (Quebec), Vol. XII, Andrea Corcoran (International Standards Affecting Securities Regulators and Regulation as Applicable to Quebec), June 2010 ("Corcoran"), p. 147; Record (Ontario), Vol. XXIV, Affidavit of Robert Christie, para. 36, pp. 15-16.
[46] Record (AGC), Vol. I, Trebilcock #1, para. 61 at pp. 260-262.
[47] IOSCO, Media Release, June 8, 2010 (http://www.iosco2010.com/pdf/com08juin2010-2.pdf). [AGC Book of Authorities, Tab 69]
[48] Record (AGC), Vol. I, Trebilcock #1, paras. 61, 64 at pp. 260-262, 264.
[49] Record (Alberta), Vol. XVII, Rice #1, para. 133 at p. 37. Alberta and British Columbia are associate members of IOSCO with no voting rights.

markets; and reducing systemic risk.[50] The first two have been recognized by all the various Canadian panels that have examined securities reform.[51] However, reducing systemic risk – the risk that default by one market participant will cause widespread negative consequences[52]-- is an objective more informed by current experience. IOSCO states that a "regulator should have, or contribute to, regulatory processes to monitor, mitigate and appropriately manage such risks."[53] Fragmentation of regulatory authority may undermine a comprehensive approach to monitoring and managing systemic risk.[54]

28. In addition to IOSCO, other international bodies (for example, the G-20 group of nations), and within Canada the Hockin Panel in 2009,[55] have endorsed the idea that the management of systemic risk is relevant to securities regulation.[56] Systemic risk was once thought to be largely confined to the commercial banking sector, but the recent global financial crisis revealed the interdependence of all aspects of financial activity conducted across banking and securities markets.

29. The dangers of systemic risk underscore the need for national, if not international, regulation.[57] Where securities activity contributes to systemic risk, a national regulator would be able to coordinate its policies with those of the Bank of Canada, the Office of the Superintendent of Financial Institutions (OFSI), the Department of Finance, the Financial Consumer Agency of Canada, and the Canada Deposit Insurance Corporation.[58] It is notable that the European Union,

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[50] Record (AGC), Vol. I, Trebilcock #1, para. 28, at pp. 241-242; IOSCO, *Objectives and Principles of Securities Regulation*, (June 2010) (updated version), p. 3 ("Objectives and Principles"). [AGC Book of Authorities, Tab 70]
[51] Record (AGC), Vol. I, Trebilcock #1 para. 28 at pp. 241-242.
[52] Record (AGC), Vol. I, Trebilcock #1, para. 21-24 at pp. 236-239.
[53] IOSCO, *Media Release* (June 10, 2010), (http://www.iosco.org/news/pdf/IOSCONEWS188.pdf). [AGC Book of Authorities, Tab 68]
[54] Record (AGC), Vol. I, Trebilcock #1, para. 29 at pp. 242-243.
[55] Record (AGC), Vol. II, Expert Panel on Securities Regulation in Canada, *Final Report and Recommendations*. Ottawa: Department of Finance, 2009, p. 133-134 ("Hockin Panel Report").
[56] Record (AGC), Vol. I, Trebilcock #1, para. 28 at pp. 241-242.
[57] Record (AGC), Vol. I, Trebilcock #1, paras. 29-30 at pp. 242-243.
[58] Record (AGC), Vol. I, Trebilcock #1, para. 61 at pp. 260-262.

comprising 27 independent countries, has recently taken steps to better integrate securities regulation among member countries into a more centralized framework of financial supervision and systemic risk management. Starting January 1, 2011, a new European Securities and Markets Authority will work in conjunction with new banking and insurance regulatory bodies, and a new European Systemic Risk Board.[59]

30. There are various types of "jurisdictional externalities" that may affect securities markets. Such externalities may be imposed from beyond a jurisdiction's borders; equally, a jurisdiction may impose unwanted effects on others. Where the character of the subject matter regulated is national and international, it is difficult for individual provincial and territorial regulators to address the negative externalities.[60]

5) Capital Markets and Criminal Investigation

31. Those responsible for the investigation of criminal activity in capital markets face many challenges. Both criminals and their victims are spread across jurisdictional lines within Canada and abroad.[61] Investigations routinely involve mutual legal assistance requests to several countries. The increasing sophistication of criminal schemes has mirrored the increasing sophistication of market participants.

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[59] EC, *Position of the European Parliament adopted at first reading on 22 September 2010 with a view to the adoption of Regulation (EU) No .../2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Securities and Markets Authority),* COD/2009/0144 at. 2 and 82 (not yet published in the Official Journal of the European Union) http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=en&procnum=COD/2009/0144,. [AGC Book of Authorities, Tab 58]

[60] Record (AGC), Vol. I, Trebilcock #1, paras. 21-24 at pp. 236-239; Michael Trebilcock (Report in Reply to Québec and Alberta Experts) ("Trebilcock #2"), para. 2 at p. 278; Record (Quebec), Vol. XII, Macey #1, pp. 70-71.

[61] Record (AGC), Vol. I, Affidavit of Stephen White ("White"), paras. 9-10 at p. 271; see also, Criminal Intelligence Service Canada, *2010 Report on Organized Crime.* Ottawa: Royal Canadian Mounted Police, 2010 ("2010 Organized Crime Report"), pp. 34-36. [AGC Book of Authorities, Tab 57]

32. Interprovincial and international cooperation has become essential in the enforcement of the law because investigators recognize that the essential nature of capital markets crimes and related crimes is transnational. Investigators have observed the integrated nature of markets. Criminals seek to profit from "the barriers between countries and institutions." Criminal organizations have taken advantage of technology; as a recent RCMP report noted, "[t]echnology enables perpetrators to undertake criminal activities anonymously, transfer funds quickly, and target victims over a broad geographic area."[62] Investigation has been rendered more difficult and costly as schemes have become more intricate and far-reaching.

6) Modern History of Securities Regulation Reform

33. While calls for the creation of a national regulator date back to the 1935 Royal Commission on Price Spreads,[63] the modern history began with the Porter Commission's suggestion in 1964 that the desirability of uniform regulation may call for a single national regulator.[64] Its report, however, contemplated a federal commission as an eleventh regulator, working with the ten provincial commissions then existing and setting high standards that could be emulated by the provinces.[65]

34. The Canadian securities landscape examined by the Porter Commission was one featuring stock exchanges in Toronto, Montreal, Vancouver, Winnipeg and Calgary.[66] Trading took place through "personal agreement on a trading floor," though the Commission foresaw the day when computer trading would be the norm.[67] Even though it looked at a landscape much different from today's,

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[62] *2010 Organized Crime Report, ibid.* at p. 36. [AGC Book of Authorities, Tab 57]
[63] *Report of the Royal Commission on Price Spreads* (Wm. Kennedy, Chair), Ottawa: King's Printer, 1935, pp. 43-45. [AGC Book of Authorities, Tab 78]
[64] Record (AGC), Vol. II, *Report of the Royal Commission on Banking and Finance*, (Dana H. Porter, Chair), Ottawa: Queen's Printer 1964, pp. 1 ("Porter Commission Report").
[65] Record (AGC), Vol. II, Porter Commission Report, pp. 21-22.
[66] Record (AGC), Vol. II, Porter Commission Report, pp. 6, 16.
[67] Record (AGC), Vol. II, Porter Commission Report, p. 17.

the Porter Commission identified certain themes about securities regulation which resonate through all of the subsequent work on the subject:

a) the need to reduce duplication of regulation;[68]

b) the fact that a great many problems were "more than local;"[69]

c) the need to have effective cooperation with other national regulators;[70]

d) the need for more effective policing to protect investors;[71] and

e) the need for uniformly high standards of legislation and regulation.[72]

There was no legislative response to the Porter Commission's work.

35. Three years later, the Ontario Securities Commission circulated a new proposal for a single national regulatory body exercising jurisdiction on the basis of delegated authority from the provinces combined with federal authority.[73] The need for a national commission was justified on two bases: administrative deficiencies in the provincial commissions, and the need for securities regulation that crosses provincial boundaries.[74] Discussions of that proposal led to draft federal legislation that was never introduced.[75] It is noteworthy that a 1969 report for the province of Quebec acknowledged that a federal presence might be justified under the trade and commerce power.[76]

36. In 1979, the federal Department of Consumer and Corporate Affairs produced a three volume study entitled *Proposals for a Securities Markets Law*

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[68] Record (AGC), Vol. II, Porter Commission Report, pp. 21-22.
[69] Record (AGC), Vol. II, Porter Commission Report, p. 21.
[70] Record (AGC), Vol. II, Porter Commission Report, p. 21.
[71] Record (AGC), Vol. II, Porter Commission Report, p. 22, 27.
[72] Record (AGC), Vol. II, Porter Commission Report, pp. 21-22 .
[73] Record (AGC), Vol. II, CANSEC proposal, pp. 29-39.
[74] Record (AGC), Vol. II, CANSEC Proposal, pp. 32-33.
[75] Harris, Douglas. *A Symposium on Canadian Securities Regulation: Harmonization or Nationalization?*, University of Toronto Capital Markets Institute, 2002, ("U. of T. White Paper") p. 15. [AGC Book of Authorities, Tab 64]
[76] Government of Quebec, *Report of the Study Committee on Financial Institutions in Quebec* (the "Parizeau Report") (1969), p. 132. [AGC Book of Authorities, Tab 61]

for Canada.[77] The proposals contemplated a national securities commission working in cooperation with provincial commissions. The proposals took "[the fact that] the financial market in Canada is Canada-wide in character...as its starting point."[78] Among the proposals was a draft act; however no legislation emerged in response to this work.

37. In 1994, the premiers of the four Atlantic provinces asked the federal government to establish a federal securities regulator.[79] The proposal contemplated a progressive implementation of the federal regulator over a two year period, and suggested that provincial participation in the regime be optional. Federal authority would be achieved through delegation from participating provinces.[80] The proposal drew a response from the federal government: the 1996 Throne Speech stated that the government was "prepared to work with interested provinces towards the development of a Canadian Securities Commission."[81] That work did not lead to legislation.

38. In 2002, the federal Minister of Finance established the "Wise Persons' Committee" to review the strengths and weaknesses of the current system of securities regulation and to recommend an appropriate structure and governance model.[82] The Wise Persons' report, published in 2003 under the title "*It's Time*," proposed a single national regulator. The proposal was premised on many factors:

a) the transformation of capital markets from being primarily local to being national and international;

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[77] Record (AGC), Vol. II, *Proposals for a Securities Market Law for Canada.* Ottawa: Consumer and Corporate Affairs Canada, 1979 ("1979 Proposals"), pp. 40-48.
[78] U. of T. White Paper, *supra* note 75 at p. 21. [AGC Book of Authorities, Tab 64]
[79] U. of T. White Paper, *supra* note 75 at p. 27 [AGC Book of Authorities, Tab 64]; AGC Record, Vol. II, Atlantic Premiers' Proposal, pp. 50-57.
[80] Record (AGC), Vol. II, Atlantic Premiers' Proposal, p. 52; U. of T. White Paper, *supra* note 75 at pp. 27-28. [AGC Book of Authorities, Tab 64]
[81] House of Commons Debates, Hansard, Vol. 133, n. 0001, 2nd Sess., 35th Leg., Feb. 27, 1996, p. 5. [AGC Book of Authorities, Tab 65]
[82] Record (AGC), Vol. II, Wise Persons' Committee Report, p. 60.

b) the importance of "fair and vibrant" capital markets to most Canadians;

c) the need to increase Canada's competitiveness in a global marketplace marked by capital mobility;

d) the increasing challenges facing regulators, such as dealing with multi-jurisdictional transactions;

e) the changing nature of Canada's capital markets, including consolidation of exchanges; and

f) the need to keep pace with regulatory reform abroad.[83]

Again, no legislation was introduced in response to the Wise Persons' work.

39. In May 2005, the Government of Ontario commissioned a panel ("the Crawford Panel"), to develop a framework for securities regulation. That panel included participants from across the country, and held national consultations.[84] The Crawford Panel recommended that a single regulator be attained by having one province enact a *Canadian Securities Act* and other jurisdictions adopt the *Act* by reference.[85] The Panel considered the proposal would be beneficial for reasons similar to those of the Porter Commission and the Wise Persons' Committee.[86]

40. Finally, on January 12, 2009 the Expert Panel on Securities Regulation in Canada ("the Hockin Panel"), commissioned by the federal Minister of Finance, issued its Report. The Hockin Panel recommended a single national regulator. In its view, such a regulator would provide clear national accountability, reduce compliance burdens, reduce systemic risks, strengthen enforcement, and better

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[83] Record (AGC), Vol. II, Wise Persons' Committee Report, pp. 67-78.
[84] Record (AGC), Vol. II, Crawford Panel Report, p. 109.
[85] Record (AGC), Vol. II, Crawford Panel Report, p. 115.
[86] Record (AGC), Vol. II, Crawford Panel Report, pp. 115-116.

serve the needs of investors.[87] It also recommended that the new regime be implemented by voluntary provincial/territorial participation.[88]

41. In July, 2009, the *Canadian Securities Regulation Regime Transition Office Act* came into force.[89] That Act created the Canadian Securities Transition Office ("the CSTO"), which has a mandate to establish a Canadian securities regulator over the course of the next three years.[90] The Government of Canada invited all 13 of Canada's provinces and territories to participate in the planning process for establishing a Canadian securities regulator being conducted by the CSTO. So far, 10 provinces and territories have agreed to participate in that planning process.[91] In developing the *Securities Act* and the Transition Plan, the CSTO received very valuable input from the Advisory Committee of Participating Provinces and Territories, officials of participating jurisdictions and staff of participating regulators.[92]

7) The Proposed Canadian *Securities Act*

42. Although the features of the proposed *Securities Act* will be described further in Part III below, the *Act*'s preamble concisely summarizes both the imperatives leading to the creation of the *Act*, and the *Act*'s objectives. In particular, the *Act* notes: the importance of capital markets to the prosperity of all Canadians; the national and international character of capital markets; and the desire to promote Canadian interests internationally.[93]

43. The goal of the legislation is comprehensive national securities regulation involving a single national securities regulator. The goal is to be achieved

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[87] Record (AGC), Vol. II, Hockin Panel Report, pp. 170-171.
[88] Record (AGC), Vol. II, Hockin Panel Report, p. 182.
[89] *Budget Implementation Act, 2009*, S.C. 2009, c.2, s. 297.
[90] *Canadian Securities Regulation Regime Transition Office Act*, S.C. 2009, c. 2, s. 297, s. 17.
[91] Transition Plan for the Canadian Securities Regulatory Authority, July 12, 2010, p. 1. (http://www.csto-btcvm.ca/documents/Transition_Plan_for_the_CSRA%20.pdf) ("Transition Plan"). [AGC Book of Authorities, Tab 80]
[92] Transition Plan, *ibid.* at p. 54. [AGC Book of Authorities, Tab 80]
[93] Record (AGC), Vol. I, Proposed Canadian *Securities Act*, ("*Securities Act*" or "the *Act*") p. 17.

incrementally, through a process by which willing provinces and territories "opt in" to the regime.[94]

[94] Record (AGC), Vol. I, *Securities Act*, s. 250, p. 162.

PART II – REFERENCE QUESTION

44. On May 26, 2010, the Governor in Council referred a single question to this Court:

> Is the annexed Proposed Canadian Securities Act within the legislative authority of the Parliament of Canada?

45. The position of the Attorney General of Canada is that the answer to this question is "yes." The *Act* as a whole is within Parliament's authority under the general branch of the Trade and Commerce clause in s. 91(2) of the *Constitution Act, 1867*. Part II, Division 6 (ss. 158-165) of the *Act* is also within Parliament's authority pursuant to the Criminal Law power in s. 91 (27).

PART III – ARGUMENT

1) The Test for Determining the Constitutionality of a Legislative Scheme

46. The single question posed by the Governor in Council asks for this Court's advisory opinion on the legislative competence of Parliament to establish a single national securities regulator. Answering this question invites the application of the two stage test articulated in the *Firearms Reference*,[95] which requires this Court to determine:

a) the pith and substance of the law; and

b) whether the law comes within one or more of the heads of power enumerated within s. 91 of the *Constitution Act*, 1867.

2) The Pith and Substance of the Law is Comprehensive National Securities Regulation

a) The Government's Goal is to Create a Single National Securities Regulator

47. "Pith and substance" determinations require courts to look at the purpose of the law, in the sense of what Parliament intended to accomplish,[96] and the practical and legal effects of the law.[97] Purpose is determined at a high level of generality. What is relevant to the pith and substance analysis is consideration of factors such as: express "purpose clauses" within an enactment;[98] the structure of the enactment itself;[99] and certain extrinsic factors such as the background and circumstances surrounding the law's enactment.[100] Effects have

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[95] *Firearms Reference, supra* note 38 at 796. [AGC Book of Authorities, Tab 37]

[96] *Ward v. Canada (Attorney General)*, [2002] 1 S.C.R. 569 at 579 ("*Ward*"). [AGC Book of Authorities, Tab 42]

[97] *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39 at para. 18 ("*COPA*"). [AGC Book of Authorities, Tab 26]

[98] *COPA*, *ibid.* at para. 18; *Firearms Reference*, *supra* note 38 at 796-797. [AGC Book of Authorities, Tabs 26, 37]

[99] *R. v. Hydro Quebec*, [1997] 3 S.C.R. 213 at paras. 99-107, 133-160 (per majority); 15-33 (per dissent). [AGC Book of Authorities, Tab 28]

[100] *Ward*, *supra* note 96 at 579. [AGC Book of Authorities, Tab 42]

significance only where they may demonstrate some alternative or ulterior purpose to the legislation.[101]

48. What is not relevant to the pith and substance analysis is consideration of the law's efficacy. As stated in the *Firearms Reference*, "Parliament is the judge of whether a measure is likely to achieve its intended purposes."[102] Alberta and Quebec have filed voluminous material that endeavours to "prove", *inter alia* that: existing provincial/territorial regulatory schemes work well;[103] competition among regulators is desirable;[104] single national regulators have been ineffective elsewhere;[105] provincial regulators comply with international standards;[106] and a single national regulator is simply bad policy.[107] With respect, this material has very limited utility: the question is not whether Canada should have a single national regulator (a question for Parliament) but whether it can.

i) The Preamble and the Purpose Clause

49. The *Act's* preamble sheds significant light on the Government's motivations and intentions. The subject matter of the regulation--capital markets --is described in the preamble as being nationally important ("Capital markets affect the well-being and prosperity of all Canadians"). Capital markets are "increasingly national and international in scope," thus possessing a character well-suited to federal regulation. The preamble states that it is in the "national interest to effectively protect and promote Canadian interests internationally." The legislation aims to enhance "the integrity and stability of Canada's financial system."

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[101] *R. v. Big M. Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 358. [AGC Book of Authorities, Tab 27]
[102] *Firearms Reference, supra* note 38 at 797; *Ward, supra* note 96 at 579-580. [AGC Book of Authorities, Tabs 37, 42]
[103] Record (Alberta), Vol. XVIII, Rice #1, para. 8 at pp. 10-12.
[104] Record (Quebec), Vol. XII, Macey #1, pp. 73-82.
[105] Record (Quebec), Vol. XII, Macey #1, pp. 46-49.
[106] Record (Quebec), Vol. XII, Corcoran, pp. 106-107;Record (Alberta), Vol. XIX, Spink #1, para. 5 at p. 5.
[107] Record (Alberta), Vol. XVIII, Thomas J. Courchene (A Single National Regulator? Public Policy and Political Economy Perspective) June 26, 2010 ("Courchene #1"), pp. 291-293; Record (Quebec), Vol. XII, Macey #1, pp. 42-43.

50. Given those factors, the Government's specific goal is the creation of "a single Canadian securities regulator, supported by a comprehensive statutory and regulatory regime that applies across Canada." The legislation is also specific as to the *means* that will be employed to create the single regulator, a system whereby willing jurisdictions "opt in."

51. The preamble is thus a clear statement of *what* the government seeks to accomplish, *why* it is doing it and *how* it intends to achieve it. The legislative goal is the creation of a single national regulator to comprehensively regulate Canada's capital markets.

52. Apart from the goal disclosed in the preamble, the *Act* has its own "purpose clause." Three purposes are mentioned: investor protection; the fostering of fair, efficient and competitive capital markets; and contributing to the integrity and stability of the financial system.[108] Those three goals are the ones viewed throughout the world as the proper objectives of securities regulation. The primary international forum for cooperation among securities regulators, IOSCO,[109] lists those same three goals as the key policy objectives for regulators.[110]

53. Quebec, Alberta and the Barreau du Québec have argued in the provincial appellate courts that the *Securities Act* deals with "investor protection" or "consumer protection," objects they claim fall exclusively within provincial competence. But there is no head of constitutional jurisdiction called "investor protection," or "consumer protection." Several heads of power may be invoked in support of federal authority.[111] Federal statutes are replete with provisions that

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[108] Record (AGC), Vol. I, *Securities Act*, s. 9, p. 36.
[109] As noted above, the International Organization of Securities Commissions.
[110] IOSCO, *Objectives and Principles of Securities Regulation*, (June 2010) (updated version), p. 3 (http://www.iosco.org/library/pubdocs/pdf/IOSCOPD329.pdf). [AGC Book of Authorities, Tab 70]
[111] Beaudoin G.A., *La Constitution du Canada*, 3e ed., Montréal, Wilson et Lafleur, 2004, p. 479. [AGC Book of Authorities, Tab 49]

may be characterized as "consumer protection." The federal *Bank Act* contains provisions that protect consumers of banking services;[112] the federal *Food and Drugs Act* protects consumers of prescription drugs.[113] The flaw in the respondents' and intervener's approach is twofold. First, they assume that "investor protection" is an exclusively provincial object because they assume that securities regulation is an exclusively provincial responsibility. Second, they seek to narrow the three objects of the *Act* set out in s. 9 to a single object, and thus diminish the comprehensive nature of the regulation.

ii) The Structure of the *Securities Act*

54. The structure of the Act demonstrates the comprehensiveness of the regulatory regime it proposes to establish. Regulation is administered by a Crown corporation known as the Canadian Securities Regulatory Authority ("CSRA"). The subject matter of the *Act* builds upon existing provincial and territorial legislation[114] by including: registration requirements for securities dealers;[115] prospectus filing requirements;[116] disclosure requirements;[117] and enumeration of specific duties for market participants.[118]

55. There are significant ways in which the statute goes beyond existing provincial/territorial schemes. For example, the Act sets out a framework for the regulation of derivatives.[119] The *Act* establishes an independent adjudicative arm called the Canadian Securities Tribunal, which separates the adjudicative function from the regulatory division.[120] Among current provincial/territorial commissions, Quebec alone has created a similarly independent tribunal. The

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[112] See, for example, *Bank Act*, S.C. 1991, c. 46, s. 440 (bank can't charge for keeping an account without agreement); s. 441(bank must disclose interest rate payable for account).
[113] See, for example, *Food and Drugs Act*, R.S., 1985, c. F-27, s. 8 (prohibition on sale of drugs produced in unsanitary conditions); s. 9 (prohibition on deceptive labelling of drugs).
[114] Record (Alberta), Vol. XIX, Spink #1, paras 10-11 at pp. 7-8.
[115] Record (AGC), Vol. I, *Securities Act*, ss. 76-79, pp. 59-60.
[116] Record (AGC), Vol. I, *Securities Act*, ss. 80-88, pp. 61-63.
[117] Record (AGC), Vol. I, *Securities Act*, ss. 93-100, pp. 64-68.
[118] Record (AGC), Vol. I, *Securities Act*, ss. 109-130, pp. 72-80.
[119] Record (AGC), Vol. I, *Securities Act*, s. 2 (Definition of "derivative"), pp. 20-21, ss. 89-92, pp. 63-64.
[120] Record (AGC), Vol. I, *Securities Act*, ss. 28-49, pp. 43-49.

Act also sets out, in addition to the usual regulatory offences,[121] criminal offences, which largely replicate, and will replace, existing *Criminal Code* offences.[122] New evidence-gathering tools support criminal investigators.[123]

56. One of the important features of the *Act* is the creation, in Part I, of a Council of Ministers that includes the federal Minister of Finance and provincial Ministers appointed by their Lieutenant Governors in Council.[124] This feature is one of the ways in which the *Act* seeks to be sensitive to provincial interests in the securities field. For example, the Council has a role in initiating policy development through participation in the Regulatory Policy Forum created by the *Act*.[125] As well, the Council is intended, *inter alia*, to facilitate the exchange of information with respect to the administration of the *Act* and securities regulation policy in general, review the priorities of the CSRA, and make recommendations on key positions such as Directors, the Chief Regulator and Tribunal members.[126]

57. These features of the *Act* are not unique; they are illustrative of a trend in modern federal statutes dealing with subject matter which may have a double aspect or benefit from close federal/provincial cooperation. The statutes enhance cooperation by acknowledging the provincial interest and providing for meaningful provincial participation. For example, the *Canada Pension Plan Investment Board Act*[127] provides for both provincial input into the composition of the Board,[128] and provincial approval of regulations made under the Act.[129] The *Canadian Environmental Protection Act, 1999*, acknowledges shared jurisdiction in its preamble,[130] and establishes a national advisory committee including

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[121] Record (AGC), Vol. I, *Securities Act*, ss. 153-157, pp. 96-98.
[122] For example, the offence of fraud in s. 158 [AGC Record, Vol. I, *Securities Act*, p. 98].
[123] Record (AGC), Vol. I, *Securities Act*, ss. 148-150, pp. 94-96.
[124] Record (AGC), Vol. I, *Securities Act*, s. 11, p. 37.
[125] Record (AGC), Vol. I, *Securities Act*, s. 50, p. 49.
[126] Record (AGC), Vol. I, *Securities Act*, s. 12, p. 37.
[127] S.C. 1997, c.40.
[128] *Ibid*, s. 10.
[129] *Ibid*, s. 53.
[130] *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33.

provincially-nominated representatives.[131] The *Species at Risk Act* establishes a Conservation Council that includes provincial ministers.[132] That legislation provides for mandatory consultation with provincial ministers on certain matters.[133]

58. The mechanism for achieving the goal of a single national regulator is at the end of the *Act*, in its transitional provisions. The *Act* provides for an "opt-in" procedure, initiated when the Lieutenant Governor in Council of a province indicates consent to the *Act's* application to the province. The federal Minister of Finance must be satisfied that the single regime will apply in that province before the Governor in Council designates the province as a participating one.[134] Thus the goal of a national scheme is to be achieved with the consent of the provinces and territories, not by overriding their legislation.

59. Sections 158-167 of the *Act* are exempted from the opt-in procedure. These are the criminal offences (including provisions for punishment and prosecution). The criminal offences will apply nationally, regardless of whether a province or territory opts in.[135]

iii) The Background to the *Securities Act*

60. The creation of a Canadian *Securities Act* is hardly a novel idea. As is explained in paras. 31-39 above, discussions about the necessity and desirability of a single national securities regulator stretch well back into the twentieth century. Advocates of a single national regulator have consistently maintained that a single regulator would, *inter alia:* reduce regulatory compliance costs, particularly for smaller issuers, thus making the Canadian marketplace more

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[131] *Ibid*, s. 6.
[132] *Species at Risk Act*, S.C. 2002, c. 29, ss. 33-35.
[133] *Ibid*, s.34(4) (orders to protect species on non-federal lands).
[134] Record (AGC), Vol. I, *Securities Act*, s. 250, p. 162.
[135] Record (AGC), Vol. I, *Securities Act*, s. 251(c), p. 163.

competitive;[136] provide a more stable regime;[137] increase accountability;[138] enhance Canada's ability to speak with one voice internationally;[139] and enhance enforcement.[140] Opponents have argued that the current system of thirteen provincial and territorial regulators is preferable because it: is more responsive to local investors and market conditions;[141] permits competition between regulators, thus encouraging innovation;[142] is sufficiently harmonized to reduce compliance costs;[143] and is working well by objective measurements.[144]

b) The Effects of the *Securities Act*

61. As noted above, the effects of the law are less important to the classification exercise than the purpose inquiry. As also noted previously, this inquiry should not be confused with consideration of the law's efficacy or wisdom. This Court should thus not ask whether the law could have been better designed or the subject of more consultation.[145] Rather, the focus is on how the law will operate and affect Canadians.[146] In this regard, two effects are significant: the provisions affecting legal rights of those whose conduct it regulates; and the effect on provincial jurisdiction.

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[136] Record (AGC), Vol. II, Wise Persons Committee Report, pp. 98-103; Crawford Panel Report, pp. 110, 115; CANSEC Proposal, p. 32: Atlantic Premiers' Proposal, p. 50.
[137] Record (AGC), Vol. II, Wise Persons' Committee Report, p. 65.
[138] Record (AGC), Vol. II, Crawford Panel Report, p. 115.
[139] Record (AGC), Vol. II, Wise Persons' Committee Report, pp. 104-105; Crawford Panel Report, p. 116.
[140] Record (AGC), Vol. II, CANSEC Proposal, pp. 32-33; Wise Persons' Committee Report, pp. 65, 73, 77, 90-91; Crawford Panel Report, p. 115.
[141] Record (AGC), Vol. II, Wise Persons' Committee Report, pp. 84-88.
[142] Record (AGC), Vol. II, Wise Persons' Committee Report, p. 89; Record (Quebec), Vol. XII, Macey #1, p. 34ff., p. 49ff.
[143] Record (Alberta), Vol. XIX, Gartner, paras. 25-35, pp. 233-235.
[144] Record (Alberta), Vol. XVIII, Rice #1, paras. 186-198 at pp. 63-68; Record (Alberta), Vol. XIX, Gartner, para. 40, p. 236.
[145] *Firearms Reference*, *supra* note 38 at para. 56. [AGC Book of Authorities, Tab 37]
[146] *Firearms Reference*, *supra* note 38 at para. 24. [AGC Book of Authorities, Tab 37]

i) The Provisions Affecting the Legal Rights of Market Participants

62. The creation of a single Canadian Securities Tribunal, independent from the CSRA in performing its adjudicative functions,[147] is an important feature of the *Act* affecting the legal rights of market participants. Market participants are subject to the decisions of a single Chief Regulator, and those participants directly affected by a decision of the Chief Regulator may have it reviewed by the Canadian Securities Tribunal. The creation of a national tribunal ensures that vindication of individual legal rights does not involve disparate proceedings before a number of provincial and territorial regulators.

63. The *Act* harmonizes the existing civil liability regimes. Part 12 sets out when various types of misrepresentation are actionable,[148] and what defences apply.[149] Part 13 contains extensive provisions governing civil liability for secondary market disclosure, including formulae for calculating damages.[150] Such provisions are particularly important in helping to ensure one of the three goals of securities regulation, that is, investor protection.

64. Investor protection is also addressed through the inclusion of criminal provisions in the *Act*. The relevant *Criminal Code* offences are consolidated in the *Act*,[151] and the *Act* provides new sentencing provisions[152] for the courts, and new tools for investigators.[153] As noted earlier, the criminal provisions are not subject to provincial opt-in; they will apply to the whole of Canada. The introduction of these provisions into securities legislation underscores the completeness of the regime. The *Act* is intended to comprehensively address the legal rights and liabilities of those participating in securities markets.

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[147] Record (AGC), Vol. I, *Securities Act*, s. 28(2), p. 43.
[148] See, for example, Record (AGC), Vol. I, *Securities Act*, ss. 169, 171, 173, pp. 105-113.
[149] See, for example, Record (AGC), Vol. I, *Securities Act*, ss. 170, 172, 174, 177, pp. 107-115.
[150] Record (AGC), Vol. I, *Securities Act*, ss. 194-219, pp. 122-145.
[151] Record (AGC), Vol. I, *Securities Act*, ss. 159-162, pp. 99-101.
[152] Record (AGC), Vol. I, *Securities Act*, ss. 163-165, pp. 102-104.
[153] Record (AGC), Vol. I, *Securities Act*, ss. 148-150, pp. 94-96.

ii) The Effect on Provincial Jurisdiction

65. Another effect that must be considered is the impact on provincial jurisdiction.[154] The *Securities Act* will have a significant impact on those provinces and territories that choose to join the regime. Numerous cases have confirmed that the provinces may regulate various aspects of the trade in securities pursuant to their jurisdiction over property and civil rights.[155] Other cases have limited provincial jurisdiction,[156] or upheld federal jurisdiction to affect securities regulation through the authority over criminal law or federally-incorporated companies.[157] This Court has explicitly warned that because federal jurisdiction over the trade in securities has not been fully exercised, it should not be assumed that such jurisdiction does not exist.[158]

66. It is important to underscore that none of the cases that has upheld provincial jurisdiction has held that such jurisdiction is *exclusive*. There are no statements in any of the cases that support provincial exclusivity.

67. A federal law may be classified differently from a provincial law even when the two laws are similar. Under the "double aspect" doctrine, very similar laws are open to both levels of government. The example often offered of double aspect is the rules of the road: provincial highway traffic offences are within the provincial power to regulate the roads in the province, while very similar *Criminal Code* offences are within the federal power over criminal law.[159] But equally strong examples exist in the field of securities regulation, despite the absence of

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[154] *Firearms Reference, supra* note 38 at paras. 48-49. [AGC Book of Authorities, Tab 37]
[155] *Lymburn v. Mayland,* [1932] A.C. 318 (registration requirements) ("*Lymburn*"); *Gregory Co. v. Quebec Securities Commission,* [1961] S.C.R. 584 (Quebec broker servicing extraprovincial clients) ("*Gregory & Co.*"); *Global Securities, supra* note 7 (production of records to foreign securities commissions); *Multiple Access, supra* note 7 (insider trading). [AGC Book of Authorities, Tabs 19, 15, 14, 21]
[156] *A.G. Manitoba v. A.G. Canada,* [1929] A.C. 260 (province cannot prevent federally incorporated companies from selling shares). [AGC Book of Authorities, Tab 3]
[157] *Smith v. The Queen,* [1960] S.C.R. 776 at 781 (*Criminal Code* offence in relation to false prospectuses); *Multiple Access, supra* note 7 (insider trading). [AGC Book of Authorities, Tabs 39, 21]
[158] *Multiple Access, supra* note 7 at 173; *Global Securities, supra* note 7 at para. 46. [AGC Book of Authorities, Tabs 21, 14]
[159] *O'Grady v. Sparling,* [1960] S.C.R. 804; *Stephens v. The Queen,* [1960] S.C.R. 823; *Mann v. The Queen,* [1966] S.C.R. 238. [AGC Book of Authorities, Tabs 23, 40, 20]

any comprehensive federal law. The federal offence of issuing a false prospectus has been upheld as a valid criminal law, while the same provincial offence has been upheld under property and civil rights in the province.[160] And the federal civil remedy for insider trading in the securities of federally-incorporated companies has been upheld as a valid corporate law, while the provincial civil remedy for insider trading in securities (including those of federally-incorporated companies) has been upheld under property and civil rights in the province.[161]

68. Both Alberta and Quebec have argued in their Courts of Appeal that because the *Act* uses similar language and pursues the same goals as provincial securities statutes, the *Act* unjustifiably encroaches on provincial jurisdiction. But the fact of similarity does not in any way affect Parliament's jurisdiction to enact a more comprehensive law. Indeed, even duplication has been upheld and described as the "ultimate in harmony."[162] It is neither unusual nor offensive in areas that have a double aspect. Overlapping authority is inevitable in our federal system.[163]

69. Moreover, the *Act* does not seek to deny provincial interests; rather, it is sensitive to them. For example, it makes participation voluntary.[164] Provinces that choose to opt in voluntarily agree that their existing securities laws will be replaced by the federal *Act*, and those that choose not to participate retain their existing securities laws. This progressive implementation feature demonstrates the federal intention to proceed along a cooperative path to the achievement of a single regulator, and one that minimizes disruption to the markets. Second, the *Act* gives a significant voice to provinces in the ongoing operation of the CSRA

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[160] *Smith v. The Queen, supra* note 154. [AGC Book of Authorities, Tab 39]
[161] *Multiple Access, supra* note 7. [AGC Book of Authorities, Tab 21]
[162] *Multiple Access, supra* note 7 at 190. [AGC Book of Authorities, Tab 21]
[163] *Multiple Access, supra* note 7 at 180-182, 189; *NIL/TUO Child and Family Services Society v. B.C. Government and Service Employees' Union*, 2010 SCC 45 at para. 42. [AGC Book of Authorities, Tabs 21, 22]
[164] Record (AGC), Vol. I, *Securities Act,* ss. 250-254, pp. 162-164.

through the creation of a Council of Ministers,[165] and its members' right to directly participate in policy-making through the Regulatory Policy Forum.[166] Third, it maintains the existing joint federal and provincial responsibility for investigation and prosecution of securities crimes.

70. Finally, the potential impact on provincial jurisdiction should also be considered in relation to the subject matter of the regulation. Capital markets have a profound influence on the economy, and regulation is important to all investors, a group that, as noted above, comprises virtually all Canadians directly or indirectly. Capital markets thus present a particularly compelling case for federal regulation.

c) Concluding Remarks on Pith and Substance

71. The pith and substance of the *Securities Act* is comprehensive national securities regulation, i.e., regulation of a type that is beyond the ability of any single province or group of provinces to achieve. Importantly, the Canadian capital market does not respect provincial boundaries. Regulation of capital market activity in thirteen geographic areas of the country is not comprehensive regulation for the benefit of all Canadians. The analysis of both the purpose and effects of the *Securities Act* makes it clear that the intention is to create a single national securities regulator, not a fourteenth.

3) Comprehensive National Securities Regulation is a Matter within the General Branch of the Trade and Commerce Clause

a) The Five Indicia of a Constitutionally Valid Scheme

72. Having established that the pith and substance of the Canadian *Securities Act* is comprehensive national securities regulation, the second part of the classification exercise is to ask whether that matter comes within an enumerated

[165] Record (AGC), Vol. I, *Securities Act,* ss. 11-13, p. 37.
[166] Record (AGC), Vol. I, *Securities Act*, s. 50, pp. 49-50.

head of power in the *Constitution Act, 1867*.[167] The short answer to that question is "yes", because the matter of comprehensive national securities regulation comes within the trade and commerce power in s. 91(2). Certain sections, notably ss. 158-166, are also supportable under the criminal law power in s. 91(27).

73. The trade and commerce clause has, since *Citizens Insurance Co. v. Parsons* in 1881,[168] been regarded as having two branches. The first branch deals with interprovincial and international trade. The second, or "general," branch applies where the subject matter "affects the whole of the Dominion."[169] The general branch is not restricted to the regulation of interprovincial and international trade, but applies to "trade as a whole."[170] The Canadian *Securities Act* is not limited to interprovincial and international aspects of securities regulation; indeed the very point of the *Act* is its comprehensive scope.

74. The leading judgment interpreting the general branch of the trade and commerce power is that of Dickson J.(as he then was) in *General Motors of Canada Ltd. v. City National Leasing*.[171] Dickson J. focused on finding a principled way to strike the balance between trade and commerce and property and civil rights;[172] he contemplated asking a series of questions to determine "whether a particular issue requires national rather than local regulation."[173] These questions were summarized by LeBel J. in *Kirkbi Holdings*:[174]

i) is the impugned legislation part of a regulatory scheme?;

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[167] *Ward, supra* note 96 at para. 16; *Firearms Reference, supra* note 38 at para. 15. [AGC Book of Authorities, Tabs 42, 37]
[168] *Citizens Insurance Co. v. Parsons* (1881) 7 A.C. 96 (P.C.) ("*Citizens Insurance*"). [AGC Book of Authorities, Tab 9]
[169] *Citizens Insurance, ibid.* at 113. [AGC Book of Authorities, Tab 9]
[170] *General Motors, supra* note 1 at 661. [AGC Book of Authorities, Tab 13]
[171] *General Motors, supra* note 1 at 661-662, 677. [AGC Book of Authorities, Tab 13]
[172] *General Motors, supra* note 1 at 663. [AGC Book of Authorities, Tab 13]
[173] *Kirkbi AG., supra* note 2 at para. 16. [AGC Book of Authorities, Tab 16]
[174] *Kirkbi AG., supra* note 2 at para. 17. [AGC Book of Authorities, Tab 16]

ii) is the scheme monitored by the continuing oversight of a regulatory agency?;

iii) is the legislation concerned with trade as a whole rather than a particular industry?;

iv) is the legislation of a nature that the provinces jointly or severally would be constitutionally incapable of enacting?; and

v) would the failure to include one or more provinces or localities in the scheme jeopardize the successful operation of the scheme in other parts of the country?

75. Dickson C.J. stated that the five indicia "did not purport to be an exhaustive list," nor is "the presence of any or all of these *indicia* necessarily decisive."[175] Thus, the *General Motors* approach is not so much an exhaustive legal test as a series of indicators that bear on the classification issue.

76. Alberta has argued in its Court of Appeal that the *General Motors* approach should be jettisoned in favour of a "stricter test." To the extent the argument is based on the claim that the *Act* raises a challenge to the constitutionality of an entire provincial enactment, it has no basis in law: double aspect jurisprudence does not require the striking down of provincial statutes where the federal statute is constitutional. To the extent the argument is made on the basis of the need to avoid duplication, the *Act* specifically contemplates no duplication, in that the transitional provisions ensure that the *Act* governs in a province that does agree to participate, and assumes the continued operation of the provincial statute in a province that does not participate. To the extent the argument is based on concern for provincial jurisdiction in areas such as insurance regulation, Alberta's argument is an *in terrorem* one, and again devoid

[175] *Kirkbi AG.*, *supra* note 2 at para. 17. [AGC Book of Authorities, Tab 16]

of a factual basis. The argument seems designed, not just to "strictly limit" the general branch of the trade and commerce power, but to extinguish it.

77. One further preliminary factor is relevant. As with all legislation, a presumption of constitutionality applies. Thus it falls to the challengers to demonstrate that the legislation is *ultra vires*.[176] Evidence has been provided in this Reference as to the nature of the market in securities, the capacity of the provinces to regulate that market, and related factual issues. Quebec and Alberta have filed over 3,000 pages of expert reports and affidavits in support of their positions. In evaluating this overwhelming body of material, some of which is enthusiastic advocacy,[177] and much of which is legally irrelevant, it is important to bear in mind that, on factual issues, the Court's inquiry is directed to determining simply whether there is a rational basis for the legislation. In the words of Laskin C.J., writing for himself, Judson, Spence and Dickson JJ., in the *Anti-Inflation Reference* (1976),[178] "the extrinsic evidence need only go so far as to persuade the Court that there is *a rational basis for the legislation* which it is attributing to the head of power invoked in this case" (emphasis added).

78. The rational basis inquiry is well-suited to a process that permits the generous reception of extrinsic material. There is no trial of factual issues. This means that this Court need not require strict proof of facts, nor resolve conflicts in the evidence. The inquiry is different from that in the justification phase of *Charter* cases, where the burden of proof is on the proponent of legislation to prove "on a preponderance of probability" any facts that are needed to demonstrate justification under s. 1.[179] But in a division of powers case, the

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[176] *Firearms Reference*, *supra* note 38 at para. 25. [AGC Book of Authorities, Tab 37]
[177] See, in particular, Record (Alberta), Vol. XVIII, Courchene #1, pp. 260-293; Record (Quebec), Vol. XII, Macey #1, pp.37-109.
[178] *Re Anti-Inflation Act*, [1976] 2 S.C.R. 373 at 423. [AGC Book of Authorities, Tab 32]
[179] *R. v. Oakes*, [1986] 1 S.C.R. 103 at 137-138. [AGC Book of Authorities, Tab 29]

burden of proof on the proponent is merely to establish a rational basis for the legislation.[180]

b) The *Securities Act* is Part of a Regulatory Scheme

79. Even a cursory reading of the *Securities Act* reveals that, like the *Combines Investigation Act* at issue in *General Motors*, "the *Act* as a whole embodies a complex scheme of economic regulation."[181] The purpose clause, section 9, states that it pursues the two traditional objects of securities regulation: i) the protection of investors; and ii) the promotion of fair, efficient and competitive capital markets.[182]

80. It is worthy of note that the *Act* provides no reason to read these purposes hierarchically, with "promotion of fair, efficient and competitive markets" being subordinate to "investor protection." In their Courts of Appeal, Quebec and Alberta have suggested that the protection of investors is a paramount concern, and a distinctively provincial one. Their own legislative regimes belie this assertion. Quebec's *Securities Act* lists the promotion of market efficiency before investor protection in stating the mission of its securities regulator;[183] Alberta's *Securities Act*[184] has no statement of objectives, and the homepage of the website for Alberta's Securities Commission employs the catchphrase "Fostering Capital Opportunities,"[185] (not "Protecting Alberta's Investors" or something similar). There is a tension between the objectives of market efficiency and investor protection, and a regulatory regime will seek to strike a balance between

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[180] Compare *Re Anti-Inflation Act*, *supra* note 178 at 425 where Laskin C.J.C. also suggested the burden may be on the challenger to establish the absence of a rational basis. [AGC Book of Authorities, Tab 32]
[181] *General Motors*, *supra* note 1 at 676. [AGC Book of Authorities, Tab 13]
[182] Record (AGC),Vol. I, *Securities Act*, s. 9(a)-(b), p. 36.
[183] *Securities Act* (Quebec), R.S.Q. cV-1.1, s. 276.
[184] *Securities Act* (Alberta), R.S.A. 2000, c. s-4.
[185] Alberta Securities Commission homepage, http://www.albertasecurities.com/Pages/Default.aspx (accessed December 1, 2010) [AGC Book of Authorities, tab 47]

them.[186] This Court has recognized the importance of a securities regulator pursuing both objectives.[187]

81. The purpose clause of the *Act* discloses even broader objects in subsection (c):

to contribute, as part of the Canadian financial regulatory framework, to the integrity and stability of the financial system	contribuer, dans le cadre du régime réglementaire des finances du Canada, à l'intégrité et à la stabilité du système financier

82. This goal of contributing to the integrity and stability of the financial system is consistent with the evolving view internationally of the legitimate objects of securities regulation, as articulated by IOSCO.[188] IOSCO views securities regulation as playing a part in monitoring and reducing "systemic risk", which may be described as:

> a "domino effect" whereby the risk of default by one market participant will impact the ability of others to fulfill their legal obligations, setting off a chain of negative economic consequences that pervade an entire financial system.[189]

83. Modern securities products blur the boundaries between what has been traditionally considered "securities" and "banking." The *Securities Act* situates securities regulation within the overall financial regulatory regime to promote national financial stability. The other essential components of that framework, such as banking, interest and bankruptcy, are all similarly subject primarily to federal regulation.[190] This is consistent with the goal of economic integration

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[186] Record (AGC), Vol. I, Trebilcock #1, para. 28 at pp. 241-242.
[187] *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission),* [2001] 2 S.C.R. 132 at para. 41. [AGC Book of Authorities, Tab 10]
[188] Record (AGC), Vol. I, Trebilcock #1, para. 28 at pp. 241-242; Record (Quebec), Vol. XII, Corcoran, pp. 132-133.
[189] Record (AGC), Vol. I, Trebilcock #1, para. 26 at p. 240-241.
[190] *Constitution Act 1867*, ss. 91(15), (19) and (21), respectively.

pursued by the framers of the constitution,[191] and reflected in the economic powers given in ss. 91(14)–(21) of the *Constitution Act, 1867*.

84. The *Act* sets out substantive requirements for participation in securities markets that are similar to those found in existing provincial schemes, including provisions dealing with registration, prospectuses, disclosure and take-over bids. But the *Act* goes beyond existing provincial regimes in important respects. For example, it confers authority to gather, collect and compel information from market participants to monitor systemic risk,[192] and it provides regulation-making power [193] and authority to issue cease trading orders[194] to protect market stability in the face of such risk. It confers the power to share such information with foreign regulators, where, for example, such sharing would "[contribute] to the integrity and stability of the financial system."[195] It establishes a comprehensive continuum of enforcement mechanisms, from administrative proceedings[196] to civil proceedings[197] to regulatory prosecutions[198] and criminal prosecutions.[199] As in *General Motors*, the fact that the *Act* elucidates prohibited conduct, creates an investigatory procedure, and establishes a remedial mechanism leads inexorably to the conclusion that the *Act*:

> constitute[s] a well-integrated scheme of regulation designed to discourage forms of commercial behaviour viewed as detrimental to Canada and the Canadian economy.[200]

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[191] *Black v. Law Society of Alberta*, [1989] 1 S.C.R. 591 at 609. [AGC Book of Authorities, Tab 5]
[192] Record (AGC), Vol. I, *Securities Act*, s. 109(3), p. 72; s. 224, p. 147.
[193] Record (AGC), Vol. I, *Securities Act*, ss. 227, 228(4)(c), pp. 148-152, 153-154.
[194] Record (AGC), Vol. I, *Securities Act*, s. 144, pp. 90-91.
[195] Record (AGC), Vol. I, *Securities Act*, s. 224, p. 147.
[196] Record (AGC), Vol. I, *Securities Act*, ss. 139-147, pp. 86-94.
[197] Record (AGC), Vol. I, *Securities Act*, ss. 169-219, pp. 106-146.
[198] Record (AGC), Vol. I, *Securities Act*, ss. 153-157, pp. 96-97.
[199] Record (AGC), Vol. I, *Securities Act*, ss. 158-165, pp. 98-104.
[200] *General Motors*, *supra* note 1 at 676. [AGC Book of Authorities, Tab 13]

c) The Canadian Securities Regulatory Authority Provides Continuous Oversight

85. The second indicator in the *General Motors* framework is the presence or absence of monitoring by a regulator on a continuous basis. This criterion is satisfied. Part 2 of the *Act* establishes a corporation known as the Canadian Securities Regulatory Authority (CSRA). In s. 16(2) of the *Act*, the means by which the CSRA will pursue the *Act*'s purposes are set out:

(2) The primary means for achieving the purposes of this Act include
(*a*) requirements for timely, accurate and efficient disclosure of information;
(*b*) prohibitions of unfair, improper or fraudulent market practices;
(*c*) standards for honest and responsible conduct by market participants;
(*d*) the monitoring and evaluation of issues or developments affecting the integrity or stability of capital markets; and
(*e*) cooperation and coordination among financial authorities, in Canada and elsewhere.

(2) Les principaux moyens de réaliser l'objet de la présente loi sont notamment
a) des exigences concernant la communication de l'information en temps opportun et avec exactitude et efficience;
b) des interdictions visant les pratiques déloyales, irrégulières ou frauduleuses du marché;
c) des normes touchant le comportement honnête et responsable des participants du marché;
d) la surveillance et l'évaluation des questions et faits nouveaux touchant l'intégrité ou la stabilité des marchés des capitaux;
e) la coopération et la coordination entre les autorités financières, au Canada et à l'étranger.

86. Among the means of pursuing the purposes of the Act, the CSRA has the duty of "cooperation and coordination among financial authorities in Canada and elsewhere."[201] The duty to monitor and evaluate developments affecting the integrity and stability of capital markets further confirms the importance of its role. Within Canada, the CSRA will have to cooperate and coordinate with the Office of the Superintendent of Financial Institutions, the Bank of Canada, the Department of Finance, the Financial Consumer Agency of Canada, and the Canada Deposit Insurance Corporation, all federal agencies involved with the

[201] Record (AGC), Vol. I, *Securities Act*, s. 16(2)(e), pp. 38-39.

regulation of financial institutions, but which are not responsible for the regulation of securities in Canada.

87. Outside Canada, the CSRA will be in a position to speak for Canada with the national securities regulators of other countries, both bilaterally and in multilateral forums such as IOSCO, across the full range of securities regulation issues. Where concerted action is needed, for example, in enforcement or in matters involving the monitoring or containment of systemic risk, the CSRA will be capable of carrying out Canada's role.

88. The CSRA has two divisions, a "Regulatory Division" headed by a "Chief Regulator"[202] and an adjudicative division, the "Canadian Securities Tribunal,"[203] which is independent of CSRA in the performance of its adjudicative functions.[204] The Canadian Securities Tribunal, headed by a Chief Adjudicator,[205] reviews decisions of the Chief Regulator,[206] has powers to conduct proceedings similar to those of superior courts,[207] and has rule-making authority.[208] The establishment of both a regulatory division and a tribunal are indicative of the permanent nature of the regulator and its commitment to "vigilant oversight."[209]

d) The *Securities Act* Focuses on Trade as a Whole

89. The third of the *General Motors* indicators examines the national and general character of the law. The *Securities Act* focuses on trade as a whole, not on a particular product or a specific industry.[210] Capital markets are a key part of the economy's infrastructure. Every industry requires access to fair and efficient capital markets to raise capital and hedge risk; every industry and every investor

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[202] Record (AGC), Vol. I, *Securities Act*, ss. 22-27, pp. 41-43.
[203] Record (AGC), Vol. I, *Securities Act*, ss. 28-49, pp. 43-49.
[204] Record (AGC), Vol. I, *Securities Act*, ss. 18(2)(a), 28(2), pp. 39, 43.
[205] Record (AGC), Vol. I, *Securities Act*, ss. 35-36, pp. 45-46.
[206] Record (AGC), Vol. I, *Securities Act*, s. 26, pp. 42-43.
[207] Record (AGC), Vol. I, *Securities Act*, s. 39, p. 47.
[208] Record (AGC), Vol. I, *Securities Act*, s. 49, pp. 48-49.
[209] *General Motors*, *supra* note 1 at pp. 677-678. [AGC Book of Authorities, Tab 13]
[210] Compare *Labatt Breweries of Canada Limited v. Attorney General of Canada*, [1980] 1 S.C.R. 914. [AGC Book of Authorities, Tab 18]

wants assurance that those markets are being regulated to monitor and manage risk. Capital markets have a pervasive effect on the national economy, and a national regulator is well-situated to ensure that the interests of all Canadians are protected.

90. Alberta and Quebec have erroneously characterized the *Act* in the provincial appellate courts as being regulation of a single "securities industry." It is true that securities law is partly concerned with regulating parties that might be thought to be in a "securities industry," such as securities dealers and other intermediaries who purchase and sell securities. But securities legislation is also very much concerned with regulating the conduct of companies that form part of virtually every industry in Canada. Securities laws and rules are not focused solely on regulating the types of securities that these many different kinds of companies may issue to investors; they are also focused on regulating ways in which public companies conduct their affairs in order to ensure that parties that seek capital from our capital markets abide by certain standards, thereby enhancing the reputation and quality of our capital markets. Securities law therefore transcends any one industry sector and regulates the conduct of a broad and diverse group of companies active in all sectors of the Canadian economy.

91. Examples of this kind of regulation include not only rules governing primary and secondary market disclosure obligations, but extend to such matters as: the composition of public company audit committees, the financial experience that members of such committees must have and audit committee responsibilities;[211] the maintenance of corporate governance standards including such matters as board composition, the choice of the Chair of the Board and the need for nominating and compensation committees;[212] and the establishment

[211] Alberta's National Instrument 52-110(Audit Committee); Quebec Regulation 52-110. [AGC Book of Authorities, Tabs 43, 76]
[212] Alberta National Instrument 58-101(Disclosure of Corporate Governance Practices); Quebec Regulation 58-101. [AGC Book of Authorities, Tabs 45, 77]

and maintenance of disclosure controls and procedures, as well as internal controls over financial reporting.[213] Just as competition law imposes rules on companies in all industries concerning what competitive practices are or are not acceptable, securities laws impose rules on companies in all industries on how they must structure aspects of their internal administration and their interaction with capital markets.

92. A logical place to begin the analysis of whether the focus of the *Act* is on trade as a whole is to look at the character of the subject matter to be regulated. In this regard, the preamble to the legislation is highly instructive. The first four clauses of the preamble refer to the wide-ranging impact of capital markets, and those markets are the general subject matter of regulation. Each of the preamble's clauses merits closer scrutiny.

i) "Capital markets affect the well-being and prosperity of all Canadians"

93. The importance of vibrant capital markets to the economy generally, and to individual Canadians, cannot be seriously disputed. While many Canadians may not be fully aware of the extent to which their financial security is tied to the health of capital markets, the statistical evidence is compelling. For example, in December of 2009, the Canada Pension Plan Investment Board held $17.9 billion in Canadian equities, and $51.1 billion in foreign equities.[214] Similarly, the Caisse de dépôt et placement du Québec--a very large institutional fund manager--held $17.1 billion in Canadian equities (of which 80% was outside Quebec), and $29.3 billion in foreign equities, as of the end of 2009.[215] The Wise Persons' Committee found in 2002 that 46% of Canadians own publicly traded equities and, if indirect holdings through pension funds are considered, "almost

[213] Alberta National Instrument 52-109 (Certification of Disclosure in Issuers' Annual and Interim Filings); Quebec Regulation 52-109. [AGC Book of Authorities, Tabs 44, 75]
[214] Record (AGC), Vol. I, Milne, para. 6.5, p. 198.
[215] Caisse de dépôt et placements du Québec, *Combined Financial Statements 2009,* http://www.lacaisse.com/en/nouvelles-medias/Documents/Etats-financiers_RF2009_EN.pdf. [AGC Book of Authorities, Tab 50]

all Canadians are invested in the public equity markets."[216] The same committee found that 88% of the long-term financing of Canadian firms is raised in capital markets. Capital markets may thus be accurately characterized as a "national asset."[217]

ii) "Capital markets are increasingly national and international in scope"

94. Though Alberta and Quebec seek to deny it, the evidence is overwhelming that capital markets are national and international in character rather than local. Moreover, this Court has already accepted the national and international characterization, on two occasions.[218]

95. Assuming that there still is room for debate, the proposition can be easily demonstrated in a variety of ways. The issue has been extensively studied by a number of expert committees, all of which have agreed on the national/international characterization.[219] The committees reached this appraisal by examining empirical evidence. First, a two-thirds majority of the issuers of securities in Canada are registered in more than one jurisdiction. Second, only a tiny minority of issuers seek to raise capital in only their home provinces,[220] whereas 25% raised capital in ten or more provinces and territories. Third, the vast majority of mutual funds were offered for sale throughout Canada. Fourth, significant numbers of Canadian issuers of securities are cross-listed on U.S. exchanges. Fifth, foreign securities dealers, some associated with banks, have set up operations in all domestic financial centres.[221]

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[216] Record (AGC), Vol. II, Wise Persons' Committee Report, p. 72.

[217] Anisman P., *The Proposals for a Securities Market Law for Canada: Purpose and Process*, 19 Osgoode Hall L. J. 329 at 334-335, 352 (1981). [AGC Book of Authorities, Tab 48]

[218] *Global Securities*, *supra* note 7 at para. 28; *Multiple Access, supra* note 7 at p. 173. [AGC Book of Authorities, Tabs 14, 21]

[219] Record (AGC), Vol. II, Wise Persons' Committee Report, p. 62; Crawford Panel Report, p. 111.

[220] Record (AGC), Vol. I, Milne, para. 3.5 at pp.187-188; Record, Investment Industry Association of Canada materials ("Record (IIAC)"), Affidavit of Jeff Kennedy, para. 23.

[221] Record (AGC), Vol. I, Milne, paras. 3.1-3.14 at pp. 186-191.

96. The expert reports filed by Alberta and Quebec have attempted to characterize Canadian capital markets as "local and international".[222] These characterizations, however, rely as much on assertion as they do on objectively verifiable data. As well, they focus on very narrow segments of the capital market. As pointed out by Professor Trebilcock, to the extent that these local markets exist they are very probably the *result* of the present regulatory structure rather than a genuine feature of the market. In the absence of regulatory barriers, there is no reason to believe that capital flows would respect provincial territorial boundaries. All of the components of this market, in particular the transmission of information and the capital itself, move instantaneously and often with minimal cost from coast to coast to coast. Even where capital appears to be raised exclusively within a province, the capital may come from institutional investors located in one province funded by clients who are spread across the country.[223]

97. It should be noted that Alberta's own evidence acknowledges the existence of a national market. Papers authored by the CSA and provincial officials in response to proposals for a federal regulator refer numerous times to the existence of a "national market."[224] References to a "national capital market" have also appeared in CSA policy documents.[225]

98. This is not to deny that there has been, and will continue to be, some local flavour to capital markets. But it is impossible today to maintain credibly that the dominant characteristic of capital markets is anything other than national (i.e. interprovincial) and international. The actions of issuers of securities and

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[222] Record (Quebec), Vol. XII, Macey #1, p. 1620.
[223] Record (IIAC), Vol. XXXI, Affidavit of Jeff Kennedy, paras. 58-60, pp. 48-49
[224] Record (Alberta), Vol. XIX, Affidavit of Dennis Gartner, para. 26, Vol. XX, pp. 160, 163,174,183
[225]Canadian Securities Administrators, National Policy 62-201—Bids Made only in Certain Jurisdictions, http://www.albertasecurities.com/securitiesLaw/Regulatory%20Instruments/12/37/np62-201.pdf (AGC Book of Authorities, Tab 52]

investors demonstrate that they are treating capital markets as national and international. The markets do not respect provincial borders.[226]

99. It is interesting to note that the very case law that supports provincial jurisdiction in securities regulation is based on factual situations involving the interprovincial or international activities of market participants. *Global Securities* concerns the investigation of possible securities infractions of a person and company operating in more than one jurisdiction.[227] In that case the B.C. Securities Commission filed evidence to demonstrate that effective securities regulation was only possible through effective inter-jurisdictional cooperation.[228] In *Gregory and Co. v. Quebec Securities Commission*,[229] what was at issue were the actions of a Québec broker in promoting securities offerings and servicing clients beyond the borders of Québec. In *R. v. W.M. McKenzie Securities Ltd.*,[230] an Ontario broker solicited customers within Manitoba. All three cases upheld provincial jurisdiction, but the facts clearly demonstrate that the daily business of both market participants and regulators stretches beyond provincial borders.

iii) "Capital markets are rapidly evolving and increasingly complex"

100. The rapid evolution of capital markets over the latter half of the 20th century and into the present one has heightened their importance to the economy as a whole and to individual Canadians. As noted above, almost all Canadians participate directly or indirectly in stock markets.[231] The health of those markets is critical to everyone with a pension, everyone who holds a mortgage, and everyone who has shifted some or all of their savings from bank deposits to mutual funds or other investment vehicles.[232]

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[226] *Kirkbi AG.*, *supra* note 2 at para. 29. [AGC Book of Authorities, Tab 16]
[227] *Global Securities*, *supra* note 7 at paras. 6-8. [AGC Book of Authorities, Tab 14]
[228] *Global Securities*, *supra* note 7 at paras. 27-28. [AGC Book of Authorities, Tab 14]
[229] *Gregory & Co.*, *supra* note 155. [AGC Book of Authorities, Tab 15]
[230] (1966), 56 D.L.R. (2d) 56 (Man. C.A.) ("*McKenzie Securities*"). [AGC Book of Authorities, Tab 30]
[231] Record (AGC), Vol. I, Milne, paras. 6.5-6.6,12.1 at pp. 198-199, 217.
[232] Record (CBA), Vol. XXVIII, Wrobel, para. 20, pp. 14-15

101. The vigorous growth of capital markets has been accompanied by the development of a bewildering array of new securities instruments based on sophisticated mathematical modelling.[233] The increasing complexity of the products, and the high speed and high volumes of computer trading, present formidable challenges to whichever regulator, provincial or federal, has to regulate the issuers of these products.

102. The relevance of such evidence is not to argue that only federal expertise can be effectively brought to bear on the problem, but that securities transactions are affected by more highly integrated world markets. When the U.S.A. sneezed in 2007 – due in significant measure, to the "securitization" of loans – many other countries caught a cold. The response was joint, global action. The recent global economic crisis is compelling evidence of the internationalization of markets and their importance to the national interest. Indeed, the effect of an economic crisis in one country on the capital markets of others is the stuff of daily news reports. This bolsters the conclusion that there is a rational basis for the federal initiative.

iv) "It is important for Canada to have competitive capital markets and a strengthened, comprehensive and coordinated enforcement regime for those markets"

103. As noted above, since virtually all Canadians are invested directly or indirectly in securities markets, the importance of having *competitive* markets in a global marketplace should be obvious. The various blue ribbon panels that have looked at the issue have all concluded that competitiveness of the economy generally would be enhanced by lowering compliance costs to those regulated, as would occur if there were one regulator, not thirteen.[234] Indeed, international bodies such as the OECD and IMF have come to the same conclusion.[235]

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[233] Record (AGC), Vol. I, Milne, paras. 4.1-4.5 at pp. 191-193.
[234] Record (AGC), Vol. II, Wise Persons' Committee Report, pp. 98-99; Crawford Panel Report, pp.115-116; Hockin Panel Report, p. 164.
[235] OECD Economic Surveys 2010 (Canada), Overview, p. 8 (http://www.oecd.org/dataoecd/23/38/45950025.pdf); International Monetary Fund, Canada: Financial

104. The preamble also speaks to the goal of increasing the comprehensiveness of the enforcement regime. The experience of investigators is that securities crime is both an interprovincial and international phenomenon.[236] From the criminal investigation perspective, again the subject matter of regulation is something that transcends provincial and even national borders.

e) Limitations on the Provincial Capacity to Regulate

105. The fourth of the *General Motors* indicators concerns whether the legislation is such that "provinces jointly or severally would be constitutionally incapable of enacting". This factor calls for an examination of provincial capacity – is this an area in which the provinces and territories acting individually or collectively can enact the comprehensive regulatory regime contemplated by the *Securities Act*? The following paragraphs will demonstrate that the answer to this question is "no."

106. In considering this branch of the *General Motors* approach, it is critical to bear its purpose in mind. The fourth and fifth indicators were first suggested by Dickson J. (as he then was) in his dissenting judgment in the *Canadian National Transportation* case:[237]

> In approaching this difficult problem of characterization it is useful to note the remarks of the Chief Justice in *MacDonald v. Vapor Canada Ltd.*, supra, at p. 165, in which he cites as possible indicia for a valid exercise of the general trade and commerce power the presence of a national regulatory scheme, the oversight of a regulatory agency and a concern with trade in general rather than with an aspect of a particular business. To this list I would add what

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System Stability Assessment—Update, 2008; January 15th, 2008 www.imf.org/external/pubs/ft/scr/2008/cr0859.pdf, p. 33. [AGC Book of Authorities, Tabs 66, 58]

[236] Record (AGC), Vol. I, White, paras. 9, 17 at pp. 271, 273-274.

[237] *A.G. Canada v. Canadian National Transportation Limited*, [1983] 2 S.C.R. 206 at 267-268. [AGC Book of Authorities, Tab 1]

> to my mind would be even stronger indications of valid general regulation of trade and commerce, namely (i) that the provinces jointly or severally would be constitutionally incapable of passing such an enactment and (ii) that failure to include one or more provinces or localities would jeopardize successful operation in other parts of the country.

107. It is apparent from the foregoing that the presence of these indicators was used by Dickson J. as confirmatory evidence of the appropriate exercise of the general branch of the trade and commerce power. Consequently, he did not suggest that the ability of the provinces to band together and act would demonstrate the absence of federal authority.

108. In considering the capacity of the provinces to enact comprehensive securities regulation, each province acting alone has limitations on its legislative powers that preclude comprehensive regulation, and a group of provinces acting in concert (as in the passport system) is subject to further limitations that preclude comprehensive regulation.

109. The first limitation on provincial power is the inability to regulate interprovincial and international trade.[238] This limitation has been a serious problem for the regulation of the marketing of agricultural products, and in that context the solution has been found in complex federal-provincial marketing plans that have been constructed with interlocking federal and provincial laws.[239] In the field of securities regulation and in the absence of federal regulation, the courts have displayed a greater tolerance of provincial power, upholding provincial regulation of a broker operating in the province whose customers were

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[238] For example, *Burns Foods Ltd. et al. v. Attorney General for Manitoba et al.*, [1975] 1 S.C.R. 494 (hog marketing plan could not apply to hogs imported from another province); *Central Canada Potash Co. v. Government of Saskatchewan*, [1979] 1 S.C.R. 42 (provincial regulation of potash production unconstitutional because product destined for international markets); reversed for provincial natural resources by *Constitution Act, 1982*, s. 50 adding new 92A(2). [AGC Book of Authorities, Tabs 6, 8]

[239] Compare *A.G. Man. v. Man. Egg & Poultry Assn.*, [1971] S.C.R. 689 (provincial egg marketing scheme struck down) with *Re Agricultural Products Marketing Act*, [1978] 2 S.C.R. 1198 (federal-provincial egg marketing scheme upheld). [AGC Book of Authorities, Tabs 2, 31]

outside the province,[240] a broker operating outside the province whose customers were inside the province,[241] and insider trading by investors in one province using the stock exchange (the TSX) in another province.[242] These cases recognized that interprovincial and international trades in securities were outside provincial competence, but held that there was enough intraprovincial activity in each case to found provincial jurisdiction. However, none of these cases opined on the limits of provincial jurisdiction, and it is clear from the agricultural marketing cases that the provinces would not be able to exercise unlimited interprovincial regulation.

110. Alberta and Quebec attempt to mask this limitation by describing securities transactions as simply a chain of intraprovincial transactions.[243] These arguments mistake cause for effect: provinces regulate on that basis because *that is all they are constitutionally able to do*; it does not mean that the description reflects the true character of the securities marketplace and in fact it ignores the economic reality of a cross-border securities trade. A security purchased or sold through an exchange or automated system is an economic transaction between persons who could be located anywhere in the world. Not only are the parties likely to be located in different provinces (or countries), but so are their brokers.[244] Especially since the consolidation of stock exchanges in Canada, the stock exchange or other trading market on which the trade is effected is also likely to be in a different province from that of the parties. Settlement of the trade is typically through the Canadian Depository for Securities in Toronto.[245]

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[240] *Gregory & Co., supra* note 155 (although Court did not directly rule on the constitutionality of this application of the provincial law). [AGC Book of Authorities, Tab 15]

[241] *McKenzie Securities, supra* note 230. [AGC Book of Authorities, Tab 30]

[242] *Bennett v. British Columbia (Securities Commission)*, 94 D.L.R. (4th) 339 (B.C.C.A.). [AGC Book of Authorities, Tab 4]

[243] Record (Alberta), Vol. XIX, Spink #1, para. 2, p. 2

[244] Record, Canadian Foundation for Advancement of Investor Rights materials, Vol. XXXII, Affidavit of Ermanno Pascutto, para. 13, pp. 5-6

[245] Record (IIAC), Vol. XXXI, Affidavit of Philip S.W. Smith, paras. 29-41,pp. 9-12; Gillen, M.R. *Securities Regulation in Canada*, Toronto, Carswell, 3rd ed., 2007, p. 43, 79 [AGC Book of Authorities,

111. Alberta and Quebec also ignore the actual regulation underpinning a typical secondary market transaction, which includes: 1) the regulation of conduct in the market, generally, to prevent manipulative trading or trading on undisclosed material information to the investor's detriment;[246] 2) the regulation of the conduct of the issuer, which could be located anywhere, to require it to disclose all material information in a timely way, to govern its affairs to an appropriate standard and to manage and disclose its conflicts of interest;[247] and 3) the regulation of the integrity and conduct of the exchange or trading system, the intermediaries, and the clearing system to ensure that the trade is conducted fairly and is settled.[248]

112. Securities regulation has traditionally been concerned with the primary market, requiring a company that issued new securities to provide potential purchasers with a prospectus that makes full, true and plain disclosure. That continues to be a concern of modern securities regulation. But the secondary market now greatly exceeds the primary market in volume and importance, since 94% of trading activity occurs in the secondary market.[249] A person wishing to buy a share in a company will only have an opportunity to buy it in the primary market if the company happens to be issuing new shares at that time. The purchaser will typically purchase the share in the secondary market. In light of the interprovincial and international character of the secondary market, the efforts by the provinces to harmonize regulatory requirements and focus more attention on disclosure and conduct in the secondary market are not at all surprising.

Tab 59]; see also the website of Clearing and Depository Services Inc.: http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-Profile?Open. [AGC Book of Authorities, Tab 55]

[246] Johnston, David and Rockwell, Kathleen, *Canadian Securities Regulation*, 4th ed., LexisNexis Canada Inc., 2006, p. 247. [AGC Book of Authorities, Tab 72]

[247] Johnston, *ibid*, p. 196. [AGC Book of Authorities, Tab 72]

[248] Johnston, *ibid*, p. 633. [AGC Book of Authorities, Tab 72]

[249] Canadian Securities Administrators, Notice 53-302 (http://www.gov.ns.ca/nssc/CSANotices/csanotice53-302.pdf), p. 4; TSE Committee on Corporate Disclosure, *Final Report: Responsible Corporate Disclosure – A Search for Balance*, (Toronto: Toronto Stock Exchange, 1997), p. 3 ("Allen Committee Report"). [AGC Book of Authorities, Tabs 51, 81]

113. The second limitation concerns matters outside the province.[250] Provincial laws cannot apply extraprovincially; Parliament has no territorial limitations on its powers. Here too the courts have been tolerant of provincial activity, upholding the power of the British Columbia Securities Commission to seize documents for the purpose of handing them over to the Securities and Exchange Commission in the United States in support of the investigation of a breach of securities law in the United States.[251] But in that case the seized documents were located within the province. What no provincial securities commission can do is make an order that applies outside the province, even though the issuers, dealers and advisers mostly operate in more than one province. Thus a dealer ordered to cease trading in Quebec will be free to continue to trade in New Brunswick until the New Brunswick Commission makes a similar order.

114. The adverse consequence of this limitation has been brought home to frustrated investors in a series of cases dealing with certification of proposed classes in class action lawsuits. In *Pearson v. Boliden*,[252] the plaintiffs brought a class action in British Columbia for misrepresentation in a prospectus. The defendants were successful in excluding investors in New Brunswick, Alberta and the Territories from the class, on the basis that the courts are "bound to follow the constitutional principle that it is the province in whose territory the securities are distributed which has the jurisdiction (in the constitutional sense) to regulate the manner in which the distribution is carried out and to attach civil consequences to non-compliance."[253] Other cases have similarly limited investors' ability to seek redress as part of class actions.[254]

115. Another serious consequence of the territorial limits of provincial jurisdiction arises in the context of take-over bid regulation. A take-over bid—an

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[250] E.g., *Unifund Assurance Co. v. Insurance Corp. of British Columbia,* [2003] 2 S.C.R. 63 (holding that otherwise valid provincial law could not apply outside the province). [AGC Book of Authorities, Tab 41]
[251] *Global Securities, supra* note 7. [AGC Book of Authorities, Tab 14]
[252] (2002), 222 D.L.R. 4th 453 (B.C.C.A.). [AGC Book of Authorities, Tab 24]
[253] *Ibid.* at para. 65. [AGC Book of Authorities, Tab 24]
[254] *Coulson v. Citigroup*, 2010 ONSC 1596 at paras. 145-146; *Schroeder v. DJO Canada Inc.*, 2010 SKQB 125 at paras. 67-69. [AGC Book of Authorities, Tabs 12, 38]

attempt by one entity to acquire control of another—is "a dramatic occurrence in corporate life."[255] When shareholders of a company that is the target of a take-over bid are located in multiple provinces, an offer in one province can have a profound impact on shareholders in another.[256] Provincial securities regulators can only regulate offers made to shareholders within its boundaries.[257] This creates the possibility that not all shareholders will be treated equally, if for example a take-over bid offer is made to all of the target company's shareholders in one province but not another. Currently, only a national policy exists to encourage provincial regulators to take action to prevent this occurrence.[258] A national regulator would have the capacity to implement binding regulation over take-over bids to ensure that investors across the country are protected equally.

116. The third limitation is the status and essential capacities of federally-incorporated companies. This limits the power of the province to regulate the issue of securities by federally-incorporated companies.[259] Some regulation has been upheld: for example, a federally-incorporated company can be required to issue shares through a provincially registered broker,[260] and insider trading in shares, including the shares of federally-incorporated companies, can be regulated.[261] But the Privy Council decided in 1929 that a provincial law that would require a company to obtain the approval of a provincial official or agency for the issue of shares in the province is unconstitutional in its application to federally-incorporated companies.[262] While the scope of this decision is not

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[255] Johnston, *ibid*, p. 285 [AGC Book of Authorities, Tab 72]
[256] *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132; Tamura, G.C. "Take-over Bids & Extraterritorial Application," (1996) 19 OSCB 399, at 403-407 (AGC Book of Authorities, Tabs 10, 79]
[257] Johnston, *ibid*, p.291 [AGC Book of Authorities, Tab 72]
[258] CSA National Policy 62-203 "Take-Over Bids and Issuer Bids," (http://www.albertasecurities.com/securitiesLaw/Regulatory%20Instruments/6/13983/2698057%20v1%20-%20NP%2062-203%20-%20PUB%20NOV%2016,07.pdf), s. 2.3; [AGC Book of Authorities, Tab 54]
[259] Condon M.G., Anand A.I., Sarra J.P., *Securities Law in Canada: Cases and Commentary*, (Emond-Montgomery, 2005, p. 32. [AGC Book of Authorities, Tab 56]
[260] *Lymburn, supra* note 155. [AGC Book of Authorities, Tab 19]
[261] *Multiple Access, supra* note 7. [AGC Book of Authorities, Tab 21]
[262] *A.G. Manitoba v. A.G. Canada, supra* note 156. [AGC Book of Authorities, Tab 3]

entirely clear,[263] the denial by a provincial regulator of a prospectus receipt to a federally-incorporated company is constitutionally suspect.[264]

117. The fourth limitation is criminal law, which is an exclusively federal power under s. 91(27) of the *Constitution Act, 1867*. A province cannot legislate a comprehensive enforcement regime for securities regulation because the conduct of the truly bad actors needs to be punished, not merely by banning them from securities activity, or imposing administrative penalties or civil remedies, but by imposing sentences under the criminal law power.

118. The fifth limitation concerns the international relationships that have become so important in the field of securities regulation. A province cannot represent Canada's interests or speak for Canada at the international level. Quebec points out in its expert reports that both it and Ontario are vigorous participants in IOSCO, the international forum for securities regulators. To the extent Quebec makes out a case for the importance of the work of IOSCO, it reveals the regrettable absence of a voice that can speak for all of Canada at that organization, make commitments on behalf of Canada, and deliver on any commitments made. This diminishes Canada's capacity to cooperate with other countries in the design and enforcement of its securities laws, creating serious issues of effectiveness and accountability, as commentators have noted.[265]

119. One of the most important duties undertaken by IOSCO is the promulgation of a set of principles to guide securities regulators in their work. In 1998, IOSCO issued a new statement of the appropriate purposes of securities regulation. For the first time, the "monitoring of systemic risk" was added.[266] As noted previously, "systemic risk" deals with preventing the domino effect of the

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[263] Nicholls, C. and MacIntosh J., *Securities Law,* Toronto, Irwin Law, 2007, p. 65. [AGC Book of Authorities, Tab 73]
[264] Gillen, M.R., *supra* note 245, p. 79. [AGC Book of Authorities, Tab 59]
[265] Record (CBA), Vol. XXVIII, Wrobel, paras. 50-52,57-59, pp. 29-30 32.
[266] IOSCO, *Objectives and Principles of Securities Regulation*, September 1998 (http://www.iosco.org/library/index.cfm?section=policydocs). [AGC Book of Authorities, Tab 71]]

failure of one part of an integrated system from infecting the remaining parts. Though the exact role securities regulators may play in preventing systemic risk is still the subject of discussion domestically[267] and internationally, the ability of IOSCO members to play any meaningful role must presume the power to make national decisions and take action at the national level. In fact, membership in IOSCO entails a commitment to seeking legislative change to adhere to the agreed norms of the organization,[268] something Quebec and Ontario cannot do on behalf of Canada.

120. When provinces join together, they cannot approximate a national system of comprehensive securities regulation. The limitations inherent in cooperative provincial action in this field are illustrated by the operation of the passport system.

121. Nine of the ten provinces and the three territories have joined together to create a "passport" system of securities regulation. Their aim is to achieve some of the benefits of a single national regulator without creating an actual national regulator. Under the passport system, a single application to the market participant's home jurisdiction (the principal regulator) provides a passport to the other provinces and territories. Because of the territorial limit on provincial power, this takes the form of each participant province automatically recognizing and adopting the decision of the principal regulator. In order to overcome the problem of divergent regulatory rules, the passport system had to be and was preceded by the harmonization of a number of the provincial laws or rules regulating the topics covered by the passport system.

122. The passport system is a recognition by its participants that a single securities regulator is needed for a market that does not respect provincial

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[267] Alberta Securities Commission, 2010 Annual Report,[AGC Book of Authorities Tab 47]http://www.albertasecurities.com/news/ASC%20Publications/6116/2010%20ASC%20Annual%20Report.pdf, p. 10

[268] Record (Quebec), Vol. XII, Corcoran, p. 132.

boundaries, and it is indeed a great improvement over thirteen independent regulators. However, the system illustrates further limitations on provincial power when joint action is attempted. First, the regulatory coverage is incomplete because the provinces have been unable to achieve agreement on many important aspects of securities regulation. Second, the regulatory system is incomplete, because provinces have been unable to deliver full participation, since Ontario has refused to join the system, and in any case there is no way of binding the participating provinces to continue their participation. Third, any change in the system requires unanimous consent of the participating provinces. Fourth, the resources of the participating provinces are not combined, so that smaller provinces continue to have much less capacity than the large provinces to fulfil their regulatory responsibilities as principal regulators. These points are elaborated in the paragraphs that follow.

123. With respect to regulatory coverage, the passport system is focused on a selected number of regularly-occurring matters. It covers: prospectus offerings by issuers (although exemptions for "private" distributions continue to differ from province to province); the registration of investment dealers and advisors; and discretionary exemptions. These rules have been substantially harmonized by the provinces and territories. However, filing fees still have to be paid to the regulator in every province or territory in which shares are to be issued or in which a market participant operates,[269] notwithstanding that only the principal regulator conducts a review of the prospectus, filings, or other application. And the party seeking to raise capital will still have to learn the rules particular to each jurisdiction. While the resultant proliferation of rules and policies is benignly described by the experts of Alberta and Quebec as "regulatory competition"[270] or "dynamic efficiency,"[271] it is self-evident that such a system is more complex and costly.

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[269] Record (Ontario), Vol. XXIV, Affidavit of Robert Christie, para. 42, p. 18
[270] Record (Quebec), Vol. XII, Macey #1, p. 34ff;
[271] Record (Alberta), Vol. XXII, Report of Thomas Courchene dated October 27, 2010 ("Courchene #2"), p. 116ff.

124. The passport system does not cover the regulation of derivatives, regulatory fees, takeovers, insider trading or self-regulatory organizations (for example, the self-regulatory organizations of investment dealers and mutual fund dealers whose rules must be approved by the commissions). The evidence filed by Ontario identifies a number of other significant areas that the passport system does not cover.[272]

125. With respect to the regulation of derivatives,[273] the need for greater involvement by securities regulators in this field has been noted both in Canada and internationally.[274] In a recent consultation paper, the Canadian Securities Administrators have noted that the over-the-counter derivatives market is small, but "a vital market for all sectors of the economy."[275] The paper also acknowledges that derivatives are subject to different regulatory regimes in each province.[276]

126. While the passport system contemplated cooperation in enforcement, it is still the case that disciplinary and remedial orders against those who violate the rules apply only in the jurisdiction where the order is made and cannot be applied in other jurisdictions until reciprocal or similar orders are made in those other jurisdictions, in some cases only after a further opportunity to be heard. Failure to have a co-ordinated response to matters such as take-over bids, financial disclosure or insider trading reports can cause significant harm to investors.[277]

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[272] Record (Ontario), Vol. XXIV, Christie, para, 38, p. 16; appendix 2, pp.30-34

[273] Grottenthaler M.E. and Henderson P.J., *The Law of Financial Derivatives in Canada*, Toronto, Thomson Reuters, 2003, s.10.1.1. [AGC Book of Authorities, Tab 62]

[274] Group of 20 ("G 20") *Leaders' Statement*, Pittsburgh Summit, September 24-25, 2009, p.9 (http://www.g20.org/pub_communiques.aspx); International Monetary Fund, Global Financial Stability Report (April, 2010), ch. 3 (http://www.iosco.org/news/pdf/IOSCONEWS188.pdf). [AGC Book of Authorities, Tabs 63, 67].

[275] Canadian Securities Administrators, Consultation Paper 91-4101 on Over-the Counter Derivatives Regulation in Canada, s.1.2 (p.8). Ontario Securities Commission website: http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20101102_91-401_cp-on-derivatives.pdf [AGC Book of Authorities, Tab 52]

[276] *Ibid.*

[277] Record (Ontario), Vol. XXIV, Christie, para. 37, p.16.

127. With respect to territorial coverage, Ontario has not joined the passport system because of what it perceives as a significant number of shortcomings inherent in that system.[278] And even the remaining 12 do not necessarily constitute a stable core. There is nothing to prevent participating provinces from leaving the system whenever they believe that there would be an advantage in their doing so. Indeed, according to the model of "competitive federalism", much lauded by the American academic experts retained by Quebec,[279] any province could be expected to abandon the system whenever it calculates that laxer regulation (or perhaps even stricter regulation) would be more welcoming to issuers and other market participants than the province's membership in a passport system. Given the significance of securities regulation to all Canadians, it would surely be preferable that public policy respecting securities regulation respect the interests of all Canadians. It would appear that the European Union has reached a similar conclusion as evidenced by its recent move to further integrate and centralize securities regulatory authority, including the power to impose technical standards on its 27 member countries.[280]

128. The passport system is administered by the Canadian Securities Administrators (CSA), a body consisting of the 13 regulators of the provinces and territories. (Ontario is a member of CSA, but has not signed the accord creating the passport system.) The CSA acts on a unanimity principle, which makes the system inflexible: change is very slow and often impossible since the objection of one regulator is fatal to the adoption of a new policy.[281] Each member of the CSA is no doubt accountable to his or her own province or territory, but there is no national mandate or national accountability for CSA's decision-making processes.

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[278] Record (Ontario), Vol. XXIV, Christie, paras. 5, 29, and 64, pp. 3, 12, 26.
[279] Record (Quebec), Vol. XII, Macey #1, pp. 34-43; Vol. XI, Choi #1, paras. 12-44, pp. 21-42
[280] EC, *supra* note 59, at. 8 [AGC Book of Authorities, Tab 58]
[281] Record (Quebec), Vol. XIII, Nick Le Pan (Enhancing Integrated Market Enforcement Teams, Achieving Results in Fighting Capital Markets Crime), October 2007 ("Le Pan"), p. 111.

129. The passport system does not consolidate the resources of the twelve participating regulators. Some of Canada's largest companies are located outside British Columbia, Alberta, Ontario and Quebec. When one of those companies is faced with a hostile takeover or other issue for which a securities commission decision becomes necessary, the "principal regulator" for that decision is a commission that may lack the experience, the staff and other resources that are needed for that decision.

130. The passport system does not provide for a unified system of adjudication. Each jurisdiction renders its own decisions in disputes with market participants over compliance with securities laws and the imposition of disciplinary or remedial measures on market participants.

131. What the provinces cannot do together is at the core of the objectives of the *Act*. Canada's capital market affects all Canadians throughout Canada. The regulation of Canada's capital market that results from the combined effect of provincial and territorial regulation--in part by design through the efforts at harmonization--is decidedly not coordinated national regulation in the nation's interest. It is not greater than the sum of the individual provinces' interests. Indeed, in a real sense, the sum is lesser than the parts. No one is accountable for the external effects of one province's regulatory choices on the residents of all the other provinces.[282] The Government of Canada must have the capacity to protect the national economy by ensuring the fairness, effectiveness and competitiveness of capital markets, and be able to act to avoid the collapse of the financial system during times of crisis.

f) The Inclusion of Provinces in the Regime

132. The fifth of the *General Motors* indicators asks whether the failure to include one or more provinces in the regime would jeopardize its successful

[282] Record (AGC), Vol. I, Trebilcock #1, paras, 21-24 at pp. 236-239; Michael Trebilcock (Report in Reply to Quebec and Alberta Experts) ("Trebilcock #2"), para. 2 at p. 278;

operation. As with the fourth indicator, it was conceived as an additional way of recognizing the federal character of the scheme; its satisfaction is not determinative of the scheme's validity. When applied to the *Securities Act*, it poses a particular challenge: clearly the government's intention is to create a single national regulator because it believes that a single national regulator is necessary for the successful operation of the scheme. The absence of one or more provinces would undermine the regime, posing risks of divergent rules for market participants, uncoordinated enforcement, and variable protection for investors. Despite the goal of universal coverage, the government has chosen a means that does not necessarily achieve this intent immediately, and indeed creates a possibility that a single regulator may never be achieved. However, the attempt to achieve the goal through the voluntary participation of provinces and territories is one that is well-suited to "an era of cooperative, flexible federalism."[283]

133. The validity of the legislation should be judged in terms of the intended scope of the legislation, not the efficacy of what would result if the intention was not fully realized, nor the means chosen by the government to achieve the intention. In choosing the means, Parliament should be entitled to a large measure of deference. The transition from decades of provincial regulation takes time, as do discussions with provinces and territories. The government rejected more contentious means of achieving the goal, such as a proposal by the Hockin Panel that market participants in non-participating provinces be empowered to decide for themselves whether to be governed by the federal, and not a provincial, regime.[284] And the government must be careful to minimize the possibility of disruption to the markets during the transition period.[285]

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[283] *NIL/TUO Child and Family Services Society v. B.C. Government and Service Employees' Union, supra* note 163 at para. 42; *COPA, supra* note 93 at para.45; *Quebec (Attorney General) v. Moses* 2010 SCC 17 at paras. 13, 29 (majority), and 84 (dissent); *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, at para. 24. [AGC Book of Authorities, Tabs 22, 26, 25, 7]

[284] Record (AGC), Vol. II, Hockin Panel Report, pp. 183-184.

[285] Record (AGC), Vol. II, Hockin Panel Report, p. 182.

134. The transitional provisions of the *Act*[286] contemplate a progressive implementation scheme in which provinces and territories agree to participate. Participation by all provinces and territories is highly desirable, and necessary to make the operation of the new regime fully successful.[287] But mandatory participation could come at a significant cost to federal-provincial relations. The *Act* attempts to strike a balance by pursuing the desired policy goal of a single regulator through means of persuasion rather than coercion. If the result of choosing such means results in less than full participation of provinces (at least initially), that is a price that can be paid in a federal state without affecting the constitutional validity of the scheme as a whole.

4) The Use of the Criminal Law Power

135. In Part 10, Division 6, the *Act* deals with "Criminal Offences and Punishment".[288] The authority of the federal government to legislate with respect to fraud and the other offences of dishonest market behaviour should be obvious. Indeed, previous securities offences have been upheld as being within federal jurisdiction.[289]

136. The inclusion of the criminal offence provisions, which are national in coverage and not subject to the provincial opt-in, serves simply to underscore the comprehensiveness of the regulatory regime. It is subject matter that is beyond the competence of the provinces to include in their current securities legislation. When read together with the other enforcement provisions,[290] including new investigatory tools,[291] the *Act* shows how a federal scheme can unify the approach to enforcement of securities law along a continuum from administrative orders to jail sentences.

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[286] Record (AGC), Vol. I, *Securities Act*, ss. 250 – 254, pp. 162-164.
[287] See, in this regard, Record (AGC), Vol. I, Trebilcock #1, paras. 63-67 at pp. 262-266.
[288] Record (AGC), Vol. I, *Securities Act*, ss. 158-165, pp. 98-104.
[289] *Smith v. The Queen, supra* note 174 (issuing a false prospectus); *Multiple Access, supra* note 7 (insider trading). [AGC Book of Authorities, Tabs 39, 21]
[290] Record (AGC), Vol. I, *Securities Act*, ss. 153-157, pp. 96-98.
[291] Record (AGC), Vol. I, *Securities Act*, ss. 148-150, pp. 94-96.

5) Conclusion

137. The pith and substance of the *Securities Act* is comprehensive national securities regulation, and that is a matter that comes within the general branch of the trade and commerce clause when viewed through the lens of the five *General Motors* indicia:

1) The *Act* establishes a regulatory scheme which is more comprehensive than current provincial and territorial schemes;
2) The scheme is monitored by the continuing oversight of a regulatory agency, namely, the Canadian Securities Regulatory Authority;
3) The legislation is concerned with trade as a whole rather than a particular industry in an area in which the subject matter of the regulation is overwhelmingly interprovincial and international, and of critical importance to all Canadians;
4) The legislation is of a nature that the provinces jointly or severally would be incapable of enacting, because the limitations on their powers preclude them from establishing a comprehensive regime of securities regulation; and
5) The scheme has to be, and is intended to be, national in scope to ensure its fully successful operation, while adopting a progressive implementation scheme to achieve that goal.

PART IV – COSTS

138. The Attorney General of Canada does not seek costs, nor should any be awarded against him.

PART V—DISPOSITION

139. The answer to the question posed on this Reference should be "yes," for the reasons given above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Ottawa, Ontario, this day of December, 2010

_____ _____

Robert J. Frater Peter W. Hogg, Q.C.

Counsel for the Attorney General of Canada

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Province of Alberta

SECURITIES ACT

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SECURITIES ACT

Chapter S-4

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) "adviser" means a person or company engaging in or holding itself out as engaging in the business of advising in securities or exchange contracts;

CANADA

CONSOLIDATION

CODIFICATION

Bank Act

Loi sur les banques

S.C. 1991, c. 46

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(*a*) in the case of a deposit made for a fixed period, after the fixed period has terminated;

(*b*) in the case of any other deposit, in respect of which no transaction has taken place and no statement of account has been requested or acknowledged by the creditor; and

(*c*) in the case of a cheque, draft or bill of exchange, in respect of which the instrument has remained unpaid.

b) pendant laquelle il n'y a eu aucune opération ni demande ou accusé de réception d'un état de compte par le déposant, dans le cas des autres dépôts;

c) pendant laquelle l'effet est resté impayé, dans le cas d'un chèque, d'une traite ou d'une lettre de change.

Notification of transfer to the Bank of Canada

(3) The notice to be sent during the month of January next following the end of the first nine-year period determined under paragraphs (2)(*a*) to (*c*), as the case may be, must also

(*a*) [Not in force]

(*b*) include the mailing address and websites where information can be obtained on how to claim the unpaid deposit or instrument.

1991, c 46, s. 439, 2007, c 6, s. 30

Notification de transfert à la Banque du Canada

(3) L'avis envoyé au cours du mois de janvier qui suit la fin de la première période de neuf ans déterminée en application des alinéas (2)*a*) à *c*), selon le cas, doit en outre :

a) [non en vigueur]

b) donner l'adresse postale et les sites Web où peut être obtenue l'information concernant la présentation d'une demande de paiement du dépôt ou de l'effet impayé.

1991, ch. 46, art. 439, 2007, ch. 6, art. 30.

Accounts

Comptes

Definitions

439.1 The following definitions apply in this section and in sections 445 to 448.2, 458.1, 459.2 and 459.4.

"low-fee retail deposit account" « *compte de dépôt de détail à frais modiques* »

"low-fee retail deposit account" means a retail deposit account that has the prescribed characteristics.

"member bank" « *banque membre* »

"member bank" means a bank that is a member institution as defined in section 2 of the *Canada Deposit Insurance Corporation Act*.

"personal deposit account" « *compte de dépôt personnel* »

"personal deposit account" means a deposit account in the name of one or more natural persons that is kept by that person or those persons for a purpose other than that of carrying on business.

"retail deposit account" « *compte de dépôt de détail* »

"retail deposit account" means a personal deposit account that is opened with a deposit of less than $150,000 or any greater amount that may be prescribed.

2001, c 9, s. 113

Définitions

439.1 Les définitions qui suivent s'appliquent au présent article et aux articles 445 à 448.2, 458.1, 459.2 et 459.4.

« banque membre » "*member bank*"

« banque membre » Banque qui est une institution membre au sens de l'article 2 de la *Loi sur la Société d'assurance-dépôts du Canada*.

« compte de dépôt de détail » "*retail deposit account*"

« compte de dépôt de détail » Compte de dépôt personnel ouvert avec un dépôt inférieur à 150 000 $ ou au montant supérieur fixé par règlement.

« compte de dépôt de détail à frais modiques » "*low-fee retail deposit account*"

« compte de dépôt de détail à frais modiques » Compte de dépôt de détail ayant les caractéristiques prévues par règlement.

« compte de dépôt personnel » "*personal deposit account*"

« compte de dépôt personnel » Compte tenu au nom d'une ou de plusieurs personnes physiques à des fins non commerciales.

2001, ch 9, art 113.

Account charges

440. A bank shall not, directly or indirectly, charge or receive any sum for the keeping of an account unless the charge is made by express agreement between the bank and a customer or by order of a court.

Frais de tenue de compte

440. Pour la tenue d'un compte au Canada, la banque ne peut prélever ou recevoir, directement ou indirectement, que les frais fixés soit par entente expresse entre elle et le client, soit par ordonnance judiciaire.

Disclosure on opening account

441. (1) A bank shall not open or maintain an interest-bearing deposit account in Canada in the name of any natural person unless the bank discloses, in accordance with the regulations, to the person who requests the bank to open the account, the rate of interest applicable to the account and how the amount of interest to be paid is to be calculated.

Exception

(2) Subsection (1) does not apply in respect of an interest-bearing deposit account that is opened with a deposit in excess of $150,000 or any greater amount that may be prescribed.

1991, c 46, s 441, 2001, c 9, s 114

Disclosure in advertisements

442. No person shall authorize the publication, issue or appearance of any advertisement in Canada that indicates the rate of interest offered by a bank on an interest-bearing deposit or a debt obligation unless the advertisement discloses, in accordance with the regulations, how the amount of interest is to be calculated.

Disclosure regulations

443. The Governor in Council may make regulations respecting

(*a*) the manner in which and the time at which disclosure is to be made by a bank of

(i) interest rates applicable to debts of the bank and deposits with the bank, and

(ii) the manner in which the amount of interest paid is to be calculated; and

(*b*) such other matters or things as may be necessary to carry out the requirements of sections 441 and 442.

444. [Repealed, 2001, c. 9, s. 115]

Disclosure required on opening a deposit account

445. (1) Subject to subsections (2) to (4), a bank shall not open a deposit account in the name of a customer unless, at or before the time the account is opened, the bank provides in writing to the individual who requests the opening of the account

(*a*) a copy of the account agreement with the bank;

(*b*) information about all charges applicable to the account;

(*c*) information about how the customer will be notified of any increase in those charges and of any new charges applicable to the account;

Déclaration à l'ouverture d'un compte

441. (1) La banque ne peut ouvrir et maintenir, au Canada, un compte de dépôt portant intérêt au nom d'une personne physique sans faire savoir à la personne qui a demandé l'ouverture du compte, et conformément aux règlements, le taux d'intérêt applicable de même que son mode de calcul.

Exception

(2) Le paragraphe (1) ne s'applique pas aux comptes qui sont ouverts avec un dépôt excédant 150 000 $ ou le montant supérieur fixé par règlement.

1991, ch 46, art 441, 2001, ch 9, art. 114

Divulgation dans la publicité

442. Nul ne peut autoriser la publication, la diffusion ou la parution au Canada d'une annonce publicitaire indiquant le taux d'intérêt offert par une banque sur les dépôts portant intérêt ou les titres de créance sans qu'y soit divulgué, en conformité avec les règlements, le mode de calcul des intérêts.

Règlements — Divulgation

443. Le gouverneur en conseil peut prendre des règlements concernant :

a) la date et les modalités de communication :

(i) du taux d'intérêt applicable aux dettes de la banque, notamment les dépôts qu'elle reçoit,

(ii) du mode de calcul du montant des intérêts payés;

b) toute autre mesure d'application des articles 441 et 442.

444. [Abrogé, 2001, ch. 9, art. 115]

Déclaration à l'ouverture d'un compte de dépôt

445. (1) Sous réserve des paragraphes (2) à (4), la banque ne peut ouvrir un compte de dépôt au nom d'un client sauf si, avant l'ouverture du compte ou lors de celle-ci, elle fournit par écrit à la personne qui en demande l'ouverture :

a) une copie de l'entente relative au compte;

b) les renseignements sur tous les frais liés au compte;

c) les renseignements sur la notification de l'augmentation des frais ou de l'introduction de nouveaux frais;

d) les renseignements sur la procédure d'examen des réclamations relatives au traitement des frais à payer pour le compte;

CANADA

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

2009, c. 2

An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and related fiscal measures

[*Assented to 12th March 2009*]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Budget Implementation Act, 2009*.

PART 1

AMENDMENTS IN RESPECT OF INCOME TAX

INCOME TAX ACT

2. [Amendment]

3. [Amendment]

4. [Amendments]

5. [Amendment]

6. [Amendment]

7. [Amendment]

8. [Amendment]

9. [Amendment]

10. [Amendments]

11. [Amendments]

12. [Amendments]

13. [Amendments]

14. [Amendment]

15. [Amendment]

2009, ch. 2

Loi portant exécution de certaines dispositions du budget déposé au Parlement le 27 janvier 2009 et mettant en œuvre des mesures fiscales connexes

[*Sanctionnée le 12 mars 2009*]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

TITRE ABRÉGÉ

1. *Loi d'exécution du budget de 2009.*

Titre abrégé

PARTIE 1

MODIFICATIONS RELATIVES À L'IMPÔT SUR LE REVENU

LOI DE L'IMPÔT SUR LE REVENU

2. [Modification]

3. [Modification]

4. [Modifications]

5. [Modification]

6. [Modification]

7. [Modification]

8. [Modification]

9. [Modification]

10. [Modifications]

11. [Modifications]

12. [Modifications]

13. [Modifications]

14. [Modification]

15. [Modification]

DIVISION 7

SECURITIES

Securities Regulation

Maximum payment of $150,000,000

295. (1) The Minister of Finance may make direct payments, in an aggregate amount not exceeding $150,000,000, to provinces and territories for matters relating to the establishment of a Canadian securities regulation regime and a Canadian regulatory authority.

Payments out of C.R.F.

(2) Any amount payable under this section may be paid out of the Consolidated Revenue Fund, on the requisition of the Minister of Finance, at the times and in the manner, and on any terms and conditions, that the Minister of Finance considers appropriate.

Agreements

296. The Minister of Finance may enter into any agreement respecting securities regulation with any province or territory.

Canadian Securities Regulation Regime Transition Office Act

Enactment of Act

297. The *Canadian Securities Regulation Regime Transition Office Act* is enacted as follows:

[See *Canadian Securities Regulation Regime Transition Office Act*]

Transitional Provision

298. [Transitional Provision]

Coming into Force

Order in council

***299. Section 297 comes into force on a day to be fixed by order of the Governor in Council.**

*** [Note: Section 297 in force July 13, 2009, *see* SI/2009-60.]**

SECTION 7

VALEURS MOBILIÈRES

Réglementation des valeurs mobilières

Paiement maximal de 150 000 000 $

295. (1) Le ministre des Finances peut faire des paiements directs, jusqu'à concurrence de cent cinquante millions de dollars, à des provinces et à des territoires au titre de mesures liées à l'établissement d'un régime canadien de réglementation des valeurs mobilières et à la constitution d'une autorité administrative canadienne.

Paiements sur le Trésor

(2) À la demande du ministre des Finances, les sommes à verser au titre du présent article sont payées sur le Trésor, selon les conditions et modalités — de temps et autres — qu'il estime indiquées.

Accords

296. Le ministre des Finances peut conclure avec les provinces et les territoires des accords relatifs à la réglementation des valeurs mobilières.

Loi sur le Bureau de transition vers un régime canadien de réglementation des valeurs mobilières

Édiction de la loi

297. Est édictée la *Loi sur le Bureau de transition vers un régime canadien de réglementation des valeurs mobilières*, dont le texte suit:

[Voir la *Loi sur le Bureau de transition vers un régime canadien de réglementation des valeurs mobilières*]

Disposition transitoire

298. [Disposition transitoire]

Entrée en vigueur

Décret

***299. L'article 297 entre en vigueur à la date fixée par décret.**

*** [Note: Article 297 en vigueur le 13 juillet 2009, *voir* TR/2009-60.]**

CANADA

CONSOLIDATION

CODIFICATION

Canada Pension Plan Investment Board Act

Loi sur l'Office d'investissement du régime de pensions du Canada

S.C. 1997, c. 40

L.C. 1997, ch. 40

Current to November 3, 2010

À jour au 3 novembre 2010

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

1997, c. 40

An Act to establish the Canada Pension Plan Investment Board and to amend the Canada Pension Plan and the Old Age Security Act and to make consequential amendments to other Acts

[*Assented to 18th December 1997*]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Canada Pension Plan Investment Board Act*.

INTERPRETATION

Definitions

2. The definitions in this section apply in this Act.

"appropriate provincial Minister" « *ministre provincial compétent* »

"appropriate provincial Minister", in respect of a province, means the province's minister of the Crown who has primary responsibility for that province's finances.

"Board" « *Office* »

"Board" means the Canada Pension Plan Investment Board established by section 3.

"by-law" *Version anglaise seulement*

"by-law" means a by-law of the Board.

"court" « *tribunal* »

"court" means

(*a*) in the Province of Ontario, the Ontario Court (General Division);

(*b*) in the Province of Quebec, the Superior Court of the Province;

(*c*) in the Provinces of Nova Scotia and British Columbia, the Supreme Court of the Province;

1997, ch. 40

Loi constituant l'Office d'investissement du régime de pensions du Canada et modifiant le Régime de pensions du Canada, la Loi sur la sécurité de la vieillesse et d'autres lois en conséquence

[*Sanctionnée le 18 décembre 1997*]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur l'Office d'investissement du régime de pensions du Canada.*

DÉFINITIONS ET APPLICATION

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi.

« entité » "*entity*"

« entité » Personne morale, fiducie, société de personnes, fonds, organisation ou association non dotée de la personnalité morale, de même que Sa Majesté du chef du Canada ou d'une province et ses organismes et le gouvernement d'un pays étranger ou de l'une de ses subdivisions politiques et ses organismes.

« filiale » "*subsidiary*"

« filiale » Personne morale appartenant à cent pour cent à l'Office, soit directement, soit par l'intermédiaire de filiales dont chacune appartient à cent pour cent, même indirectement, à l'Office.

« ministre » "*Minister*"

« ministre » Le ministre des Finances.

« ministre provincial compétent » "*appropriate provincial Minister*"

« ministre provincial compétent » Le ministre de qui relève au premier chef l'administration des finances de la province.

(*d*) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench for the Province;

(*e*) in the Provinces of Prince Edward Island and Newfoundland, the trial division of the Supreme Court of the Province; and

(*f*) the Supreme Court of Yukon, the Supreme Court of the Northwest Territories and the Nunavut Court of Justice.

"designated security" « *titre désigné* »

"designated security" means

(*a*) an obligation

(i) that, before April 1, 1998, was held to the credit of the Canada Pension Plan Investment Fund, as established under subsection 109(1) of the *Canada Pension Plan*,

(ii) that, as applied to Canada, is an obligation of the Government of Canada and, as applied to a province, is an obligation of the government of the province or an obligation of any agent of Her Majesty in right of the province that is guaranteed as to principal and interest by that government, and

(iii) that complies with the conditions that were set out in section 111 of the *Canada Pension Plan* as that section read immediately before April 1, 1998; or

(*b*) an obligation that

(i) on or after April 1, 1998, was purchased by the Minister of Finance under section 110 of the *Canada Pension Plan* or is purchased by the Board under section 6.1, and

(ii) is an obligation of the government of a province or an obligation of any agent of Her Majesty in right of a province that is guaranteed as to principal and interest by that government.

"entity" « *entité* »

"entity" means a body corporate, a trust, a partnership, a fund, an unincorporated association or organization, Her Majesty in right of Canada or of a province or an agency of Her Majesty in right of Canada or of a province and the government of a foreign country or any political subdivision or agency of the government of a foreign country.

« Office » "*Board*"

« Office » L'Office d'investissement du régime de pensions du Canada constitué en vertu de l'article 3.

« province participante » "*participating province*"

« province participante » S'entend d'une province autre qu'un territoire ou autre qu'une province instituant un régime général de pensions au sens du paragraphe 3(1) du *Régime de pensions du Canada*.

« titre désigné » "*designated security*"

« titre désigné »

a) Soit une obligation qui :

(i) était, avant le 1er avril 1998, détenue au crédit du Fonds de placement du régime de pensions du Canada, compte ouvert en application du paragraphe 109(1) du *Régime de pensions du Canada*,

(ii) à l'égard du Canada, en est une du gouvernement du Canada et, à l'égard d'une province, en est une du gouvernement de celle-ci, ou en est une d'un mandataire de Sa Majesté du chef de la province, garantie, quant au principal et à l'intérêt, par le gouvernement de la province,

(iii) satisfait aux conditions énoncées à l'article 111 du *Régime de pensions du Canada* dans sa version antérieure au 1er avril 1998;

b) soit une obligation qui :

(i) le 1er avril 1998 ou après cette date, soit a été achetée par le ministre des Finances en application de l'article 110 du *Régime de pensions du Canada*, soit est achetée par l'Office en application de l'article 6.1,

(ii) en est une du gouvernement d'une province ou en est une d'un mandataire de Sa Majesté du chef de la province, garantie, quant au principal et à l'intérêt, par le gouvernement de la province.

« tribunal » "*court*"

« tribunal »

a) La Cour de l'Ontario (Division générale);

b) la Cour supérieure du Québec;

c) la Cour suprême de la Nouvelle-Écosse ou de la Colombie-Britannique;

d) la Cour du Banc de la Reine du Nouveau-Brunswick, du Manitoba, de la Saskatchewan ou de l'Alberta;

"Minister" « *ministre* »

"Minister" means the Minister of Finance.

"participating province" « *province participante* »

"participating province" means a province other than

(*a*) a territory; and

(*b*) a province providing a comprehensive pension plan as defined in subsection 3(1) of the *Canada Pension Plan*.

"subsidiary" « *filiale* »

"subsidiary" means a corporation that is wholly owned by the Board directly or indirectly through any number of subsidiaries each of which is wholly owned directly or indirectly by the Board.

1997, c. 40, s. 2; 1999, c. 3, s. 19; 2002, c. 7, s. 112(E); 2003, c. 5, s. 12.

e) la Section de première instance de la Cour suprême de l'Île-du-Prince-Édouard ou de Terre-Neuve;

f) la Cour suprême du Yukon, la Cour suprême des Territoires du Nord-Ouest ou la Cour de justice du Nunavut.

1997, ch. 40, art. 2; 1999, ch. 3, art. 19; 2002, ch. 7, art. 112(A); 2003, ch. 5, art. 12.

CONSTITUTION OF THE BOARD

Board established

3. (1) There is established a corporation to be known as the Canada Pension Plan Investment Board.

Not agent of Her Majesty

(2) The Board is not an agent of Her Majesty.

Not part of federal public administration

(3) Directors, officers, employees and agents of the Board are not part of the federal public administration.

Canada Corporations Act

(4) The *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970, does not apply to the Board.

1997, c. 40, s. 3; 2003, c. 22, s. 224(E).

CONSTITUTION DE L'OFFICE

Constitution

3. (1) Est constitué l'Office d'investissement du régime de pensions du Canada, doté de la personnalité morale.

Non-mandataire de Sa Majesté

(2) L'Office n'est pas mandataire de Sa Majesté.

Administration fédérale

(3) Les dirigeants et les employés de l'Office ne font pas partie de l'administration publique fédérale.

Loi sur les corporations canadiennes

(4) La *Loi sur les corporations canadiennes*, chapitre C-32 des Statuts revisés du Canada de 1970, ne s'applique pas à l'Office.

1997, ch. 40, art. 3; 2003, ch. 22, art. 224(A).

CAPITAL AND SHARES

Capital

4. (1) The capital of the Board is $100. The Minister shall pay the capital of the Board out of the Consolidated Revenue Fund.

Shares

(2) The capital is divided into 10 shares having a par value of $10 each. The shares shall be issued to the Minister to be held on behalf of Her Majesty in right of Canada.

Registration

(3) The shares issued to the Minister shall be registered by the Board in the name of the Minister.

CAPITAL-ACTIONS

Capital

4. (1) Le capital de l'Office est de cent dollars. Ce montant est prélevé sur le Trésor par le ministre.

Actions

(2) Le capital est réparti en dix actions d'une valeur nominale de dix dollars chacune, émises et attribuées au ministre, pour le compte de Sa Majesté du chef du Canada.

Enregistrement

(3) Les actions émises sont enregistrées au nom du ministre par l'Office.

OBJECTS AND POWERS

Objects

5. The objects of the Board are

(*a*) to assist the Canada Pension Plan in meeting its obligations to contributors and beneficiaries under the *Canada Pension Plan*;

MISSION ET POUVOIRS

Mission

5. L'Office a pour mission :

a) d'aider le Régime de pensions du Canada à s'acquitter de ses obligations envers les cotisants et les bénéficiaires que lui impose le *Régime de pensions du Canada*;

(*b*) to manage any amounts transferred to it under section 108.1 of the *Canada Pension Plan*, and its right, title or interest in any designated securities, in the best interests of the contributors and beneficiaries under that Act; and

(*c*) to invest its assets with a view to achieving a maximum rate of return, without undue risk of loss, having regard to the factors that may affect the funding of the Canada Pension Plan and the ability of the Canada Pension Plan to meet its financial obligations on any given business day.

1997, c. 40, s. 5; 2003, c. 5, s. 13.

b) de gérer les sommes transférées en application de l'article 108.1 du *Régime de pensions du Canada*, ainsi que ses droit, titre ou intérêt dans les titres désignés, dans l'intérêt des cotisants et des bénéficiaires de ce régime;

c) de placer son actif en vue d'un rendement maximal tout en évitant des risques de perte indus et compte tenu des facteurs pouvant avoir un effet sur le financement du Régime de pensions du Canada ainsi que sur son aptitude à s'acquitter, chaque jour ouvrable, de ses obligations financières.

1997, ch. 40, art. 5; 2003, ch. 5, art. 13.

Powers of Board

6. (1) The Board has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

Capacité d'une personne physique

6. (1) L'Office a, sous réserve des autres dispositions de la présente loi, la capacité d'une personne physique.

No inconsistent business or activity

(2) The Board and its subsidiaries shall not, directly or indirectly, carry on any business or activity or exercise any power that is inconsistent with the Board's objects, or that the Board is restricted by this Act from carrying on or exercising, and shall not, directly or indirectly, exercise any of its powers in a manner contrary to this Act.

Activités incompatibles

(2) L'Office, non plus que ses filiales, ne peut exercer, directement ou indirectement, ni pouvoirs ni activités incompatibles avec sa mission ou avec les restrictions imposées par la présente loi; il lui est aussi interdit d'exercer, directement ou indirectement, ses attributions en violation de la présente loi.

No invalidity

(3) No act of the Board, including a transfer of property, is invalid by reason only that the Board was without the capacity or power to so act.

Validité des actes

(3) Les actes de l'Office, notamment en matière de transfert de biens, ne sont pas nuls au seul motif qu'ils ont été accomplis sans pouvoir habilitant.

DESIGNATED SECURITIES

TITRES DÉSIGNÉS

Replacement security

6.1 (1) On the maturity of a designated security of a province that was issued before January 1, 1998, the Board shall purchase another security issued by that province if the Board is requested to do so, in writing, by the appropriate provincial Minister of that province at least 30 days before the date of maturity.

Remplacement de titre

6.1 (1) À l'échéance d'un titre désigné d'une province qui a été émis avant le 1er janvier 1998, l'Office achète un autre titre émis par la province si le ministre provincial compétent lui en fait la demande par écrit au moins trente jours avant la date de l'échéance.

Principal amount

(2) The principal amount of the replacement security shall be not more than the principal outstanding under the maturing designated security.

Principal

(2) La valeur nominale d'un nouveau titre ne peut être supérieure au principal impayé du titre désigné arrivant à échéance.

Term to maturity

(3) The replacement security shall be for a term of 20 years.

Durée

(3) Le nouveau titre est émis pour vingt ans.

Interest

(4) The replacement security shall bear interest at a rate fixed by the Board, in accordance with any agreement entered into between the Board and the Minister. The rate shall be substantially the same as the interest rate that

Intérêts

(4) Les intérêts sur le nouveau titre sont au taux fixé par l'Office, conformément à tout accord qu'il a conclu avec le ministre. Le taux est à un niveau sensiblement égal à celui que la province serait tenue de payer si elle empruntait

the province would be required to pay if it were to borrow the same amount for the same term through the issuance of a security on the public capital market.

la même somme pour la même période pour un titre émis sur le marché financier libre.

Features of replacement security

(5) The replacement security shall be issued to or payable to the Board and shall be expressed to be not negotiable and not transferable or assignable.

Conditions

(5) Le nouveau titre est contracté envers l'Office ou payable à celui-ci; le titre est émis comme n'étant ni négociable, ni transférable, ni cessible.

Redemption at request of province

(6) The Board shall redeem a designated security in whole or in part before maturity if

(*a*) the Board is requested to do so, in writing, by the appropriate provincial Minister of a province at least 30 days before the proposed redemption date; and

(*b*) the appropriate provincial Minister has agreed to pay on the proposed redemption date

(i) any payments of principal or interest due on or before the proposed redemption date but not yet paid,

(ii) interest on the principal amount being redeemed accrued to the proposed redemption date, and

(iii) an amount equal to the present value of the remaining instalments of principal being redeemed and interest on that principal.

Rachat de titres à la demande d'une province

(6) L'Office rachète un titre désigné en tout ou en partie avant échéance si, à la fois :

a) le ministre provincial compétent lui en fait la demande par écrit au moins trente jours avant la date de rachat proposée;

b) le ministre provincial compétent accepte de payer ce qui suit à la date de rachat proposée :

(i) le principal et l'intérêt dus et non encore payés à cette date,

(ii) l'intérêt sur le principal racheté accumulé jusqu'à cette date,

(iii) une somme égale à la valeur actualisée du principal racheté impayé et de l'intérêt sur celui-ci.

Calculation of present value

(7) For the purposes of subparagraph (6)(*b*)(iii), the present value shall be calculated by discounting the instalments of principal being redeemed and interest on that principal using an interest rate fixed by the Board, in accordance with any agreement entered into between the Board and the Minister of Finance. In fixing that rate, the Board shall choose a rate that

(*a*) if the designated security to be redeemed was issued before January 1, 1998, is substantially the same as the rate that the Government of Canada would be required to pay if it were to borrow the principal amount being redeemed for a term equal to the remaining term of that designated security through the issuance of a security on the public capital market; or

(*b*) if the designated security to be redeemed was issued on or after January 1, 1998, is substantially the same as the rate that the province would be required to pay if it were

Valeur actualisée des titres

(7) La valeur actualisée du principal racheté impayé est calculée par actualisation des versements en fonction d'un taux d'intérêt, fixé par l'Office conformément à tout accord qu'il a conclu avec le ministre des Finances, qui correspond :

a) si le titre désigné à racheter a été émis avant le 1er janvier 1998, à un taux sensiblement égal à celui que le gouvernement du Canada serait tenu de payer s'il empruntait le montant du principal à racheter, pour une période égale au reste de l'échéance, en émettant un titre sur le marché financier libre;

b) si le titre désigné à racheter a été émis le 1er janvier 1998 ou après cette date, à un taux sensiblement égal à celui que la province serait tenue de payer si elle empruntait le montant du principal à racheter, pour une période égale au reste de l'échéance, en émettant un titre sur le marché financier libre.

to borrow the principal amount being redeemed for a term equal to the remaining term of that designated security through the issuance of a security on the public capital market.

Consolidation of securities

(8) At the request of the provincial treasurer or other similar officer of a province, the Board may accept in the place of any series of designated securities of that province acquired during any consecutive period of not more than twelve months, on payment of any interest then accrued on the securities, another security of that province that is in an amount equal to the aggregate amount then outstanding of the designated securities of that series, and that bears interest at a rate determined by the Board.

Obligation guaranteed by the provincial government

(9) Any security purchased by the Board under this section must be an obligation of the government of a province or an obligation of an agent of Her Majesty in right of a province that is guaranteed as to principal and interest by that government.

2003, c. 5, s. 14.

Unification des titres

(8) À la demande du trésorier provincial ou d'un autre semblable fonctionnaire d'une province, l'Office peut accepter, à la place d'une série de titres désignés de cette province achetés au cours de toute période ininterrompue d'au plus douze mois, sur paiement de l'intérêt couru sur ces titres, une autre garantie de cette province d'un montant égal à l'ensemble alors en circulation des titres désignés de cette série, laquelle garantie porte intérêt à un taux que fixe l'Office.

Obligation garantie par le gouvernement provincial

(9) Le titre acheté par l'Office en application du présent article doit être une obligation du gouvernement d'une province ou une obligation d'un mandataire de Sa Majesté du chef de la province, garantie, quant au principal et à l'intérêt, par ce gouvernement.

2003, ch. 5, art. 14.

MANAGEMENT

Board of Directors

Board of directors

7. The Board shall be managed by a board of directors of 12 directors, including the Chairperson.

Principal duties

8. (1) Subject to this Act, the board of directors shall manage or supervise the management of the business and affairs of the Board.

Specific duties

(2) Without limiting the generality of subsection (1), the board of directors shall

(*a*) establish written investment policies, standards and procedures in accordance with section 35;

(*b*) establish procedures for the identification of potential conflicts of interest and procedures to resolve those conflicts;

(*c*) establish a code of conduct for officers and employees of the Board; and

(*d*) designate a committee of the board of directors to monitor application of the conflict of interest procedures and the code of conduct.

GESTION

Conseil d'administration

Conseil d'administration

7. Le conseil d'administration de l'Office se compose de douze administrateurs, dont le président.

Obligation de gérer

8. (1) Sous réserve des autres dispositions de la présente loi, le conseil d'administration assure ou surveille la gestion des affaires et activités de l'Office.

Obligations précises

(2) Le conseil d'administration doit, notamment :

a) établir, conformément à l'article 35, des principes, normes et procédures en matière de placement;

b) instituer des mécanismes de détection et de résolution des conflits d'intérêts réels ou potentiels;

c) formuler un code de déontologie pour le personnel;

d) désigner l'un des comités du conseil d'administration pour surveiller l'application de ce code et des mécanismes visés à l'alinéa *b*).

Power to delegate

9. (1) Subject to subsection (2) and the by-laws, the board of directors may delegate to the Chairperson, to a committee of the board of directors or to any officer of the Board any of the powers or duties of the board of directors.

Délégation

9. (1) Le conseil d'administration peut, sous réserve des règlements administratifs, déléguer certains de ses pouvoirs à un de ses comités, au président ou à un dirigeant de l'Office.

Limits on power

(2) The board of directors may not delegate the power to

(*a*) adopt, amend or repeal by-laws;

(*b*) establish the Board's investment policies, standards and procedures;

(*c*) fill a vacancy in a committee of directors or in the office of auditor of the Board;

(*d*) appoint officers to the Board or fix their remuneration; or

(*e*) approve the annual financial statements of the Board and any other financial statements issued by the Board.

Interdictions

(2) Il ne peut toutefois déléguer les pouvoirs suivants :

a) prendre, modifier ou abroger des règlements administratifs;

b) établir des principes, normes et procédures en matière de placement;

c) pourvoir les vacances survenues au sein d'un comité d'administrateurs ou au poste de vérificateur de l'Office;

d) nommer des dirigeants et fixer leur rémunération;

e) approuver les états financiers annuels et les autres états financiers de l'Office.

Directors

Administrateurs

Appointment of directors

10. (1) Each director shall be appointed by the Governor in Council, on the recommendation of the Minister, to hold office during good behaviour for such term, not exceeding three years, as will ensure, as far as possible, the expiration in any one year of the terms of office of not more than one half of the directors.

Durée du mandat

10. (1) Les administrateurs sont, sur recommandation du ministre, nommés à titre inamovible par le gouverneur en conseil pour des mandats respectifs de trois ans au maximum, ces mandats étant, dans la mesure du possible, échelonnés de manière que leur expiration au cours d'une même année touche au plus la moitié d'entre eux.

Committee to advise Minister

(2) The Minister may establish a committee to advise the Minister on the appointment of directors. The committee shall consist of a representative designated by the Minister and a representative of each participating province designated by the appropriate provincial Minister for that province.

Comité

(2) Le ministre peut constituer un comité chargé de le conseiller pour la nomination des administrateurs; il en désigne un des membres, les ministres provinciaux compétents pour les provinces participantes en désignant chacun un.

Consultation with participating provinces

(3) The Minister shall consult with the appropriate provincial Ministers of the participating provinces before making any recommendation to the Governor in Council with respect to the appointment of directors and before making an appointment under subsection (8).

Consultation

(3) Il consulte les ministres provinciaux compétents des provinces participantes avant de recommander au gouverneur en conseil la nomination d'un administrateur ou d'y procéder en vertu du paragraphe (8).

Factors for consideration in appointments

(4) Before making any recommendation to the Governor in Council with respect to the appointment of directors, and before making an appointment under subsection (8), the Minister shall have regard to the desirability of having directors who are representative of the various regions of Canada and having on the board of directors a sufficient number of directors with

Représentativité

(4) Lorsqu'il fait la recommandation visée au paragraphe (1) ou lorsqu'il nomme un administrateur en application du paragraphe (8), le ministre tente d'assurer, autant que faire se peut, d'une part, la représentation des diverses régions du pays et, d'autre part, la présence au conseil d'un nombre suffisant de personnes ayant une compétence financière reconnue ou

proven financial ability or relevant work experience such that the Board will be able to effectively achieve its objects.

une expérience de travail propre à aider l'Office à accomplir sa mission avec efficacité.

Reappointment

(5) A director is eligible for reappointment for one or more additional terms of office.

(5) Le mandat des administrateurs est renouvelable plus d'une fois.

Nouveau mandat

Removal

(6) The Governor in Council may remove a director for cause.

(6) Un administrateur peut faire l'objet d'une révocation motivée par le gouverneur en conseil.

Révocation

Continuation in office

(7) If no person is appointed to take office as a director on the expiration of the term of an incumbent director, the incumbent director continues in office until a successor is appointed.

(7) S'il n'est pas pourvu à sa succession, le mandat de l'administrateur se prolonge jusqu'à la nomination de son remplaçant.

Prolongation du mandat

Vacancy

(8) Where a person ceases to be a director during the term for which the person was appointed, the Minister shall appoint a qualified person to hold office as a director for the remainder of the term.

(8) En cas de vacance en cours de mandat, le ministre nomme une personne compétente pour le reste du mandat.

Vacance en cours de mandat

Disqualified persons

(9) The following persons are disqualified from being directors:

(*a*) a person who is less than 18 years of age;

(*b*) a person who is of unsound mind and has been so found by a court in Canada or elsewhere;

(*c*) a person who has the status of a bankrupt;

(*d*) a person who is not a natural person;

(*e*) a person who is an agent or employee of Her Majesty in right of Canada or in right of a province;

(*f*) a person who is a member of the Senate or House of Commons of Canada or a member of a provincial legislature;

(*g*) a person who is an agent or employee of the government of a foreign country or any political subdivision of a foreign country; and

(*h*) a person who is not a resident of Canada.

(9) Ne peut être administrateur la personne :

a) qui est âgée de moins de dix-huit ans;

b) dont les facultés mentales ont été jugées altérées par un tribunal, même étranger;

c) qui a le statut de failli;

d) qui n'est pas une personne physique;

e) qui est mandataire ou employé de Sa Majesté du chef du Canada ou d'une province;

f) qui est membre du Sénat ou de la Chambre des communes, ou d'une législature provinciale;

g) qui travaille pour le gouvernement d'un pays étranger ou de l'une de ses subdivisions politiques ou en est le mandataire;

h) qui n'est pas résidente du Canada.

Inadmissibilité

Remuneration and benefits of directors

(10) A director is entitled to receive from the Board such remuneration and benefits as may be fixed by the by-laws, which remuneration and benefits shall be fixed having regard to the remuneration and benefits received by persons having similar responsibilities and engaged in similar activities.

(10) Les administrateurs reçoivent de l'Office la rémunération et les avantages fixés par règlement administratif compte tenu de la rémunération et des avantages accordés aux personnes ayant des fonctions et des responsabilités semblables.

Rémunération des administrateurs

Resignation

11. (1) The resignation of a director becomes effective at the time the Board receives a written resignation or at the time specified in the resignation, whichever is later.

Date de prise d'effet de la démission

11. (1) La démission d'un administrateur prend effet au moment où l'Office en reçoit un avis écrit ou, si elle est ultérieure, à la date que précise celui-ci.

Copy of resignation

(2) The Board shall send a copy of a director's resignation to the Clerk of the Privy Council within 15 days after receiving it.

Double de la démission

(2) Dans les quinze jours suivant la réception de l'avis, l'Office en envoie copie au greffier du Conseil privé.

CHAIRPERSON

PRÉSIDENT

Chairperson

12. (1) The Governor in Council shall, on the recommendation of the Minister made after the Minister has consulted with the board of directors and the appropriate provincial Ministers of the participating provinces, designate one of the directors as Chairperson to hold office during good behaviour for such term as the Governor in Council deems appropriate.

Président

12. (1) Sur la recommandation que lui fait le ministre après avoir consulté les ministres provinciaux compétents des provinces participantes et le conseil d'administration, le gouverneur en conseil désigne le président à titre inamovible pour le mandat qu'il juge indiqué.

Removal

(2) The Governor in Council may remove the Chairperson for cause.

Révocation

(2) Le président peut faire l'objet d'une révocation motivée de la part du gouverneur en conseil.

Presiding at meetings

(3) The Chairperson shall preside at all meetings of the board of directors and may exercise such powers and perform such duties and functions as are specified by the board of directors.

Présidence des réunions

(3) Il préside les réunions du conseil et exerce les attributions que lui délègue le conseil d'administration.

Replacement of Chairperson

(4) Where the Chairperson is absent at any meeting of the board of directors, one of the directors present who is chosen to so act by the directors present shall preside and have all the powers, duties and functions of the Chairperson.

Absence du président

(4) En cas d'absence du président, les administrateurs présents choisissent l'un d'entre eux pour présider la réunion et exercer les attributions du président.

Remuneration of Chairperson

(5) The Chairperson is entitled to receive from the Board such remuneration and benefits as may be fixed by the by-laws, which remuneration and benefits shall be fixed having regard to the remuneration and benefits received by persons having similar responsibilities and engaged in similar activities.

Rémunération du président

(5) Le président reçoit de l'Office la rémunération et les avantages fixés par règlement administratif compte tenu de la rémunération et des avantages accordés aux personnes ayant des fonctions et des responsabilités semblables.

OFFICERS

DIRIGEANTS

Appointment of officers

13. (1) The board of directors may, subject to the by-laws, designate the offices of the Board, appoint officers of the Board and specify their duties.

Nomination des dirigeants

13. (1) Le conseil d'administration peut, sous réserve des règlements administratifs, établir les postes de direction, en nommer les titulaires et préciser les fonctions de ceux-ci.

Directors not officers

(2) A director is not eligible to be appointed an officer of the Board.

Incompatibilité

(2) Les administrateurs ne peuvent être nommés à des postes de direction.

Two or more offices

(3) A person may hold two or more offices of the Board.

Cumul de postes

(3) La même personne peut occuper plusieurs postes de direction.

Duty of Care

Duty of care

14. (1) Every director and officer of the Board in exercising any of the powers of a director or an officer and in discharging any of the duties of a director or an officer shall

(*a*) act honestly and in good faith with a view to the best interests of the Board; and

(*b*) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Special knowledge or skill

(2) A director or officer of the Board who in fact possesses, or by reason of profession or business ought to possess, a particular level of knowledge or skill relevant to the director's or officer's powers or duties shall employ that particular level of knowledge or skill in the exercise of those powers or the discharge of those duties.

Reliance on statements

(3) A director or an officer of the Board is deemed to comply with subsections (1) and (2) if they rely in good faith on

(*a*) financial statements of the Board represented by an officer of the Board, or represented in a written report of the Board's auditor, to be a fair reflection of the financial condition of the Board; or

(*b*) a report of an accountant, lawyer, notary or other professional person whose profession lends credibility to a statement made by the person.

Duty to comply

15. (1) Every director, officer and employee of the Board shall comply with this Act and the by-laws.

No exculpation

(2) No provision in any contract, in any resolution of the Board or in the by-laws relieves any director, officer or employee of the Board from the duty to act in accordance with this Act or relieves a director, officer or employee from liability for a breach of the Act.

Indemnification

Indemnification

16. (1) Except in respect of an action by or on behalf of the Board to procure a judgment in its favour, the Board may indemnify a director or officer of the Board, a former director or officer of the Board, or any person who acts or acted at the Board's request as a director or officer of an entity of which the Board is or was a

Diligence

Diligence

14. (1) Les administrateurs et les dirigeants doivent, dans l'exercice de leurs fonctions, agir:

a) avec intégrité et de bonne foi pour servir au mieux les intérêts de l'Office;

b) avec le soin, la diligence et la compétence dont ferait preuve, en pareilles circonstances, une personne prudente.

Compétences

(2) L'administrateur ou le dirigeant qui a ou devrait avoir, compte tenu de sa profession ou de son entreprise, des connaissances ou aptitudes utiles dans l'exercice de ses fonctions est tenu de les mettre en œuvre.

Exception

(3) Est réputé avoir agi en conformité avec les paragraphes (1) et (2) l'administrateur ou le dirigeant qui s'appuie de bonne foi sur:

a) des états financiers de l'Office reflétant fidèlement la situation de celui-ci, d'après l'un des dirigeants ou d'après le rapport écrit du vérificateur;

b) tout rapport des personnes dont la profession donne une certaine crédibilité aux déclarations qu'elles font, notamment les avocats, notaires ou comptables.

Observation

15. (1) Les administrateurs, dirigeants et employés sont tenus d'observer la présente loi ainsi que les règlements administratifs de l'Office.

Obligation absolue

(2) Aucune disposition d'un contrat, d'une résolution ou d'un règlement administratif ne peut exonérer les administrateurs, les dirigeants ou les employés de l'obligation d'observer la présente loi ni des responsabilités découlant d'un manquement à cette obligation.

Indemnisation

Indemnisation

16. (1) Sauf dans le cadre d'actions intentées par lui ou pour son compte en vue d'obtenir un jugement favorable, l'Office peut indemniser ses administrateurs ou ses dirigeants — ou leurs prédécesseurs — , ainsi que les personnes qui, à sa demande, agissent ou ont agi en cette qualité pour une entité dont il est ac-

shareholder or in which the Board has or had a financial interest, against all costs and expenses reasonably incurred by the person, including amounts paid in settlement or to satisfy a judgment, in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been such a person, if

(*a*) the person acted honestly and in good faith with a view to the best interests of the Board or the entity; and

(*b*) in the case of a criminal or administrative action or proceeding enforced by a monetary penalty, the person had reasonable grounds for believing that the impugned conduct was lawful.

tionnaire ou dans laquelle il a, ou a déjà eu, un intérêt financier, de tous leurs frais, y compris les sommes versées en règlement d'une action ou pour exécuter un jugement, entraînés par des procédures civiles, pénales ou administratives auxquelles ils étaient parties en cette qualité, si :

a) ils ont agi avec intégrité et de bonne foi pour servir au mieux les intérêts de l'Office ou de l'entité;

b) dans le cas d'une action pénale ou administrative imposant une sanction pécuniaire, ils avaient de bonnes raisons de croire que leur conduite était conforme à la loi.

Indemnification in derivative action

(2) The Board may, with the approval of a court, indemnify a person referred to in subsection (1), in respect of an action by or on behalf of the Board or an entity referred to in that subsection to procure a judgment in its favour to which the person is made a party by reason of being or having been a director or an officer of the Board or entity, against all costs and expenses reasonably incurred by the person, including an amount paid in settlement or to satisfy a judgment, in respect of that action if the person fulfils the conditions set out in paragraphs (1)(*a*) and (*b*).

Indemnisation lors d'actions indirectes

(2) Si les personnes visées au paragraphe (1) remplissent les conditions qui y sont énoncées, l'Office peut, avec l'agrément du tribunal, les indemniser de tous leurs frais — y compris toute somme versée en règlement d'une action ou pour exécuter un jugement — résultant du fait qu'elles ont été parties, en raison de leurs fonctions, à des actions intentées par l'Office ou par l'entité, ou pour leur compte, en vue d'obtenir un jugement favorable.

Right to indemnity

(3) Notwithstanding the other subsections of this section, a person referred to in subsection (1) is entitled to indemnity from the Board in respect of all costs and expenses, including an amount paid in settlement or to satisfy a judgment, reasonably incurred by the person in respect of the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or an officer of the Board or of an entity referred to in that subsection, if the person seeking indemnity

(*a*) was substantially successful on the merits in the defence of the action or proceeding; and

(*b*) fulfils the conditions set out in paragraphs (1)(*a*) and (*b*).

Droit à l'indemnisation

(3) Par dérogation aux autres dispositions du présent article, les personnes visées au paragraphe (1) sont indemnisables par l'Office de tous leurs frais — y compris toute somme versée en règlement d'une action ou pour exécuter un jugement — entraînés par des procédures civiles, pénales ou administratives auxquelles elles étaient parties en raison de leurs fonctions, si :

a) d'une part, elles ont obtenu gain de cause, dans une large mesure, sur leur défense au fond;

b) d'autre part, elles remplissent les conditions énoncées au paragraphe (1).

Personal representatives

(4) Where the Board could indemnify a person under any of subsections (1) to (3), the Board may to the same extent indemnify the heirs or personal representatives of the person.

Héritiers

(4) L'Office peut, dans la mesure prévue aux paragraphes (1) à (3), indemniser les héritiers ou représentants personnels des personnes indemnisables au titre de ces paragraphes.

Definition of "proceeding"

(5) For the purposes of this section, "proceeding" includes an investigation that

(*a*) pertains to the administration or enforcement of an Act of Parliament or of the legislature of a province;

(*b*) is authorized by or pursuant to an Act of Parliament or of the legislature of a province; or

(*c*) is within a class of investigations prescribed in the regulations.

Définition de « procédures »

(5) Pour l'application du présent article, « procédures » s'entend aussi d'une enquête :

a) portant sur l'application d'une loi fédérale ou provinciale;

b) autorisée sous le régime d'une loi fédérale ou provinciale;

c) faisant partie d'une catégorie d'enquêtes précisée dans les règlements.

Directors' and officers' insurance

17. The Board may purchase and maintain insurance for the benefit of any person referred to in subsection 16(1) and the personal representatives of that person against any liability incurred by the person

(*a*) in the capacity of a director or officer of the Board, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the Board; or

(*b*) in the capacity of a director or officer of another entity where the person acts or acted in that capacity at the Board's request, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the entity.

Assurance des administrateurs et dirigeants

17. L'Office peut souscrire au profit des personnes indemnisables une assurance couvrant la responsabilité qu'elles encourent en leur qualité d'administrateur ou de dirigeant ou, à sa demande, d'une autre entité, sauf lorsque cette responsabilité est liée au fait qu'elles n'ont pas agi avec intégrité et de bonne foi pour servir au mieux les intérêts de l'Office ou de l'entité.

Application to court for indemnification

18. (1) A court may order an indemnity under section 16 on the application of the Board or a person referred to in subsection 16(1) or (4) and may make any further order that it thinks fit.

Demande au tribunal

18. (1) À la demande de l'Office ou de l'une des personnes visées aux paragraphes 16(1) ou (4), le tribunal peut, par ordonnance, prescrire toute forme d'indemnisation prévue à l'article 16 et prendre toute autre mesure qu'il estime indiquée.

Notice of application

(2) Where an application is made for an order under subsection (1), the court may order notice to be given to any interested person, and that person is entitled to appear and be heard in person or by counsel.

Avis

(2) Le tribunal peut ordonner qu'avis soit donné de la demande d'indemnisation à tout intéressé; celui-ci peut comparaître en personne ou par ministère d'avocat lors de l'audition de celle-ci.

MEETINGS

RÉUNIONS

Resolution in lieu of meeting

19. (1) A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of the board of directors or of one of its committees, is as valid as if it had been passed at a meeting of the board of directors or of one of its committees.

Résolution tenant lieu d'assemblée

19. (1) Les résolutions écrites, signées de tous les administrateurs habiles à voter lors des réunions du conseil d'administration ou d'un comité de celui-ci, ont la même valeur que si elles avaient été adoptées au cours de ces réunions.

Filing resolution

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the board of directors or its committees.

Dépôt de la résolution

(2) Un exemplaire de ces résolutions est conservé avec les procès-verbaux des délibérations du conseil d'administration ou du comité, selon le cas.

Participation by telephone

20. A director may, subject to the by-laws, participate in a meeting of the board of directors or of one of its committees by means of any telephone or other communications facilities that permit all persons participating in the meeting to communicate with each other, and a director who participates in that way is deemed for the purposes of this Act to be present at the meeting.

Participation par téléphone

20. Sous réserve des règlements administratifs, les administrateurs peuvent participer à une réunion du conseil d'administration ou d'un de ses comités s'ils utilisent des moyens techniques, notamment le téléphone, permettant à tous les participants de communiquer entre eux; ils sont alors réputés, pour l'application de la présente loi, assister à la réunion.

Dissent

21. (1) A director who is present at a meeting of the board of directors or of one of its committees is deemed to have consented to any resolution passed or action taken at the meeting unless

(*a*) the director's dissent is entered in the minutes of the meeting or the director requests that the director's dissent be entered in the minutes of the meeting;

(*b*) the director sends a written dissent to the secretary of the meeting before the meeting is adjourned; or

(*c*) the director sends a dissent by registered mail or delivers it to the head office of the Board immediately after the meeting is adjourned.

Dissidence

21. (1) L'administrateur qui assiste à une réunion du conseil d'administration ou d'un comité de celui-ci est réputé avoir accepté toutes les résolutions adoptées ou toutes les mesures prises, à moins que son désaccord selon le cas :

a) soit consigné au procès-verbal, ou qu'il demande qu'il le soit;

b) fasse l'objet d'un avis écrit envoyé par ses soins au secrétaire de la réunion avant la fin de celle-ci;

c) soit remis ou fasse l'objet d'un avis écrit envoyé par courrier recommandé au siège de l'Office, aussitôt après la fin de la réunion.

Loss of right to dissent

(2) A director who votes for or consents to a resolution is not entitled to dissent under subsection (1).

Perte du droit à la dissidence

(2) L'administrateur qui vote ou accepte une résolution n'est pas fondé à faire valoir sa dissidence.

Dissent of absent director

(3) A director who was not present at a meeting at which a resolution was passed or an action was taken is deemed to have consented to the resolution or the action unless, within seven days after becoming aware of the resolution or the action, the director

(*a*) causes a dissent to be placed with the minutes of the meeting; or

(*b*) sends a dissent by registered mail or delivers it to the head office of the Board.

Dissidence d'un administrateur absent

(3) L'administrateur absent d'une réunion au cours de laquelle une résolution a été adoptée ou une mesure prise est réputé l'avoir acceptée, sauf si, dans les sept jours suivant la date où il en a eu connaissance, soit il fait consigner sa dissidence au procès-verbal de la réunion, soit il en remet, ou envoie par courrier recommandé, un avis écrit au siège de l'Office.

CONFLICTS OF INTEREST

CONFLIT D'INTÉRÊTS

Disclosure of director's interest

22. (1) A director or officer of the Board shall disclose in writing to the Board or request to have entered in the minutes of a meeting of the board of directors or one of its committees the nature and extent of the director's or officer's interest

(*a*) as a party to a transaction or proposed transaction with the Board; or

Communication des intérêts

22. (1) Doit communiquer par écrit à l'Office la nature et l'étendue de l'intérêt qu'il détient — ou demander qu'elles soient consignées au procès-verbal d'une réunion du conseil d'administration ou d'un de ses comités — l'administrateur ou le dirigeant qui est :

a) soit partie à une transaction ou à un projet de transaction avec l'Office;

(*b*) as a director or an officer of any entity that is a party to a transaction or proposed transaction with the Board or as a person who holds a material interest in any such entity.

b) soit administrateur ou dirigeant d'une entité partie à une telle transaction ou un tel projet, ou qui possède un intérêt important dans cette entité.

Time of disclosure for director

(2) The disclosure must be made, in the case of a director,

(*a*) at the meeting at which a proposed transaction is first considered;

(*b*) if the director was not at the time of that meeting interested in a proposed transaction, at the first meeting after the director becomes so interested;

(*c*) if the director becomes interested after a transaction is made, at the first meeting after the director becomes so interested; or

(*d*) if a person who is interested in a transaction later becomes a director, at the first meeting after the person becomes a director.

Moment de la communication dans le cas d'un dirigeant

(2) La communication se fait, dans le cas d'un administrateur, lors de la première réunion :

a) au cours de laquelle le projet de transaction est étudié;

b) suivant le moment où soit l'administrateur qui n'avait aucun intérêt dans le projet de transaction en acquiert un, soit l'administrateur acquiert un intérêt dans la transaction après sa conclusion, soit devient administrateur une personne ayant déjà un intérêt dans la transaction.

Time of disclosure for officer

(3) The disclosure must be made, in the case of an officer,

(*a*) without delay after the officer becomes aware that the transaction or proposed transaction is to be considered or has been considered at a meeting of the board of directors or one of its committees;

(*b*) if the officer becomes interested after a transaction is made, without delay after the officer becomes so interested; or

(*c*) if a person who is interested in a transaction later becomes an officer, without delay after the person becomes an officer.

Moment de la communication dans les autres cas

(3) Le dirigeant doit, pour sa part, effectuer la communication sans délai après :

a) avoir appris que la transaction ou le projet a été ou sera examiné lors d'une réunion;

b) avoir acquis l'intérêt, s'il l'acquiert après la conclusion de la transaction;

c) être devenu dirigeant, lorsqu'il détient déjà un intérêt.

Time of disclosure for director or officer

(4) If a transaction or proposed transaction is one that, in the ordinary course of the Board's business, would not require approval by the board of directors, a director or officer shall disclose in writing to the Board or request to have entered in the minutes of a meeting of the board of directors or one of its committees the nature and extent of the interest of the director or officer without delay after the director or officer becomes aware of the transaction or proposed transaction.

Moment de la communication dans les autres cas

(4) Si lorsque la transaction ou le projet ne requiert pas normalement l'approbation du conseil d'administration, la règle énoncée au paragraphe (1) s'applique dès que l'administrateur ou le dirigeant a connaissance de la transaction ou du projet.

Voting

(5) A director referred to in subsection (1) shall not vote on a resolution or participate in a discussion to approve the transaction mentioned in that subsection unless the transaction is

Vote

(5) L'administrateur visé au paragraphe (1) ne peut participer ni au vote ni aux discussions sur la résolution présentée pour faire approuver la transaction, sauf si celle-ci vise :

(*a*) one relating primarily to the director's remuneration as a director of the Board or one of its subsidiaries;

(*b*) one for indemnity or insurance under section 16 or 17; or

(*c*) one with a subsidiary.

a) essentiellement sa rémunération en qualité d'administrateur de l'Office ou d'une de ses filiales;

b) l'indemnité ou l'assurance prévue à l'article 16 ou 17;

c) une filiale de l'Office.

Continuing disclosure

(6) For the purposes of this section, a general notice to the board of directors or to one of its committees by a director or officer, declaring that the director or officer is a director or officer of, or has a material interest in, an entity and is to be regarded as interested in any transaction made with that entity, is a sufficient declaration of interest in relation to any transaction so made.

Déclaration d'intérêt

(6) Pour l'application du présent article, il suffit, pour déclarer l'intérêt qu'il détient relativement à une transaction, que l'administrateur ou le dirigeant de l'Office donne au conseil d'administration, ou à un de ses comités, un avis général les informant qu'il est administrateur ou dirigeant d'une entité ou possède dans celle-ci un intérêt important et doit être considéré comme ayant un intérêt dans toute transaction conclue avec elle.

Avoidance standards

(7) A transaction between the Board and one or more of its directors or officers, or between the Board and another entity of which a director or officer of the Board is a director or officer or in which a director or officer of the Board has a material interest, is neither void nor voidable by reason only of that relationship or by reason only that a director with an interest in the transaction is present at or is counted to determine the presence of a quorum at a meeting of the board of directors or on one its committees that authorized the transaction, if

(*a*) the director or officer disclosed the interest in accordance with subsection (2), (3), (4) or (6), as the case may be;

(*b*) the transaction was approved by the directors; and

(*c*) the transaction was reasonable and fair to the Board at the time it was approved.

Normes relatives à la nullité

(7) Aucune transaction entre l'Office et soit l'un de ses administrateurs ou dirigeants, soit une autre entité dont est également administrateur ou dirigeant l'un de ses administrateurs ou dirigeants ou dans laquelle celui-ci a un intérêt important, n'est entachée de nullité pour ce seul motif ou au motif que l'un de ces administrateurs est présent ou permet d'atteindre le quorum requis à la réunion du conseil d'administration ou du comité qui a autorisé la transaction, si, d'une part, l'administrateur ou le dirigeant a communiqué ou déclaré son intérêt conformément aux paragraphes (2), (3), (4) ou (6) et les administrateurs de l'Office ont approuvé la transaction, et, d'autre part, celle-ci était, à cette époque, équitable pour lui.

Application to court

(8) Where a director or officer of the Board fails to disclose an interest in a transaction in accordance with this section, a court may, on the application of the Board, set aside the transaction on any terms that it thinks fit.

Demande au tribunal

(8) Lorsque l'un des administrateurs ou dirigeants a omis, en violation du présent article, de révéler son intérêt dans une transaction, le tribunal peut, à la demande de l'Office, annuler la transaction selon les modalités qu'il estime indiquées.

Meaning of "transaction"

(9) In this section, "transaction" includes a contract, a guarantee and an investment.

Définition de « transaction »

(9) Pour l'application du présent article, «transaction» s'entend notamment d'un contrat, d'une garantie ou d'un placement.

GENERAL

DISPOSITIONS GÉNÉRALES

No constructive notice

23. No person dealing with the Board or with any person who has acquired rights from the Board is deemed to have notice or knowl-

Règle d'interprétation

23. Les personnes qui traitent avec l'Office ou ses ayants droit ne sont pas présumées avoir connaissance du contenu d'un document

edge of the contents of a document, other than an Act of Parliament or any instrument required to be published in the *Canada Gazette* pursuant to the *Statutory Instruments Act*, concerning the Board by reason only that the document is available at the head office of the Board or has been made public.

concernant l'Office, sauf une loi fédérale ou un texte qui doit être publié dans la *Gazette du Canada* en application de la *Loi sur les textes réglementaires*, du seul fait que ce document a été rendu public ou qu'on peut l'obtenir au siège de l'Office.

Validity of acts

24. An act of the Chairperson or other director of the Board, or of the chief executive officer or other officer of the Board, is not invalid by reason only of an irregularity in that person's appointment or a defect in that person's qualifications.

Validité

24. Une irrégularité dans leur nomination ou le fait qu'ils ne satisfont pas à toutes les conditions d'aptitude ne porte pas en soi atteinte à la validité des actes d'un administrateur, du président, du premier dirigeant ou d'un autre dirigeant de l'Office.

Assertions

25. The Board may not assert against a person dealing with the Board or with any person who has acquired rights from the Board

(*a*) that this Act or the by-laws have not been complied with, or

(*b*) that a document issued by any director, officer or agent of the Board having apparent authority to issue the document is not valid or genuine by reason only that the person who issued the document lacked actual authority to issue the document,

except where the person has knowledge that the facts asserted are true.

Opposabilité interdite

25. L'Office ne peut opposer à des personnes qui traitent avec lui ou ses ayants droit — sauf si elles ont connaissance de la réalité — le fait que:

a) la présente loi ou ses règlements administratifs n'ont pas été observés;

b) un document délivré par un de ses administrateurs, dirigeants ou mandataires apparemment habilité à le faire n'est pas valide ou authentique pour le seul motif que l'intéressé n'avait pas le pouvoir nécessaire.

Corporate seal

26. The Board may, but need not, have a corporate seal, and an instrument or agreement executed on behalf of the Board is not invalid merely because a corporate seal is not affixed to it.

Sceau

26. L'Office n'est pas tenu d'avoir un sceau, et l'absence de sceau sur tout document signé en son nom ne rend pas ce dernier nul.

BY-LAWS

RÈGLEMENTS ADMINISTRATIFS

By-laws

27. (1) The board of directors may make by-laws that are consistent with this Act to govern the conduct and management of the Board's business and affairs, including by-laws

(*a*) for the administration, management and control of the Board's property;

(*b*) governing the calling of meetings of the board of directors and its committees, the time and place of those meetings and the quorum and procedure in all matters relating to those meetings;

(*c*) respecting the functions, duties and remuneration of the officers and employees of the Board; and

Règlements administratifs

27. (1) Le conseil d'administration peut, par règlement administratif compatible avec la présente loi, régir la conduite de ses travaux et la gestion de ses affaires, notamment en ce qui touche:

a) la gestion et la disposition de ses biens;

b) la convocation de ses réunions et de celles de ses comités, les dates, heures et lieux de celles-ci, ainsi que le quorum et la procédure à suivre pour ces réunions;

c) les attributions des administrateurs, dirigeants et employés et leur rémunération;

d) la constitution de ses comités et la désignation de leurs membres.

(*d*) respecting the establishment of committees of the board of directors and the appointment of members to those committees.

Effective date

(2) A by-law is effective as soon as it is made or on such later date as may be stated in the by-law to be its effective date.

Prise d'effet

(2) Les règlements administratifs prennent effet soit dès leur adoption par le conseil d'administration soit à la date ultérieure qu'il peut fixer.

Copy to Minister

28. (1) The board of directors shall provide a copy of every by-law and every amendment to or repeal of any by-law to the Minister and the appropriate provincial Ministers within 14 days after its effective date.

Copie au ministre

28. (1) Le conseil d'administration envoie au ministre et aux ministres provinciaux compétents des copies du règlement administratif ou, le cas échéant, de son abrogation ou de toute modification dans les quatorze jours suivant sa prise d'effet.

By-laws available to the public

(2) A copy of every by-law shall be kept at the head office of the Board. Anyone is entitled, during the usual business hours of the Board, to examine the by-laws and, on payment of a reasonable fee, to make copies of or take extracts from them.

Copie au siège social

(2) L'Office conserve à son siège une copie des règlements administratifs, que l'on peut consulter pendant les heures normales d'ouverture et, sur paiement d'un droit raisonnable, photocopier en tout ou en partie.

Statutory Instruments Act does not apply

29. The *Statutory Instruments Act* does not apply in respect of by-laws.

Statut

29. La *Loi sur les textes réglementaires* ne s'applique pas aux règlements administratifs pris par le conseil d'administration.

COMMITTEES

Establishment

Audit and investment committees

30. (1) The board of directors shall establish an audit committee and an investment committee.

Other committees

(2) The board of directors may establish other committees as it deems necessary and assign to them such duties as it considers appropriate.

COMITÉS

Constitution

Comités de vérification et de placement

30. (1) Le conseil d'administration doit constituer deux comités chargés respectivement de la vérification et des placements.

Autres comités

(2) Le conseil d'administration peut, en tant que de besoin, constituer d'autres comités et leur attribuer les fonctions qu'il estime indiquées.

Audit Committee

Duties of audit committee

31. The audit committee shall

(*a*) require the Board's management to implement and maintain appropriate internal control procedures;

(*b*) review, evaluate and approve those internal control procedures;

(*c*) review and approve the Board's annual financial statements and report to the board of directors before those statements are approved by the board of directors;

(*d*) meet with the Board's auditor to discuss the Board's annual financial statements and the auditor's report;

Comité de vérification

Fonctions du comité de vérification

31. Le comité de vérification a pour tâche de:

a) veiller à ce que les mécanismes appropriés de contrôle interne soient mis en place par la direction de l'Office;

b) revoir, évaluer et approuver ces mécanismes;

c) examiner les états financiers annuels de l'Office, les approuver et en faire rapport à l'Office avant leur approbation par le conseil d'administration;

d) rencontrer le vérificateur pour discuter de son rapport et des états financiers annuels;

(*e*) review all investments and transactions that could adversely affect the return on the Board's investments that are brought to the committee's attention by the Board's auditor or officers; and

(*f*) meet with the chief internal auditor of the Board, or with the person acting in any similar capacity, and with the Board's management, to discuss the effectiveness of the internal control procedures.

e) vérifier tous les placements et opérations susceptibles de nuire au rendement sur le capital investi que le vérificateur ou un dirigeant porte à son attention;

f) rencontrer le vérificateur en chef interne, ou la personne exerçant des fonctions analogues, ainsi que la direction de l'Office, pour discuter de l'efficacité des mécanismes de contrôle interne mis en place par celui-ci.

Meeting of audit committee

32. (1) The Board's auditor or any member of the audit committee may call a meeting of the committee.

Réunions du comité

32. (1) Le vérificateur ou tout membre du comité de vérification peut convoquer une réunion du comité.

Meeting of directors

(2) The audit committee may call a meeting of the board of directors to consider any matter of concern to the committee.

Réunions des administrateurs

(2) Le comité de vérification peut convoquer une réunion des administrateurs pour l'étude des questions qui l'intéressent.

Auditor's right to attend meetings

33. (1) The Board's auditor is entitled to receive notice of and to attend meetings of the board of directors and meetings of the audit committee, at the Board's expense, and to be heard at those meetings on matters relating to the auditor's duties.

Présence du vérificateur

33. (1) Le vérificateur doit recevoir avis de chacune des réunions du conseil d'administration et du comité de vérification, il a le droit d'y assister, aux frais de l'Office, et d'y être entendu sur les questions qui relèvent de son mandat.

Requiring auditor's attendance

(2) The Board's auditor shall attend meetings of the audit committee, if requested to do so by a member of the audit committee, at the Board's expense, and shall attend meetings of the board of directors, if requested to do so by a director.

Présence obligatoire

(2) Il est en outre tenu, sur demande, selon le cas, d'un membre du comité de vérification ou d'un administrateur, d'assister, aux frais de l'Office, aux réunions du comité ou du conseil d'administration.

Investment Committee

Comité de placement

Duties of investment committee

34. The investment committee shall

(*a*) perform the duties that are delegated to it by the board of directors;

(*b*) approve the engagement of investment managers empowered with discretionary authority to invest the assets of the Board;

(*c*) meet with the officers and employees of the Board to discuss the effectiveness of the Board's investment policies and the achievement of the Board's objects;

(*d*) require management to implement and maintain appropriate procedures to

(i) monitor the application of the Board's investment policies, standards and procedures, and

(ii) ensure that the Board's agents comply with this Act and the Board's investment policies, standards and procedures; and

Fonction du comité de placement

34. Le comité de placement s'acquitte des tâches suivantes:

a) il exerce les fonctions qui lui sont déléguées par le conseil d'administration;

b) il approuve les contrats des conseillers en placement engagés par l'Office avec tous pouvoirs en matière de placement;

c) il rencontre les membres du personnel de l'Office afin de discuter avec eux de l'efficacité des politiques de placement de l'Office et de la réalisation de sa mission;

d) il impose à la direction l'obligation d'établir des procédures pour:

(i) surveiller la mise en œuvre des principes, normes et procédures de l'Office en matière de placement,

(*e*) review, evaluate and approve management's procedures referred to in paragraph (*d*).

(ii) faire en sorte que les mandataires de celui-ci s'y conforment de même qu'à la présente loi;

e) il revoit, évalue et approuve les procédures visées à l'alinéa *d*).

INVESTMENTS

Investment policies, standards and procedures

35. Subject to the regulations, the board of directors shall establish, and the Board and its subsidiaries shall adhere to, investment policies, standards and procedures that a person of ordinary prudence would exercise in dealing with the property of others.

Duty of investment managers

36. Every investment manager who invests the assets of the Board shall do so in accordance with this Act and the Board's investment policies, standards and procedures.

37. [Repealed, 2009, c. 31, s. 44]

PLACEMENTS

Normes en matière de placement

35. Sous réserve des règlements, l'Office et ses filiales sont tenus de se conformer aux principes, normes et procédures en matière de placement que le conseil d'administration établit sur le modèle de ceux qu'une personne prudente mettrait en œuvre lorsqu'elle traite avec le bien d'autrui.

Conseillers en placements

36. Les conseillers en placement effectuent leurs placements pour l'Office en conformité avec la présente loi ainsi qu'avec les principes, normes et procédures visés au paragraphe 35.

37. [Abrogé, 2009, ch. 31, art. 44]

FINANCIAL MANAGEMENT

Financial Year

Financial year

38. The financial year of the Board is the period beginning on April 1 in one calendar year and ending on March 31 in the next calendar year.

Financial Statements

Books and systems

39. (1) The Board shall, in respect of itself and each of its subsidiaries, cause

(*a*) books of account and records to be kept;

(*b*) financial and management control and information systems and management practices to be maintained; and

(*c*) a record of the investments held during the financial year to be kept, showing

(i) the book value of each investment,

(ii) the market value of each investment and such information as will permit the verification of that value, and

(iii) such information as will permit the determination of whether the requirements of this Act and the investment policies, standards and procedures have been met.

Manner in which books, etc., to be kept

(2) The books, records, systems and practices required by subsection (1) shall be kept

GESTION FINANCIÈRE

Exercice

Exercice

38. L'exercice de l'Office correspond à la période commençant le 1er avril et se terminant le 31 mars de l'année suivante.

États financiers

Documents comptables

39. (1) L'Office veille, en ce qui concerne tant lui-même que ses filiales :

a) à faire tenir des documents comptables;

b) à mettre en œuvre, en matière de finances et de gestion, des moyens de contrôle et d'information et à faire appliquer des méthodes de gestion;

c) à faire tenir pour chaque exercice un registre des placements présentant :

(i) la valeur comptable de chacun d'eux,

(ii) leur valeur marchande et l'information permettant de la vérifier,

(iii) les renseignements permettant de vérifier si les exigences de la présente loi et les principes, normes et procédures en matière de placement ont été respectés.

Tenue des documents

(2) Pour l'application du paragraphe (1), l'Office s'efforce d'assurer, dans la mesure du possible et tant pour lui que pour ses filiales :

and maintained in such manner as will provide reasonable assurance that

(*a*) the Board's assets and those of its subsidiaries are safeguarded and controlled;

(*b*) the Board's transactions and those of its subsidiaries are in accordance with this Act and the by-laws, or the by-laws of the subsidiaries, as the case may be; and

(*c*) the Board's financial, human and physical resources and those of its subsidiaries are managed economically and efficiently and that the Board's operations and those of its subsidiaries are carried out effectively.

a) la protection et le contrôle de l'actif;

b) la conformité des opérations avec la présente loi ainsi qu'avec ses règlements administratifs ou ceux des filiales;

c) une gestion économique et efficiente des ressources financières, humaines et matérielles et l'efficacité des opérations.

Internal audit

(3) The Board shall cause internal audits to be conducted, in respect of itself and each of its subsidiaries, to assess compliance with subsections (1) and (2).

Vérification interne

(3) Afin de surveiller l'observation des paragraphes (1) et (2), l'Office fait procéder à des vérifications internes de ses opérations et de celles de ses filiales.

Annual financial statements

(4) The Board shall cause financial statements to be prepared annually, in respect of itself and each of its subsidiaries, including, with respect to the financial year to which it relates,

(*a*) a balance sheet as at the end of the financial year;

(*b*) a statement of income for the financial year;

(*c*) a statement of change in net assets for the financial year; and

(*d*) a statement of investment portfolio.

États financiers annuels

(4) Il fait établir des états financiers annuels qui présentent notamment, à l'égard de lui-même et de ses filiales:

a) un bilan de fin d'exercice;

b) un état des revenus pour l'exercice;

c) un état des modifications de l'actif net;

d) un état des placements de portefeuille.

Contents of statements

(5) The annual financial statements shall show such information and particulars as in the opinion of the directors are necessary to present fairly, in accordance with generally accepted accounting principles, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants, the Board's financial position as at the end of the financial year to which it relates.

Contenu des documents

(5) Ces documents contiennent également l'information générale et particulière que le conseil d'administration juge nécessaire pour présenter fidèlement, selon les principes comptables généralement reconnus — principalement ceux qui sont énoncés dans le Manuel de l'Institut canadien des comptables agréés — , la situation financière de l'Office à la clôture de l'exercice.

Quarterly financial statements

(6) During each financial year, the Board shall cause quarterly financial statements to be prepared for each three month period of the year. The quarterly statements shall

(*a*) show the same information for the most recent three month period as is required to be set out in the Board's annual financial statements, except that a balance sheet is not required; and

États financiers trimestriels

(6) Au cours de chaque exercice, l'Office fait établir, pour chacun des quatre trimestres, des états financiers présentant pour la période en cause les mêmes renseignements que dans les états financiers annuels, à l'exception du bilan de fin d'exercice, et comportant un état financier comparatif de la partie de l'exercice écoulée et de la période correspondante de l'exercice précédent.

(*b*) show the same information in respect of the part of the year up to the date of the statements in relation to the corresponding period in the preceding financial year.

Approval by board of directors

(7) The board of directors shall approve the annual financial statements of the Board and of each of its subsidiaries and that approval shall be evidenced by the signature of at least one director of the Board.

Approbation par le conseil d'administration

(7) Le conseil d'administration de l'Office doit approuver ses états financiers annuels ainsi que ceux de ses filiales, l'approbation étant attestée par la signature d'au moins un administrateur de l'Office.

AUDITOR'S REPORT

RAPPORT DU VÉRIFICATEUR

Annual auditor's report

40. (1) The Board shall cause an annual auditor's report to be prepared, in respect of itself and each of its subsidiaries, on

(*a*) the annual financial statements referred to in section 39;

(*b*) any revised financial statement referred to in subsection 41(3); and

(*c*) the record of investments referred to in paragraph 39(1)(*c*).

Rapport annuel du vérificateur

40. (1) L'Office fait établir chaque année, pour lui et ses filiales, un rapport de vérification :

a) des états financiers annuels prévus à l'article 39;

b) des états financiers révisés prévus au paragraphe 41(3);

c) du registre des placements visé à l'alinéa 39(1)*c*).

Contents

(2) A report under subsection (1) shall be addressed to the Board and shall

(*a*) include separate statements indicating whether, in the auditor's opinion,

(i) the financial statements are presented fairly in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding year,

(ii) the Board's transactions and those of its subsidiaries that have come to the auditor's notice in the course of the auditor's examination for the report were in accordance with this Act and the by-laws, and the by-laws of the subsidiaries, as the case may be, and

(iii) the record of investments kept in accordance with paragraph 39(1)(*c*) fairly presents the information required by that paragraph; and

(*b*) call attention to any other matter falling within the scope of the auditor's examination for the report that, in the auditor's opinion, should be brought to the attention of the Board.

Contenu

(2) Le rapport, qui lui est transmis, comporte notamment les éléments suivants :

a) des énoncés distincts indiquant si, selon le vérificateur :

(i) les états financiers sont présentés fidèlement en conformité avec les principes comptables généralement reconnus appliqués d'une façon compatible avec celle de l'année précédente,

(ii) les opérations de l'Office et de ses filiales qui ont été portées à sa connaissance au cours des travaux menant à l'établissement de son rapport ont été effectuées en conformité avec la présente loi et les règlements administratifs de l'Office ou des filiales,

(iii) le registre visé à l'alinéa 39(1)*c*) présente fidèlement l'information nécessaire pour chacun des placements;

b) la mention des autres questions qui entrent dans le champ des travaux de vérification devant mener à l'établissement du rapport et qui, selon lui, devraient être portées à l'attention de l'Office.

Examination

(3) An auditor preparing a report under subsection (1) shall make such examination as the auditor considers necessary for the purpose.

Examens

(3) Le vérificateur procède aux examens qu'il estime nécessaires pour lui permettre d'établir le rapport visé au paragraphe (1).

Auditing standards

(4) An auditor's examination shall be conducted in accordance with generally accepted auditing standards, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants.

(4) Ce faisant, il applique les normes de vérification généralement reconnues, principalement celles qui sont énoncées dans le Manuel de l'Institut canadien des comptables agréés.

Normes applicables

Reliance on internal audit

(5) In conducting an audit under this Act, an auditor shall rely on any internal audit conducted under subsection 39(3), to the extent that the auditor considers that reliance to be practicable.

(5) Le vérificateur, dans la mesure où il les juge utilisables, se fie aux résultats de toute vérification interne faite en conformité avec le paragraphe 39(3).

Utilisation des données d'une vérification interne

Notice of errors and omissions

41. (1) A director or officer of the Board shall without delay notify the Board's auditor and the audit committee of any error or omission of which the director or officer becomes aware in a financial statement that the auditor or a former auditor has reported on or in a report prepared by the auditor or a former auditor under section 40.

41. (1) Les administrateurs et les dirigeants de l'Office informent immédiatement le vérificateur et le comité de vérification de l'Office des erreurs ou omissions qu'ils trouvent dans un état financier sur lequel le vérificateur ou un de ses prédécesseurs a fait un rapport ou dans un rapport établi par l'un de ceux-ci en conformité avec l'article 40.

Avis d'erreurs et d'omissions

Duty of auditor

(2) Where the Board's auditor, or a former auditor of the Board, is notified or becomes aware of any error or omission in a financial statement that the auditor or former auditor has reported on or in a report prepared by the auditor or former auditor under section 40, the auditor or former auditor shall without delay notify each director of the Board of the error or omission if the auditor or former auditor is of the opinion that the error or omission is material.

(2) Le vérificateur ou son prédécesseur qui est informé de l'existence d'une telle erreur ou omission, ou qui en trouve une, en avise immédiatement tous les administrateurs de l'Office s'il estime qu'elle est importante.

Obligation du vérificateur

Correction

(3) Where the directors receive a notification under subsection (2) of an error or omission in a financial statement or a report, the Board shall prepare a revised financial statement or the auditor or former auditor shall issue a correction to the report, as the case may be, and a copy of it shall be given to the Minister and the appropriate provincial Ministers.

(3) À la suite de l'avis prévu au paragraphe (2), l'Office fait établir un état financier révisé ou le vérificateur ou son prédécesseur apporte un rectificatif au rapport; un exemplaire du document en cause est remis au ministre et aux ministres provinciaux compétents.

Rectificatif

AUDITOR

VÉRIFICATEUR

Appointment of auditor

42. (1) The auditor of the Board shall be appointed annually by the board of directors, and may be removed at any time by the board of directors.

42. (1) Le vérificateur de l'Office est nommé chaque année par le conseil d'administration, qui peut le révoquer à tout moment.

Nomination

Re-appointment

(2) On the expiration of the appointment of the auditor of the Board, the auditor is eligible for re-appointment.

(2) Le mandat du vérificateur est renouvelable.

Renouvellement

Continuation in office

(3) Notwithstanding subsection (1), if an auditor of the Board is not appointed to take office on the expiration of the appointment of an incumbent auditor, the incumbent auditor continues in office until a successor is appointed.

(3) Par dérogation au paragraphe (1), s'il n'est pas pourvu à sa succession, le mandat du vérificateur se prolonge jusqu'à la nomination de son remplaçant.

Prolongation du mandat

Definition of "firm of accountants"

43. (1) In this section, "firm of accountants" means a partnership, the members of which are accountants engaged in the practice of accounting, or a body corporate that is incorporated by or under an Act of the legislature of a province and engaged in the practice of accounting.

Qualification of auditor

(2) A natural person or firm of accountants is qualified to be the auditor of the Board if

(*a*) in the case of a natural person, the person is an accountant who

(i) is a member in good standing of an institute or association of accountants incorporated by or under an Act of the legislature of a province,

(ii) has at least five years experience at a senior level in performing audits of a financial institution,

(iii) is ordinarily resident in Canada, and

(iv) is independent of the Board, each of its subsidiaries, and the directors and officers of the Board and those of each of its subsidiaries; and

(*b*) in the case of a firm of accountants, the member or officer of the firm jointly designated by the firm and the Board to conduct the audit of the Board on behalf of the firm meets the qualifications described in paragraph (*a*).

Independence

(3) For the purposes of this section,

(*a*) independence is a question of fact; and

(*b*) a person is deemed not to be independent if that person or any of that person's business partners

(i) is a business partner, director, officer or employee of the Board or of any of its subsidiaries, or a business partner of any director, officer or employee of the Board or of any of its subsidiaries, or

(ii) has been a liquidator, trustee in bankruptcy, receiver or receiver and manager of any of the Board's subsidiaries within the two years before the natural person's or the firm of accountants' proposed appointment, as the case may be, as the Board's auditor.

Définition de « cabinet de comptables »

43. (1) Pour l'application du présent article, «cabinet de comptables» s'entend d'une société de personnes dont les membres sont des comptables exerçant leur profession ou d'une personne morale constituée sous le régime d'une loi provinciale pour fournir des services de comptabilité.

Conditions à remplir

(2) Peut être nommé vérificateur:

a) toute personne physique qui:

(i) est membre en règle d'un institut ou d'une association de comptables constitués en personne morale sous le régime d'une loi provinciale,

(ii) possède au moins cinq ans d'expérience au niveau supérieur dans l'exercice de la vérification d'institutions financières,

(iii) réside habituellement au Canada,

(iv) est indépendante de l'Office et de ses filiales, ainsi que des administrateurs et dirigeants de l'un et des autres;

b) le cabinet de comptables dont le membre ou dirigeant désigné conjointement par le cabinet et l'Office pour la vérification satisfait aux critères énumérés à l'alinéa *a*).

Indépendance

(3) Pour l'application du présent article:

a) l'indépendance est une question de fait;

b) est réputée ne pas être indépendante la personne qui, ou dont un associé:

(i) est associé, administrateur, dirigeant ou employé de l'Office ou de l'une de ses filiales ou est associé d'un de leurs administrateurs, dirigeants ou employés,

(ii) a été séquestre, séquestre-gérant, liquidateur ou syndic de faillite d'une des filiales de l'Office dans les deux ans précédant sa nomination éventuelle au poste de vérificateur de l'Office.

Joint designation

(4) Within 15 days after appointing a firm of accountants as its auditor, the Board and the firm shall jointly designate a member or officer of the firm who has the qualifications described in paragraph (2)(*a*) to conduct the audit of the Board on behalf of the firm.

Désignation conjointe

(4) Dans les quinze jours suivant celui où il a été choisi pour procéder à la vérification, le cabinet de comptables désigne, conjointement avec l'Office, un membre ou un dirigeant qui satisfait aux critères énumérés à l'alinéa (2)*a*).

Resignation

(5) An auditor of the Board who becomes disqualified under this section shall resign without delay after becoming aware of the disqualification.

Démission

(5) Le vérificateur doit démissionner dès qu'à sa connaissance il ne remplit plus les conditions requises par le présent article.

When resignation becomes effective

(6) A resignation of an auditor of the Board becomes effective at the time the Board receives a written resignation from the auditor or at the time specified in the resignation, whichever is later.

Démission

(6) La démission du vérificateur prend effet dès réception par l'Office d'un avis écrit à cet effet ou, si elle est ultérieure, à la date que précise celui-ci.

Statement of auditor

(7) Where the Board's auditor resigns or receives a notice or otherwise learns of a meeting of the board of directors at which another auditor is to be appointed in place of the auditor and the auditor objects to being replaced, the auditor shall submit to the Board a written statement giving the reasons for the resignation or the reasons why the auditor objects to being replaced.

Déclaration du vérificateur

(7) Le vérificateur de l'Office qui démissionne ou qui apprend, notamment par voie d'avis, la tenue d'une réunion du conseil d'administration destinée à pourvoir le poste qu'il occupe est tenu de présenter à l'Office une déclaration écrite exposant les motifs, selon le cas, de sa démission ou de son opposition à son remplacement.

Statement to be sent to Ministers

(8) Where the Board receives a written statement referred to in subsection (7) that relates to a resignation of its auditor as a result of a disagreement with the directors or officers of the Board or that relates to a replacement or proposed replacement of the auditor, the Board shall without delay send a copy of the statement to the Minister and to the appropriate provincial Ministers of the participating provinces.

Transmission de la déclaration

(8) L'Office fait parvenir sans délai au ministre et aux ministres provinciaux compétents des provinces participantes un exemplaire de la déclaration du vérificateur visé par le remplacement ou qui démissionne en raison d'un désaccord avec les administrateurs ou dirigeants.

Right to Information

Accès aux renseignements

Right to information

44. (1) On the request of the Board's auditor, the present or former directors, officers, employees or agents of the Board shall provide to the auditor all information and explanations, and all access to records, documents, books, accounts and vouchers of the Board and its subsidiaries, that the auditor considers necessary to prepare any report required by this Act and that they are reasonably able to furnish.

Accès aux renseignements

44. (1) Les administrateurs, dirigeants, employés ou mandataires de l'Office, ou leurs prédécesseurs, doivent, à la demande du vérificateur, lui fournir des renseignements et des éclaircissements et lui donner accès aux registres, livres, comptes, pièces justificatives et autres documents de l'Office ou de ses filiales qu'il estime nécessaires pour établir les rapports prévus par la présente loi, et ce dans la mesure où il leur est normalement possible de le faire.

Directors' duties

(2) On the request of the Board's auditor, the directors shall

Obligation des administrateurs

(2) Les administrateurs de l'Office doivent, à la demande du vérificateur :

(*a*) obtain from the present or former directors, officers, employees or agents of any of its subsidiaries all information and explanations that

(i) the auditor considers necessary to enable the auditor to prepare any report required by this Act, and

(ii) the present or former directors, officers, employees or agents are reasonably able to furnish; and

(*b*) furnish the auditor with the information and explanations so obtained.

a) obtenir auprès des administrateurs, dirigeants, employés ou mandataires d'une de ses filiales, ou de leurs prédécesseurs, les renseignements et éclaircissements que ces personnes peuvent normalement fournir et que le vérificateur estime nécessaires pour lui permettre d'établir les rapports prévus par la présente loi;

b) fournir les renseignements et éclaircissements ainsi recueillis au vérificateur.

Reliance on reports

(3) The Board's auditor may reasonably rely on any report of any other auditor of the Board.

Autres rapports

(3) Le vérificateur de l'Office peut normalement se fier aux rapports des autres vérificateurs de l'Office.

No civil liability

(4) A person who in good faith makes an oral or written communication under subsection (1) or (2) shall not be liable in any civil action arising from having made the communication.

Immunité

(4) Les communications orales ou écrites faites de bonne foi en application du paragraphe (1) ou (2) sont soustraites aux poursuites civiles.

Qualified Privilege

Qualified privilege

45. Any oral or written statement or report made under this Act by the Board's auditor or a former auditor of the Board has qualified privilege.

Immunité du vérificateur

Immunité relative

45. Les vérificateurs, ainsi que leurs prédécesseurs, jouissent d'une immunité relative en ce qui concerne les déclarations orales ou écrites et les rapports qu'ils font en vertu de la présente loi.

Special Audit

Special audit

46. (1) The Minister may, if the Minister considers it necessary, appoint an auditor to conduct a special audit of the Board or any of its subsidiaries.

Vérification spéciale

46. (1) Le ministre peut faire procéder à une vérification spéciale de l'Office ou d'une de ses filiales s'il l'estime nécessaire et nommer à cette fin un vérificateur.

Costs of audit

(2) The costs of a special audit are payable by the Board.

Dépenses

(2) Les dépenses exposées à cet effet sont à la charge de l'Office.

Other sections to apply

(3) Sections 43 to 45 apply in respect of a special auditor, with any modifications that the circumstances require.

Application des articles 43 à 45

(3) Les articles 43 à 45 s'appliquent, avec les adaptations nécessaires, au vérificateur spécial.

Special Examination

Special examination

47. (1) The Minister shall cause a special examination to be carried out at least once every six years in respect of the Board or any of its subsidiaries to determine if the systems and practices referred to in paragraph 39(1)(*b*) were, in the period under examination, maintained in a manner that provided reasonable assurance that they met the requirements of paragraphs 39(2)(*a*) and (*c*).

Examens spéciaux

Examens spéciaux

47. (1) Le ministre fait procéder, au moins tous les six ans, à un examen spécial des opérations de l'Office ou d'une de ses filiales afin de déterminer si, pendant la période considérée, la mise en œuvre des moyens et des méthodes visés à l'alinéa 39(1)*b*) a été, dans la mesure du possible, conforme aux dispositions des alinéas 39(2)*a*) et *c*).

Consultation required

(2) Before causing a special examination to be carried out, the Minister shall consult with the appropriate provincial Ministers of the participating provinces.

(2) Auparavant, il doit toutefois consulter les ministres provinciaux compétents des provinces participantes.

Consultation

Plan

(3) Before an examiner commences a special examination, the examiner shall survey the systems and practices of the Board or of the subsidiary being examined, as the case may be, and submit a plan to the audit committee for the examination, including a statement of the criteria to be applied in the examination.

(3) Avant de procéder à ses travaux, l'examinateur étudie les moyens et les méthodes de l'Office ou de sa filiale et établit un plan d'action, notamment quant aux critères qu'il entend appliquer, qu'il présente ensuite au comité de vérification.

Plan d'action

Resolution of disagreements

(4) Disagreements, if any, between the examiner and the audit committee with respect to a plan referred to in subsection (3) may be resolved by the Minister.

(4) Les désaccords entre l'examinateur et le comité de vérification sur ce plan d'action peuvent être tranchés par le ministre.

Désaccord

Reliance on internal audit

(5) An examiner shall rely on any internal audit conducted under subsection 39(3), to the extent that the examiner considers that reliance to be practicable.

(5) L'examinateur, dans la mesure où il les juge utilisables, se fie aux résultats de toute vérification interne faite en conformité avec le paragraphe 39(3).

Utilisation des données d'une vérification interne

Report

48. (1) An examiner shall, on completion of the special examination, submit a report on the examiner's findings to the Minister and the appropriate provincial Ministers.

48. (1) Ses travaux terminés, l'examinateur expose ses conclusions dans un rapport qu'il soumet au ministre et aux ministres provinciaux compétents.

Rapport spécial au ministre de tutelle

Contents

(2) The report of an examiner shall include

(*a*) a statement indicating whether, in the examiner's opinion, with respect to the criteria established under subsection 47(3), there is reasonable assurance that there are no significant deficiencies in the systems and practices examined; and

(*b*) a statement of the extent to which the examiner relied on internal audits.

(2) Le rapport comporte notamment deux énoncés précisant :

a) d'une part, si, selon l'examinateur, compte tenu des critères établis en conformité avec le paragraphe 47(3), il peut être garanti que, dans la mesure du possible, les moyens et les méthodes étudiés ne présentent pas de défauts graves;

b) d'autre part, dans quelle mesure l'examinateur s'est fié aux résultats d'une vérification interne.

Contenu

Who conducts examination

49. (1) Subject to subsection (2), a special examination referred to in section 47 shall be carried out by the Board's auditor or, where the Minister has consulted the board of directors and is of the opinion that it is necessary, by an auditor appointed by the Minister.

49. (1) Sous réserve du paragraphe (2), l'examen spécial visé à l'article 47 est confié au vérificateur de l'Office; toutefois, dans les cas où il estime contre-indiqué de voir confier l'examen à celui-ci, le ministre peut, après consultation du conseil d'administration, en charger un autre vérificateur.

Examinateur

Sections 43 to 45 apply

(2) Sections 43 to 45 apply in respect of an examiner as though the references in that section to an auditor were references to an examiner.

(2) Les articles 43 à 45 s'appliquent à l'examinateur comme s'il s'agissait du vérificateur.

Application des articles 43 à 45

REPORTING

QUARTERLY STATEMENTS

Statements to go to Ministers

50. (1) The Board shall send copies of the financial statements for the first, second and third quarters of the financial year, prepared in accordance with subsection 39(6), to the Minister and the appropriate provincial Ministers within 45 days after the end of the three-month period to which they relate.

Statements to be made public

(2) Within seven days after the financial statements are sent as required under subsection (1), the Board shall make the statements available to the public.

1997, c. 40, s. 50; 2003, c. 5, s. 16.

ANNUAL REPORT

Annual report required

51. (1) The Board shall as soon as possible, but in any case within 60 days, after the end of each financial year provide the Minister and the appropriate provincial Ministers with an annual report on the operations of the Board in that year and the Board shall make copies of the report available to the public.

Tabling in Parliament

(2) After receiving the annual report, the Minister shall cause it to be laid before each House of Parliament on any of the next 15 days during which that House is sitting.

Contents

(3) The annual report shall contain

(*a*) the financial statements for the previous year prepared as required under section 39;

(*b*) the Board's auditor's report for that year prepared as required under section 40;

(*c*) a certificate, signed by a director on behalf of the board of directors, stating that the investments of the Board held during that year were in accordance with this Act and the Board's investment policies, standards and procedures;

(*d*) a statement of the Board's objectives for that year and a statement on the extent to which the Board met those objectives;

(*e*) a statement of the Board's objectives for the next year and for the foreseeable future;

(*f*) a statement of the Board's investment policies, standards and procedures; and

RAPPORTS

ÉTATS FINANCIERS TRIMESTRIELS

États financiers

50. (1) Dans les quarante-cinq jours suivant la fin des premier, deuxième et troisième trimestres de l'exercice, l'Office envoie au ministre et aux ministres provinciaux compétents copie des états financiers du trimestre en cause établis en conformité avec le paragraphe 39(6).

États financiers à la disposition du public

(2) Dans les sept jours suivant leur envoi en application du paragraphe (1), l'Office met les états financiers à la disposition du public.

1997, ch. 40, art. 50; 2003, ch. 5, art. 16.

RAPPORT ANNUEL

Rapport annuel

51. (1) Le plus tôt possible, dans les soixante jours suivant la fin de chaque exercice, l'Office fait parvenir un rapport annuel de ses activités pendant l'exercice au ministre et aux ministres provinciaux compétents. Il met aussi des exemplaires à la disposition du public.

Dépôt et publication

(2) Le ministre en fait déposer un exemplaire devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci qui suivent sa réception.

Présentation matérielle et contenu

(3) Le rapport annuel contient les éléments suivants :

a) les états financiers de l'Office visés à l'article 39;

b) le rapport annuel du vérificateur visé à l'article 40;

c) un certificat signé, au nom du conseil d'administration, par un des administrateurs indiquant que les placements ont été effectués conformément à la présente loi ainsi qu'aux principes, normes et procédures en matière de placement de l'Office;

d) un énoncé des objectifs de l'Office et de la mesure dans laquelle celui-ci les a réalisés pour l'exercice en question;

e) un énoncé des objectifs de l'Office pour l'exercice suivant et l'avenir prévisible;

f) un énoncé des principes, normes et procédures en matière de placement de l'Office;

(*g*) such other information as is required by the regulations.

1997, c. 40, s. 51; 2003, c. 5, s. 17.

g) tout autre renseignement réglementaire.

1997, ch. 40, art. 51; 2003, ch. 5, art. 17.

PUBLIC MEETINGS

Public meetings

52. (1) The Board shall hold a public meeting once every two years in each participating province to discuss the Board's most recent annual report and to give interested persons an opportunity to comment on it.

Notice of meeting

(2) The Board shall publish a notice of each meeting at least 10 days before the date of the meeting in at least one newspaper of general circulation in the province where the meeting will take place. The notice shall indicate the date, time and place of the meeting and where copies of the Board's most recent annual report can be obtained.

Directors and officers to attend

(3) The Board shall require one or more directors or officers of the Board to be at the meeting to answer questions from the public and shall have copies of the Board's most recent annual report available for distribution at the meeting.

ASSEMBLÉES PUBLIQUES

Assemblées publiques

52. (1) L'Office tient une assemblée publique biannuelle dans chacune des provinces participantes pour discuter du plus récent rapport annuel et donner aux intéressés toute possibilité de présenter leurs observations sur celui-ci.

Préavis

(2) L'Office publie, dans au moins un journal de diffusion générale dans la province où aura lieu l'assemblée, un préavis de celle-ci d'au moins dix jours en indiquant les date, heure et lieu et précisant où l'on peut se procurer copie du rapport annuel.

Présence des administrateurs et dirigeants

(3) Un ou plusieurs administrateurs ou dirigeants de l'Office doivent être présents à l'assemblée pour répondre aux questions et distribuer des exemplaires du rapport aux participants.

REGULATIONS

Regulations

53. (1) The Governor in Council may make regulations

(*a*) specifying which provisions of the *Pension Benefits Standards Act, 1985* and any regulations made under that Act apply to the Board and its subsidiaries and adapting those provisions in the manner that the Governor in Council considers appropriate for the purpose of applying them to the Board and its subsidiaries;

(*b*) respecting the investments the Board and its subsidiaries may make; and

(*c*) prescribing anything that this Act provides is to be prescribed or is to be determined by regulation.

Application

(2) A regulation made under subsection (1) has no force or effect until the appropriate provincial Minister of each of at least two thirds of the participating provinces having in total not less than two thirds of the population of all of the participating provinces has approved the regulation.

RÈGLEMENTS

Règlements

53. (1) Le gouverneur en conseil peut prendre des règlements :

a) précisant les dispositions de la *Loi de 1985 sur les normes de prestation de pension* ou tout règlement pris en vertu de celle-ci qui s'appliquent à l'Office et les adapter de la manière qu'il juge indiquée;

b) concernant les placements faits par l'Office et ses filiales;

c) en vue de toute autre mesure d'ordre réglementaire prévue par la présente loi.

Accord des provinces

(2) Les règlements pris en vertu du paragraphe (1) n'entrent pas en vigueur tant que les ministres provinciaux compétents d'au moins les deux tiers des provinces participantes, comptant au total les deux tiers au moins de la population de toutes ces provinces, n'ont pas approuvé les règlements.

Approval of proposed regulation

(2.1) For the purpose of subsection (2), the approval of a proposed regulation published in the *Canada Gazette* is deemed to be the approval of the regulation if the regulation is the same or substantially the same as the proposed regulation.

(2.1) Pour l'application du paragraphe (2), l'approbation d'un projet de règlement publié dans la *Gazette du Canada* vaut approbation du règlement si celui-ci est identique ou conforme en substance au projet de règlement.

Approbation du projet de règlement

Determination of population

(3) For the purposes of subsection (2), the population of a province at any time in a year in respect of which the determination of the province's population is relevant means the province's population on June 1 of that year, as estimated by the Chief Statistician of Canada.

(3) Pour l'application du paragraphe (2), la population d'une province, à tout moment d'une année auquel se rapporte la détermination qui en est faite, signifie sa population au premier juin de cette année, selon l'estimation du statisticien en chef du Canada.

Détermination du chiffre de la population

Publication of coming into force date

(4) If the approvals necessary to give force and effect to a regulation are given only after the regulation is made, the Minister shall, as soon as feasible, cause to be published in the *Canada Gazette* the date that the regulation came into force.

1997, c. 40, s. 53; 2009, c. 31, s. 45.

(4) Si les approbations requises pour l'entrée en vigueur du règlement ne sont données qu'après sa prise, le ministre fait publier dès que possible dans la *Gazette du Canada* un avis de la date d'entrée en vigueur du règlement.

1997, ch. 40, art. 53; 2009, ch. 31, art. 45.

Publication de la date d'entrée en vigueur

OFFENCE

INFRACTIONS

False statements

54. (1) Every director, officer, employee, agent or auditor of the Board or of any of its subsidiaries who, in carrying out a duty under this Act or the by-laws, prepares, signs, approves or concurs in any statement, report or other document respecting the affairs of the Board or the subsidiary that contains any false or deceptive information is guilty of an offence.

54. (1) Commet une infraction l'administrateur, le membre du personnel, le vérificateur ou le mandataire de l'Office ou de l'une de ses filiales qui, dans l'accomplissement de ses fonctions en exécution de la présente loi ou de ses règlements administratifs, rédige, signe, approuve ou ratifie un état, une déclaration, un rapport ou autre document relatif aux affaires de ceux-ci qui contient des renseignements faux ou trompeurs.

Fausses déclarations

Punishment

(2) Every person who commits an offence under subsection (1) is liable on summary conviction

(*a*) in the case of a natural person, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 12 months, or to both; or

(*b*) in any other case, to a fine not exceeding $500,000.

(2) La personne qui commet l'infraction visée au paragraphe (1) est passible, sur déclaration de culpabilité par procédure sommaire :

a) dans le cas d'une personne physique, d'une amende maximale de 100 000$ et d'un emprisonnement maximal de douze mois, ou de l'une de ces peines;

b) dans tous les autres cas, d'une amende maximale de 500 000$.

Sanction

WINDING-UP

LIQUIDATION

Insolvency and winding-up

55. No Act relating to the insolvency or winding-up of any corporation applies to the Board and in no case shall the affairs of the Board be wound up unless Parliament so provides.

55. L'Office est soustrait à l'application des lois concernant l'insolvabilité ou la liquidation des personnes morales, et seul le Parlement peut décider sa liquidation.

Insolvabilité et liquidation

CANADA PENSION PLAN ACCOUNT

Duty of Board

56. (1) The Board shall pay into the Consolidated Revenue Fund, for credit to the Canada Pension Plan Account established under subsection 108(1) of the *Canada Pension Plan*, any amount required under subsection 108.1(2) or 113(1.1) of that Act.

Transfer of securities

(2) The Board shall transfer to the Minister any designated securities of a province or of Canada that the Minister requires under subsection 113(1.1) of the *Canada Pension Plan*.

1997, c. 40, s. 56; 2003, c. 5, s. 18.

Costs

57. Where the Minister is of the opinion that the Board cannot pay its administration costs, the Minister shall pay those costs out of the Consolidated Revenue Fund and any such payment shall be charged to the Canada Pension Plan Account established under subsection 108(1) of the *Canada Pension Plan*.

AMENDMENTS TO THE CANADA PENSION PLAN

58. to 99. [Amendments]

AMENDMENTS TO THE OLD AGE SECURITY ACT

100. to 107. [Amendments]

CONSEQUENTIAL AMENDMENTS

108. and 109. [Amendments]

COMING INTO FORCE

Coming into force

***110.** (1) Sections 1 to 59, 61, 69 to 71, 74 and 76, subsection 77(1) and sections 81, 83, 89 to 94, 96 to 98, 108 and 109 come into force, in accordance with subsection 114(4) of the *Canada Pension Plan*, on a day or days to be fixed by order of the Governor in Council.

Coming into force

(2) Section 84, subsection 90(3) of the *Canada Pension Plan* as enacted by section 86, section 90.1 of the *Canada Pension Plan* as enacted by section 87, sections 100 and 101, subsection 44(4) of the *Old Age Security Act* as enacted by section 106 and section 44.1 of the *Old Age Security Act* as enacted by section 107

COMPTE DU RÉGIME DE PENSIONS DU CANADA

Responsabilité de l'Office

56. (1) L'Office verse au Trésor les sommes exigées en vertu des paragraphes 108.1(2) et 113(1.1) du *Régime de pensions du Canada*. Ces sommes sont portées au crédit du compte du régime de pensions du Canada ouvert en application du paragraphe 108(1) de cette loi.

Transfert des titres

(2) L'Office transfère au ministre les titres désignés d'une province ou du Canada que celui-ci exige en vertu du paragraphe 113(1.1) du *Régime de pensions du Canada*.

1997, ch. 40, art. 56; 2003, ch. 5, art. 18.

Frais d'administration

57. Lorsqu'il est d'avis que l'Office n'a pas les fonds nécessaires pour payer ses frais d'administration, le ministre les prélève sur le Trésor et les porte au débit du compte du régime de pensions du Canada ouvert en vertu du paragraphe 108(1) du *Régime de pensions du Canada*.

MODIFICATIONS DU RÉGIME DE PENSIONS DU CANADA

58. à 99. [Modifications]

MODIFICATIONS DE LA LOI SUR LA SÉCURITÉ DE LA VIEILLESSE

100. à 107. [Modifications]

MODIFICATIONS CORRÉLATIVES

108. et 109. [Modifications]

ENTRÉE EN VIGUEUR

Entrée en vigueur

***110.** (1) Les articles 1 à 59, 61, 69 à 71, 74 et 76, le paragraphe 77(1) et les articles 81, 83, 89 à 94, 96 à 98, 108 et 109 entrent en vigueur en conformité avec le paragraphe 114(4) du *Régime de pensions du Canada* à la date ou aux dates fixées par décret.

Entrée en vigueur

(2) L'article 84, le paragraphe 90(3) du *Régime de pensions du Canada*, édicté par l'article 86, l'article 90.1 du *Régime de pensions du Canada*, édicté par l'article 87, les articles 100 et 101, le paragraphe 44(4) de la *Loi sur la sécurité de la vieillesse*, édicté par l'article 106, et l'article 44.1 de cette loi, édicté par l'article

come into force on a day or days to be fixed by order of the Governor in Council.

* [Note: Sections 58, 59, 61, 69 to 71, 74 and 76, subsection 77(1) and sections 81, 83, 92 to 94 and 96 to 98 in force January 1, 1998, sections 1 to 57, 89 to 91 and 108 and 109 in force April 1, 1998, *see* SI/98-24; section 84, subsection 90(3) and section 90.1 of the *Canada Pension Plan* as enacted by sections 86 and 87, respectively, sections 100 and 101, subsection 44(4) and section 44.1 of the *Old Age Security Act* as enacted by sections 106 and 107 in force April 1, 2010, *see* SI/2010-16.]

107, entrent en vigueur à la date fixée par décret.

* [Note: Les articles 58, 59, 61, 69 à 71, 74 et 76, le paragraphe 77(1) et les articles 81, 83, 92 à 94 et 96 à 98 en vigueur le 1er janvier 1998, les articles 1 à 57, 89 à 91 et 108 et 109 en vigueur le 1er avril 1998, *voir* TR/98-24; l'article 84, le paragraphe 90(3), l'article 90.1 du *Régime de pensions du Canada*, édictés respectivement par les articles 86 et 87, les articles 100 et 101, le paragraphe 44(4) et l'article 44.1 de la *Loi sur la sécurité de la vieillesse*, édictés respectivement par les articles 106 et 107 en vigueur le 1er avril 2010, *voir* TR/2010-16.]

SCHEDULE

[Amendment]

ANNEXE

[Modification]

RELATED PROVISIONS

— 1998, c. 30, s. 11(1)

Transitional — cross-references

11. (1) In any Act of Parliament, other than in a provision amended by sections 12 to 16, or in any proclamation, regulation, order, instrument or other document, a reference to the Ontario Court (General Division) or the Ontario Court (Provincial Division) shall be construed, with respect to any transaction, matter or event occurring after the coming into force of this section, as a reference to

(*a*) in the case of the Ontario Court (General Division), the Superior Court of Justice or the Superior Court of Justice in and for the Province of Ontario, as the case may require; and

(*b*) in the case of the Ontario Court (Provincial Division), the Ontario Court of Justice.

— 2003, c. 5, s. 19

19. (1) On the first day of each month after the coming into force of this section, 1/36 of the right, title or interest of the Minister of Finance in each security that was purchased by the Minister under section 110 of the *Canada Pension Plan*, and that is held by that Minister on the first day of the first month following the coming into force of this section, is transferred to the Canada Pension Plan Investment Board established under section 3 of the *Canada Pension Plan Investment Board Act* ("the Board").

Transfer of replacement securities

(2) If a security referred to in subsection (1) is replaced within the 36-month period beginning on the first day of the first month following the coming into force of this section,

(*a*) the Board is deemed to have acquired a right, title or interest in the replacement security in the same proportion as the right, title or interest it had acquired in the security being replaced; and

(*b*) on the first day of each month after the day on which the replacement security is purchased, for each month then remaining in the 36-month period, an equal portion of the right, title or interest of the Minister of Finance in the replacement security is transferred to the Board, so that the replacement security is fully transferred to the Board on the same day as the security that it replaced would have been fully transferred.

Rights extinguished

(3) If a security referred to in subsection (1) is redeemed during the 36-month period referred to in subsection (2) and is not replaced, any right, title or interest of the Board in the security is extinguished.

DISPOSITIONS CONNEXES

— 1998, ch. 30, par. 11(1)

Mentions

11. (1) Dans les dispositions des lois fédérales autres que celles visées par les articles 12 à 16, ainsi que dans les proclamations, règlements, décrets ou autres documents, toute mention de la Cour de l'Ontario (Division générale) ou de la Cour de l'Ontario (Division provinciale) vaut, en ce qui a trait aux opérations ou actes postérieurs à l'entrée en vigueur du présent article, mention, respectivement, de la Cour supérieure de justice ou de la Cour supérieure de justice de l'Ontario, selon le cas, et de la Cour de justice de l'Ontario.

— 2003, ch. 5, art. 19

19. (1) Le premier jour de chaque mois suivant l'entrée en vigueur du présent article, un trente-sixième du droit, du titre ou de l'intérêt détenus par le ministre des Finances dans chaque titre qu'il a acheté en application de l'article 110 du *Régime de pensions du Canada* et qu'il détient au premier jour du premier mois suivant l'entrée en vigueur du présent article est transféré à l'Office d'investissement du régime de pensions du Canada constitué par l'article 3 de la *Loi sur l'Office d'investissement du régime de pensions du Canada* (« l'Office »).

Transfert de nouveaux titres

(2) Lorsqu'un titre visé au paragraphe (1) est remplacé au cours de la période de trente-six mois commençant le premier jour du mois suivant l'entrée en vigueur du présent article :

a) l'Office est réputé avoir acquis un droit, un titre ou un intérêt dans le nouveau titre dans une proportion équivalente à celle qu'il détenait dans le titre remplacé;

b) le premier jour de chaque mois suivant la date d'achat du nouveau titre, pour chaque mois qui reste dans la période de trente-six mois, une partie égale du droit, du titre ou de l'intérêt du ministre des Finances dans le nouveau titre est transférée à l'Office, de sorte que le nouveau titre est transféré en totalité à l'Office à la même date que le titre qu'il remplace l'aurait été.

Droits annulés

(3) Lorsqu'un titre visé au paragraphe (1) est racheté au cours de la période de trente-six mois visée au paragraphe (2) et n'est pas remplacé, tout droit, titre ou intérêt de l'Office dans le titre est annulé.

AMENDMENTS NOT IN FORCE

— 2009, c. 23, s. 317

317. (1) Subsection 3(4) of the *Canada Pension Plan Investment Board Act* is replaced by the following:

Acts not applicable to Board

(4) The *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970, and the *Canada Not-for-profit Corporations Act* do not apply to the Board.

(2) Subsection 3(4) of the Act, as enacted by subsection (1), is replaced by the following:

Act not applicable to Board

(4) The *Canada Not-for-profit Corporations Act* does not apply to the Board.

MODIFICATIONS NON EN VIGUEUR

— 2009, ch. 23, art. 317

317. (1) Le paragraphe 3(4) de la *Loi sur l'Office d'investissement du régime de pensions du Canada* est remplacé par ce qui suit :

Non-application

(4) La *Loi sur les corporations canadiennes*, chapitre C-32 des Statuts revisés du Canada de 1970, et la *Loi canadienne sur les organisations à but non lucratif* ne s'appliquent pas à l'Office.

(2) Le paragraphe 3(4) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

Non-application

(4) La *Loi canadienne sur les organisations à but non lucratif* ne s'applique pas à l'Office.

CANADA

CONSOLIDATION

CODIFICATION

Canadian Securities Regulation Regime Transition Office Act

Loi sur le Bureau de transition vers un régime canadien de réglementation des valeurs mobilières

S.C. 2009, c. 2, s. 297

L.C. 2009, ch. 2, art. 297

NOTE

[Enacted by section 297 of chapter 2 of the Statutes of Canada, 2009, in force July 13, 2009, *see* SI/2009-60.]

NOTE

[Édictée par l'article 297 du chapitre 2 des Lois du Canada (2009), en vigueur le 13 juillet 2009, *voir* TR/2009-60.]

Current to October 6, 2010

À jour au 6 octobre 2010

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Canadian Securities Regulation Regime Transition Office Act, S.C. 2009, c. 2, s. 297, section 17

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Canadian Securities Regulation Regime Transition Office Act, S.C. 2009, c. 2, s. 297, section 17

2009, c. 2, s. 297 | **2009, ch. 2, art. 297**

An Act to establish the Canadian Securities Regulation Regime Transition Office

Loi constituant le Bureau de transition vers un régime canadien de réglementation des valeurs mobilières

[*Assented to 12th March 2009*]

[*Sanctionnée le 12 mars 2009*]

SHORT TITLE

Short title

1. This Act may be cited as the *Canadian Securities Regulation Regime Transition Office Act*.

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur le Bureau de transition vers un régime canadien de réglementation des valeurs mobilières*.

INTERPRETATION

Definitions

2. The following definitions apply in this Act.

"Advisory Committee" « *comité consultatif* »

"Advisory Committee" means the advisory committee of participating provinces and territories established under section 5.

"Minister" « *ministre* »

"Minister" means the Minister of Finance.

"participating province or territory" « *province ou territoire participant* »

"participating province or territory" means any province or territory that informs the Minister of its willingness to participate in the establishment of a Canadian securities regulation regime and a Canadian regulatory authority.

"Transition Office" « *Bureau de transition* »

"Transition Office" means the Canadian Securities Regulation Regime Transition Office established under section 3.

DÉFINITIONS

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi.

« Bureau de transition » "*Transition Office*"

« Bureau de transition » Le Bureau de transition vers un régime canadien de réglementation des valeurs mobilières, constitué par l'article 3.

« comité consultatif » "*Advisory Committee*"

« comité consultatif » Le comité consultatif des provinces et territoires participants, constitué par l'article 5.

« ministre » "*Minister*"

« ministre » Le ministre des Finances.

« province ou territoire participant » "*participating province or territory*"

« province ou territoire participant » Toute province ou tout territoire ayant informé le ministre de sa volonté de participer à l'établissement d'un régime canadien de réglementation des valeurs mobilières et à la constitution d'une autorité administrative canadienne.

ESTABLISHMENT

Transition Office

3. (1) The Canadian Securities Regulation Regime Transition Office is established.

Status

(2) The Transition Office is not an agent of Her Majesty nor is it an entity governed by the *Financial Administration Act*, and its president, officers, employees, agents and mandataries,

MISE EN PLACE

Bureau de transition

3. (1) Est constitué le Bureau de transition vers un régime canadien de réglementation des valeurs mobilières.

Statut

(2) Le Bureau de transition n'est ni mandataire de l'État ni une entité régie par la *Loi sur la gestion des finances publiques*; son président, ses dirigeants, employés, mandataires,

advisers and experts and the members of the Advisory Committee are not part of the federal public administration.

conseillers et experts et les membres du comité consultatif ne font pas partie de l'administration publique fédérale.

President

4. (1) The Governor in Council shall, on the recommendation of the Minister, appoint a president, or two co-presidents acting jointly, of the Transition Office, to hold office during pleasure.

4. (1) Le gouverneur en conseil nomme à titre amovible, sur recommandation du ministre, le président — ou deux coprésidents agissant conjointement — du Bureau de transition.

Président

Powers, duties and functions

(2) The president is the chief executive officer of the Transition Office and has control and supervision over the work, officers and employees of that office.

(2) Le président est le premier dirigeant du Bureau de transition; à ce titre, il en assure la direction et contrôle la gestion de son personnel.

Attributions

Acting president

(3) In the event of the absence or incapacity of the president or a vacancy in that office, the Minister may designate a person to act as president, which person may not act for a period exceeding 90 days without the Governor in Council's approval.

(3) En cas d'absence ou d'empêchement du président ou de vacance de son poste, le ministre peut désigner un intérimaire; cependant, l'intérim ne peut dépasser quatre-vingt-dix jours sans l'approbation du gouverneur en conseil.

Intérim : président

Acting co-president

(4) In the event of the absence or incapacity of a co-president or a vacancy in that office, the Minister may designate a person to act as co-president, which person may not act for a period exceeding 90 days without the Governor in Council's approval. The other co-president may act alone until another co-president is designated or appointed.

(4) Il en est de même en cas d'absence ou d'empêchement d'un coprésident. L'autre coprésident peut agir seul jusqu'à la désignation d'un intérimaire ou la nomination d'un coprésident.

Intérim : coprésident

Interpretation

(5) In this Act, other than in subsections (1) and (3), "president" includes two co-presidents who hold office, or a co-president who acts alone under subsection (4), as the case may be.

(5) Toute mention du président dans la présente loi — sauf aux paragraphes (1) et (3) — vaut mention des coprésidents en exercice ou du coprésident agissant seul au titre du paragraphe (4), selon le cas.

Précisions

Advisory Committee

5. (1) An advisory committee of participating provinces and territories is established within the Transition Office and consists of not more than 13 members.

5. (1) Est constitué, au sein du Bureau de transition, un comité consultatif des provinces et territoires participants composé d'au plus treize membres.

Comité consultatif

Members

(2) The Governor in Council shall appoint, on the recommendation of the Minister, a member for each participating province and territory, from persons nominated by that province or territory, to hold office during pleasure.

(2) Sur recommandation du ministre, le gouverneur en conseil nomme à titre amovible, pour chaque province ou territoire participant, un membre qu'il choisit parmi les personnes recommandées par la province ou le territoire.

Membres

Role

(3) The Advisory Committee's role is to provide the president with advice on matters related to the Transition Office's purpose.

(3) Le rôle du comité consultatif est de donner au président son avis sur des questions liées à la mission du Bureau de transition.

Rôle

Staff

6. The Transition Office may employ any officers and employees and engage the services of any agents and mandataries, advisers and experts that it considers necessary to carry out its purpose.

6. Le Bureau de transition peut employer le personnel et retenir les services des mandataires, conseillers et experts qu'il estime nécessaires à l'exécution de sa mission.

Personnel

Conditions of employment — president and members

7. (1) The Governor in Council, on the recommendation of the Minister, shall determine the remuneration and allowances to be paid to the president and members of the Advisory Committee and any other conditions of their employment.

7. (1) Le gouverneur en conseil fixe, sur recommandation du ministre, la rémunération, les indemnités et les autres conditions d'emploi du président et des membres du comité consultatif.

Conditions d'emploi : président et membres

Conditions of employment — staff

(2) The Transition Office shall determine the remuneration and allowances to be paid to its officers, employees, agents and mandataries, advisers and experts and any other conditions of their employment or engagement, as the case may be.

(2) Le Bureau de transition fixe la rémunération et les indemnités des dirigeants, employés, mandataires, conseillers et experts, ainsi que leurs autres conditions d'emploi ou d'exécution de services.

Conditions d'emploi : dirigeants, employés, etc.

Remuneration

(3) The Transition Office shall pay the remuneration and allowances determined under subsections (1) and (2).

(3) Il paie la rémunération et les indemnités des personnes visées aux paragraphes (1) et (2).

Rémunération

Conflict of interest — president and members

8. (1) The president and the members of the Advisory Committee shall not accept or hold any office or employment, or carry on any activity, that, in the Minister's opinion, is inconsistent with the performance of their duties.

8. (1) Le président et les membres du comité consultatif ne peuvent accepter ni occuper de charge ou d'emploi — ni exercer d'activité — qui, de l'avis du ministre, sont incompatibles avec leurs attributions.

Conflit d'intérêts : président et membres

Conflict of interest — officers and employees

(2) The officers and employees of the Transition Office shall not accept or hold any office or employment, or carry on any activity, that, in the president's opinion, is inconsistent with the performance of their duties.

(2) Il en est de même pour les dirigeants et les employés si le président est d'avis qu'il y a incompatibilité.

Conflit d'intérêts : dirigeants et employés

Immunity

9. No criminal or civil proceedings lie against the president, a member of the Advisory Committee or an officer or employee of the Transition Office for anything done or omitted to be done by that person in good faith under this Act.

9. Le président, les membres du comité consultatif, les dirigeants et les employés bénéficient de l'immunité civile et pénale pour les faits — actes ou omissions — accomplis de bonne foi au titre de la présente loi.

Immunité

PURPOSE AND POWERS

MISSION ET ATTRIBUTIONS

Purpose

10. The purpose of the Transition Office is to assist in the establishment of a Canadian securities regulation regime and a Canadian regulatory authority.

10. Le Bureau de transition a pour mission de concourir à l'établissement d'un régime canadien de réglementation des valeurs mobilières et à la constitution d'une autorité administrative canadienne.

Mission

Duties

11. (1) In carrying out its purpose, the Transition Office shall

(*a*) develop a transition plan with respect to administrative and organizational matters, including those relating to human, financial, material and informational resources;

(*b*) consult with stakeholders, including Canadian capital market participants; and

(*c*) undertake any other activity that the Minister may direct.

11. (1) Dans le cadre de sa mission, le Bureau de transition :

a) élabore un plan de transition traitant des questions administratives et organisationnelles, y compris celles touchant les ressources humaines, financières, matérielles et informationnelles;

b) consulte les parties intéressées, dont les participants aux marchés financiers canadiens;

Attributions

Copy

(2) The Transition Office shall provide the Minister and each participating province and territory with a copy of the transition plan no later than one year after the day on which section 3 comes into force.

Capacity and powers

12. In order to carry out its purpose, the Transition Office has the capacity and the rights, powers and privileges of a natural person and, in particular, it may

(*a*) initiate, finance and administer programs and activities;

(*b*) expend any money it receives for its activities, subject to any terms and conditions on which it is provided;

(*c*) enter into contracts; and

(*d*) with the Minister's approval, enter into any agreement with the government of a province or territory that the president considers necessary or advisable.

Information

13. The Transition Office shall inform the Minister regularly of its activities and its progress in carrying out its purpose.

FINANCIAL PROVISIONS

Maximum payment of $33,000,000

14. (1) The Minister may make direct payments, in an aggregate amount not exceeding $33,000,000, to the Transition Office for its use.

Payments out of C.R.F.

(2) Any amount payable under this section may be paid out of the Consolidated Revenue Fund, on the requisition of the Minister, at the times and in the manner, and on any terms and conditions, that the Minister considers appropriate.

Audit

15. The accounts and financial transactions of the Transition Office shall be audited annually by the Auditor General of Canada, and a report of the audit shall be made to the Transition Office and the Minister.

ANNUAL REPORT

Submission to Minister

16. (1) The president shall, within four months after the end of each fiscal year, submit a report of all of the Transition Office's activities for that fiscal year, including its financial

c) exerce, à la demande du ministre, toute autre activité.

Copie

(2) Il transmet au ministre et aux provinces et territoires participants, au plus tard un an après l'entrée en vigueur de l'article 3, copie du plan de transition.

Capacité et pouvoirs

12. Pour l'exécution de sa mission, le Bureau de transition a la capacité et les droits, pouvoirs et privilèges d'une personne physique; il peut notamment:

a) prendre l'initiative de programmes et d'activités et les administrer et les financer;

b) dépenser les sommes reçues pour ses activités, sous réserve des conditions qui y sont rattachées;

c) conclure des contrats;

d) avec l'approbation du ministre, conclure avec le gouvernement d'une province ou d'un territoire tout accord que le président estime nécessaire ou souhaitable.

Information

13. Le Bureau de transition informe régulièrement le ministre de ses activités et des progrès réalisés dans l'exécution de sa mission.

DISPOSITIONS FINANCIÈRES

Paiement maximal de 33 000 000 $

14. (1) Le ministre peut faire des paiements directs, jusqu'à concurrence de trente-trois millions de dollars, au Bureau de transition, à son usage.

Paiements sur le Trésor

(2) À la demande du ministre, les sommes à verser au titre du présent article sont payées sur le Trésor, selon les conditions et modalités — de temps et autres — qu'il estime indiquées.

Vérification

15. Le vérificateur général du Canada examine annuellement les comptes et opérations financières du Bureau de transition et présente son rapport à celui-ci et au ministre.

RAPPORT ANNUEL

Présentation au ministre

16. (1) Dans les quatre mois suivant la fin de chaque exercice, le président présente au ministre un rapport sur les activités du Bureau de transition pendant l'exercice, qui comprend les

statements and the report referred to in section 15, to the Minister.

Tabling report

(2) The Minister shall cause a copy of the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the Minister receives the report.

Report available to public

(3) After the report is tabled in Parliament, the Transition Office shall make it available to the public.

DISSOLUTION

Date of dissolution

17. (1) The Transition Office is dissolved three years after the day on which section 3 comes into force.

Change in date of dissolution

(2) Despite subsection (1), the Governor in Council may, by order and on the recommendation of the Minister, set a different date of dissolution, and that date is to be no later than four years after the day on which section 3 comes into force. The order shall be published in the *Canada Gazette* at least three months before the date of dissolution referred to in the order or if it is earlier, the date determined under subsection (1).

Statutory Instruments Act

(3) The *Statutory Instruments Act* does not apply to an order made under subsection (2).

Assets transferred

(4) On the Transition Office's dissolution, any of its property that remains after the payment of its debts and liabilities, or after the making of adequate provision for the payment of its debts and liabilities, shall be transferred to Her Majesty in right of Canada or to any body that the Governor in Council may specify.

états financiers de celui-ci et le rapport visé à l'article 15.

Dépôt devant le Parlement

(2) Le ministre en fait déposer un exemplaire devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant sa réception.

Mise à disposition

(3) Le Bureau de transition le met à la disposition du public après le dépôt.

DISSOLUTION

Date de dissolution

17. (1) Le Bureau de transition est dissous trois ans après l'entrée en vigueur de l'article 3.

Modification de la date

(2) Toutefois, le gouverneur en conseil peut par décret, sur recommandation du ministre, préciser une date de dissolution différente, qui ne peut être postérieure de plus de quatre ans à l'entrée en vigueur de l'article 3. Le décret est publié dans la *Gazette du Canada* au moins trois mois avant la date établie au titre du paragraphe (1) ou, si celle-ci est postérieure à la date de dissolution différente, au moins trois mois avant cette dernière date.

Loi sur les textes réglementaires

(3) La *Loi sur les textes réglementaires* ne s'applique pas au décret.

Transfert

(4) À la dissolution, les biens du Bureau de transition qui restent, après règlement de ses dettes ou constitution d'une provision suffisante à cette fin, sont dévolus à l'État ou à toute entité précisée par le gouverneur en conseil.

RELATED PROVISIONS

— 2009, c. 2, s. 298

Initial annual report

298. If section 297 comes into force less than three months before the end of a fiscal year, the president shall submit the first report required under section 16 of the *Canadian Securities Regulation Regime Transition Office Act* no later than four months after the end of the following fiscal year, and that report shall cover the period starting on the day on which section 297 comes into force and ending on the last day of that following fiscal year.

DISPOSITIONS CONNEXES

— 2009, ch. 2, art. 298

Rapport annuel initial

298. Si l'article 297 entre en vigueur dans les trois mois précédant la fin d'un exercice, le président présente le premier rapport exigé par l'article 16 de la *Loi sur le Bureau de transition vers un régime canadien de réglementation des valeurs mobilières* au plus tard quatre mois après la fin de l'exercice suivant et celui-ci couvre la période commençant à l'entrée en vigueur de l'article 297 et se terminant à la fin de ce dernier exercice.

CANADA

CONSOLIDATION

CODIFICATION

Canadian Environmental Protection Act, 1999

Loi canadienne sur la protection de l'environnement (1999)

S.C. 1999, c. 33

L.C. 1999, ch. 33

Current to November 3, 2010

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Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

1999, c. 33

An Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development

[*Assented to 14th September 1999*]

Declaration

It is hereby declared that the protection of the environment is essential to the well-being of Canadians and that the primary purpose of this Act is to contribute to sustainable development through pollution prevention.

Preamble

Whereas the Government of Canada seeks to achieve sustainable development that is based on an ecologically efficient use of natural, social and economic resources and acknowledges the need to integrate environmental, economic and social factors in the making of all decisions by government and private entities;

Whereas the Government of Canada is committed to implementing pollution prevention as a national goal and as the priority approach to environmental protection;

Whereas the Government of Canada acknowledges the need to virtually eliminate the most persistent and bioaccumulative toxic substances and the need to control and manage pollutants and wastes if their release into the environment cannot be prevented;

Whereas the Government of Canada recognizes the importance of an ecosystem approach;

Whereas the Government of Canada will continue to demonstrate national leadership in establishing environmental standards, ecosystem objectives and environmental quality guidelines and codes of practice;

Whereas the Government of Canada is committed to implementing the precautionary principle that, where there are threats of serious or

1999, ch. 33

Loi visant la prévention de la pollution et la protection de l'environnement et de la santé humaine en vue de contribuer au développement durable

[*Sanctionnée le 14 septembre 1999*]

Déclaration

Il est déclaré que la protection de l'environnement est essentielle au bien-être de la population du Canada et que l'objet principal de la présente loi est de contribuer au développement durable au moyen de la prévention de la pollution.

Préambule

Attendu:

que le gouvernement du Canada vise au développement durable fondé sur l'utilisation écologiquement rationnelle des ressources naturelles, sociales et économiques et reconnaît la nécessité, pour lui et les organismes privés, de prendre toute décision en tenant compte des facteurs environnementaux, économiques et sociaux;

qu'il s'engage à privilégier, à l'échelle nationale, la prévention de la pollution dans le cadre de la protection de l'environnement;

qu'il reconnaît la nécessité de procéder à la quasi-élimination des substances toxiques les plus persistantes et bioaccumulables et de limiter et gérer les polluants et déchets dont le rejet dans l'environnement ne peut être évité;

qu'il reconnaît l'importance d'adopter une approche basée sur les écosystèmes;

qu'il continue à jouer un rôle moteur au plan national dans l'établissement de normes environnementales, d'objectifs relatifs aux écosystèmes et de directives et codes de pratique nationaux en matière de qualité de l'environnement;

PART 1

ADMINISTRATION

ADVISORY COMMITTEES

National Advisory Committee

6. (1) For the purpose of enabling national action to be carried out and taking cooperative action in matters affecting the environment and for the purpose of avoiding duplication in regulatory activity among governments, the Minister shall establish a National Advisory Committee

(*a*) to advise the Ministers on regulations proposed to be made under subsection 93(1);

(*b*) to advise the Minister on a cooperative, coordinated intergovernmental approach for the management of toxic substances; and

(*c*) to advise the Minister on other environmental matters that are of mutual interest to the Government of Canada and other governments and to which this Act relates.

Precautionary principle

(1.1) In giving its advice and recommendations, the Committee shall use the precautionary principle.

Composition of Committee

(2) The Committee shall consist of the following members:

(*a*) one representative for each of the Ministers;

(*b*) one representative of the government of each of the provinces; and

(*c*) subject to subsection (3), not more than six representatives of aboriginal governments, to be selected on the following regional basis,

(i) one representative for all aboriginal governments, except Inuit, in Newfoundland, Prince Edward Island, Nova Scotia and New Brunswick,

(ii) one representative for all aboriginal governments, except Inuit, in Quebec,

(iii) one representative for all aboriginal governments, except Inuit, in Ontario,

(iv) one representative for all aboriginal governments, except Inuit, in Manitoba, Saskatchewan, Alberta, the Northwest Territories and Nunavut,

PARTIE 1

EXÉCUTION

COMITÉS CONSULTATIFS

Comité consultatif national

6. (1) En vue de rendre réalisable une action nationale et de prendre des mesures coordonnées dans les domaines touchant l'environnement, ainsi que pour éviter le dédoublement des règlements pris par les gouvernements, le ministre constitue le comité consultatif national chargé:

a) de conseiller les ministres sur les projets de règlement prévus au paragraphe 93(1);

b) de le conseiller sur un cadre intergouvernemental d'action concertée pour la gestion des substances toxiques;

c) de le conseiller sur les autres questions liées à l'environnement qui sont d'intérêt commun pour le gouvernement du Canada et d'autres gouvernements.

Principe de la prudence

(1.1) Lorsqu'il conseille le ministre ou lui fait des recommandations, le comité consultatif est tenu d'appliquer le principe de la prudence.

Composition

(2) Le comité se compose des membres suivants:

a) un représentant pour chacun des ministres;

b) un représentant du gouvernement de chaque province;

c) sous réserve du paragraphe (3), au plus six représentants de gouvernements autochtones, choisis de la façon suivante:

(i) un pour tous les gouvernements autochtones — sauf inuit — de Terre-Neuve, de l'Île-du-Prince-Édouard, de la Nouvelle-Écosse et du Nouveau-Brunswick,

(ii) un pour tous les gouvernements autochtones — sauf inuit — au Québec,

(iii) un pour tous les gouvernements autochtones — sauf inuit — en Ontario,

(iv) un pour tous les gouvernements autochtones — sauf inuit — au Manitoba, en Saskatchewan, en Alberta, dans les Territoires du Nord-Ouest et au Nunavut,

(v) un pour tous les gouvernements autochtones — sauf inuit — en Colombie-Britannique et au Yukon,

(v) one representative for all aboriginal governments, except Inuit, in British Columbia and Yukon, and

(vi) one representative for all Inuit aboriginal governments.

(vi) un pour tous les gouvernements autochtones inuit.

Provincial representatives

(2.1) The representative of a provincial government shall be selected by that government.

(2.1) Le représentant du gouvernement d'une province est choisi par ce gouvernement.

Représentant provincial

Aboriginal representatives

(2.2) Subject to subsection (3), the representative of aboriginal governments shall be selected by the aboriginal governments he or she represents.

(2.2) Sous réserve du paragraphe (3), le représentant de gouvernements autochtones est choisi par les gouvernements autochtones qu'il représente.

Représentants autochtones

Inuit aboriginal representatives

(2.3) Subject to subsection (3), the representative of Inuit aboriginal governments shall be selected by those governments.

(2.3) Sous réserve du paragraphe (3), le représentant des gouvernements autochtones inuit est choisi par ces gouvernements.

Représentants autochtones inuit

Absence of aboriginal government

(3) Where there is no Inuit aboriginal government or aboriginal government for a region referred to in any of subparagraphs (2)(*c*)(i) to (v), the representative of the Inuit or of aboriginal people for the region, as the case may be, may be selected in accordance with regulations made under subsection (4).

(3) Si aucun gouvernement autochtone inuit n'est constitué ou si aucun gouvernement autochtone n'est constitué dans l'une des régions visées aux sous-alinéas (2)*c*)(i) à (v), le représentant des Inuit ou des autochtones de cette région, selon le cas, peut être choisi en conformité avec les règlements d'application du paragraphe (4).

Absence de gouvernement autochtone

Regulations

(4) The Minister may make regulations respecting the manner of selecting a representative under subsection (3).

1999, c. 33, s. 6; 2002, c. 7, s. 124.

(4) Le ministre peut prendre des règlements en ce qui touche la façon de choisir le représentant visé au paragraphe (3).

1999, ch. 33, art. 6; 2002, ch. 7, art. 124.

Règlements

Ministerial advisory committees

7. (1) For the purpose of carrying out their duties under this Act, the Ministers or either Minister may

(*a*) establish advisory committees to report to the Ministers or either Minister; and

(*b*) specify the functions that the committees are to perform and the manner in which those functions are to be performed.

7. (1) Les ministres, ou l'un ou l'autre, peuvent, pour l'accomplissement de la mission qui leur est confiée par la présente loi :

a) constituer des comités consultatifs chargés de leur — ou lui — faire rapport;

b) préciser le mandat des comités ainsi que les modalités de son exercice.

Comités consultatifs ministériels

Publication of report

(2) The report of a committee established under subsection (1), including its recommendations and reasons, shall be made public.

(2) Les rapports des comités, notamment leurs recommandations et les motifs à l'appui de celles-ci, sont rendus publics.

Rapports

Report of various committees

8. The Minister shall include in the annual report required by section 342 a report of the activities of the Committee and of any committees established under paragraph 7(1)(*a*).

8. Le ministre incorpore au rapport annuel exigé par l'article 342 un rapport sur les activités du comité et celles des comités établis selon l'alinéa 7(1)*a*).

Rapport sur les comités

AGREEMENTS RESPECTING ADMINISTRATION

ACCORDS RELATIFS À L'EXÉCUTION DE LA PRÉSENTE LOI

Negotiation of agreement

9. (1) The Minister may negotiate an agreement with a government or with an aboriginal people with respect to the administration of this Act.

9. (1) Le ministre peut négocier avec un gouvernement ou un peuple autochtone un accord relatif à l'exécution de la présente loi.

Négociation

THE CONSTITUTION ACT, 1867

30 & 31 Victoria, c. 3. (U.K.)

(Consolidated with amendments)

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith

(29th March 1867)

WHEREAS the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America:[1]

I. PRELIMINARY

Short title

1. This Act may be cited as the *Constitution Act, 1867*.[2]

2. Repealed.[3]

II. UNION

Declaration of Union

3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, Nova Scotia, and New Brunswick shall form and be One Dominion under the Name of Canada;

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[1] The enacting clause was repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.). It read as follows:

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

[2] As enacted by the *Constitution Act, 1982*, which came into force on April 17, 1982. The section, as originally enacted, read as follows:

1. This Act may be cited as The British North America Act, 1867.

[3] Section 2, repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.), read as follows:

2. The Provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.

VI. Distribution of Legislative Powers

Powers of the Parliament

Legislative Authority of Parliament of Canada

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, —

1. Repealed.[44]

1A. The Public Debt and Property.[45]

2. The Regulation of Trade and Commerce.

2A. Unemployment insurance.[46]

3. The raising of Money by any Mode or System of Taxation.

4. The borrowing of Money on the Public Credit.

5. Postal Service.

6. The Census and Statistics.

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

9. Beacons, Buoys, Lighthouses, and Sable Island.

10. Navigation and Shipping.

11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

12. Sea Coast and Inland Fisheries.

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[44] Class I was added by the *British North America (No. 2) Act, 1949*, 13 Geo. VI, c. 81 (U.K.). That Act and class I were repealed by the *Constitution Act, 1982*. The matters referred to in class I are provided for in subsection 4(2) and Part V of the *Constitution Act, 1982*. As enacted, class I read as follows:

> 1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

[45] Re-numbered by the *British North America (No. 2) Act, 1949*.

[46] Added by the *Constitution Act, 1940*, 3-4 Geo. VI, c. 36 (U.K.).

13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.[47]

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[47] **Legislative authority has been conferred on Parliament by other Acts as follows:**

1. The *Constitution Act, 1871*, 34-35 Vict., c. 28 (U.K.).

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

Exclusive Powers of Provincial Legislatures

Subjects of exclusive Provincial Legislation

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, —

1. Repealed.[48]
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

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5. The following Acts passed by the said Parliament of Canada, and intituled respectively, — "An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada"; and "An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of "the Province of Manitoba", shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor General of the said Dominion of Canada.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

The *Rupert's Land Act, 1868*, 31-32 Vict., c. 105 (U.K.) (repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.)) had previously conferred similar authority in relation to Rupert's Land and the North Western Territory upon admission of those areas.

2. The *Constitution Act, 1886*, 49-50 Vict., c. 35 (U.K.).

1. The Parliament of Canada may from time to time make provision for the representation in the Senate and House of Commons of Canada, or in either of them, of any territories which for the time being form part of the Dominion of Canada, but are not included in any province thereof.

3. The *Statute of Westminster, 1931*, 22 Geo. V, c. 4 (U.K.).

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

4. Under section 44 of the *Constitution Act, 1982*, Parliament has exclusive authority to amend the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons. Sections 38, 41, 42 and 43 of that Act authorize the Senate and House of Commons to give their approval to certain other constitutional amendments by resolution.

[48] Class I was repealed by the *Constitution Act, 1982*. As enacted, it read as follows:

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.

Section 45 of the *Constitution Act, 1982* now authorizes legislatures to make laws amending the constitution of the province. Sections 38, 41, 42 and 43 of that Act authorize legislative assemblies to give their approval by resolution to certain other amendments to the Constitution of Canada.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:
    (*a*) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
    (*b*) Lines of Steam Ships between the Province and any British or Foreign Country:
    (*c*) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

Laws respecting non-renewable natural resources, forestry resources and electrical energy

92A. (1) In each province, the legislature may exclusively make laws in relation to

(*a*) exploration for non-renewable natural resources in the province;

(*b*) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and

(*c*) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

CANADA

CONSOLIDATION

CODIFICATION

Food and Drugs Act

Loi sur les aliments et drogues

CHAPTER F-27

CHAPITRE F-27

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Food and Drugs Act, R.S., 1985, c. F-27, s. 8

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents, and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

CHAPTER F-27

An Act respecting food, drugs, cosmetics and therapeutic devices

SHORT TITLE

Short title

1. This Act may be cited as the *Food and Drugs Act*.

R.S., c. F-27, s. 1

INTERPRETATION

Definitions

2. In this Act,

"advertisement" « *publicité* » ou « *annonce* »

"advertisement" includes any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any food, drug, cosmetic or device;

"analyst" « *analyste* »

"analyst" means a person designated as an analyst for the purpose of the enforcement of this Act under section 28 or under section 13 of the *Canadian Food Inspection Agency Act*;

"contraceptive device" « *moyen anticoncepti-onnel* »

"contraceptive device" means any instrument, apparatus, contrivance or substance other than a drug, that is manufactured, sold or represented for use in the prevention of conception;

"cosmetic" « *cosmétique* »

"cosmetic" includes any substance or mixture of substances manufactured, sold or represented for use in cleansing, improving or altering the complexion, skin, hair or teeth, and includes deodorants and perfumes;

"Department" « *ministère* »

"Department" means the Department of Health;

"device" « *instrument* »

"device" means any article, instrument, apparatus or contrivance, including any component, part or accessory thereof, manufactured, sold or represented for use in

(*a*) the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or its symptoms, in human beings or animals,

CHAPITRE F-27

Loi concernant les aliments, drogues, cosmétiques et instruments thérapeutiques

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur les aliments et drogues.*

S.R., ch. F-27, art. 1

DÉFINITIONS

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi.

« aliment » "food"

« aliment » Notamment tout article fabriqué, vendu ou présenté comme pouvant servir de nourriture ou de boisson à l'être humain, la gomme à mâcher ainsi que tout ingrédient pouvant être mélangé avec un aliment à quelque fin que ce soit.

« analyste » "analyst"

« analyste » Personne désignée à ce titre conformément à l'article 28 de la présente loi ou à l'article 13 de la *Loi sur l'Agence canadienne d'inspection des aliments* pour l'application de la présente loi.

« conditions non hygiéniques » "unsanitary conditions"

« conditions non hygiéniques » Conditions ou circonstances de nature à contaminer des aliments, drogues ou cosmétiques par le contact de choses malpropres, ou à les rendre nuisibles à la santé.

« cosmétique » "cosmetic"

« cosmétique » Notamment les substances ou mélanges de substances fabriqués, vendus ou présentés comme pouvant servir à embellir, purifier ou modifier le teint, la peau, les cheveux ou les dents, y compris les désodorisants et les parfums.

« drogue » "drug"

« drogue » Sont compris parmi les drogues les substances ou mélanges de substances fabriqués, vendus ou présentés comme pouvant servir :

a) au diagnostic, au traitement, à l'atténuation ou à la prévention d'une maladie, d'un

c) il est destiné à être expédié ou transporté d'une province à une autre.

L.R. (1985), ch. F-27, art. 6; L.R. (1985), ch. 27 (3e suppl.), art. 1

Governor in Council may identify standard or portion thereof

6.1 (1) The Governor in Council may, by regulation, identify a standard prescribed for a food, or any portion of the standard, as being necessary to prevent injury to the health of the consumer or purchaser of the food.

Spécification d'une norme ou d'un élément particulier d'une norme par le gouverneur en conseil

6.1 (1) En cas d'établissement d'une norme réglementaire à l'égard d'un aliment, le gouverneur en conseil peut, par règlement, spécifier que cette norme ou un élément particulier de celle-ci est nécessaire à la prévention d'un préjudice à la santé des consommateurs ou acheteurs de cet aliment.

Where standard or portion thereof is identified

(2) Where a standard or any portion of a standard prescribed for a food is identified by the Governor in Council pursuant to subsection (1), no person shall label, package, sell or advertise any article in such a manner that it is likely to be mistaken for that food unless the article complies with the standard or portion of a standard so identified.

R.S., 1985, c. 27 (3rd Supp.), s. 1

Cas où un élément particulier est spécifié

(2) Dans les cas où, en application du paragraphe (1), le gouverneur en conseil spécifie soit une norme réglementaire à l'égard d'un aliment, soit un élément d'une telle norme, il est interdit d'étiqueter, d'emballer ou de vendre un aliment — ou d'en faire la publicité — de telle manière qu'il puisse être confondu avec l'aliment visé par la norme, à moins qu'il ne soit conforme à cette norme ou cet élément.

L.R. (1985), ch. 27 (3e suppl.), art. 1

Unsanitary manufacture, etc., of food

7. No person shall manufacture, prepare, preserve, package or store for sale any food under unsanitary conditions.

R.S., c. F-27, s. 7

Conditions non hygiéniques

7. Il est interdit de fabriquer, de préparer, de conserver, d'emballer ou d'emmagasiner pour la vente des aliments dans des conditions non hygiéniques.

S.R., ch. F-27, art. 7

Drugs

Drogues

Prohibited sales of drugs

8. No person shall sell any drug that

(*a*) was manufactured, prepared, preserved, packaged or stored under unsanitary conditions; or

(*b*) is adulterated

R.S., c. F-27, s. 8

Vente interdite

8. Il est interdit de vendre des drogues qui, selon le cas :

a) ont été fabriquées, préparées, conservées, emballées ou emmagasinées dans des conditions non hygiéniques,

b) sont falsifiées

S.R., ch. F-27, art. 8

Deception, etc., regarding drugs

9. (1) No person shall label, package, treat, process, sell or advertise any drug in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety

Fraude

9. (1) Il est interdit d'étiqueter, d'emballer, de traiter, de préparer ou de vendre une drogue — ou d'en faire la publicité — d'une manière fausse, trompeuse ou mensongère ou susceptible de créer une fausse impression quant à sa nature, sa valeur, sa quantité, sa composition, ses avantages ou sa sûreté.

Drugs labelled or packaged in contravention of regulations

(2) A drug that is not labelled or packaged as required by, or is labelled or packaged contrary to, the regulations shall be deemed to be labelled or packaged contrary to subsection (1).

R.S., c. F-27, s. 9

Étiquetage ou emballage non réglementaire

(2) La drogue qui n'est pas étiquetée ou emballée ainsi que l'exigent les règlements ou dont l'étiquetage ou l'emballage n'est pas conforme aux règlements est réputée contrevenir au paragraphe (1).

S.R., ch. F-27, art. 9

CANADA

CONSOLIDATION

CODIFICATION

Species at Risk Act

Loi sur les espèces en péril

S.C. 2002, c. 29

L.C. 2002, ch. 29

Current to November 3, 2010

À jour au 3 novembre 2010

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit:

Codifications comme élément de preuve

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

2002, c. 29 **2002, ch. 29**

An Act respecting the protection of wildlife species at risk in Canada

Loi concernant la protection des espèces sauvages en péril au Canada

[*Assented to 12th December 2002*]

[*Sanctionnée le 12 décembre 2002*]

Preamble

Recognizing that

Canada's natural heritage is an integral part of our national identity and history,

wildlife, in all its forms, has value in and of itself and is valued by Canadians for aesthetic, cultural, spiritual, recreational, educational, historical, economic, medical, ecological and scientific reasons,

Canadian wildlife species and ecosystems are also part of the world's heritage and the Government of Canada has ratified the United Nations Convention on the Conservation of Biological Diversity,

providing legal protection for species at risk will complement existing legislation and will, in part, meet Canada's commitments under that Convention,

the Government of Canada is committed to conserving biological diversity and to the principle that, if there are threats of serious or irreversible damage to a wildlife species, cost-effective measures to prevent the reduction or loss of the species should not be postponed for a lack of full scientific certainty,

responsibility for the conservation of wildlife in Canada is shared among the governments in this country and that it is important for them to work cooperatively to pursue the establishment of complementary legislation and programs for the protection and recovery of species at risk in Canada,

it is important that there be cooperation between the governments in this country to maintain and strengthen national standards of environmental conservation and that the

Préambule

Attendu :

que le patrimoine naturel du Canada fait partie intégrante de notre identité nationale et de notre histoire;

que les espèces sauvages, sous toutes leurs formes, ont leur valeur intrinsèque et sont appréciées des Canadiens pour des raisons esthétiques, culturelles, spirituelles, récréatives, éducatives, historiques, économiques, médicales, écologiques et scientifiques;

que les espèces sauvages et les écosystèmes du Canada font aussi partie du patrimoine mondial et que le gouvernement du Canada a ratifié la Convention des Nations Unies sur la diversité biologique;

que l'attribution d'une protection juridique aux espèces en péril complétera les textes législatifs existants et permettra au Canada de respecter une partie des engagements qu'il a pris aux termes de cette convention;

que le gouvernement du Canada s'est engagé à conserver la diversité biologique et à respecter le principe voulant que, s'il existe une menace d'atteinte grave ou irréversible à une espèce sauvage, le manque de certitude scientifique ne soit pas prétexte à retarder la prise de mesures efficientes pour prévenir sa disparition ou sa décroissance;

que la conservation des espèces sauvages au Canada est une responsabilité partagée par les gouvernements du pays et que la collaboration entre eux est importante en vue d'établir des lois et des programmes complémentaires pouvant assurer la protection et le

Possession, collection, etc.

(2) No person shall possess, collect, buy, sell or trade an individual of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species, or any part or derivative of such an individual.

Possession, achat, etc.

(2) Il est interdit de posséder, de collectionner, d'acheter, de vendre ou d'échanger un individu — notamment partie d'un individu ou produit qui en provient — d'une espèce sauvage inscrite comme espèce disparue du pays, en voie de disparition ou menacée.

Deeming

(3) For the purposes of subsection (2), any animal, plant or thing that is represented to be an individual, or a part or derivative of an individual, of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species is deemed, in the absence of evidence to the contrary, to be such an individual or a part or derivative of such an individual.

Présomption

(3) Pour l'application du paragraphe (2), tout animal, toute plante ou toute chose présentée comme un individu — notamment partie d'un individu ou produit qui en provient — d'une espèce sauvage inscrite comme espèce disparue du pays, en voie de disparition ou menacée est réputée, sauf preuve contraire, être tel individu, telle partie ou tel produit.

Damage or destruction of residence

33. No person shall damage or destroy the residence of one or more individuals of a wildlife species that is listed as an endangered species or a threatened species, or that is listed as an extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild in Canada.

Endommagement ou destruction de la résidence

33. Il est interdit d'endommager ou de détruire la résidence d'un ou de plusieurs individus soit d'une espèce sauvage inscrite comme espèce en voie de disparition ou menacée, soit d'une espèce sauvage inscrite comme espèce disparue du pays dont un programme de rétablissement a recommandé la réinsertion à l'état sauvage au Canada.

Application — certain species in provinces

34. (1) With respect to individuals of a listed wildlife species that is not an aquatic species or a species of birds that are migratory birds protected by the *Migratory Birds Convention Act, 1994*, sections 32 and 33 do not apply in lands in a province that are not federal lands unless an order is made under subsection (2) to provide that they apply.

Application : certaines espèces dans une province

34. (1) S'agissant des individus d'une espèce sauvage inscrite, autre qu'une espèce aquatique ou une espèce d'oiseau migrateur protégée par la *Loi de 1994 sur la convention concernant les oiseaux migrateurs*, les articles 32 et 33 ne s'appliquent dans une province, ailleurs que sur le territoire domanial, que si un décret prévu au paragraphe (2) prévoit une telle application.

Order

(2) The Governor in Council may, on the recommendation of the Minister, by order, provide that sections 32 and 33, or either of them, apply in lands in a province that are not federal lands with respect to individuals of a listed wildlife species that is not an aquatic species or a species of birds that are migratory birds protected by the *Migratory Birds Convention Act, 1994*.

Décret

(2) Sur recommandation du ministre, le gouverneur en conseil peut prévoir, par décret, l'application des articles 32 et 33, ou de l'un de ceux-ci, dans une province, ailleurs que sur le territoire domanial, à l'égard des individus d'une espèce sauvage inscrite, autre qu'une espèce aquatique ou une espèce d'oiseau migrateur protégée par la *Loi de 1994 sur la convention concernant les oiseaux migrateurs*.

Obligation to make recommendation

(3) The Minister must recommend that the order be made if the Minister is of the opinion that the laws of the province do not effectively protect the species or the residences of its individuals.

Obligation du ministre

(3) S'il estime que le droit de la province ne protège pas efficacement l'espèce ou la résidence de ses individus, le ministre est tenu de recommander au gouverneur en conseil la prise du décret.

Consultation

(4) Before recommending that the Governor in Council make an order under subsection (2), the Minister must consult

(*a*) the appropriate provincial minister; and

Consultation

(4) Le ministre ne recommande la prise du décret :

a) qu'après avoir consulté le ministre provincial compétent;

(*b*) if the species is found in an area in respect of which a wildlife management board is authorized by a land claims agreement to perform functions in respect of wildlife species, the wildlife management board.

b) si l'espèce se trouve dans une aire à l'égard de laquelle un conseil de gestion des ressources fauniques est habilité par un accord sur des revendications territoriales à exercer des attributions à l'égard d'espèces sauvages, qu'après avoir consulté le conseil.

Application — certain species in territories

35. (1) Sections 32 and 33 apply in each of the territories in respect of a listed wildlife species only to the extent that the Governor in Council, on the recommendation of the Minister, makes an order providing that they, or any of them, apply.

Application : certaines espèces dans les territoires

35. (1) Les articles 32 et 33 ne s'appliquent dans un territoire à l'égard d'une espèce sauvage inscrite que si le gouverneur en conseil, sur recommandation du ministre, prend un décret prévoyant l'application de ces articles ou de l'un de ceux-ci.

Exception

(2) Subsection (1) does not apply

(*a*) in respect of individuals of aquatic species and their habitat or species of birds that are migratory birds protected by the *Migratory Birds Convention Act, 1994*; or

(*b*) on land under the authority of the Minister or the Parks Canada Agency.

(2) Le paragraphe (1) ne s'applique pas :

a) à l'égard des individus d'une espèce aquatique et de leur habitat ou d'une espèce d'oiseau migrateur protégée par la *Loi de 1994 sur la convention concernant les oiseaux migrateurs*;

b) sur les terres relevant du ministre ou de l'Agence Parcs Canada.

Obligation to make recommendation

(3) The Minister must recommend that the order be made if the Minister is of the opinion that the laws of the territory do not effectively protect the species or the residences of its individuals.

Obligation du ministre

(3) S'il estime que le droit du territoire ne protège pas efficacement cette espèce ou la résidence de ses individus, le ministre est tenu de recommander au gouverneur en conseil la prise du décret.

Pre-conditions for recommendation

(4) Before recommending that an order be made under subsection (1), the Minister must

(*a*) consult the appropriate territorial minister; and

(*b*) if the species is found in an area in respect of which a wildlife management board is authorized by a land claims agreement to perform functions in respect of wildlife species, consult the wildlife management board.

Consultation

(4) Le ministre ne recommande la prise du décret :

a) qu'après avoir consulté le ministre territorial compétent;

b) si l'espèce se trouve dans une aire à l'égard de laquelle un conseil de gestion des ressources fauniques est habilité par un accord sur des revendications territoriales à exercer des attributions à l'égard d'espèces sauvages, qu'après avoir consulté le conseil.

Prohibitions re provincial and territorial classifications

36. (1) If a wildlife species that is not listed has been classified as an endangered species or a threatened species by a provincial or territorial minister, no person shall

(*a*) kill, harm, harass, capture or take an individual of that species that is on federal lands in the province or territory;

(*b*) possess, collect, buy, sell or trade an individual of that species that is on federal lands in the province or territory, or any part or derivative of such an individual; or

Interdictions : espèces provinciales ou territoriales

36. (1) Si une espèce sauvage non inscrite est classée par un ministre provincial ou territorial comme espèce en voie de disparition ou menacée, il est interdit :

a) de tuer un individu de cette espèce se trouvant sur le territoire domanial situé dans la province ou le territoire, de lui nuire, de le harceler, de le capturer ou de le prendre;

b) de posséder, de collectionner, d'acheter, de vendre ou d'échanger un individu — notamment partie d'un individu ou produit qui en provient — de cette espèce se trouvant sur

Québec

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R.S.Q., chapter V-1.1

SECURITIES ACT

TITLE I
GENERAL PROVISIONS

CHAPTER I
SCOPE

1. This Act applies to the following forms of investment:

(1) any security recognized as such in the trade, more particularly, a share, bond, capital stock of an entity constituted as a legal person, or a subscription right or warrant;

(2) an instrument, other than a bond, evidencing a loan of money;

(3) a deposit of money, whether or not evidenced by a certificate except a deposit received by the Gouvernement du Québec, the Government of Canada, or one of their departments or agencies;

(4) *(subparagraph repealed);*

(5) *(subparagraph repealed);*

(6) a share in an investment club;

(7) an investment contract;

(8) *(subparagraph repealed);*

(8.1) an option or other non-traded derivative whose value is derived from, referenced to or based on the value or market price of a security, granted as compensation or as payment for a good or service;

(9) any other form of investment determined by regulation of the Government.

An investment contract is a contract whereby a person, having been led to expect profits, undertakes to participate in the risk of a venture by a contribution of capital or loan, without having the required knowledge to carry on the venture or without obtaining the right to participate directly in decisions concerning the carrying on of the venture.

1982, c. 48, s. 1; 1999, c. 40, s. 327; 2001, c. 38, s. 2; 2008, c. 7, s. 137; 2008, c. 24, s. 196.

2. The scheme of securities regulation established by this Act and the regulations applies, with the necessary modifications, to the other forms of investment listed in section 1, subject to any express exemption.

1982, c. 48, s. 2.

2.1. This Act does not apply to derivatives within the meaning of the Derivatives Act (chapter I-14.01).

2008, c. 24, s. 197.

3. The following forms of investment are exempt from the application of Titles II to VIII, except that mentioned in paragraph 10, which remains subject to Titles V and VII:

(1) a debt security issued by the Gouvernement du Québec, the Government of Canada or the government of a Canadian province or territory;

2001, c. 38, s. 73; 2002, c. 45, s. 696; O.C. 46-2004, s. 2; 2004, c. 37, s. 90; 2009, c. 58, s. 121.

273.3. The Bureau de décision et de révision may prohibit a person from acting as a director or officer of an issuer, dealer, adviser or investment fund manager on the grounds set out in article 329 of the Civil Code, or where a penalty has been imposed on the person under this Act.

The prohibition imposed by the Bureau de décision et de révision may not exceed five years.

The Bureau de décision et de révision may, at the request of the person concerned, lift the prohibition on such conditions as it considers appropriate.

2001, c. 38, s. 73; 2002, c. 45, s. 696; 2006, c. 50, s. 111; 2009, c. 25, s. 40; 2009, c. 58, s. 122.

274. The Authority may make policy statements relating to the carrying out of this Act.

The policy statements set out how the Authority intends to exercise its discretionary powers for the purposes of the administration of this Act.

1982, c. 48, s. 274; 1989, c. 48, s. 255; 2001, c. 38, s. 74; 2002, c. 45, s. 696; 2004, c. 37, s. 90; 2008, c. 24, s. 215.

274.1. The Authority may impose an administrative monetary penalty for a contravention of or failure to comply with the provisions of, or a regulation under, Title II or III, except section 73 as regards timely disclosure of a material change by a reporting issuer, in the cases, on the conditions and in the amounts prescribed by regulation.

2004, c. 37, s. 24; 2006, c. 50, s. 88; 2009, c. 58, s. 123.

275. *(Repealed).*

1982, c. 48, s. 275; 1997, c. 36, s. 1.

TITLE X
ADMINISTRATION OF THE ACT

CHAPTER I
GENERAL PROVISIONS

276. The Autorité des marchés financiers established under section 1 of the Act respecting the Autorité des marchés financiers (chapter A-33.2) is responsible for the administration of this Act and shall discharge the functions and exercise the powers specified thereunder.

In addition, the Authority's mission is

(1) to promote efficiency in the securities market;

(2) to protect investors against unfair, improper or fraudulent practices;

(3) to regulate the information that must be disclosed to security holders and to the public in respect of persons engaging in the distribution of securities and in respect of the securities issued by these persons;

(4) to define a framework for the activities of the professionals of the securities market and organizations responsible for the operation of a stock market.

1982, c. 48, s. 276; 2002, c. 45, s. 644; 2004, c. 37, s. 90.

276.1. *(Repealed).*

1997, c. 36, s. 2; 1999, c. 40, s. 327; 2002, c. 45, s. 645.

276.2. The Authority may provide consulting and implementation services related to the regulation of the securities market to bodies outside Québec involved in such regulation.

1997, c. 36, s. 2; 2002, c. 45, s. 696; 2004, c. 37, s. 90.

276.3. The Authority shall advise the Minister on any matter he submits to it concerning securities.

1997, c. 36, s. 2; 2002, c. 45, s. 696; 2004, c. 37, s. 90.

276.4. *(Repealed).*

1997, c. 36, s. 2; 2002, c. 45, s. 646; 2004, c. 37, s. 90; 2008, c. 7, s. 162.

276.5. *(Repealed).*

1997, c. 36, s. 2; 2002, c. 45, s. 647.

277. *(Repealed).*

1982, c. 48, s. 277; 2001, c. 38, s. 75; 2002, c. 45, s. 647.

278. *(Repealed).*

1982, c. 48, s. 278; 2002, c. 45, s. 647.

278.1. *(Repealed).*

1997, c. 36, s. 3; 2002, c. 45, s. 647.

279. *(Repealed).*

1982, c. 48, s. 279; 1999, c. 40, s. 327; 2002, c. 45, s. 647.

280. *(Repealed).*

1982, c. 48, s. 280; 2002, c. 45, s. 647.

281. *(Repealed).*

1982, c. 48, s. 281; 2001, c. 38, s. 76.

281.1. *(Repealed).*

2001, c. 38, s. 77; 2002, c. 45, s. 647.

282. *(Repealed).*

1982, c. 48, s. 282; 2002, c. 45, s. 647.

283. No proceeding may be brought against the Authority, a member of its personnel, its appointed agent or any person exercising a delegated power, for official acts done in good faith in the exercise of their functions.

1982, c. 48, s. 283; 1984, c. 41, s. 63; 2001, c. 38, s. 78; 2002, c. 45, s. 648; 2004, c. 37, s. 91.

283.1. The Authority may delegate its powers to review its decisions, order an investigation under section 239, institute court proceedings under this Act in the name of the Authority or make a decision under Title VI only to a superintendent or to another officer reporting directly to the president and director general of the Authority.

The first paragraph does not prevent the Authority from delegating its powers in accordance with Chapter II of this Title.

2006, c. 50, s. 90.