

**2024 01G 0937**  
**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**  
**GENERAL DIVISION**

**BETWEEN:**

**NEIL BOSE, THE PRESIDENT AND  
VICE-CHANCELLOR *PRO TEMPORE* OF  
MEMORIAL UNIVERSITY OF NEWFOUNDLAND** **APPLICANT**

**AND:**

**MICHAEL HARVEY, in his capacity as  
THE INFORMATION AND PRIVACY COMMISSIONER  
OF NEWFOUNDLAND AND LABRADOR** **FIRST INTERVENOR**

**AND:**

**MATTHEW BARTER,  
THE ACCESS TO INFORMATION REQUESTER  
AND COMPLAINANT BEFORE THE COMMISSIONER** **SECOND INTERVENOR**

**AND:**

**GENESIS GROUP INC.** **THIRD INTERVENOR**

**AND:**

**C-CORE** **FOURTH INTERVENOR**

**A CASE-MANAGED PROCEEDING BEFORE  
THE HONOURABLE JUSTICE ROBERT P. STACK**

**MEMORANDUM OF FACT AND LAW**  
**OF THE THIRD INTERVENOR, GENESIS GROUP INC.**

<b>SUMMARY OF CURRENT DOCUMENT</b>	
Court File Number(s):	2024 01G 0937
Date of Filing Document:	October 16, 2024
Name of Party Filing or Person:	The Third Intervenor, Genesis Group Inc.
Application to which Document being filed relates:	Originating Application of Neil Bose, The President and Vice-Chancellor <i>Pro Tempore</i> of Memorial University of Newfoundland, brought pursuant to subsection 50(2)(a) of the <i>Access to Information and Protection of Privacy Act, 2015</i> , SNL 2015, c. A-1.2
Statement of Purpose in filing:	To support the Originating Application

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	PROCEDURAL HISTORY.....	3
III.	FACTS.....	4
	A. About Genesis.....	5
	B. About the Information.....	6
	C. About Genesis as a Separately Incorporated Entity in relation to Memorial.....	7
	D. About Genesis' accountability to Memorial as its shareholder.....	9
	E. About Genesis and the <i>ATIPPA</i> , the <i>Auditor General Act</i> and other public-sector legislation.....	9
	F. About the importance of the legislative distinction to Genesis' Business.....	13
IV.	ISSUES.....	14
V.	LAW & ARGUMENT.....	14
	ISSUE 1: Is Genesis a public body pursuant to the <i>ATIPPA</i> ?.....	14
	ISSUE 2: Is the requested Information relating to Genesis within Memorial's custody and control?.....	19
VI.	RELIEF SOUGHT.....	27
VII.	LIST OF AUTHORITIES.....	28

I. **INTRODUCTION**

1. The Third Intervenor, Genesis Group Inc. (“**Genesis**”) submits this Memorandum of Fact and Law in support of the Originating Application of Neil Bose, The President and Vice-President *Pro Tempore* of Memorial University of Newfoundland (“**Memorial**”). The Originating Application seeks this Honourable Court’s declaration, pursuant to subsection 50(2)(a) of the *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c. A-1.2 (the “**ATIPPA**”), that Memorial is not required to comply with the recommendations made by the First Intervenor, Michael Harvey, in his capacity as the Information and Privacy Commissioner of Newfoundland and Labrador (the “**Commissioner**”) in his Report A-2024-006 (the “**Commissioner’s Report**”).
  
2. This proceeding generally concerns who keeps and/or controls information about Genesis’ expenses, specifically information about remuneration and benefits paid to a small, easily identifiable group of employees, and whether such information is, or should be, available to the public. Until the Commissioner’s Report, it was generally understood by Genesis that such information was solely in its custody and control, as a private corporation, and accordingly was not subject to the public right of access pursuant to the *ATIPPA*. If the relevant findings in the Commissioner’s Report are confirmed by this proceeding, it will detrimentally impact Genesis’ ability to conduct its core business (as particularized herein below). Accordingly, for the reasons referenced and submitted herein, Genesis argues that the relevant findings of the Commissioner – (i) that Genesis is part of Memorial, and on that basis, subject to the *ATIPPA*, and (ii) that Memorial has custody or control over the financial information sought by the requestor – are unreasonable and incorrect.

II. **PROCEDURAL HISTORY**

3. In late 2023, the Second Intervenor, Matthew Barter (“**Barter**”) made four information requests to Memorial regarding three corporations: Genesis, a corporation continued under the *Corporations Act*, RSNL 1990, c. C-36; the Fourth Intervenor, C-Core, a corporation continued under the *Canada Not-for-Profit Corporations Act*, SC 2009, c. 23; and the Canadian Centre for Fisheries Innovation (“**CCFI**”), as a corporation also continued under the *Canada Not-for-profit Corporations Act*. The requests were for the following information:
  - a. Bonuses/special payments paid to C-Core executives and bonuses paid to C-Core management employees from January 1, 2019 to October 23, 2023;

- b. All bonuses and special payments paid to Genesis executives and all incentives paid to Genesis management employees from January 1, 2019 to October 23, 2023;
- c. All vehicle allowances paid to Genesis executive management staff from January 1, 2019 to present; and
- d. All vehicle allowances paid to CCFI executive and management staff from January 1, 2019 to November 2, 2023.

(collectively, the “**Information**” and/or the “**Requests**”)

- 4. Memorial denied the Requests on the basis that it did not have custody or control of the Information sought in the Requests per sections 5 and 8 of the *ATPPA*. Memorial took the position the Information was in the custody or control of C-Core, Genesis, and/or CCFI, respectively. Barter disagreed with this position and caused complaints to be filed with the Commissioner (the “**Complaints**”). The Commissioner proceeded to formal investigation of the Complaints pursuant to subsection 44(4) of the *ATIPPA*.
- 5. On February 8, 2024, the Commissioner, having completed his investigation, released the Commissioner’s Report. In the report, the Commissioner sided with Barter and found that Memorial had custody or control of the Information. Memorial disagreed with the Commissioner’s finding, and consequently made the within Originating Application. Genesis and C-Core, as parties interested in the subject matter of the Originating Application, and positioned to be significantly impacted by this Honorable Court’s decision, were granted leave to participate in the proceeding as intervenors.

### III. FACTS

- 6. Genesis submits the following categories of facts are material to the issues raised by this proceeding, namely facts: about Genesis as a private corporation; about the requested Information; about Genesis’ relation to Memorial as a Separately Incorporated Entity; about Genesis’ accountability to Memorial as Genesis’ shareholder; about Genesis’ operational beliefs regarding the *ATIPPA*, the *Auditor General Act* and other public-sector legislation; and about the importance of the legislative distinction to Genesis’ business.

**A. About Genesis**

7. Genesis was incorporated on October 3, 1980, under *The Companies Act*, R.S.N. 1970, c. 54 as a corporation with share capital. The corporation's original name was Seabright Corporation Limited. The corporation's name was changed to Genesis Group Inc. on September 19, 2000.

Reference: Affidavit of Karla Connolly, para. 2. & exhibit A

8. Genesis is a technology incubator that operates as a not-for-profit support network dedicated to fostering entrepreneurship and developing sustainable businesses. Its primary mission, as stated in its By-Law No. 1, is to assist and encourage academics, those associated with Memorial, and the local community in commercializing technological ideas, concepts, and intellectual property ("**Genesis' Business**"). Genesis provides resources, mentorship, and support to early-stage startup companies, guiding them from idea validation to scaling their businesses. Through its programs, Genesis helps startups develop minimum viable products, find market fit, and achieve significant milestones, such as reaching a million dollars in annual recurring revenue. The incubator also facilitates connections with industry mentors, investors, and ecosystem partners to ensure startups have the necessary tools and networks to thrive, with a primary emphasis on benefiting the Province of Newfoundland and Labrador.

Reference: Affidavit of Karla Connolly, para. 3 & exhibit B

9. Since its inception, Genesis has grown into a globally-recognized innovation hub with national and international partners who have committed to supporting Genesis' Business. Genesis secures more than 50% of its annual operating revenues from private sources. Companies assisted by Genesis have collectively secured almost a billion dollars in private capital, have created more than 2,500 jobs and generated more than \$700 million annually in recurring revenues. Genesis' success, and the resulting injection of capital and jobs into the Province, are facilitated in part by its status as a private corporation.

Reference: Affidavit of Karla Connolly, para. 4

10. Memorial is the sole shareholder of Genesis. Pursuant to paragraph 45 of Genesis' By-Law No. 1, ownership of voting shares of Genesis is restricted to Memorial.

Reference: Affidavit of Karla Connolly, para. 5

11. Genesis is governed by a Board of Directors, which presently comprises 12 directors, 11 of whom are voting directors. The directors, as empowered by paragraph 8 of Genesis' By-Law No, 1, manage Genesis' affairs conducted in support of Genesis' Business. The directors are elected by Memorial's Board of Regents, after receiving recommendations from Genesis' Board of Directors and Memorial's President. Directors are primarily elected from the private sector. Directors are elected to serve for two to three year terms. A quorum of a majority of the elected voting directors is required for the transaction of business at any meeting of directors. Where there is such quorum, every question is decided by a majority of the votes cast by the directors.

Reference: Affidavit of Karla Connolly, para. 6 & exhibit B

**B. About the Information**

12. This proceeding concerns four access to information requests made by Barter to Memorial, two of which concerned information about employees of Genesis. In access to information request 0020-062-23-125, Barter sought access to information about *"all bonuses and special payments paid to Genesis executives and all incentives paid to Genesis management employees from January 1, 2019 to October 23, 2023"*. In access to information request 0020-062-23-126, Barter sought access to information about *"all vehicle allowances paid to Genesis executive and management staff from January 1, 2019 to present"*.

Reference: Affidavit of Karla Connolly, para. 7

13. Genesis is a small operation, presently consisting of 15 full-time employees and one part-time employee, for a total of 16 employees. The amount of remuneration and benefits paid to Genesis' employees, and other such conditions of employment, are decided exclusively by Genesis' CEO and approved by the Board of Directors, with the sole exception of those regarding Genesis' CEO, which are decided by Genesis' Board of Directors. Information regarding such employee remuneration, benefits and conditions of employment is personal information of Genesis' employees and is treated by Genesis as confidential information. The Information relates solely to Genesis' employees and Genesis' Business.

Reference: Affidavit of Karla Connolly, para. 8

14. Genesis' employees, including Genesis' Chief Executive Officer, are retained by signing employment contracts with Genesis (not Memorial). Genesis employees' employment

contracts assume that Genesis is a private corporation; accordingly, the contracts do not notify employees of potential disclosure of the Information pursuant to the *ATIPPA* or other public-sector legislation.

Reference: Affidavit of Karla Connolly, para. 9

15. Genesis uses physical, organization and electronic security measures to protect the confidential employee information in its custody and control against loss, theft, unauthorized access, disclosure, use or modification. Such measures include premises security, restricted file access, technological safeguards including security software and firewalls to prevent unauthorized computer access, and password and security policies.

Reference: Affidavit of Karla Connolly, para. 10

**C. About Genesis as a Separately Incorporated Entity in relation to Memorial**

16. Genesis is termed a Separately Incorporated Entity (“**SIE**”) in relation to Memorial. The nature of Genesis’ relation to Memorial as an SIE is particularized below. As a private corporation, Genesis governs itself as a commercial enterprise uninhibited by the statutory obligations imposed on public bodies. This includes Genesis negotiating freely and entering into contracts with innovation enterprises in a manner that promotes economic growth for the Province, while simultaneously protecting such enterprises’ proprietary and commercially sensitive information from publication. Imposing public body statutory obligations on Genesis would significantly impede Genesis’ Business.

Reference: Affidavit of Karla Connolly, para. 11

17. Genesis does not receive monetary funding from Memorial, nor does Memorial direct Genesis on how to spend the funding Genesis receives from other sources.

Reference: Affidavit of Karla Connolly, para. 12

18. In carrying out its business, Genesis uses assets and facilities owned by Memorial. Genesis’ use of Memorial’s property is governed by a Management Agreement, pursuant to which Genesis is appointed as Memorial’s managing agent of the property it uses.

Reference: Affidavit of Karla Connolly, para. 13 & exhibit C

19. In connection with Genesis’ use of University property, Genesis is authorized by paragraph 69 of its By-Law No. 1 to acquire shares or other securities as Memorial’s agent

for purposes deemed appropriate by Genesis' officers or directors, including for the recovery of costs incurred by Genesis in providing services to such bodies corporate, or in lieu of a licence fee from such bodies corporate for the use of property owned by Memorial and managed by Genesis. Any revenue on the disposition of such shares or other securities, including dividends received in respect of such shares, are used solely, with Memorial's prior approval, to further Genesis' Business, or are held by Genesis as agent of Memorial.

Reference: Affidavit of Karla Connolly, para. 14

20. Further in connection with Genesis' use of Memorial's property, Genesis is authorized by paragraph 72 of its By-Law No. 1 to enter into royalty or licence agreements as agent of Memorial, for purposes deemed appropriate by Genesis' officers or directors, including the recovery of costs incurred by Genesis in supporting the development of inventions, discoveries or creations, and patenting processes. Any royalties or other revenues generated from royalty or licence arrangements are used solely to further Genesis' Business, or held by Genesis as agent of Memorial.

Reference: Affidavit of Karla Connolly, para. 15

21. Pursuant to the Management Agreement, Memorial also serves as payroll agent to Genesis. In this capacity, Memorial provides administrative services to Genesis in the form of (i) delivering Genesis' employees their wages, (ii) preparing payroll reports and returns required of Genesis, and (iii) remitting to the proper authorities all deductions and payments for income tax, unemployment insurance, group coverages, union dues, Canada Pension Plan, Workers' Compensation and any other deductions or payments which may from time to time be applicable to Genesis' employees, or Genesis, or both. To enable Memorial's provision of payroll service, Genesis provides the necessary instructions and details about the remuneration to be paid to each Genesis employee to Memorial's Human Resources Department, as well as deposits funds to Memorial to account for the payroll payments. As a consequence of its acting as payroll agent, Memorial has bare possession of the Information, but does not have authority over the content or use of the Information. Memorial's use of the Information is strictly for the purpose of administering the payroll service to Genesis.

Reference: Affidavit of Karla Connolly, para. 16

**D. About Genesis' accountability to Memorial as its shareholder**

22. Genesis is accountable to Memorial in its capacity as Genesis' sole shareholder. Pursuant to paragraph 53 of Genesis' By-Law No. 1, Genesis is required to hold an annual meeting with its shareholder (the "**AGM requirement**"). The AGM requirement includes: (i) Memorial hearing and receiving Genesis' financial reports and statements, and any other documentation as required to be read and laid before it as shareholder; (ii) Memorial electing Genesis' directors; (iii) Memorial appointing Genesis' auditor, and fixing or authorizing Genesis' Board of Directors to fix the auditor's remuneration; and (iv) the transaction of such other business as may properly be brought before the meeting. Genesis' disclosure of its special purpose annual financial statements, auditor's report, and further information respecting the financial position of the corporation and results of its operations to Memorial, as its sole shareholder, is done in compliance with the AGM requirement and with provisions of the *Corporations Act*, RSNL 1990, c. C-36.

Reference: Affidavit of Karla Connolly, para. 17 & exhibit B

23. The subject Information is not specified in the special purpose annual financial statements, or any other reports, disclosed by Genesis to Memorial at the AGM. Accordingly, the Information does not appear as a line item in Genesis' special purpose annual financial statements.

Reference: Affidavit of Karla Connolly, para. 18

24. Information contained in Genesis' special purpose annual financial statements regarding its assets, liabilities, revenues and expenses are generally reflected in Memorial's consolidated financial statements. Just as the subject Information does not appear as a line item in the special purpose annual financial statements of Genesis consolidated in the financial statements of Memorial, the Information does not appear as a line item in Memorial's consolidated financial statements.

Reference: Affidavit of Karla Connolly, para. 19

**E. About Genesis and the ATIPPA, the Auditor General Act and other public-sector legislation**

25. Genesis operates on the belief that legislative policy adopted by the Province, enacted in public-sector legislation, distinguishes Genesis from Memorial, and that the Province has

recurrently demonstrated its legislative intent that Genesis not be bound by public-sector legislation.

Reference: Affidavit of Karla Connolly, para. 20

26. Prior to the issuance of the Commissioner's Report, Genesis has operated on the belief that it is not a "public body" to which the public right of access to information applies under the *ATIPPA*. Genesis' belief is partially informed by the Commissioner's reasons in Reports A-2023-020 and A-2023-029, in which the Commissioner concluded that other SIEs in relation to Memorial were not public bodies under the *ATIPPA*.

Reference: Affidavit of Karla Connolly, para. 21 & exhibits D, E & F

27. Genesis was not given opportunity to make representations or provide evidence to the Commissioner, or to otherwise participate in the Commissioner's investigation of the access to information requests at issue in these proceedings, which ultimately resulted in the Commissioner's issuance of his report.

Reference: Affidavit of Karla Connolly, para. 22

28. Genesis also operates on the belief that it is not subject to audit under the *Auditor General Act, 2021*, SNL 2021, c. A-22.1. On April 7, 2022, the Lieutenant-Governor in Council issued Order in Council OC2022-088, requesting, under the authority of section 22 of the *Auditor General Act, 2021*, that the Auditor General perform an audit of the operations and spending at Memorial (the "**Audit**"). During the Audit, at Memorial's request, Genesis voluntarily submitted the subject employee information to the Auditor General on a confidential basis. The confidential nature of the employee information shared by Genesis, and Genesis' belief that the Auditor General did not have jurisdiction to audit Genesis or to include the personal information of Genesis' employees within the Audit report, were repeatedly stated by Genesis to the Auditor General during the Audit process.

Reference: Affidavit of Karla Connolly, para. 23

29. On August 11, 2023, Genesis' legal counsel wrote to the Auditor General in relation to a draft of the Auditor General's Audit report, to request removal of information pertaining to Genesis and its employees from the report. In the letter, Genesis stated its position:

- a. That inclusion of the information within the Audit exceeded the Auditor General's jurisdiction and, if published, would violate the privacy of Genesis employees;
- b. That OC2022-088 did not authorize the Auditor General to conduct an audit of Genesis, or to include an audit of Genesis within the Auditor General's audit of Memorial;
- c. That as a result of its independent legal status, Genesis was not subject to legislation governing public bodies in Newfoundland and Labrador and had never publicly disclosed information pertaining to its employees' remuneration;
- d. That Genesis had voluntarily shared its information with the Auditor General on a confidential basis in order to assist with its Audit of Memorial's operations, and not to enable an audit of Genesis;
- e. That Genesis did not consent to the use of its confidential information in the Audit report;
- f. That Genesis' employees did not consent to the disclosure of their personal information pertaining to their remuneration in the Audit report; and
- g. That publication of the Audit report with the information included would constitute a violation of privacy under the *ATIPPA* and the *Privacy Act*, RSNL 1990, c. P-22.

Reference: Affidavit of Karla Connolly, para. 24 & exhibit G

30. On October 20, 2023, following the Auditor General's refusal of Genesis' request and delivery of the Audit report to the Lieutenant-Governor in Council on October 19, 2023, Genesis' legal counsel wrote to the Clerk of the Executive Council and Cabinet Secretariat, as adviser in the Executive Council to the Lieutenant-Governor in Council, to express Genesis' concerns about the contents of the Audit report. In the letter, Genesis reiterated the points previously stated in its letter to the Auditor General of August 11, 2023, and further stated:

- a. That the Audit report in the Lieutenant-Governor in Council's custody and control was subject to the *ATIPPA* and the protections it affords, specifically the protection from unauthorized disclosure under subsection 64(1) of the Act;
- b. That none of the circumstances enumerated in subsection 68(1) of the *ATIPPA*, in which a public body may disclose personal information in its custody and control, applied to the Employee Information;
- c. That publication of the Audit report without redacting the employee information would contravene subsection 68(1) of the *ATIPPA*, and subsection 40(1) of the *ATIPPA*, the latter of which requires a public body to refuse to disclose personal information where the disclosure would constitute an unreasonable invasion of personal privacy.
- d. That the Audit report adopted a tenor that served to challenge legislative policy choices already made by the Government of Newfoundland and Labrador, to the detriment of Genesis and the Province; and
- e. That accordingly, Genesis requested the employee information in the Audit report be redacted, or protected through other means, when tabling, releasing, publishing or otherwise discussing the report.

Reference: Affidavit of Karla Connolly, para. 25 & exhibit H

31. On October 23, 2023, the Lieutenant-Governor in Council released the Auditor General's Audit report on Memorial, with Genesis' employee information redacted.

Reference: Affidavit of Karla Connolly, para. 26 & exhibit I

32. Genesis is not designated in the Schedule of the *Public Sector Compensation Transparency Regulations*, NLR 81/16 as a "public body" for the purposes of the *Public Sector Compensation Transparency Act*, SNL 2016, c. P-41.02. Accordingly, the Employee Information relating to Genesis employees is not included in the annual disclosures of public-sector compensation (the proverbial "sunshine list") pursuant to the *Public Sector Compensation Transparency Act*.

Reference: Affidavit of Karla Connolly, para. 27

33. Genesis also operates on the belief that its employees are not employees to which the *Memorial University Pensions Act*, RSNL 1990, c. M-8 applies. The *Memorial University Pensions Act* does not explicitly reference Genesis. The Act explicitly references, in subsection 3(1)(b), the statute's application to the employees of another SIE in relation to Memorial, namely the Memorial University Recreation Complex Inc.

Reference: Affidavit of Karla Connolly, para. 28

34. The Commissioner's Report set out multiple findings contrary to Genesis' beliefs about the application of the *ATIPPA*, including:

- a. At paragraph 23 of the report, that "*C-Core, Genesis, and CCFI are part of Memorial and subject to the ATIPPA, 2015*"; and
- b. At paragraph 31 of the report, that "*Memorial has custody or control over the financial records sought by the Complainant*".

Reference: Affidavit of Karla Connolly, exhibit D.

35. Genesis agrees with the Commissioner's finding at paragraph 17 of the Commissioner's Report that Genesis is not a "*stand-alone*" public body under the *ATIPPA*.

**F. About the importance of the legislative distinction to Genesis' Business**

36. Designation of Genesis as a "public body" to which the *ATIPPA* public right of access to information applies, either as a result of Genesis' relationship with Memorial, or directly through legislative amendments of public-sector legislation, would undermine Genesis' effectiveness and the pursuit of Genesis' Business.

Reference: Affidavit of Karla Connolly, para. 29

37. Imposing public body statutory obligations on Genesis would significantly impede its ability to undertake Genesis' Business. Given its small structure, Genesis would be significantly constrained were it required to undertake compliance with public sector legislation while maintaining the level of service that Genesis' Business requires. It would consume Genesis' time and detrimentally detract from Genesis' Business, were Genesis required to consider and implement operational changes to comply with, for instance: the *ATIPPA*; the *Management of Information Act*, SNL 2005, c. M-1.01; the *Public Bodies Reporting Act*, SNL 2018, c. P-35.2; the *Public Procurement Act*, SNL 2016, c. P-41.001; the *Public*

*Sector Compensation Transparency Act*; and the *Transparency and Accountability Act*, SNL 2004, c. T-8.1.

Reference: Affidavit of Karla Connolly, para. 30

38. The reporting and transparency requirements set out in the aforementioned public-sector legislation would be antithetical to Genesis' Business. Disclosure of Genesis' financial information would hinder its competitive advantage and its ability to win contracts with new innovation enterprises. Similarly, whereas Genesis competes with private commercial enterprises in the labour market, disclosure of its salaries would negatively impact its competitiveness in employee recruitment and retention. Most harmful would be the ability of members of the public and third-party competitors' to seek access to the proprietary, technological and commercially sensitive information that third-party innovation enterprises entrust to Genesis to help grow their ideas and their businesses, through the *ATIPPA* or public body reports.

Reference: Affidavit of Karla Connolly, para 31

#### IV. **ISSUES:**

39. Informed by this factual context, the core issues to be determined in this proceeding are those identified by Memorial at paragraph 57 of its brief. Framed specific to Genesis, the issues are:
- a. Is Genesis a public body under the *ATIPPA*?
  - b. Is the requested Information relating to Genesis within Memorial's custody and control?
    - i. Does the requested Information relate to a Memorial matter?
    - ii. Could Memorial reasonably expect to obtain a copy of the requested Information upon request?

#### V. **LAW & ARGUMENT:**

##### **ISSUE 1: Is Genesis a public body pursuant to the *ATIPPA*?**

40. Genesis agrees with and wholly adopts Memorial's argument regarding the first issue set out in paragraphs 58 to 86 of Memorial's Brief as it relates to Genesis. Genesis supplements Memorial's arguments as follows.

41. Genesis submits the Commissioner's finding at paragraph 23 of the Commissioner's Report that Genesis is "*part of Memorial and subject to the ATIPPA, 2015*" is unreasonable and incorrect.
42. As stated at paragraph 65 of Memorial's Brief, the *ATIPPA*'s language is straightforward and confirms the legislation does not apply to Genesis in its own right, as a "*stand alone*" public body. Likewise, the language of the *ATIPPA* does not support the premise that the statute's application to Memorial as a "public body" should also extend to Genesis.
43. The *ATIPPA*'s definition of "public body" in subsection 2(x) distinguishes four types of corporations, each covered by the definition:
  - a. A corporation directly owned by the Crown, described in subsection 2(x)(ii) as "*a corporation, the ownership of which, or majority of the shares of which is vested in the Crown*";
  - b. A corporation directly controlled by appointees of the Crown, described in subsection 2(x)(iii) as "*a corporation, commission or body, the majority of the members of which, or the majority of members of the board of directors of which are appointed by an Act, the Lieutenant-Governor in Council or a minister*";
  - c. Pursuant to subsection 2(x)(iv), a corporation that is a "*local public body*", described in subsection 2(p) as including educational bodies, health care bodies, and local government bodies (each term being further defined in section 2); and
  - d. A corporation directly owned by or created for a local government body, described specifically in subsection 2(x)(vi) as "*a corporation or other entity owned by or created by or for a local government body or group of local government bodies, which has as its primary purpose the management of a local government asset or the discharge of a local government responsibility*" (a "**local government corporation**").

Reference: *ATIPPA*, s. 2, Tab 1

44. Genesis submits that it meets none of the criteria of the corporations described in subsection 2(x) of the *Act*. Genesis' shares are not vested in the Crown, and none of the members of Genesis' Board of Directors are appointed by an Act, the Lieutenant-Governor in Council or a minister. Nor does Genesis constitute a local government corporation. The question of whether Genesis should be included as an extension of Memorial as a "local public body" within the meaning of subsection 2(x)(iv) is addressed further below.
45. From the perspective of legislative drafting, there would be no need for the *ATIPPA* to specify a local government corporation in subsection 2(x)(vi) if such corporation was already captured by any of the other types of corporations described in subsections 2(x)(ii), (iii) or (iv). If a local government corporation – by nature of the characteristics identified in subsection 2(x)(vi), specifically ownership, origin of creation, and purpose – could simply be considered "part of" a local government body for purposes of application of the *ATIPPA*, there would be no need to include the specific language set out in subsection 2(x)(vi). By corollary, the absence of similar specific descriptions of corporations owned by or created by or for the other types of local public bodies described in subsection 2(p) – namely educational bodies or health care bodies – suggests that such corporations are not otherwise covered by the definition of "public body" in subsection 2(x).
46. Moreover, adopting an expansive definition of "Memorial University of Newfoundland" as being inclusive of Genesis would do violence to the legislative drafting of subsection 2(x). The *ATIPPA* expressly identifies Memorial in subsection 2(h)(i) as being an "educational body" under the *Act*. The subcategory of public bodies termed "educational bodies" are, in turn, specified as falling within the category of public bodies described in subsection 2(p) as "local public bodies". If one were to assume that Genesis' being a corporation owned by, or created by or for, Memorial was sufficient to have it fall within Memorial's description in subsection 2(h)(i), it would negate the necessity for the wording of subsection 2(x)(v) distinguishing local government corporations.
47. Genesis submits that an inference should be drawn from the Legislature's choice to include local government corporations as "*stand alone*" public bodies within the definition of "public body" in subsection 2(x) of the *ATIPPA*, and to not specify the same regarding corporations owned by, or created by or for, educational bodies or health care bodies. The

inference supported by the foregoing is that the Legislature did not intend local educational corporations or local health care corporations to be subject to the *ATIPPA*.

48. In similar vein to C-Core's argument at paragraphs 38 to 40 of its Brief, Genesis submits the legislative history of the *ATIPPA* supports the inference that the Legislature chose not to include local educational corporations or local health care corporations within the definition of "public bodies" in the *Act*. Genesis has existed since 1980 and was in existence at the time of the drafting of Newfoundland and Labrador's first access to information legislation (the *Freedom of Information Act*, RSN 1990, c. F-25), the previous version of the *ATIPPA* (the *Access to Information and Protection of Privacy Act*, SNL 2002, c. A-1.1), and at the time of the drafting of the current *ATIPPA*. If the Legislature had intended the *ATIPPA* to apply to local educational corporations or local health care corporations, it could have clearly and unambiguously done so by including language akin to that in subsection 2(x)(vi) regarding local government corporations. The absence of such specific language in these circumstances leads the reasonable inference that the Legislature had no intention for Genesis or the other SIEs to be treated as "public bodies" under the *ATIPPA*, as an extension of Memorial or otherwise.
49. As stated in paragraphs 59 and 60 of Memorial's Brief, the modern principle of statutory interpretation, section 16 of the *Interpretation Act*, RSNL 1990, c. I-19, and the confirmatory statements of the Court of Appeal in *Archean Resources v. Newfoundland*, 2002 NFCA 43 each direct that statutes must be interpreted harmoniously with their legislative objects and purposes. As referenced in paragraph 61 of Memorial's Brief, the purpose of the *ATIPPA* is expressly stated in subsection 3(1) of the *Act*. Subsection 3(1) provides the purpose of the *ATIPPA* is to facilitate democracy through "(a) ensuring that citizens have the information required to participate meaningfully in the democratic process; (b) increasing transparency in government and public bodies so that elected officials, officers and employees of public bodies remain accountable; and (c) protecting the privacy of individuals with respect to personal information about themselves held and used by public bodies."
50. Interpreting and applying the *ATIPPA* such that Genesis is not a part of Memorial, and accordingly not to be treated as a "public body" under the *Act*, would not undermine the purpose of facilitating democracy through transparency and accountability generally, nor

specifically regarding Memorial, including transparency and accountability regarding Memorial's ownership interest in, and connection with, Genesis. As referenced above and supported by the sworn evidence of Karla Connolly, the nature of Memorial being Genesis' sole shareholder implicates that Genesis is required to provide periodic accounting to Memorial (in the form of special purpose annual financial statements) towards ensuring Genesis' business is appropriately accounted for and reported to its shareholder. Such accounting and reporting information (which does not contain the transactional level information requested by Barter) in the possession of Memorial is subject to the public right of access under the *ATIPPA*.

51. If one were to accept the Commissioner's premise in paragraphs 19 and 20 of the Commissioner's Report that application of the *ATIPPA* is based on the need to follow the expenditure of public funding (which Genesis does not concede), it must be acknowledged that Genesis does not receive monetary funding from Memorial, nor does Memorial direct Genesis on how to spend the funding Genesis receives from other sources. Rather, Genesis secures more than 50% of its annual operating revenues from private sources, and Genesis governs itself as a private-sector commercial enterprise, with its own Board of Directors managing Genesis' affairs. Transparency and accountability surrounding the "in kind" services that Memorial contributes to Genesis (i.e., use of Memorial's property, Memorial's payroll agent services) as consideration for the terms and conditions of the Management Agreement between Genesis and Memorial, is achieved by Memorial alone being subject to the *ATIPPA*. There is no reason, from the perspective of *ATIPPA*'s purpose and object, to require the *Act* to apply to Genesis to bring light to Memorial's support of Genesis.

Reference: Affidavit of Karla Connolly, paras. 4, 10, 12, 14-16.

52. If the Commissioner's interpretation of the *ATIPPA* is confirmed, such that Genesis is considered "part" of Memorial for purposes of application of the *ATIPPA*, such an outcome would not only be detrimental to Genesis' ability to conduct its core business but would also materially change Memorial's relationship with Genesis as shareholder. Suddenly, the information available to public disclosure pursuant to the *ATIPPA* would significantly exceed that which Genesis is obligated to account and report to Memorial as its sole shareholder. Moreover, application of the *ATIPPA* to Genesis as a public body would significantly undermine Genesis' effectiveness and the pursuit of Genesis' Business as

summarized in paragraphs 37 and 38 above, and as sworn to by Karla Connolly in her Affidavit at paragraphs 30 and 31.

53. Genesis agrees with the argument of C-Core at paragraphs 35-37 of its Brief, that the test adopted by the Commissioner at paragraphs 19 and 20 of the Commissioner's Report, focusing on "*financial, structural, and policy control*", is not one that has been judicially recognized for determining which bodies should properly constitute "public bodies" under the *ATIPPA*, or the extension of those public bodies to implicate private-sector third-parties. Additionally, Genesis submits Memorial does not, as a matter of fact or practice, retain or exercise significant "*financial, structural, and policy control*" over Genesis, based on the facts set out herein above and supported by the sworn evidence of Karla Connolly.
54. For the reasons stated above, as well as those stated in paragraphs 58 to 86 of Memorial's Brief, Genesis respectfully submits that the finding of the Commissioner at paragraph 23 of the Commissioner's Report – that Genesis is subject to the *ATIPPA* based on its being part of Memorial – should be determined by this Honourable Court to be unreasonable and incorrect, and accordingly Memorial should not be required to comply with the Commissioner's recommendations flowing from the finding.

**ISSUE 2: Is the requested Information relating to Genesis within Memorial's custody and control?**

55. Genesis agrees with and wholly adopts Memorial's argument regarding this second issue set out in paragraphs 87 to 175 of Memorial's Brief as it relates to Genesis. Genesis supplements Memorial's arguments as follows.
56. Regarding application of the two-pronged test in *National Defence* to the requested Information relating to Genesis, Genesis submits the inquiry in the present case does not survive the first screening step. The Commissioner's finding, at paragraph 28 of the Commissioner's Report, that the requested Information "*certainly relates to a matter of importance to Memorial*" as it is "*expenditures made by three of Memorial's SIEs and these expenditures would have to be disclosed to Memorial in order for its audit to be accurate*" is unreasonable and incorrect.

57. Genesis agrees with and wholly adopts C-Core's argument at paragraphs 57 to 67 of its Brief regarding the Commissioner's fundamental misunderstanding of the consolidation of financial statements and the requirements and rights of Memorial to have access to transactional level information of the SIEs, including Genesis.
58. Similar to the legislation governing C-Core referenced in paragraph 62 of C-Core's Brief, the *Corporations Act*, RSNL 1990, c. C-36, being the legislation which governs Genesis and its legal relationship with Memorial as shareholder, includes provisions concerning consolidated financial statements. Genesis submits that like the *Not-for-Profit Corporations Act*, SC 2009, c. 23, the *Corporations Act's* provisions concerning consolidated financial statements do not support the Commissioner's position.
59. Like subsection 174(1) of the *Not-for-Profit Corporations Act*, subsection 260(1) of the *Corporations Act* requires that where a corporation has consolidated financial statements, it is only required to keep copies of the financial statements of its subsidiary entities:
260. (1) A corporation shall keep at its registered office a copy of the financial statements of each of its subsidiary bodies corporate and of each body corporate the accounts of which are consolidated in the financial statements of the corporation.
- Reference: *Corporations Act*, RSNL 1990, c. C-36, s. 260(1), Tab 2
60. Sections 274 and 275 of the *Corporations Act* deal with disclosure of information to the auditor of a corporation. Subsection 274(1) requires the auditor to make the examination that is necessary to enable the auditor to report in the prescribed manner to be placed before the shareholders. Section 275 provides the auditor authority to require the disclosure of information from all relevant parties as necessary to enable the auditor to prepare the report required in subsection 274(1). However, subsection 274(2) is an exception to this disclosure requirement relating to subsidiaries and consolidated financial statements. It provides that the auditor of a corporation may reasonably rely upon the report of an auditor of a subsidiary the accounts of which are included in whole or in part in the consolidated financial statements of the corporation:
274. (1) An auditor of a corporation shall make the examination that is in the auditor's opinion necessary to enable the auditor to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except the financial statements or part of them that relate to the immediately preceding financial year referred to in subparagraph 258(1)(a)(ii).

(2) Notwithstanding section 275, an auditor of a corporation may reasonably rely upon the report of an auditor of a body corporate or unincorporated business the accounts of which are included in whole or in part in the financial statements of the corporation.

(3) For the purpose of subsection (2), reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding corporation reported upon by the auditor are in consolidated form.

275. (1) Upon the demand of an auditor of a corporation, the present or former directors, officers, employees or agents of the corporation shall provide

(a) the information and explanations; and

(b) the access to records, documents, books, accounts and vouchers of the corporation or a subsidiary,

that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 274 and that the directors, officers, employees or agents are reasonably able to provide.

Reference: *Corporations Act*, RSNL 1990, c. C-36, ss. 274, 275, Tab 2

61. As argued by C-Core at paragraph 65 of its Brief, the implications of 260, 274 and 275 of the *Corporations Act* is that the consolidation of financial statements, where and to the extent it occurs, occurs at the financial statement or auditor report level. There are no provisions of the *Corporations Act* which expand the rights of access to information on the part of a parent or holding corporation into the accounts of a subsidiary, or the disclosure obligations of a corporation, solely as a result of the parent or holding corporation moving to consolidated financial statements. Instead, the disclosure obligations of the corporation continue to be governed by the obligations to submit financial statements such as section 258.
62. Genesis submits that the same assertions made by C-Core at paragraphs 66 and 67 of its Brief apply regarding Genesis. The Commissioner's assertion that Memorial requires access to detailed transaction information of Genesis to enable Memorial's auditor's preparation of consolidated financial statements is unreasonable and incorrect.

63. Regarding whether the requested Information relates to a departmental matter of Memorial, Genesis submits its statutory financial disclosure obligations to Memorial are those enumerated in section 258 of the *Corporations Act*, which do not include the specific records requested by Barter:

258. (1) The directors of a corporation shall place before the shareholders at an annual meeting

(a) comparative financial statements, as prescribed, relating separately to

(i) the period that began on the date the corporation came into existence and ended not more than 6 months before the annual meeting or, where the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than 6 months before the annual meeting, and

(ii) the immediately preceding financial year;

(b) the report of the auditor; and

(c) further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or a unanimous shareholder agreement.

Reference: *Corporations Act*, RSNL 1990, c. C-36, s. 258, Tab 2

64. Regulations under the *Corporations Act*, namely the *Corporations Regulations*, CNR 750/96, further describe Genesis' disclosure requirement regarding comparative financial statements:

27. (1) The financial statements referred to in paragraph 258(1)(a) of the Act shall be prepared in accordance with the standards of the Chartered Professional Accountants of Canada set out in the CPA Canada Handbook including any amendments to it.

(2) Notwithstanding subsection (1), a reporting issuer may prepare financial statements referred to in paragraph 258(1)(a) of the Act in accordance with other standards as may be permitted in the rules made under section 144.1 of the *Securities Act*.

...

29. (1) The financial statements referred to in section 258 of the Act must include at least

(a) a balance sheet;

(b) a statement of retained earnings;

(c) an income statement; and

(d) a statement of changes in financial position.

(2) Financial statements need not be designated by the names set out in paragraphs (1)(a) to (d).

Reference: *Corporations Regulations*, CNR 750/96, ss. 27, 29, Tab 3

65. Genesis submits that expenditures within the scope of the *Corporations Regulations* are reported in annual financial statements on a net basis and that there is no statutory requirement to disclose itemized financial information as is requested by Barter. Therefore, the Commissioner's conclusion that Genesis is required to disclose the requested Information to Memorial in order for Memorial's audit to be accurate is unreasonable and incorrect.

66. Genesis submits the same assertions made by C-Core at paragraphs 71 and 72 of its Brief apply regarding Genesis. Memorial's possession of detailed transactional financial information of Genesis is exclusively a function of Memorial's providing payroll services to Genesis. To enable Memorial's provision of payroll service, Genesis provides the necessary instructions and details about the remuneration to be paid to each Genesis employee to Memorial's Human Resources Department. As a consequence of Memorial's acting as payroll agent, it has bare possession of the requested Information, however Memorial does not have authority over the content or use of the Information. Memorial's use of the Information is strictly for the purpose of its administering the payroll service for Genesis. If Genesis were to terminate its arrangement with Memorial and transfer its Information to another third-party payroll service provider, Memorial would have no possession of, or right of access to, the requested Information. In this scenario, Memorial's bare possession of such Information cannot be construed as being a departmental function of Memorial.

Reference: Affidavit of Karla Connolly, para. 16

67. Genesis repeats its position that the assessment of custody and control of the Information should not have proceeded to the second part of the *National Defence* two-part test. However, as the Commissioner proceeded to examine the second part of the test in the Commissioner's Report, Genesis makes the following submissions in its regard.

68. Genesis takes the same position as stated by C-Core in its Brief at paragraph 74. Genesis does not challenge the applicability of the list of factors identified by the Commissioner as relating to the second part of the *National Defence* test but challenges the Commissioner's interpretation and application of each factor. Genesis challenges the Commissioner's conclusive finding, at paragraph 31 of the Commissioner's Report, that Memorial has more than "bare possession" of the requested Information but rather has "*custody or control over the financial records sought by the Complainant*". Genesis challenges this finding on the same bases identified by C-Core at paragraph 75 of its Brief, but regarding Genesis:
- a. That any access that Memorial currently has to the requested Information is by virtue of Memorial's providing payroll service to Genesis;
  - b. That Memorial has no ownership or proprietary right to the requested Information by virtue of the Management Agreement between Memorial and Genesis; and
  - c. Memorial has no statutory right to the requested Information.
69. Regarding each factor addressed in paragraph 30 of the Commissioner's Report, Genesis submits:
- a. Regarding "whether the record was created by an officer or employee of the institution", Genesis agrees with and adopts Memorial's argument at paragraphs 110-114 of its Brief.
  - b. Regarding "the use the creator intended to make of the record", Genesis agrees with and adopts Memorial's argument at paragraphs 115-117 of its Brief, and further reiterates Genesis' provision of the Information to Memorial was strictly for the purpose of Memorial's fulfilment of its payroll service obligations pursuant to the Management Agreement.
  - c. Regarding "whether the institution has a statutory power or duty to carry out the activity that resulted in the creation of the record", Genesis submits Memorial provides the payroll service to Genesis pursuant to the Management Agreement, not pursuant to a statutory duty.

- d. Regarding “whether the activity in question is a core, central or basic function of the institution”, Genesis agrees with and adopts Memorial’s argument at paragraphs 118-126 of its Brief. Memorial’s provision of payroll service to Genesis is not a core, central or basic function of Memorial. As stated above, Genesis could procure such service elsewhere.
- e. Regarding “whether the content of the record relate to the institution’s mandate and functions”, the answer is no. Genesis agrees with and adopts Memorial’s argument at paragraphs 127-135 of its Brief. The Information relates solely to Genesis’ employees and Genesis’ Business, and Genesis is managed and administered independently of Memorial as detailed above.
- f. Regarding “whether the institution has physical possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement”, Genesis submits Memorial has bare possession of the Information only as a consequence of Genesis’ providing the Information to Memorial for the sole purpose of Memorial’s fulfilment of its payroll service obligations pursuant to the Management Agreement. The Information has not been provided by Genesis pursuant to any mandatory statutory or employment requirement.
- g. Regarding “whether the institution has more than bare possession of the record, which is to say ownership of the record without the right to use it for its benefit”, Genesis agrees with and adopts Memorial’s argument at paragraphs 136-153 of its Brief. Genesis submits that Memorial only has bare possession of the Information, as payroll service provider, and not pursuant to an overriding statutory right for its own benefit. Memorial’s use of the Information is strictly for the purpose of its administering the payroll service to Genesis pursuant to the Management Agreement. The Information is not in Memorial’s possession for Memorial’s own use or benefit.
- h. Regarding “whether the institution has a right to possession of the record”, Genesis submits Memorial has no statutory right to possess the Information, as detailed in

the submissions above. Memorial has no legal entitlement to access transactional level information of Genesis.

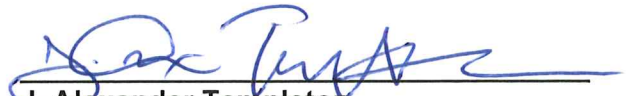
- i. Regarding “whether the institution has the authority to regulate the record’s content, use and disposal”, Genesis agrees with and adopts Memorial’s argument at paragraphs 154-157 of its Brief.
  - j. Regarding “whether there are any limits on the use to which the institution may put the record, what those limits are, and why they apply to the record”, Genesis agrees with and adopts Memorial’s argument at paragraphs 158-166 of its Brief.
  - k. Regarding “the extent to which the institution has relied upon the record”, Genesis agrees with and adopts Memorial’s argument at paragraphs 167-169 of its Brief, and further reiterates that Memorial’s consolidation of its financial statements does not require the Information, being transactional level information of Genesis, as detailed above. Genesis submits there is no evidence of Memorial having used or relied upon the Information other than to simply fulfill its payroll service obligations under the Management Agreement.
  - l. Regarding “how closely the Information is integrated with other records held by the institution”, Genesis agrees with and adopts Memorial’s argument at paragraphs 170-175 of its Brief. Genesis submits the evidence of Kelly Martin substantiates how Memorial purposely segregates the Information from other records held by Memorial.
70. For the reasons stated above, as well as those stated in paragraphs 87 to 175 of Memorial’s Brief, Genesis respectfully submits that the finding of the Commissioner at paragraph 23 of the Commissioner’s Report – that Memorial has custody or control of the requested Information – should be determined by this Honourable Court to be unreasonable and incorrect, and accordingly Memorial should not be required to comply with the Commissioner’s recommendations flowing from the finding.

**VI. RELIEF SOUGHT**

71. Genesis repeats the foregoing, and respectfully requests that Memorial's Originating Application for a declaration pursuant to subsection 50(2)(a) of the *ATIPPA*, that it is authorized to refuse the Requests on the basis that the information sought in the Requests is not within the custody and control of Memorial, be granted.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

**DATED** at the City of St. John's, in the Province of Newfoundland and Labrador, this 18<sup>th</sup> day of October, 2024.



**J. Alexander Templeton**  
McINNIS COOPER  
Solicitors for the Third Intervenor  
10 Fort William Place  
Baine Johnston Centre, 5<sup>th</sup> Floor  
St. John's, NL A1C 5X4

**TO:** **Koren A. Thomson**  
STEWART McKELVEY  
100 New Gower Street  
Cabot Place, Suite 1100  
St. John's, NL A1C 5V3

**AND TO:** **Andrew A. Fitzgerald, K.C.**  
LEARMONTH, BOULOS & FITZGERALD  
Solicitors for the First Intervenor  
140 Water Street  
TD Building, Suite 804  
St. John's, NL A1C 5L7

**AND TO:** **Matthew Barter**  
The Second Intervenor  
47 Patrick's Path  
Torbay, NL A1K 1J8

**AND TO:** **G. Todd Stanley, K.C.**  
COX & PALMER  
Solicitors for the Fourth Intervenor  
235 Water Street  
Scotia Centre, Suite 1100  
St. John's, NL A1C 1B6

VII. LIST OF AUTHORITIES

TAB	Legislation
1.	<i>Access to Information and Protection of Privacy Act, 2015</i> , SNL 2015, c. A-1.2 [Excerpt]
2.	<i>Corporations Act</i> , RSNL 1990, c. C-36 [Excerpt]
3.	<i>Corporations Regulations</i> , CNR 750/96 [Excerpt]

**TAB 1**

This is an official version.

Copyright © 2024: Queen's Printer,  
St. John's, Newfoundland and Labrador, Canada

**Important Information**

(Includes details about the availability of printed and electronic versions of the Statutes.)

**Table of Public Statutes**

**Main Site**

**How current is this statute?**

---

**Responsible Department**

---

SNL2015 CHAPTER A-1.2

**ACCESS TO INFORMATION AND PROTECTION  
OF PRIVACY ACT, 2015**

Amended:

2016 c6 s2; 2016 cR-15.2 s30; 2017 c10 s3; 10/18 s2; 2018 c4 s1;  
2018 cI-7.1 s24; 2018 cC-12.3 s112; 2019 cO-6.1 s49;  
2019 cP-44.01 s30; 2021 c4; 2021 cA-4.02 s40; 2021 cA-22.1 s41;  
2022 c15; 2022 cP-30.1 s38; 2022 cW-11.1 s153; 2023 c16; 2023 c18 s38

**CHAPTER A-1.2**

**AN ACT TO PROVIDE THE PUBLIC WITH ACCESS TO INFORMATION  
AND PROTECTION OF PRIVACY**

*(Assented to June 1, 2015)*

*Analysis*

1. Short title

PART I  
INTERPRETATION

2. Definitions

3. Purpose

4.  
Schedule of excluded public bodies

5. Application

6. Relationship to Personal Health Information Act

7. Conflict with other Acts

PART II  
ACCESS AND CORRECTION

DIVISION 1  
THE REQUEST

8. Right of access

9. Public interest

- [10. Right to request correction of personal information](#)
- [11. Making a request](#)
- [12. Anonymity](#)
- [13. Duty to assist applicant](#)
- [14. Transferring a request](#)
- [15. Advisory response](#)
- [16. Time limit for final response](#)
- [17. Content of final response for access](#)
- [18. Content of final response for correction of personal information](#)
- [19. Third party notification](#)
- [20. Provision of information](#)
- [21. Disregarding a request](#)
- [22. Published material](#)
- [23. Extension of time limit](#)
- [24. Extraordinary circumstances](#)
- [25. Costs](#)
- [26. Estimate and waiver of costs](#)

DIVISION 2  
EXCEPTIONS TO ACCESS

- [27. Cabinet confidences](#)
- [28. Local public body confidences](#)
- [29. Policy advice or recommendations](#)
- [30. Legal advice](#)
- [31. Disclosure harmful to law enforcement](#)
- [32. Confidential evaluations](#)
- [33. Information from a workplace investigation](#)
- [34. Disclosure harmful to intergovernmental relations or negotiations](#)
- [35. Disclosure harmful to the financial or economic interests of a public body](#)
- [36. Disclosure harmful to conservation](#)
- [37. Disclosure harmful to individual or public safety](#)
- [38. Disclosure harmful to labour relations interests of public body as employer](#)
- [39. Disclosure harmful to business interests of a third party](#)
- [40. Disclosure harmful to personal privacy](#)
- [41. Disclosure of House of Assembly service and statutory office records](#)

DIVISION 3  
COMPLAINT

- [42. Access or correction complaint](#)
- [43. Burden of proof](#)
- [44. Investigation](#)
- [45. Authority of commissioner not to investigate a complaint](#)
- [46. Time limit for formal investigation](#)
- [47. Recommendations](#)
- [48. Report](#)
- [49. Response of public body](#)
- [50. Head of public body seeks declaration in court](#)

[51. Filing an order with the Trial Division](#)

DIVISION 4  
APPEAL TO THE TRIAL DIVISION

[52. Direct appeal to Trial Division by an applicant](#)

[53. Direct appeal to Trial Division by a third party](#)

[54. Appeal of public body decision after receipt of commissioner's recommendation](#)

[55. No right of appeal](#)

[56. Procedure on appeal](#)

[57. Practice and procedure](#)

[58. Solicitor and client privilege](#)

[59. Conduct of appeal](#)

[60. Disposition of appeal](#)

PART III  
PROTECTION OF PERSONAL INFORMATION

DIVISION 1  
COLLECTION, USE AND DISCLOSURE

[61. Purpose for which personal information may be collected](#)

[62. How personal information is to be collected](#)

[63. Accuracy of personal information](#)

[64. Protection of personal information](#)

[65. Retention of personal information](#)

[66. Use of personal information](#)

[67. Use of personal information by post-secondary educational bodies](#)

[68. Disclosure of personal information](#)

[69. Definition of consistent purposes](#)

[70. Disclosure for research or statistical purposes](#)

[71. Disclosure for archival or historical purposes](#)

[72. Privacy impact assessment](#)

DIVISION 2  
PRIVACY COMPLAINT

[73. Privacy complaint](#)

[74. Investigation – privacy complaint](#)

[75. Authority of commissioner not to investigate a privacy complaint](#)

[76. Recommendations – privacy complaint](#)

[77. Report – privacy complaint](#)

[78. Response of public body – privacy complaint](#)

[79. Head of public body seeks declaration in court](#)

[80. Filing an order with the Trial Division](#)

DIVISION 3  
APPLICATION TO THE TRIAL DIVISION FOR A DECLARATION

[81. Practice and procedure](#)

[82. Solicitor and client privilege](#)

[83. Conduct](#)

[84. Disposition](#)

PART IV  
OFFICE AND POWERS OF THE INFORMATION AND PRIVACY COMMISSIONER

DIVISION 1  
OFFICE

- [85. Appointment of the Information and Privacy Commissioner](#)
- [86. Status of the commissioner](#)
- [87. Term of office](#)
- [88. Removal or suspension](#)
- [89. Acting commissioner](#)
- [90. Salary, pension and benefits](#)
- [91. Expenses](#)
- [92. Commissioner's staff](#)
- [93. Oath of office](#)
- [94. Oath of staff](#)

DIVISION 2  
POWERS OF THE COMMISSIONER

- [95. General powers and duties of commissioner](#)
- [96. Representation during an investigation](#)
- [97. Production of documents](#)
- [98. Right of entry](#)
- [99. Admissibility of evidence](#)
- [100. Privilege](#)
- [101. Section 8.1 of the Evidence Act](#)
- [102. Disclosure of information](#)
- [103. Delegation](#)
- [104. Protection from liability](#)
- [105. Annual report](#)
- [106. Special report](#)
- [107. Report – investigation or audit](#)

PART V  
GENERAL

- [108. Exercising rights of another person](#)
- [109. Designation of head by local public body](#)
- [110. Designation and delegation by the head of a public body](#)
- [111. Publication scheme](#)
- [112. Amendments to statutes and regulations](#)
- [113. Report of minister responsible](#)
- [114. Limitation of liability](#)
- [115. Offence](#)
- [116. Regulations](#)
- [117. Review](#)
- [118. Transitional](#)
- [119. SNL2013 cA-3.1 Amdt.](#)
- [120. SNL1991 c22 Amdt.](#)
- [121. RSNL1990 cC-2 Amdt.](#)
- [122. SNL2004 cC-5.1 Amdt.](#)
- [123. SNL2010 cC-12.2 Amdt.](#)

[124. SNL2001 cC-14.1 Amdt.](#)

[125. SNL2007 cE-11.01 Amdt.](#)

[126. SNL1995 cP-37.1 Amdt.](#)

[127. RSNL1990 cH-10 Amdt.](#)

[128. SNL2007cH-10.1 Amdt.](#)

[129. SNL1999 cM-5.1 Amdt.](#)

[130. SNL2014 cM-16.2 Amdt.](#)

[131. SNL2008 cP-7.01 Amdt.](#)

[132. SNL2008 cR-13.1 Amdt.](#)

[133. SNL2014 c23 Amdt.](#)

[134. SNL2005 cR-15.1 Amdt.](#)

[135. SNL2009 cV-6.01 Amdt.](#)

[136. Repeal](#)

[137. Commencement](#)

[Schedule A](#)

[Schedule B](#)

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

#### **Short title**

1. This Act may be cited as the *Access to Information and Protection of Privacy Act, 2015* .

[2015 cA-1.2 s1](#)

### **PART I INTERPRETATION**

[Back to Top](#)

#### **Definitions**

2. In this Act

- (a) "applicant" means a person who makes a request under section 11 for access to a record, including a record containing personal information about the person, or for correction of personal information;
- (b) "business day" means a day that is not a Saturday, Sunday or a holiday;
- (c) "Cabinet" means the executive council appointed under the *Executive Council Act* , and includes a committee of the executive council;
- (d) "commissioner" means the Information and Privacy Commissioner appointed under section 85 ;
- (e) "complaint" means a complaint filed under section 42 ;
- (f) "coordinator" means the person designated by the head of the public body as coordinator under subsection 110 (1);

- (g) "dataset" means information comprising a collection of information held in electronic form where all or most of the information in the collection
- (i) has been obtained or recorded for the purpose of providing a public body with information in connection with the provision of a service by the public body or the carrying out of another function of the public body,
  - (ii) is factual information
    - (A) which is not the product of analysis or interpretation other than calculation, and
    - (B) to which section 13 of the *Statistics Agency Act* does not apply, and
  - (iii) remains presented in a way that, except for the purpose of forming part of the collection, has not been organized, adapted or otherwise materially altered since it was obtained or recorded;
- (h) "educational body" means
- (i) Memorial University of Newfoundland ,
  - (ii) College of the North Atlantic ,
  - (iii) Centre for Nursing Studies,
  - (iv) Western Regional School of Nursing,
  - (v) a school board, school district constituted or established under the *Schools Act, 1997*, including the conseil scolaire francophone, and
  - (vi) a body designated as an educational body in the regulations made under section 116 ;
- (i) "employee", in relation to a public body, includes a person retained under a contract to perform services for the public body;
- (j) "head", in relation to a public body, means
- (i) in the case of a department, the minister who presides over it,
  - (ii) in the case of a corporation, its chief executive officer,
  - (iii) in the case of an unincorporated body, the minister appointed under the *Executive Council Act* to administer the Act under which the body is established, or the minister who is otherwise responsible for the body,
  - (iv) in the case of the House of Assembly the Speaker and in the case of the statutory offices as defined in the *House of Assembly Accountability, Integrity and Administration Act*, the applicable officer of each statutory office, or
  - (v) in another case, the person or group of persons designated under section 109 or in the regulations as the head of the public body;
- (k) "health care body" means
- (i) the authority as defined in the *Provincial Health Authority Act* ,
  - (ii) the Mental Health Care and Treatment Review Board,
  - (iii) [Rep. by 2022 cP-30.1 s38]

- (iv) a body designated as a health care body in the regulations made under section 116 ;
- (l) "House of Assembly Management Commission" means the commission continued under section 18 of the *House of Assembly Accountability, Integrity and Administration Act* ;
- (m) "judicial administration record" means a record containing information relating to a judge, master or justice of the peace, including information respecting
  - (i) the scheduling of judges, hearings and trials,
  - (ii) the content of judicial training programs,
  - (iii) statistics of judicial activity prepared by or for a judge,
  - (iv) a judicial directive, and
  - (v) a record of the Complaints Review Committee or an adjudication tribunal established under the *Provincial Court Act, 1991* ;
- (n) "law enforcement" means
  - (i) policing, including criminal intelligence operations, or
  - (ii) investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment;
- (o) "local government body" means
  - (i) the City of Corner Brook ,
  - (ii) the City of Mount Pearl ,
  - (iii) the City of St. John's ,
  - (iv) a municipality as defined in the *Municipalities Act, 1999* , and
  - (v) a body designated as a local government body in the regulations made under section 116 ;
- (p) "local public body" means
  - (i) an educational body,
  - (ii) a health care body, and
  - (iii) a local government body;
- (q) "minister" means a member of the executive council appointed under the *Executive Council Act* ;
- (r) "minister responsible for this Act" means the minister appointed under the *Executive Council Act* to administer this Act;
- (s) "officer of the House of Assembly" means the Speaker of the House of Assembly, the Clerk of the House of Assembly, the Chief Electoral Officer, the Auditor General of Newfoundland and Labrador, the Commissioner for Legislative Standards, the Citizens' Representative, the Child and Youth Advocate, the Seniors' Advocate and the Information and Privacy Commissioner, and a position designated to be an officer of the House of Assembly by the Act creating the position;

- (t) "person" includes an individual, corporation, partnership, association, organization or other entity;
- (u) "personal information" means recorded information about an identifiable individual, including
- (i) the individual's name, address or telephone number,
  - (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
  - (iii) the individual's age, sex, sexual orientation, marital status or family status,
  - (iv) an identifying number, symbol or other particular assigned to the individual,
  - (v) the individual's fingerprints, blood type or inheritable characteristics,
  - (vi) information about the individual's health care status or history, including a physical or mental disability,
  - (vii) information about the individual's educational, financial, criminal or employment status or history,
  - (viii) the opinions of a person about the individual, and
  - (ix) the individual's personal views or opinions, except where they are about someone else;
- (v) "privacy complaint" means a privacy complaint filed under subsection 73 (1) or (2) or an investigation initiated on the commissioner's own motion under subsection 73 (3);
- (w) "privacy impact assessment" means an assessment that is conducted by a public body as defined under subparagraph (x)(i) to determine if a current or proposed program or service meets or will meet the requirements of Part III of this Act;
- (x) "public body" means
- (i) a department created under the *Executive Council Act*, or a branch of the executive government of the province,
  - (ii) a corporation, the ownership of which, or a majority of the shares of which is vested in the Crown,
  - (iii) a corporation, commission or body, the majority of the members of which, or the majority of members of the board of directors of which are appointed by an Act, the Lieutenant-Governor in Council or a minister,
  - (iv) a local public body,
  - (v) the House of Assembly and statutory offices, as defined in the *House of Assembly Accountability, Integrity and Administration Act*, and
  - (vi) a corporation or other entity owned by or created by or for a local government body or group of local government bodies, which has as its primary purpose the management of a local government asset or the discharge of a local government responsibility,
- and includes a body designated for this purpose in the regulations made under section 116, but does not include
- (vii) the constituency office of a member of the House of Assembly wherever located,

- (viii) the Court of Appeal, the Trial Division, or the Provincial Court , or
- (ix) a body listed in Schedule B;
- (y) "record" means a record of information in any form, and includes a dataset, information that is machine readable, written, photographed, recorded or stored in any manner, but does not include a computer program or a mechanism that produced records on any storage medium;
- (z) "remuneration" includes salary, wages, overtime pay, bonuses, allowances, honorariums, severance pay, and the aggregate of the contributions of a public body to pension, insurance, health and other benefit plans;
- (aa) "request" means a request made under section 11 for access to a record, including a record containing personal information about the applicant, or correction of personal information, unless the context indicates otherwise;
- (bb) "Schedule B" means the schedule of bodies excluded from the definition of public body; and
- (cc) "third party", in relation to a request for access to a record or for correction of personal information, means a person or group of persons other than
  - (i) the person who made the request, or
  - (ii) a public body.

[2015 cA-1.2 s2; 2017 c10 s3; 2022 cP-30.1 s38](#)

[Back to Top](#)

## **Purpose**

3. (1) The purpose of this Act is to facilitate democracy through
  - (a) ensuring that citizens have the information required to participate meaningfully in the democratic process;
  - (b) increasing transparency in government and public bodies so that elected officials, officers and employees of public bodies remain accountable; and
  - (c) protecting the privacy of individuals with respect to personal information about themselves held and used by public bodies.
- (2) The purpose is to be achieved by
  - (a) giving the public a right of access to records;
  - (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves;
  - (c) specifying the limited exceptions to the rights of access and correction that are necessary to
    - (i) preserve the ability of government to function efficiently as a cabinet government in a parliamentary democracy,
    - (ii) accommodate established and accepted rights and privileges of others, and
    - (iii) protect from harm the confidential proprietary and other rights of third parties;

- (d) providing that some discretionary exceptions will not apply where it is clearly demonstrated that the public interest in disclosure outweighs the reason for the exception;
- (e) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and
- (f) providing for an oversight agency that
  - (i) is an advocate for access to information and protection of privacy,
  - (ii) facilitates timely and user friendly application of this Act,
  - (iii) provides independent review of decisions made by public bodies under this Act,
  - (iv) provides independent investigation of privacy complaints,
  - (v) makes recommendations to government and to public bodies as to actions they might take to better achieve the objectives of this Act, and
  - (vi) educates the public and public bodies on all aspects of this Act.

(3) This Act does not replace other procedures for access to information or limit access to information that is not personal information and is available to the public.

[2015 cA-1.2 s3](#)

[Back to Top](#)

#### Schedule of excluded public bodies

4. When the House of Assembly is not in session, the Lieutenant-Governor in Council, on the recommendation of the House of Assembly Management Commission, may by order amend Schedule B, but the order shall not continue in force beyond the end of the next sitting of the House of Assembly.

[2015 cA-1.2 s4](#)

[Back to Top](#)

#### Application

5. (1) This Act applies to all records in the custody of or under the control of a public body but does not apply to

- (a) a record in a court file, a record of a judge of the Court of Appeal, Trial Division, or Provincial Court, a judicial administration record or a record relating to support services provided to the judges of those courts;
- (b) a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity;
- (c) a personal or constituency record of a member of the House of Assembly, that is in the possession or control of the member;
- (d) records of a registered political party or caucus as defined in the *House of Assembly Accountability, Integrity and Administration Act*;
- (e) a personal or constituency record of a minister;
- (f) a record of a question that is to be used on an examination or test;

**TAB 2**

**Important Information**

(Includes details about the availability of printed and electronic versions of the Statutes.)

**Table of Public Statutes**

**Main Site**

**How current is this statute?**

---

**Responsible Department**

---

RSNL1990 CHAPTER C-36

**CORPORATIONS ACT**

Amended:

1992 c54 s3 (Rep. before being proclaimed); 1993 c53 s4; 1994 c28 s4; 1996 cR-10.1 s20; 1996 cJ-1.1 s192;  
1997 c13 s11; 2001 cN-3.1 s2; 2004 c14; 2007 cS-13.01 s107;  
2007 cT-9.1 s5; 2010 c31 s6; 2018 c21 s1; 2020 c29; 2021 c26

**CHAPTER C-36**

**AN ACT TO REVISE AND REFORM THE LAW  
RESPECTING CORPORATIONS**

*Analysis*

- [1. Short title](#)
  - [2. Definitions](#)
  - [3. Purposes of Act](#)
  - [4. Application of Act](#)
  - [5. Certain societies exempt from Act](#)
  - [6. Prohibited associations](#)
  - [7. Affiliated corporations](#)
  - [8. Control of a body corporate](#)
  - [9. Holding and subsidiary bodies corporate](#)
  - [10. Distribution to the public](#)
- PART I  
INCORPORATION
- [11. Power to incorporate](#)
  - [12. Articles of incorporation](#)
  - [13. Special majorities](#)
  - [14. Delivery of articles](#)
  - [15. Certificate of incorporation](#)

- [16. Effect of certificate](#)
- [17. Name of corporation](#)
- [18. English- French form of name](#)
- [19. Name in any language](#)
- [20. Designating number](#)
- [21. Prohibited names](#)
- [22. Directing change of name](#)
- [23. Name of continued corporation](#)
- [24. Revoking name](#)
- [25. Certificate of amendment of name](#)
- [26. Pre-incorporation contracts](#)

PART II  
CAPACITY AND POWERS

- [27. Corporate capacity](#)
- [28. Restricted business](#)
- [29. Effect of restricted acts](#)
- [30. No constructive notice](#)
- [31. Assertions of corporate incapacity](#)
- [32. Corporate seal](#)

PART III  
REGISTERED OFFICE AND RECORDS

- [33. Registered office](#)
- [34. Notice of registered office](#)
- [35. Displaying name of corporation](#)
- [36. Corporate records](#)
- [37. Director's records](#)
- [38. Accounting records out of province](#)
- [39. Records of continued corporation](#)
- [40. Form of records](#)
- [41. Duty of care: records](#)
- [42. Access to corporate records](#)
- [43. Basic shareholder lists](#)
- [44. Share options list](#)
- [45. Use of shareholder list](#)
- [45.1 Individual with significant control over corporation](#)
- [45.2 Register of individuals with significant control over corporation](#)
- [45.3 Inability to identify individuals](#)
- [45.4 Disclosure of information in register](#)
- [45.5 Disclosure to investigative bodies](#)

PART IV  
CORPORATE FINANCE

- [46. Shares](#)
- [47. One class of shares](#)
- [48. Classes of shares](#)
- [49. How shares issued](#)

- [50. Consideration for shares](#)
- [51. Shares non-assessable](#)
- [52. Stated capital accounts](#)
- [53. Open-end mutual funds](#)
- [54. Shares in series](#)
- [55. Pre-emptive rights](#)
- [56. Instruments evidencing rights](#)
- [57. When shares issued](#)
- [58. Corporation's own shares](#)
- [59. Holding own shares](#)
- [60. Exception relating to Canadian ownership](#)
- [61. Voting shares](#)
- [62. Acquiring own shares](#)
- [63. Other acquisition](#)
- [64. Redemption of shares](#)
- [65. Donated shares](#)
- [66. Voting own shares](#)
- [67. Reduction of stated capital](#)
- [68. Stated capital account adjustment](#)
- [69. Cancellation, etc. of own shares](#)
- [70. Presumption against acquisition](#)
- [71. Exception](#)
- [72. Change of shares](#)
- [73. Redemption of debt obligations, etc.](#)
- [74. Contract to purchase own shares](#)
- [75. Commission for sale of shares](#)
- [76. When dividends prohibited](#)
- [77. Payment of dividends](#)
- [78. Illicit loans](#)
- [79. Permitted loans](#)
- [80. Enforceability of illicit loan](#)
- [81. Shareholder immunity](#)
- [82. Lien on shares](#)

PART V  
SALE OF CONSTRAINED SHARES

- [83. Sale of constrained shares by corporation](#)
- [84. Proceeds of sale to be trust fund](#)

PART VI  
SECURITY CERTIFICATES, REGISTERS AND TRANSFERS

- [85. Transfers of securities](#)
- [86. Rep. by 2007 cS-13.01 s107](#)
- [87. Security certificates](#)
- [88. Contents of share certificate](#)
- [89. Rep. by 2007 cS-13.01 s107](#)
- [90. Notation of constraint and failure to note](#)

- [91. Restriction on share transfer](#)
- [92. Particulars of class](#)
- [93. Fractional shares](#)
- [94. Fractional share rights](#)
- [95. Scrip certificate rights](#)
- [96. Securities records](#)
- [97. Securities registers](#)
- [98. Place of registers](#)
- [99. Effect of registration](#)
- [100. Branch register](#)
- [101. Destruction of certificates](#)
- [102. Dealings with registered holder](#)
- [103. No duty to 3rd person](#)
- [104. Infants](#)
- [105. Joint holders](#)
- [106. Transmission of securities](#)
- [107. Overissue](#)
- [108. Rep. by 2007 cS-13.01 s107](#)
- [109. Rep. by 2007 cS-13.01 s107](#)
- [110. Rep. by 2007 cS-13.01 s107](#)
- [111. Rep. by 2007 cS-13.01 s107](#)
- [112. Rep. by 2007 cS-13.01 s107](#)
- [113. Rep. by 2007 cS-13.01 s107](#)
- [114. Rep. by 2007 cS-13.01 s107](#)
- [115. Rep. by 2007 cS-13.01 s107](#)
- [116. Rep. by 2007 cS-13.01 s107](#)
- [117. Rep. by 2007 cS-13.01 s107](#)
- [118. Rep. by 2007 cS-13.01 s107](#)
- [119. Rep. by 2007 cS-13.01 s107](#)
- [120. Rep. by 2007 cS-13.01 s107](#)
- [121. Rep. by 2007 cS-13.01 s107](#)
- [122. Rep. by 2007 cS-13.01 s107](#)
- [123. Rep. by 2007 cS-13.01 s107](#)
- [124. Rep. by 2007 cS-13.01 s107](#)
- [125. Rep. by 2007 cS-13.01 s107](#)
- [126. Rep. by 2007 cS-13.01 s107](#)
- [127. Rep. by 2007 cS-13.01 s107](#)
- [128. Rep. by 2007 cS-13.01 s107](#)
- [129. Rep. by 2007 cS-13.01 s107](#)
- [130. Rep. by 2007 cS-13.01 s107](#)
- [131. Rep. by 2007 cS-13.01 s107](#)
- [132. Rep. by 2007 cS-13.01 s107](#)
- [133. Rep. by 2007 cS-13.01 s107](#)
- [134. Rep. by 1996 cJ-1.1 s192](#)

[135. Rep. by 2007 cS-13.01 s107](#)

[136. Rep. by 2007 cS-13.01 s107](#)

[137. Rep. by 2007 cS-13.01 s107](#)

[138. Rep. by 2007 cS-13.01 s107](#)

[139. Rep. by 2007 cS-13.01 s107](#)

[140. Rep. by 2007 cS-13.01 s107](#)

[141. Rep. by 2007 cS-13.01 s107](#)

[142. Rep. by 2007 cS-13.01 s107](#)

[143. Rep. by 2007 cS-13.01 s107](#)

[144. Rep. by 2007 cS-13.01 s107](#)

#### PART VII

##### TRUST INDENTURES

[145. Definitions](#)

[146. Application of Part](#)

[147. Conflict of interest](#)

[148. Qualification of trustee](#)

[149. List of security holders](#)

[150. Evidence of compliance](#)

[151. Contents of declaration](#)

[152. Further evidence of compliance](#)

[153. Evidence of compliance upon demand of trustee](#)

[154. Certificate of compliance](#)

[155. Notice of default](#)

[156. Duty of care of trustee](#)

[157. Reliance on statement](#)

[158. No exculpation](#)

#### PART VIII

##### RECEIVERS AND RECEIVER-MANAGERS

[159. Functions of receiver](#)

[160. Functions of receiver- manager](#)

[161. Directors' powers cease](#)

[162. Duty under court order](#)

[163. Duty under instrument](#)

[164. Duty of care](#)

[165. Directions by court](#)

[166. Duties of receiver](#)

#### PART IX

##### DIRECTORS AND OFFICERS

[167. Duty to manage](#)

[168. Number of directors](#)

[169. Restrictions](#)

[170. Directors' amendments of by-laws](#)

[171. Organization meeting](#)

[172. Persons disqualified as directors](#)

[173. Share qualification](#)

- [174. Rep. by 2021 c26 s4](#)
- [175. Notice of directors and term of office](#)
- [176. Cumulative voting](#)
- [177. Directors leave office](#)
- [178. Resignation of director](#)
- [179. Removal of directors, etc.](#)
- [180. Director's rights re shareholders](#)
- [181. Filling vacancy among directors](#)
- [182. Changing number of directors](#)
- [183. Notice of change of directors](#)
- [184. Meeting of directors](#)
- [185. Notice of meeting of directors](#)
- [186. Notice of adjourned meeting](#)
- [187. One director meeting](#)
- [188. Directors meeting by electronic means](#)
- [189. Delegation of director's powers](#)
- [190. Validity of acts](#)
- [191. Resolution instead of meeting](#)
- [192. Directors' liability for share issue](#)
- [193. Other directors' liabilities](#)
- [194. Contributions from other directors](#)
- [195. Recovery by directors](#)
- [196. Defence to liability of directors](#)
- [197. Time limited for action](#)
- [198. Interest in contract by director](#)
- [199. Continuing disclosure](#)
- [200. Avoidance standards](#)
- [201. Setting contract aside](#)
- [202. Appointment of officers](#)
- [203. Duties of directors and officers](#)
- [204. Dissent to acts of other directors](#)
- [205. Indemnification by corporation](#)
- [206. Indemnification in derivative actions](#)
- [207. Right to indemnify](#)
- [208. Directors' and officers' insurance](#)
- [209. Court approval of indemnity](#)
- [210. Remuneration of directors, etc.](#)

PART X  
INSIDER TRADING

- [211. Definition of "insider"](#)
- [212. Presumed insider](#)
- [213. Liability of insider](#)
- [214. Time limited on action](#)

PART XI  
SHAREHOLDERS

- [215. Meeting in province](#)
- [216. Meetings outside province](#)
- [217. Calling meetings](#)
- [218. Record date](#)
- [219. Statutory record date](#)
- [220. Notice of record date](#)
- [221. Notice of meetings](#)
- [222. Special business](#)
- [223. Waiver of notice of meeting](#)
- [224. Shareholder "proposals"](#)
- [225. Proposal in management proxy circular](#)
- [226. Nomination for director in proposal](#)
- [227. Non-compliance with s.225](#)
- [228. Immunity re proposal](#)
- [229. Notice of refusal](#)
- [230. Right to restrain meeting](#)
- [231. Right to omit proposal](#)
- [232. Registrar entitled to notice](#)
- [233. Shareholder list and effect](#)
- [234. Right to examine list](#)
- [235. Quorum at meeting](#)
- [236. Right to vote](#)
- [237. Representative voting](#)
- [238. Joint shareholders voting](#)
- [239. Voting method](#)
- [240. Resolution instead of meeting](#)
- [241. Requisition of meeting by shareholders](#)
- [242. Meeting called by court](#)
- [243. Court review of election or appointment](#)
- [244. Pooling agreement on voting](#)
- [245. Unanimous shareholder agreement](#)

PART XII  
PROXIES

- [246. Definitions](#)
- [247. Appointing proxyholders](#)
- [248. Revocation of proxy](#)
- [249. Deposit of proxies](#)
- [250. Mandatory solicitation](#)
- [251. Soliciting proxies](#)
- [252. Documents to be sent registrar](#)
- [253. Exemption order](#)
- [254. Attendance at meeting](#)
- [255. Duty of non- beneficial owner](#)
- [256. Prohibition governs](#)

[257. Restraining order](#)

PART XIII  
FINANCIAL DISCLOSURE

[258. Annual financial statements](#)

[259. Exemption](#)

[260. Consolidated statements](#)

[261. Approval of financial statements](#)

[262. Copies to shareholders](#)

[263. Copies to registrar](#)

[264. Disqualification of auditor](#)

[265. Appointment of auditor](#)

[266. Dispensing with auditor](#)

[267. When auditor leaves office](#)

[268. Removal of auditor](#)

[269. Filling vacancy of auditor](#)

[270. Court appointed auditor](#)

[271. Auditor's right to attend meeting](#)

[272. Duty of auditor to attend meeting](#)

[273. Auditor shall submit statement](#)

[274. Examination by auditor and report](#)

[275. Right to information](#)

[276. Audit committee](#)

[277. Errors in financial statements](#)

[278. Auditor's privilege re defamation](#)

PART XIV  
FUNDAMENTAL CHANGES

[279. Amending articles](#)

[280. Constraints on share transfers](#)

[281. Regulations re constrained share corporations](#)

[282. Validity of acts](#)

[283. Proposal to amend articles](#)

[284. Class vote on proposal](#)

[285. Delivery of articles](#)

[286. Certificate of amendment](#)

[287. Restated articles](#)

[288. Corporate amalgamations](#)

[289. Amalgamation agreement](#)

[290. Shareholder approval](#)

[291. Vertical short-form amalgamation](#)

[292. Horizontal short-form amalgamation](#)

[293. Articles of amalgamation](#)

[294. Certificate of amalgamation](#)

[295. Continuing imported corporation](#)

[296. Certificate of continuance](#)

[297. Rights preserved on continuation](#)

- [298. Shares on continuation](#)
- [299. Exporting corporation](#)
- [300. Prior approval required](#)
- [301. Certificate of discontinuance](#)
- [302. Directors' borrowing powers](#)
- [303. Extraordinary sale](#)
- [304. Shareholders right to dissent](#)
- [305. Demand payment by dissenter](#)
- [306. Suspension of rights](#)
- [307. Offer to pay](#)
- [308. Application to court](#)
- [309. Procedure](#)
- [310. Powers of court](#)
- [311. Interest](#)
- [312. Notice](#)
- [313. Prohibition against payment](#)
- [314. Court ordered reorganization](#)
- [315. Arrangements](#)

PART XV  
DISSENTING OFFEREES

- [316. Definitions](#)
- [317. Offeror's right to acquire shares](#)
- [318. Notice to dissenting offeree](#)
- [319. Takeover bid notice](#)
- [320. Delivery of share certificate](#)
- [321. Payment for shares](#)
- [322. Money in trust](#)
- [323. Duty of offeree- corporation](#)
- [324. Fixing of fair values](#)
- [325. Venue](#)
- [326. No security for losses](#)
- [327. Dissenting offerees as parties](#)
- [328. Powers of court](#)
- [329. Additional powers of court](#)

PART XVI  
LIQUIDATION AND DISSOLUTION

- [330. Application of Part](#)
- [331. Revival application](#)
- [332. Dissolution if no shares](#)
- [333. Dissolution if no property](#)
- [334. Dissolution where property disposed of](#)
- [335. Articles of dissolution and effect](#)
- [336. Proposing liquidation and dissolution](#)
- [337. Certificate of intent to dissolve](#)
- [338. Liquidation under supervision of court](#)

- [339. Revocation of intent to dissolve](#)
- [340. Articles of dissolution](#)
- [341. Dissolution by registrar](#)
- [342. Dissolution by court](#)
- [343. Further grounds](#)
- [344. Court supervision](#)
- [345. Application to court](#)
- [346. Powers of court](#)
- [347. Commencement of court order](#)
- [348. Effect of court order](#)
- [349. Appointment of liquidator](#)
- [350. Duties of liquidator](#)
- [351. Powers of liquidator](#)
- [352. Final accounts and dissolution](#)
- [353. Right to distribution in money](#)
- [354. Custody of records](#)
- [355. Continuation of actions after dissolution](#)
- [356. Unknown claimants](#)
- [357. Vesting of property in Crown](#)
- [358. Property automatically reverts](#)

#### PART XVII INVESTIGATION

- [359. Investigation ordered](#)
- [360. Court powers on investigation](#)
- [361. Power of inspector](#)
- [362. Hearing](#)
- [363. Criminating statements](#)
- [364. Absolute privilege](#)
- [365. Information respecting ownership](#)
- [366. Solicitor-client privilege](#)
- [367. Inquiries](#)

#### PART XVIII CIVIL REMEDIES

- [368. Definitions](#)
- [369. Derivative action](#)
- [370. Powers of court](#)
- [371. Rectifying oppression](#)
- [372. Staying or dismissing action](#)
- [373. Costs](#)
- [374. Rectification of corporate records](#)
- [375. Applications for directions](#)
- [376. Notice of refusal by registrar](#)
- [377. Appeal from registrar's decision](#)
- [378. Restraining or compliance order](#)
- [379. Summary application to court](#)

[380. Appeal](#)

PART XIX  
GENERAL AND ADMINISTRATION

[381. Appointment of registrar](#)

[382. Service upon registrar](#)

[383. Register of companies](#)

[384. Inspection of documents](#)

[385. Notice to directors and shareholders](#)

[386. Presumption of receipt](#)

[387. Undelivered notices](#)

[388. Waiver of notice](#)

[389. Certificate by corporation](#)

[390. Evidentiary value of documents](#)

[391. Security certificate](#)

[392. Copies](#)

[393. Execution and filing of articles](#)

[394. Alteration of document](#)

[395. Correction of certificates](#)

[396. Proof of documents](#)

[397. Obligation to provide records](#)

[398. Retention of records](#)

[399. Certificate of registrar](#)

[400. Power to refuse documents](#)

[401. Form of filing](#)

[402. Service on corporation](#)

[403. Reservation of name](#)

[404. Prohibited name](#)

[405. Power to refuse name](#)

[406. Name on amalgamation](#)

[407. Name as condition of revival](#)

[408. Annual returns](#)

[408.1 Summary review](#)

[409. Regulations](#)

[409.1 Fees and forms](#)

PART XX  
CONTINUATION OF FORMER-ACT  
COMPANIES

[410. Rep. by 1996 cR-10.1 s20](#)

[411. Rep. by 1996 cR-10.1 s20](#)

[412. Rep. by 1996 cR-10.1 s20](#)

[413. Rep. by 1996 cR-10.1 s20](#)

[414. Rep. by 1996 cR-10.1 s20](#)

[415. Rep. by 1996 cR-10.1 s20](#)

[416. Rep. by 1996 cR-10.1 s20](#)

[417. Rep. by 1996 cR-10.1 s20](#)

PART XXI  
CORPORATIONS WITHOUT SHARE  
CAPITAL

- [418. Application of Part](#)
- [419. Definitions](#)
- [420. Restriction under this Part](#)
- [421. Form of articles](#)
- [422. Directors](#)
- [423. Use of "incorporated", etc.](#)
- [424. Number and classes of members](#)
- [425. Admission to membership](#)
- [426. Voting by members](#)
- [427. Transferability of interest](#)
- [428. Power to make by-laws re members](#)
- [429. By-laws re groups and delegates](#)
- [430. Disposition of property on dissolution](#)

PART XXII  
REGISTRATION OF INCORPORATED  
COMPANIES

- [431. Definitions](#)
- [432. Not applicable to co-operatives](#)
- [433. Requirement for registration](#)
- [434. Manner of registering](#)
- [435. Registration of extra-provincial company](#)
- [436. Restricting activities](#)
- [437. Amalgamated foreign company](#)
- [438. Requirements to register](#)
- [439. Document not in English](#)
- [440. Power of attorney](#)
- [441. Failure of power](#)
- [442. Capacity of attorney](#)
- [443. Certificate of registration](#)
- [444. Effect of registration](#)
- [445. Rep. by 2004 c14 s9](#)
- [446. Suspension or revocation](#)
- [447. Cancellation of registration](#)
- [448. Revival of registration](#)
- [449. Authorization of previous activities](#)
- [450. Displaying name of company](#)
- [451. Change of name, etc.](#)
- [452. Incapacity of unregistered company](#)
- [453. Resumption of action upon registration](#)
- [454. Registration, etc. fees](#)
- [455. Application of other Parts](#)

PART XXIII  
INSURANCE CORPORATIONS

- [456. Interpretation](#)
  - [457. Application of Part](#)
  - [458. Approval of Superintendent of Insurance](#)
  - [459. Filing of by-law](#)
  - [460. Incorporation restricted](#)
  - [461. Dissolution of incorporated insurer](#)
  - [462. Application](#)
  - [463. Incorporation](#)
  - [464. Notice of application](#)
  - [465. Capital requirements](#)
  - [466. Subscribed capital](#)
  - [467. Application](#)
  - [468. Incorporation of mutual companies](#)
  - [469. Name](#)
  - [470. Subscription book](#)
  - [471. First meeting](#)
  - [472. Directors, etc.](#)
  - [473. Application for incorporation](#)
  - [474. Members](#)
  - [475. Withdrawal from mutual](#)
  - [476. Effect of cash plan insurance](#)
  - [477. Voting](#)
  - [478. Vote where 2 or more persons](#)
  - [479. Vote of trustee member](#)
  - [480. Quorum](#)
  - [481. Persons eligible as directors](#)
  - [482. Treasurer](#)
  - [483. Meeting of directors](#)
  - [484. Assets](#)
  - [485. Establishment of branches](#)
  - [486. Rates](#)
  - [487. Liability of branch members](#)
  - [488. Expenses divided](#)
  - [489. Application](#)
  - [490. Incorporation](#)
  - [491. Investments](#)
  - [492. Limit on benefits](#)
  - [493. Borrowing power](#)
  - [494. Treasurer](#)
  - [495. Disputes](#)
- PART XXIV  
TRUST, LOAN AND INVESTMENT  
CORPORATIONS
- [496. Application](#)
  - [497. Approval required](#)

[498. Prohibition](#)

[499. Appeal](#)

PART XXV  
OFFENCES AND PENALTIES

[500. Name of corporation](#)

[501. Abusing corporate designation](#)

[502. Failure to protect records](#)

[503. Misuse of shareholders lists](#)

[503.1 Offences respecting register of individuals with significant control over corporation](#)

[504. Offences with respect to reports](#)

[505. Misuse of security holders lists](#)

[506. Failure to send proxy form](#)

[507. Unlawfully soliciting proxies](#)

[508. Failure to comply with proxy directions](#)

[509. Default of registrant to vote shares](#)

[510. Failure to send financial statement](#)

[511. Failure to send financial documents to registrar](#)

[512. Default of auditor](#)

[513. Director's default re financial errors](#)

[514. Failure to produce records](#)

[515. Failure to report on ownership](#)

[516. General offences and penalty](#)

[517. Order to comply](#)

[518. Time limited for proceedings](#)

[519. Civil remedy not affected](#)

## Short title

1. This Act may be cited as the *Corporations Act*.

1986 c12 s1

[Back to Top](#)

## Definitions

2. In this Act

- (a) "affairs" means the relationship among a corporation, its affiliates and the shareholders, directors and officers of bodies corporate, but does not include business activities carried on by the bodies corporate;
- (b) "affiliate" means an affiliated body within the meaning of section 7;
- (c) "articles" means
  - (i) the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of dissolution and articles of revival, and

[Back to Top](#)**Restraining order**

257. (1) Where a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made, an interested person or the registrar may apply to a court.

(2) On an application under this section the court may make an order it thinks appropriate including

- (a) an order restraining the solicitation, the holding of the meeting, or a person from implementing or acting upon a resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;
- (b) an order requiring correction and a form of proxy or proxy circular and a further solicitation; or
- (c) an order adjourning the meeting.

(3) An applicant under this section shall give to the registrar notice of the application and the registrar is entitled to appear and to be heard in person or by counsel.

1986 c12 s253

**PART XIII  
FINANCIAL DISCLOSURE**

[Back to Top](#)**Annual financial statements**

258. (1) The directors of a corporation shall place before the shareholders at an annual meeting

- (a) comparative financial statements, as prescribed, relating separately to
  - (i) the period that began on the date the corporation came into existence and ended not more than 6 months before the annual meeting or, where the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than 6 months before the annual meeting, and
  - (ii) the immediately preceding financial year;
- (b) the report of the auditor; and
- (c) further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or a unanimous shareholder agreement.

(2) Notwithstanding paragraph (1)(a), the financial statements referred to in subparagraph (1)(a)(ii) may be omitted where the reason for the omission is set out in the financial statements, or in a note to it, to be placed before the shareholders at an annual meeting.

1986 c12 s254

[Back to Top](#)

## Exemption

**259.** Notwithstanding subsection 258(1), upon the application of a corporation for authorization to omit from its financial statements an item prescribed, or to dispense with the publication of a particular financial statement prescribed, the registrar may, where the registrar reasonably believes that disclosure of the information contained in it would be detrimental to the corporation, permit its omission on those reasonable conditions that the registrar thinks appropriate.

1986 c12 s255

[Back to Top](#)

## Consolidated statements

**260.** (1) A corporation shall keep at its registered office a copy of the financial statements of each of its subsidiary bodies corporate and of each body corporate the accounts of which are consolidated in the financial statements of the corporation.

(2) Shareholders of a corporation and their agents and legal representatives may upon request for them examine the statements referred to in subsection (1) during the usual business hours of the corporation and may make extracts from them free of charge.

(3) A corporation may, within 15 days of a request to examine statements under subsection (2), apply to a court for an order barring the right of a person to examine those statements; and the court may, where it is satisfied that the examination would be detrimental to the corporation or a subsidiary body corporate, bar the right and make a further order it thinks appropriate.

(4) A corporation shall give the registrar and the person asking to examine statements under subsection (2) notice of application under subsection (3); and the registrar and that person may appear and be heard in person or by counsel.

1986 c12 s256; 1987 c38 Sch A

[Back to Top](#)

## Approval of financial statements

**261.** (1) The directors of a corporation shall approve the financial statements referred to in section 258 and the approval shall be evidenced by the signature of 1 or more directors.

(2) A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 258 unless the financial statements are

- (a) approved and signed in accordance with subsection (1); and
- (b) accompanied by a report of the auditor of the corporation.

1986 c12 s257

[Back to Top](#)

## Copies to shareholders

**262.** A corporation shall, not less than 21 days before each annual meeting of shareholders or before the signing of a resolution under paragraph 240(1)(b) instead of the annual meeting, send a copy of the documents referred to in section 258 to each shareholder except a shareholder who has informed the corporation in writing that he or she does not want a copy of those documents.

1986 c12 s258

[Back to Top](#)

## Copies to registrar

**263.** (1) A corporation, any of the securities of which are part of a distribution to the public, remain outstanding and are held by more than 1 person, shall, not less than 21 days before each annual meeting of shareholders or immediately after the signing of a resolution under paragraph 240(1)(b) instead of the annual meeting, and not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution instead of the meeting should have been signed, send a copy of the documents referred to in section 258 to the registrar.

(2) Where a corporation referred to in subsection (1)

(a) sends interim financial statements or related documents to its shareholders; or

(b) is required to file interim financial statements or related documents with or to send them to a public authority or stock exchange,

the corporation shall immediately send copies of them to the registrar.

(3) A subsidiary corporation is not required to comply with this section, where

(a) the financial statements of its holding corporation are in consolidated or combined form and include the accounts of the subsidiary; and

(b) the consolidated or combined financial statements of the holding corporation are included in the documents sent to the registrar by the holding corporation in compliance with this section.

1986 c12 s259; 1987 c38 Sch A

[Back to Top](#)

## Disqualification of auditor

**264.** (1) A person is disqualified from being an auditor of a corporation who is not independent of the corporation, an affiliate, or the directors or officers of the corporation or an affiliate.

(2) For the purposes of this section,

(a) independence is a question of fact; and

(b) a person is not independent where the person or that person's business partner

(i) is a business partner, a director, an officer or an employee of the corporation or of an affiliate, or a business partner of a director, officer or employee of the corporation or an affiliate,

(ii) beneficially owns or controls, directly or indirectly, a material interest in the securities of the corporation or an affiliate, or

(iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the corporation or an affiliate within 2 years of his or her proposed appointment as auditor of the corporation.

(3) An auditor who becomes disqualified under this section shall resign immediately after becoming aware of his or her disqualification.

(4) An interested person may apply to a court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

(5) Notwithstanding subsection (1), an interested person may apply to a court for an order exempting an auditor from disqualification under this section and the court may, where it is satisfied

that an exemption would not unfairly prejudice the shareholders, make an exemption order on the terms that it thinks appropriate, which order may be given retrospective effect.

1986 c12 s260

[Back to Top](#)

### **Appointment of auditor**

**265.** (1) Shareholders of a corporation shall, by ordinary resolution, at the 1st annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 171 is eligible for appointment under subsection (1).

(3) Notwithstanding subsection (1), where an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until his or her successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of shareholders or, where not so fixed, may be fixed by the directors.

1986 c12 s261

[Back to Top](#)

### **Dispensing with auditor**

**266.** (1) Notwithstanding section 265, the shareholders of a corporation other than a corporation mentioned in subsection 263(1) may resolve not to appoint an auditor.

(2) A resolution under subsection (1) is valid only until the next succeeding annual meeting of shareholders.

(3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

(4) Upon the application of a corporation that is a wholly owned subsidiary of a holding body corporate, the registrar may exempt the corporation from appointing an auditor in the circumstances that may be prescribed.

1986 c12 s262

[Back to Top](#)

### **When auditor leaves office**

**267.** (1) An auditor of a corporation stops holding office when

(a) the auditor dies or resigns; or

(b) the auditor is removed under section 268.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later.

1986 c12 s263

[Back to Top](#)

### **Removal of auditor**

**268.** (1) The shareholders of a corporation may by ordinary resolution at a special meeting remove from office the auditor other than an auditor appointed by a court under section 270.

(2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, where not so filled, may be filled under section 269.

1986 c12 s264

[Back to Top](#)

#### **Filling vacancy of auditor**

**269.** (1) The directors shall immediately fill a vacancy in the office of auditor.

(2) Where there is not a quorum of directors, the directors then in office shall, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy and, where they fail to call a meeting or where there are no directors, the meeting may be called by a shareholder.

(3) Notwithstanding subsection (1), the articles of a corporation may provide that a vacancy in the office of auditor be filled only by vote of the shareholders.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his or her predecessor.

1986 c12 s265

[Back to Top](#)

#### **Court appointed auditor**

**270.** (1) Where a corporation does not have an auditor, the court may, upon the application of a shareholder or the registrar, appoint and fix the remuneration of an auditor, who holds office until an auditor is appointed by the shareholders.

(2) Subsection (1) does not apply where the shareholders have resolved under section 266 not to appoint an auditor.

1986 c12 s266

[Back to Top](#)

#### **Auditor's right to attend meeting**

**271.** The auditor of a corporation is entitled to receive notice of meetings of shareholders and, at the expense of the corporation, to attend and be heard at meetings on matters relating to his or her duties as auditor.

1987 c12 s267

[Back to Top](#)

#### **Duty of auditor to attend meeting**

**272.** (1) Where a director or shareholder of a corporation, whether or not the shareholder is entitled to vote at the meeting, gives written notice not less than 10 days before a meeting of shareholders to the auditor or a former auditor of the corporation, the auditor or former auditor shall attend the meeting at the expense of the corporation and answer questions relating to his or her duties as auditor.

(2) A director or shareholder who sends a notice referred to in subsection (2) shall concurrently send a copy of the notice to the corporation.

1986 c12 s268

[Back to Top](#)

## **Auditor shall submit statement**

**273.** (1) An auditor who

- (a) resigns;
- (b) receives notice or otherwise learns of a meeting of shareholders called for the purpose of removing the auditor from office;
- (c) receives notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because his or her term of office has expired or is about to expire; or
- (d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 268 is to be proposed,

is entitled to submit to the corporation a written statement giving the reasons for his or her resignation or the reasons why the auditor opposes a proposed action or resolution.

(2) The corporation shall immediately send a copy of the statement referred to in subsection (1) to a shareholder entitled to receive notice of a meeting referred to in section 271 and to the registrar unless the statement is included in or attached to a management proxy circular required by section 251.

(3) A person may not accept appointment or consent to be appointed as auditor of a corporation where he or she is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire until he or she has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, the auditor is to be replaced.

(4) Notwithstanding subsection (3), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a corporation where, within 15 days after making the request referred to in that subsection, he or she does not receive a reply.

(5) Unless subsection (4) applies, the appointment of a person who has not complied with subsection (3) is void.

1986 c12 s269

[Back to Top](#)

## **Examination by auditor and report**

**274.** (1) An auditor of a corporation shall make the examination that is in the auditor's opinion necessary to enable the auditor to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except the financial statements or part of them that relate to the immediately preceding financial year referred to in subparagraph 258(1)(a)(ii).

(2) Notwithstanding section 275, an auditor of a corporation may reasonably rely upon the report of an auditor of a body corporate or unincorporated business the accounts of which are included in whole or in part in the financial statements of the corporation.

(3) For the purpose of subsection (2), reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding corporation reported upon by the auditor are in consolidated form.

1986 c12 s270

[Back to Top](#)

## **Right to information**

**275.** (1) Upon the demand of an auditor of a corporation, the present or former directors, officers, employees or agents of the corporation shall provide

- (a) the information and explanations; and
- (b) the access to records, documents, books, accounts and vouchers of the corporation or a subsidiary,

that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 274 and that the directors, officers, employees or agents are reasonably able to provide.

- (2) Upon the demand of the auditor of a corporation, the directors of the corporation shall
  - (a) obtain from the present or former directors, officers, employees or agents of a subsidiary of the corporation the information and explanations that the directors, officers, employees and agents are reasonably able to provide and that are, in the opinion of the auditor, necessary to enable the auditor to make the examinations and report required under section 274; and
  - (b) provide the information and explanations so obtained to the auditor.

1986 c12 s271

[Back to Top](#)

## **Audit committee**

**276.** (1) A distributing corporation shall, and another corporation may, have an audit committee composed of not less than 3 directors of the corporation, a majority of whom are not officers or employees of the corporation or an affiliate.

(2) Notwithstanding subsection (1), upon the application of a corporation for authorization to dispense with an audit committee, the registrar may, where the registrar is satisfied that the shareholders will not be prejudiced by the authorization, permit the corporation to dispense with an audit committee on those reasonable conditions that the registrar thinks appropriate.

(3) An audit committee shall review the financial statements of the corporation before the financial statements are approved under section 261.

(4) The auditor of a corporation is entitled to receive notice of meetings of the audit committee and, at the expense of the corporation, to attend and be heard at the meetings; and, where requested by a member of the audit committee, shall attend meetings of the committee held during the term of office of the auditor.

(5) The auditor of a corporation or a member of the audit committee may call a meeting of the committee.

1986 c12 s272

[Back to Top](#)

## **Errors in financial statements**

**277.** (1) A director or officer of a corporation shall immediately notify the audit committee and the auditor of an error or misstatement of which the director or officer of a corporation becomes aware in a financial statement that the auditor or a former auditor has reported upon.

(2) Where the auditor or former auditor of a corporation is notified or becomes aware of an error or misstatement in a financial statement upon which the auditor or former auditor has reported,

and where in his or her opinion the error or misstatement is material, the auditor or former auditor shall inform each director accordingly.

(3) Where, under subsection (2), the auditor or former auditor informs the directors, or where the directors otherwise have knowledge of an error or misstatement in a financial statement, the directors shall

- (a) prepare and issue revised financial statements; or
- (b) otherwise inform the shareholders and, where the corporation is one that is required to comply with section 263, it shall inform the registrar of the error or misstatement in the same manner as it informs the shareholders.

1986 c12 s273

[Back to Top](#)

#### **Auditor's privilege re defamation**

**278.** An auditor is not liable to a person in an action for defamation based on an act done or not done or a statement made by the auditor in good faith in connection with a matter the auditor is authorized or required to do under this Act.

1986 c12 s274

### **PART XIV FUNDAMENTAL CHANGES**

[Back to Top](#)

#### **Amending articles**

**279.** (1) The articles of a corporation may, by special resolution, be amended to

- (a) change its name;
- (b) change the place in which its registered office is situated;
- (c) add, change or remove a restriction upon the business that the corporation may carry on;
- (d) change a maximum number of shares that the corporation is authorized to issue;
- (e) create new classes of shares;
- (f) reduce or increase its stated capital which, for the purposes of the amendment, is considered to be set out in the articles;
- (g) change the designation of all or some of its shares, and add, change or remove rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or some of its shares, whether issued or unissued;
- (h) change the shares of a class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;
- (i) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of them;
- (j) authorize the directors to divide a class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of them;

**TAB 3**

Copyright © 2015: Queens Printer,  
St. John's, Newfoundland and Labrador, Canada

**Important Information**

(Includes details about the availability of printed and electronic versions of the Statutes.)

**[Table of Regulations](#)**

**[Main Site](#)**

**[How current is this regulation?](#)**

---

**CONSOLIDATED NEWFOUNDLAND REGULATION 750/96**

*Corporations Regulations*  
under the  
*Corporations Act*  
(O.C. 96-209)

Amended by:

2004 c47 s39  
93/11  
2014 cC-10.1 s66

**CONSOLIDATED NEWFOUNDLAND REGULATION 750/96**

*Corporations Regulations*  
under the  
*Corporations Act*  
(O.C. 96-209)

Under the authority of section 409 of the *Corporations Act* and the *Subordinate Legislation Revision and Consolidation Act*, the Lieutenant-Governor in Council makes the following regulations.

**REGULATIONS**

*Analysis*

[1. Short title](#)

[2. Definitions](#)

PART I  
GENERAL

[3. "Resident Canadian" class of persons](#)

PART II  
CORPORATE NAMES

[4. Definition](#)

[5. Consideration of whole name](#)

[6. Prohibited name](#)

[7. Prohibited name](#)

[8. Prohibited name](#)

[9. Prohibited name](#)

- [10. Prohibited name](#)
- [11. Certain names not prohibited](#)
- [12. Confusing name](#)
- [13. Confusing name](#)

PART III  
PROXIES AND PROXY SOLICITATION

- [14. Form of proxy](#)
- [15. Proxy may confer discretion](#)
- [16. Authority not conferred](#)
- [17. Management proxy circular](#)
- [18. Statement to accompany circular](#)
- [19. Dissident's proxy circular](#)
- [20. Contents of dissident's proxy circular](#)
- [21. Where dissident is partnership, etc.](#)
- [22. Information may be omitted](#)
- [23. Dissident's statement](#)
- [24. Contents of proxy circular - small corporations](#)
- [25. Date of proxy circular and information](#)
- [26. Financial statements in proxy circular](#)

PART IV  
FINANCIAL DISCLOSURE

- [27. Annual financial statements](#)
- [28. Auditor's report](#)
- [29. Contents of financial statements](#)
- [30. Reporting classes of business](#)

PART V  
EXEMPTION FROM PUBLIC DISCLOSURE OF FINANCIAL STATEMENT

- [31. Disclosing corporation](#)
- [32. Information detrimental](#)
- [33. Determination of registrar](#)

PART VI  
CONSTRAINED SHARE CORPORATIONS

- [34. Interpretation](#)
- [35. Disclosure required](#)
- [36. Powers and duties of directors](#)
- [37. Limitation on voting rights](#)
- [38. Disclosing corporation](#)
- [39. Disclosure of beneficial ownership](#)
- [40. Prescribed laws](#)

PART VII  
RULES OF PROCEDURE FOR  
APPLICATIONS FOR EXEMPTION

- [41. Application](#)
- [42. Form for application](#)
- [43. Time for filing applications](#)
- [44. Notice by registrar of decision](#)

[45. General](#)

[46. Registrar to provide information](#)

[47. Where information not provided](#)

[48. Where exemption not granted](#)

PART VIII  
FEES

[49. Fees](#)

[50. Repeal](#)

**Short title**

1. These regulations may be cited as the *Corporations Regulations*.

268/86 s1

[Back to Top](#)

**Definitions**

2. In these regulations

- (a) "Act" means the *Corporations Act*;
- (b) "document" means a document required to be sent to the registrar under the Act;
- (c) "reporting issuer" has the same meaning as defined in the *Securities Act*.

268/86 s2; [93/11 s1](#)

**PART I  
GENERAL**

[Back to Top](#)

**"Resident Canadian" class of persons**

3. For the purpose of subparagraph (ii) of the definition "Resident Canadian" in paragraph 2(y) of the Act, the following classes of persons are prescribed:

- (a) persons who are full-time employees of the Government of Canada or a province, of an agency of government or a federal or provincial Crown corporation;
- (b) persons who are full-time employees of a body corporate
  - (i) of which more than 50% of the voting shares are beneficially owned or over which control or direction is exercised by resident Canadians,
  - (ii) a majority of the directors of which are resident Canadians, or
  - (iii) that a subsidiary or a wholly-owned subsidiary of a body corporate described in subparagraph (i) or (ii),

where the principal reason for the residence of the employees outside Canada is to act as such employees;

- (c) persons who are full-time students at a university or other educational institution recognized by the educational authorities of a majority of the provinces of Canada and have been resident outside Canada less than 10 consecutive years;

effect that

- (a) the circular complies with these regulations; and
- (b) a copy of the circular has been sent to each director, each shareholder and to the auditor of the corporation.

268/86 s30

[Back to Top](#)

#### **Contents of proxy circular - small corporations**

24. Notwithstanding sections 16 and 20, with respect to a corporation having fewer than 15 shareholders, the requirements of section 250 of the Act are satisfied by including in a proxy circular

- (a) the name of the director, officer or dissident on whose behalf the solicitation is made;
- (b) the name of each proposed nominee for director and managing officer of the corporation;
- (c) a statement of the right of a shareholder to revoke a proxy under section 248 of the Act and the method by which he or she may exercise it;
- (d) the name of the person by whom the cost of the solicitation has been or will be borne, directly or indirectly; and
- (e) the information required by paragraph 20(c)

but this section does not exempt such a corporation from compliance with the remaining provisions of this Part.

268/86 s31

[Back to Top](#)

#### **Date of proxy circular and information**

25. A proxy circular shall be dated as of a date not more than 30 days before the day on which it is first sent a shareholder of the corporation and the information, other than financial statements, required to be contained in it shall be given as of the date of the circular.

268/86 s32

[Back to Top](#)

#### **Financial statements in proxy circular**

26. (1) Where financial statements accompany or form part of a management proxy circular, the statements shall be prepared in the manner prescribed for the financial statements in Part IV.

(2) The financial statements referred to in subsection (1), if not reported upon by the auditor of the corporation, shall be accompanied by a report of the chief financial officer of the corporation stating that the financial statements have not been audited but have been prepared in accordance with Part IV.

268/86 s33

### **PART IV FINANCIAL DISCLOSURE**

[Back to Top](#)

## Annual financial statements

27. (1) The financial statements referred to in paragraph 258(1)(a) of the Act shall be prepared in accordance with the standards of the Chartered Professional Accountants of Canada set out in the CPA Canada Handbook including any amendments to it.

(2) Notwithstanding subsection (1), a reporting issuer may prepare financial statements referred to in paragraph 258(1)(a) of the Act in accordance with other standards as may be permitted in the rules made under section 144.1 of the *Securities Act*.

[93/11 s2; 2014 cC-10.1 s66](#)

[Back to Top](#)

## Auditor's report

28. (1) The auditor's report referred to in section 274 of the Act shall be prepared in accordance with the standards of the Chartered Professional Accountants of Canada set out in the CPA Canada Handbook including any amendments to it.

(2) Notwithstanding subsection (1) the auditor's report of a reporting issuer referred to in section 274 of the Act may be prepared in accordance with other standards as may be permitted in the rules made under section 144.1 of the *Securities Act*.

[93/11 s3; 2014 cC-10.1 s66](#)

[Back to Top](#)

## Contents of financial statements

29. (1) The financial statements referred to in section 258 of the Act must include at least
- (a) a balance sheet;
  - (b) a statement of retained earnings;
  - (c) an income statement; and
  - (d) a statement of changes in financial position.
- (2) Financial statements need not be designated by the names set out in paragraphs (1)(a) to (d).

268/86 s36

[Back to Top](#)

## Reporting classes of business

30. (1) In this section, "corporation" means a corporation that carries on a diversified as distinct from an integrated business and that sends its financial statements to the registrar under section 263 of the Act.

(2) The financial statements of a corporation shall disclose separately or in a schedule thereto a summary of financial information for each class of business the revenue from which is 10% or more of the corporation's total revenues for the period.

(3) The financial statements or schedule referred to in subsection (2) shall contain a note stating that the directors of the corporation have determined its classes of business at a meeting of directors and have recorded them in the minutes of the meeting.

(4) Subject to subsection (5), the classes of business referred to in subsection (2) shall be designated in accordance with the Statistics Canada Standard Industrial Classification Code.