

CONSOLIDATION OF INSURANCE ACT
R.S.N.W.T. 1988,c.I-4

(Current to: February 27, 2013)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

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R.S.N.W.T. 1988,c.37(Supp.)
R.S.N.W.T. 1988,c.99(Supp.)
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S.N.W.T. 1995,c.11
S.N.W.T. 1997,c.12
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S.N.W.T. 1998,c.17
S.N.W.T. 1998,c.24

AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:

S.N.W.T. 1998,c.34
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S.Nu. 2007,c.8,s.8
s.8 in force November 8, 2007
S.Nu. 2007,c.15,s.177(Sch.,s.8)
s.177(Sch.,s.8) in force April 1, 2008: SI-003-2008
S.Nu. 2010,c.14,s.9
s.9 in force June 10, 2010
S.Nu. 2011,c.25,s.11
s.11 in force October 31, 2011

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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SCHEDULE

INSURANCE ACT**INTERPRETATION**

Definitions

1. (1) In this Act, except where inconsistent with the interpretation sections of any Part,

"accident insurance" means insurance by which the insurer undertakes, otherwise than incidentally to some other class of insurance defined by or under this Act, to pay insurance money in the event of accident to the person or persons insured, but does not include insurance by which the insurer undertakes to pay insurance money both in the event of death by accident and in the event of death from any other cause;
(*assurance-accident*)

"accidental death insurance" means insurance undertaken by an insurer as part of a contract of life insurance by which the insurer undertakes to pay an additional amount of insurance money in the event of the death by accident of the person whose life is insured;
(*assurance en cas de décès accidentel*)

"actuary" means a Fellow of the Canadian Institute of Actuaries; (*actuaire*)

"adjuster" means a person who,

- (a) on behalf of an insurer or an insured, for compensation, directly or indirectly solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety or guaranty bond issued by an insurer, or investigates, adjusts or settles any such loss or claim, or
- (b) holds himself or herself out as an adjuster, investigator, consultant or adviser with respect to the settlement of such losses or claims,

but does not include,

- (c) a barrister or solicitor acting in the usual course of that profession,
- (d) a trustee or agent of the property insured,
- (e) a salaried employee of a licensed insurer while acting on behalf of the licensed insurer in the adjustment of losses,
- (f) a person who is employed as an appraiser, engineer or other expert solely for the purpose of giving expert advice or evidence, or
- (g) a person who acts as an adjuster of marine losses only;
(*expert or expert en sinistres*)

"agent" means a person who, for compensation, not being a person acting under the authority of subsection 216(1) or (2) or section 217, solicits insurance on behalf of an insurer or transmits, for a person other than himself or herself, an application for or a policy of insurance to or from such insurer or offers or assumes to act in the negotiation of such insurance or in negotiating its continuance or renewal; (*agent*)

"aircraft insurance" means insurance against loss of or damage to an aircraft and against liability for loss or damage to persons or property caused by an aircraft or by the operation of an aircraft; (*assurance-aéronefs*)

"appeal" includes a judicial revision or review of a judgment, decision, order, direction, determination, finding or conviction, and a case stated or reserved, and a removal of proceedings by way of *certiorari*, or otherwise; (*appel*)

"automobile" includes a self-propelled vehicle, and the trailers, accessories and equipment of automobiles, but does not include watercraft, aircraft or railway rolling-stock that runs on rails; (*automobile*)

"automobile insurance" means insurance

- (a) against liability arising out of
 - (i) bodily injury to or the death of a person, or
 - (ii) loss of or damage to property, caused by an automobile or the use or operation of an automobile, or
- (b) against loss of or damage to an automobile and the loss of use of an automobile,

and includes insurance otherwise coming within the class of accident insurance where the accident is caused by an automobile or the use or operation of an automobile, whether liability exists or not, if the contract also includes insurance described in paragraph (a); (*assurance automobile*)

"boiler and machinery insurance" means insurance against loss of or damage to persons or property and against liability for loss or damage to persons or property through the explosion, collapse, rupture or breakdown of, or accident to, boilers or machinery of any kind; (*assurance des chaudières et machines*)

"broker" means a person who, for compensation, not being a person acting under the authority of subsection 216(1), (2) or section 217, acts or aids in any manner in negotiating contracts of insurance or placing risks or effecting insurance or in negotiating the continuance or renewal of such contracts for a person other than himself or herself; (*courtier*)

"chief agency" means the principal office or place of business in the Territories of a licensed insurer having its head office outside the Territories; (*agence principale*)

"Clerk" means the Clerk of the Nunavut Court of Justice appointed under the *Judicature Act*; (*greffier*)

"compensation association" means a body corporate or an unincorporated association that has the purpose of compensating policy holders and eligible claimants of insolvent insurers and that is designated under paragraph 19(a) as a compensation association; (*association d'indemnisation*)

"contract" means a contract of insurance, and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement; (*contrat*)

"Court" means the Nunavut Court of Justice; (*tribunal*)

"credit insurance" means insurance against loss to the insured through the insolvency or default of a person to whom credit is given in respect of goods, wares or merchandise; (*assurance-crédit*)

"disability insurance" means insurance undertaken by an insurer as part of a contract of life insurance by which the insurer undertakes to pay insurance money or to provide other benefits in the event that the person whose life is insured becomes disabled as a result of bodily injury or disease; (*assurance-invalidité*)

"due application" includes the information, evidence and material that the Superintendent requires to be provided, and also the payment of the prescribed fees in respect of any application, certificate or document required or issued by virtue of this Act; (*demande conforme*)

"employers' liability insurance" means insurance, not being insurance incidental to some other class of insurance defined by or under this Act, against loss to an employer through liability for accidental injury to or death of an employee arising out of or in the course of his or her employment, but does not include workers' compensation insurance; (*assurance-responsabilité des employeurs*)

"endowment insurance", as applied to a fraternal society, means an undertaking to pay an ascertained or ascertainable sum at a fixed future date if the person whose life is insured is then alive, or at the death of that person if that person dies before that date; (*assurance mixte*)

"Facility Association" means the unincorporated non-profit association of insurers called the Facility Association, established for the purpose of allocating automobile insurance risks to ensure the availability of insurance to owners of automobiles and continued under section 7 of the *Compulsory Automobile Insurance Act* (Ontario); (*Association des assureurs*)

"fire insurance" means insurance, not being insurance incidental to some other class of insurance defined by or under this Act, against loss of or damage to property through fire, lightning or explosion due to ignition; (*assurance-incendie*)

"foreign jurisdiction" means a jurisdiction other than the Territories; (*territoire étranger*)

"fraternal society" means a society, order or association incorporated for the purpose of making with its members only, and not for profit, contracts of life, accident or sickness insurance in accordance with its constitution, by-laws and rules and this Act; (*société de secours mutuel*)

"guarantee insurance" means the undertaking to perform an agreement or contract or to discharge a trust, duty or obligation on default of the person liable for the performance or discharge or to pay money on the default or in place of the performance or discharge, or where there is loss or damage through the default, but does not include credit insurance; (*assurance-cautionnement*)

"head office" means the place where the chief executive officer of an insurer transacts his or her business; (*siège social*)

"inland transportation insurance" means insurance, other than marine insurance, against loss of or damage to property,

- (a) while in transit or during delay incidental to transit, or
- (b) where, in the opinion of the Superintendent, the risk is substantially a transit risk; (*assurance de transports terrestres*)

"insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value on the happening of a certain event; (*assurance*)

"insurance fund", as applied to a fraternal society or as applied to a corporation not incorporated exclusively for the transaction of insurance, includes all money, securities for money and assets appropriated by the rules of the society or corporation to the payment of insurance liabilities or appropriated for the management of the insurance branch or department or division of the society, or otherwise legally available for insurance liabilities, but does not include funds of a trade union appropriated to or applicable for the voluntary assistance of wage earners unemployed or on strike; (*fonds d'assurance*)

"insurance money" means the amount payable by an insurer under a contract, and includes all benefits, surplus, profits, dividends, bonuses and annuities payable under the contract; (*sommes assurées*)

"insurer" means the person who undertakes or agrees or offers to undertake a contract; (*assureur*)

"licence" means a licence issued under this Act by the Superintendent; (*licence*)

"life insurance" means insurance by which an insurer undertakes to pay insurance money,

- (a) on death,
- (b) on the happening of an event or contingency dependent on human life,
- (c) at a fixed or determinable future time, or
- (d) for a term dependent on human life,

and, without restricting the generality of the above, includes accidental death insurance but not accident insurance; (*assurance-vie*)

"livestock insurance" means insurance, not being insurance incidental to some other class of insurance defined by or under this Act, against loss through the death or sickness of or accident to an animal; (*assurance du bétail*)

"marine insurance" means insurance against,

- (a) liability arising out of
 - (i) bodily injury to or death of a person, or
 - (ii) the loss of or damage to property, or
- (b) the loss of or damage to property,

occurring during a voyage or marine adventure at sea or on an inland waterway or during delay incidental to that, or during transit otherwise than by water incidental to such a voyage or marine adventure; (*assurance maritime*)

"mortgage insurance" means insurance against loss caused by default on the part of a borrower under a loan secured by a mortgage on real property, a hypothec on immovable property or an interest in real or immovable property; (*assurance-hypothèque*)

"motor vehicle liability policy" means a policy or part of a policy evidencing a contract insuring

- (a) the owner or driver of an automobile, or
- (b) a person who is not the owner or driver of an automobile where the automobile is being used or operated by his or her employee or agent or any other person on his or her behalf,

against liability arising out of bodily injury to or the death of a person or loss or damage to property caused by an automobile or the use or operation of an automobile; (*police de responsabilité automobile*)

"mutual insurance" means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts, whether or not the maximum amount of the consideration is predetermined; (*assurance mutuelle*)

"non-owner's policy" means a motor vehicle liability policy insuring a person solely in respect of the use or operation by the person or on his or her behalf of an automobile that is not owned by the person; (*police de conducteur*)

"officer" includes a trustee, director, manager, treasurer, secretary or member of the board or committee of management of an insurer and a person appointed by the insurer to sue and be sued in its behalf; (*dirigeant*)

"on proof", as applied to any matter connected with the licensing of an insurer or other person, means on proof to the satisfaction of the Superintendent; (*Version anglaise seulement*)

"owner's policy" means a motor vehicle liability policy insuring a person in respect of the ownership, use or operation of an automobile owned by the person and within the description or definition of the automobile in the policy and, if the contract so provides, in respect of the use or operation of any other automobile; (*police de propriétaire*)

"Plan of Operation" means the plan established in the articles of association of the Facility Association for providing a contract of automobile insurance to owners and licensed drivers of automobiles who, but for the Plan of Operation, would be unable to obtain automobile insurance; (*régime d'assurance*)

"plate glass insurance" means insurance, not being insurance incidental to some other class of insurance defined by or under this Act, against loss of or damage to plate, sheet or window glass, whether in place or in transit; (*assurance contre le bris des glaces*)

"policy" means the instrument evidencing a contract; (*police*)

"premium" means the single or periodical payment under a contract for insurance, and includes dues, assessments, administration fees paid for the administration or servicing of a contract for insurance, and other considerations; (*prime*)

"property" includes profits, earnings and other pecuniary interests, and expenditure for rents, interest, taxes and other outgoings and charges and in respect of inability to occupy the insured premises, but only to the extent of express provision in the contract; (*biens*)

"property damage insurance" means insurance against loss of or damage to property that is not included in or incidental to some other class of insurance defined by or under this Act; (*assurance contre les dommages matériels*)

"public liability insurance" means insurance against loss or damage to the person or property of others that is not included in or incidental to some other class of insurance defined by or under this Act; (*assurance-responsabilité civile*)

"salesperson" means a person who is employed by a licensed insurance agent or broker on a stated salary that is not supplemented by commission, bonus or any other remuneration to solicit insurance or transact, for a person other than himself or herself, an application for a policy of insurance, or to act in the negotiation of such insurance or in negotiating its continuance or renewal, or collects and receives premiums on behalf of his or her employer only, but does not include a licensed insurance agent, broker or

employee engaged solely in office duties for an agent or broker or a person acting under the authority of section 216; (*vendeur*)

"sickness insurance" means insurance by which the insurer undertakes to pay insurance money in the event of sickness of the person or persons insured, but does not include disability insurance; (*assurance-maladie*)

"sprinkler leakage insurance" means insurance against loss of or damage to property through the breakage or leakage of sprinkler equipment or other fire protection system, or of pumps, water pipes or plumbing and its fixtures; (*assurance contre les fuites d'extincteurs automatiques*)

"Superintendent" means the Superintendent of Insurance appointed under subsection 254(1); (*surintendant*)

"theft insurance" means insurance against loss or damage through theft, wrongful conversion, burglary, house-breaking, robbery or forgery; (*assurance contre le vol*)

"title insurance" means insurance against loss or liability for loss due to the invalidity of the title to any property or of any instrument, or to any defect in such title or instrument; (*assurance-titre*)

"workers' compensation insurance" means the provision of compensation to workers under the *Workers' Compensation Act*, or an enactment of similar purpose elsewhere in Canada. (*assurance-indemnisation des travailleurs*)

Interpretation

(2) In the statutory conditions contained in subsections 64(2) and 129(2) and in section 177, and in the Schedule, words importing male persons include female persons. S.Nu. 2007,c.15,s.177(Sch.,s.8(3)); S.Nu. 2010,c.14,s.9(2).

PART I

GENERAL PROVISIONS APPLICABLE TO INSURERS

INSURANCE AND INSURERS

Application of Part

2. (1) This Part applies to insurance undertaken in Nunavut and to all insurers carrying on business in Nunavut.

Undertaking insurance

(2) An insurer undertaking a contract that under this Act is deemed to be made in Nunavut, whether the contract is original or renewed, except the renewal from time to time of life insurance policies, shall be deemed to be undertaking insurance in Nunavut within the meaning of this Part.

Carrying on business

- (3) An insurer undertaking insurance in Nunavut or that in Nunavut,
- (a) displays or causes to be displayed a sign containing the name of an insurer;
 - (b) maintains or operates, either in its own name or in the name of its agent or other representative, an office for the transaction of the business of insurance either in or outside Nunavut;
 - (c) distributes or publishes or causes to be distributed or published any proposal, circular, card, advertisement, printed form or similar documents;
 - (d) makes or causes to be made any written or oral solicitation for insurance;
 - (e) issues or delivers any policy of insurance or interim receipt or collects or receives or negotiates for or causes to be collected or received or negotiated for any premium for a contract of insurance or inspects any risk or adjusts any loss under a contract of insurance, otherwise than through a licensed broker pursuant to sections 223 and 224; or
 - (f) prosecutes or maintains in Nunavut an action or proceeding in respect of a contract of insurance,

shall be deemed to be an insurer carrying on business in Nunavut within the meaning of this Act.

Payments on death of members

(4) Any club, society or association incorporated or unincorporated that receives, either as trustees or otherwise, contributions or moneys from its members out of which gratuities or benefits are paid directly or indirectly on the death of its members, or any of them, shall be deemed to be an insurer carrying on business in Nunavut within the meaning of this Act. S.Nu. 2010,c.14,s.9(13).

LICENCES**Necessity for licence**

3. (1) Every insurer undertaking insurance in Nunavut or carrying on business in Nunavut shall obtain from the Superintendent and hold a licence under this Act.

Prohibition

(2) Every insurer undertaking insurance or carrying on business in Nunavut without having obtained a licence as required by this section is guilty of an offence.

Prohibition against acting on behalf of unlicensed insurer

(3) Every person who in Nunavut does or causes to be done any act or thing mentioned in subsection 2(3) or (4) on behalf of or as agent of an insurer not licensed under this Act or who receives directly or indirectly any remuneration for so doing is guilty of an offence.

Exception

(4) The following are not insurers within the meaning of this Act and are not required or entitled to be licensed as such:

- (a) pension fund societies or employees' mutual benefit societies incorporated in Nunavut;
- (b) corporations mentioned in paragraphs 211(3)(a) and (b).
S.Nu. 2010,c.14,s.9(13).

Reinsurance with unlicensed insurer

4. Nothing in this Act prevents a licensed insurer who has lawfully effected a contract of insurance in Nunavut from reinsuring the risk or part of the risk with an insurer transacting business outside Nunavut and not licensed under this Act.
S.Nu. 2010,c.14,s.9(13).

Insurers that may be licensed

5. (1) On due application and on proof of compliance with this Act, the Superintendent may issue a licence to undertake contracts of insurance and carry on business in Nunavut to any insurer coming within one of the following classes:

- (a) joint stock insurance companies;
- (b) mutual insurance corporations;
- (c) cash-mutual insurance corporations;
- (d) fraternal societies;
- (e) companies duly incorporated to undertake insurance contracts and not within the classes mentioned in paragraphs (a) to (d);
- (f) underwriters or syndicates of underwriters operating on the plan known as Lloyds;
- (g) **repealed, S.Nu. 2010,c.14,s.9(3);**
- (h) pension fund associations.

Effect of licence

(2) A licence authorizes the insurer named in the licence to exercise in Nunavut all rights and powers reasonably incidental to the carrying on of the business of insurance named in the licence that are not inconsistent with this Act or with its Act or instrument of incorporation or organization. S.Nu. 2010,c.14,s.9(3),(13).

Licence to carry on insurance business

6. (1) Subject to the provisions of the Parts of this Act that particularly relate to the classes of insurers mentioned in subsection 5(1), a licence may be issued to an insurer to carry on any one or more of the classes of insurance defined in subsection 1(1) and such other classes as are prescribed.

Determination of classes of insurance by Superintendent

(2) For the purposes of this Act, the Superintendent may determine the class or classes of insurance into which the circumstances or conditions in any case may bring any insurance issued or that may be issued in respect thereto, and the policy form to be used for that class of insurance.

Limitations or conditions on licence

(3) Any licence may be issued subject to the limitations and conditions that the Superintendent may impose.

Conditions of automobile insurance licence

7. (1) A licence to carry on automobile insurance in Nunavut is subject to the following conditions:

- (a) in any action in Nunavut against the licensed insurer or its insured arising out of an automobile accident in Nunavut, the insurer shall appear and shall not set up any defence to a claim under a contract made outside Nunavut, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in Nunavut and the contract made outside Nunavut shall be deemed to include the benefits set out in the Schedule in respect of an automobile accident occurring on or after January 1, 1988;
- (b) in any action in a province or territory against the licensed insurer or its insured arising out of an automobile accident in that province or territory, the insurer shall appear and shall not set up any defence to a claim under a contract evidenced by a motor vehicle liability policy issued in Nunavut, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in that province or territory.

Punishment for breach

(2) A licence may be cancelled when the holder commits a breach of condition as set out in subsection (1). S.Nu. 2010,c.14,s.9(13).

Membership in Facility Association

8. (1) Every insurer carrying on automobile insurance in Nunavut shall be a member of the Facility Association.

Insurers

(2) Every insurer carrying on automobile insurance in Nunavut is bound by the articles of association, by-laws and Plan of Operation of the Facility Association.

Duty of Facility Association

(3) The Facility Association shall ensure, through its members, that a contract of automobile insurance is provided with respect to every application for automobile insurance submitted under the Plan of Operation to an insurer.

Agents

(4) Where an agent submits an application for automobile insurance under the Plan of Operation to an insurer, the agent is bound by the applicable articles of association and by-laws of the Facility Association. S.Nu. 2010,c.14,s.9(13).

Actions by and against Facility Association

- 9.** (1) The Facility Association may, in its name,
- (a) be prosecuted for an offence under this Act; and
 - (b) sue and be sued.

Service

(2) A document may be served on the Facility Association by serving a director or officer of the Facility Association.

Notice of officers and directors

(3) The Facility Association shall notify the Superintendent of the names and residential addresses of the officers and directors of the Facility Association on their taking office.

Record of information

(4) The Superintendent shall include the names and addresses of the officers and directors of the Facility Association in the register referred to in subsection 259(1).

Licensing exemption

(5) Despite any enactment, the Facility Association is not required to obtain a licence or to be registered to carry on business in Nunavut. S.Nu. 2010,c.14,s.9(13).

Preparation and filing of rates

10. (1) The Facility Association shall prepare and publish rates in respect of contracts provided under the Plan of Operation and shall file the rates, together with the statistical evidence and any other information relative to the determination of the rates, with the Superintendent at least 60 days before the introduction of the rates.

Review of rates

(2) The Superintendent shall, within 60 days after a filing of rates under subsection (1),

- (a) approve the rates as filed; or
- (b) disallow the rates as filed, where, in the opinion of the Superintendent, the rates are not in accordance with statistical evidence, experience or other justifiable factor.

Commencement of rates

(3) No rate in respect of contracts provided under the Plan of Operation shall take effect unless filed with and approved by the Superintendent.

Scope of life insurance licence

11. Every insurer licensed for the transaction of life insurance may, under the authority of its licence, unless the licence expressly provides otherwise,

- (a) include in any policy of life insurance, in respect of the same life or lives insured by that policy, disability insurance and accidental death insurance; and

- (b) transact annuities of all kinds and insurance providing for the establishment of accumulation or endowment funds.

Scope of fire insurance licence

12. (1) Every insurer licensed to carry on fire insurance may, subject to its Act of incorporation and subject to the restrictions imposed by the licence, insure or reinsure any property in which the insured has an insurable interest against loss or damage by fire, lightning or explosion and may insure or reinsure the same property against loss or damage from falling aircraft, earthquake, windstorm, tornado, hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles and any one or more perils falling within any other classes of insurance that are prescribed.

Insurance of automobiles

(2) An insurer licensed to carry on fire insurance may insure an automobile against loss or damage under a policy falling within Part III.

Proof of compliance

13. (1) A licence shall not be issued to an insurer except on proof that it has complied with the provisions of this Act and the regulations applicable to it.

Evidence by insurer when head office outside Nunavut

(2) Where the head office of an applicant for a licence under this Act is located outside Nunavut, a licence shall not be issued except on proof of its ability to provide for the payment at maturity of all its contracts, but the Superintendent may accept as sufficient the fact that it is licensed by any other government in Canada.

Licence of extra-provincial or territorial corporation

(3) A licence shall not be issued to a corporation that is incorporated under the law of a province or territory unless its head office and chief place of business is located in that province or territory. S.Nu. 2010,c.14,s.9(13).

Notice of application for licence

14. The Superintendent may require notice of the application for a licence to be given by publication in the *Nunavut Gazette* and elsewhere that the Superintendent considers necessary. S.Nu. 2010,c.14,s.9(13).

Documents to be filed by applicants for licence

15. (1) Every insurer shall, when applying for a licence, file in the office of the Superintendent the following documents:

- (a) a certified copy of its Act or other instrument of incorporation or association and of its constitution and by-laws and regulations verified in a manner satisfactory to the Superintendent;
- (b) a certified copy of its last balance sheet and a report of an auditor on that balance sheet;

- (c) if the head office of the insurer is outside Nunavut, notice of the place where the chief office of the insurer in Nunavut is to be located;
- (d) if the head office of the insurer is outside Nunavut, an executed copy of a power of attorney from the insurer to the chief agent resident in Nunavut;
- (e) copies of all policy forms and forms of application for insurance proposed to be used by the insurer in Nunavut;
- (f) any evidence or documents required by other Parts of this Act.

Execution of power of attorney

(2) A power of attorney filed pursuant to paragraph (1)(d) must be under the seal of the insurer, and must be signed by the president and secretary or other proper officers of the insurer in the presence of a witness who shall make oath as to its due execution.

Contents of power of attorney

(3) A power of attorney filed pursuant to paragraph (1)(d) must

- (a) declare in what place in Nunavut the chief agency of the corporation is located; and
- (b) expressly authorize the chief agent
 - (i) to receive service of process in all actions and proceedings against the insurer in Nunavut for any liability incurred by the insurer in Nunavut, and
 - (ii) to receive from the Superintendent all notices that the law requires to be given, or that it is thought advisable to give; and
- (c) declare that service of process for or in respect of the liability referred to in subparagraph (b)(i) on the chief agent is legal and binding on the insurer.

Effect of copy and evidence

(4) The production of a copy of the power of attorney certified by the Superintendent is sufficient evidence for all purposes of the power and authority of the person named in the certified copy to act on behalf of the insurer in the manner and for the purposes set out in the certified copy.

Changes in chief agent

(5) Where the insurer changes its chief agent in Nunavut it shall, within seven days after the appointment, file with the Superintendent a similar power of attorney stating the change and containing a similar declaration as to service of process and notices.

Service of process

(6) After the power of attorney is filed, any process in any action or proceeding against the insurer for liability incurred in Nunavut may be validly served on the insurer on its chief agent but nothing in this section renders invalid service in any other mode in which the corporation may be lawfully served.

Evidence

(7) An applicant for a licence shall provide evidence satisfactory to the Superintendent that the requirements of this Act have been complied with and that the applicant is entitled to the licence applied for.

Costs of examination

(8) When the Superintendent considers it necessary to conduct an examination of the affairs of an applicant for a licence, the applicant shall pay the costs of the examination on receiving a statement of the costs certified by the Superintendent.

Duty to file amendments

(9) Every licensed insurer shall file in the office of the Superintendent certified copies of every amendment, revision or consolidation of its Act or other instrument of incorporation or association and of its constitution, by-laws and regulations verified in a manner satisfactory to the Superintendent within 30 days after the passing or adoption of the amendment, revision or consolidation. S.Nu. 2010,c.14,s.9(13).

Form of licence

16. (1) A licence must be in the form or forms for the different classes of insurers that may be determined by the Superintendent and a licence must specify the business to be carried on by the insurer.

Term of licence

(2) Every licence expires on June 30 in each year, subject to renewal by the Superintendent on or before that date.

Conditions of licence

(3) A licence may be issued or renewed subject to the limitations or conditions that the Superintendent considers appropriate.

Variation of licence

(4) Despite subsections (2) and (3), the Superintendent may at any time and in respect of any licence of an insurer,

- (a) reduce the term for which the licence was issued or renewed;
- (b) impose any conditions or limitations relating to the carrying on of the business of the insurer that the Superintendent considers appropriate; or
- (c) vary, amend or revoke any condition or limitation to which the licence is then subject,

but the Superintendent may not exercise any power conferred by this subsection until the Superintendent has given the insurer notice of his or her intention to exercise that power and has afforded the insurer a reasonable opportunity to be heard with respect to it. S.Nu. 2010,c.14,s.9(13).

Failure to pay claim

17. (1) The Superintendent may suspend or cancel a licence where written notice has been served on the Superintendent and on proof of an undisputed claim arising from loss insured against in Nunavut remaining unpaid for 60 days after being due or of a disputed claim after final judgment in the regular course of law and tender of a legal, valid discharge being unpaid.

Revival of licence

(2) A licence may be revived and the insurer may again transact business if, within six months after notice to the Superintendent of the failure of the insurer to pay an undisputed claim or the amount of a final judgment as provided in this section, the undisputed claim or final judgment on or against the insurer in Nunavut is paid and satisfied. S.Nu. 2010,c.14,s.9(13).

Membership in compensation association

18. (1) Subject to subsection (6), where a compensation association has been designated under paragraph 19(b) as a compensation association for any of the following classes of insurance, namely,

- (a) automobile insurance;
- (b) boiler and machinery insurance;
- (c) fire insurance;
- (d) inland transportation insurance;
- (e) livestock insurance;
- (f) plate glass insurance,
- (g) property damage insurance;
- (h) public liability insurance;
- (i) sprinkler leakage insurance;
- (j) theft insurance; or
- (k) a class of insurance designated under paragraph 19(c),

every insurer that holds a licence to carry on that class of insurance, and for 183 days after ceasing to hold the licence, is a member of that compensation association.

Idem

(1.1) Subject to subsection (6), where a compensation association has been designated under paragraph 19(b) as a compensation association for any of the following classes of insurance:

- (a) accident insurance;
- (b) life insurance;
- (c) sickness insurance; or
- (d) a class of insurance designated by order of the Minister,

every insurer that is eligible to become a member in the compensation association and that holds a licence to carry on that class of insurance is a member of that compensation association.

By-laws

(2) Every member of a compensation association is bound by the by-laws and memorandum of operation of the compensation association.

Assessments and levies

(3) A member of a compensation association shall pay to the compensation association all assessments and levies made against the member by the compensation association.

Failure to pay assessments or levies

(4) Where a member of a compensation association fails to pay an assessment or a levy within 30 days after the day the notice of the assessment or levy is mailed to the member,

- (a) the compensation association may claim the amount of the assessment or levy, with interest, as a debt due from the member; and
- (b) the Superintendent may cancel the licence of the member.

Cessation of debt

(5) The debt due under paragraph (4)(a) does not cease to be due on the termination of the membership of the insurer in the compensation association.

Exemptions

(6) Subsections (1) and (1.1) do not apply to an insurer

- (a) designated under paragraph 19(d); or
- (b) whose business is limited to the business of reinsurance.
R.S.N.W.T. 1988,c.37(Supp.),s.2,3;
R.S.N.W.T. 1988,c.99(Supp.),s.2.

Designations

19. The Minister may, by order, designate

- (a) a body corporate or an unincorporated association as a compensation association;
- (b) a compensation association for one or more classes of insurance;
- (c) a class of insurance for the purposes of paragraph 18(1)(k) or (1.1)(d); and
- (d) an insurer as being adequately covered by a plan to compensate its policy holders and eligible claimants on the insolvency of the insurer other than a plan of compensation provided by a compensation association.
R.S.N.W.T. 1988,c.37(Supp.),s.4.

Report on assets and contraventions

20. (1) If the Superintendent, on examination, or from annual statements or on other evidence, finds

- (a) that the assets of an insurer are insufficient to justify it continuing in business or to provide proper security to persons effecting insurance with it in Nunavut; or
- (b) that an insurer has failed to comply with any provision of law or with its Act or instrument of incorporation or association,

the Superintendent shall report the findings to the Minister.

Suspension or cancellation of licence

(2) The Minister may instruct the Superintendent to suspend or cancel the licence of an insurer if the Minister, after consideration of a report under subsection (1) and after giving the insurer a reasonable opportunity to be heard, and on any further inquiry and investigation that the Minister thinks proper to make, concurs with the report of the Superintendent.

Notice

(3) Notice of a suspension or cancellation under this section must be published in the *Nunavut Gazette* and elsewhere as the Minister directs and after the publication every person transacting business on behalf of the insurer, except for winding-up purposes, is guilty of an offence.

Modified, limited or conditional licence

(4) Where the Superintendent has reported as provided in subsection (1), the Minister may direct the issue of such modified, limited or conditional licence as is considered necessary for the protection of persons in Nunavut who have effected or effect contracts of insurance with the insurer.

Further grounds for suspension or cancellation

(5) Where the licence of an insurer is suspended or cancelled elsewhere in Canada, the Superintendent may suspend or cancel the licence of the insurer under this Act. S.Nu. 2010,c.14,s.9(13).

Statistical returns

21. (1) Every licensed insurer that carries on in Nunavut the business of automobile insurance, fire insurance, property damage insurance or sprinkler leakage insurance shall prepare and file, when required, with the Superintendent or with the statistical agency that the Superintendent may designate, the statistical return of the experience of that business that the Superintendent may require and in the form and manner and according to the system of classification that the Superintendent may approve.

Compilation of data

(2) The Superintendent may require any agency designated under subsection (1) to compile the data so filed in the form that the Superintendent may approve, and the expense of making the compilation shall be apportioned among the insurers whose data is

compiled by the agency by the Superintendent who shall certify in writing the amount due from each insurer and that amount is payable by the insurer to the agency without delay.

Audit and direction where records not duly kept

(3) If at any time it appears to the Superintendent that an insurer's record of premium income and claims paid are not kept in such a manner as to show correctly the experience of the insurer for the purposes of the statistical return, the Superintendent may nominate a competent accountant to proceed under the direction of the Superintendent to audit the books and records of the insurer and to give instructions that will enable the officers of the insurer to keep the records correctly after that.

Expenses of audit

(4) The expense of an audit under subsection (3) shall be borne by the insurer and the account shall, when certified and approved under the signature of the Superintendent, be paid by the insurer without delay.

Offence

(5) Every insurer that contravenes this section and the principal officer in Nunavut of any such insurer are guilty of an offence. S.Nu. 2010,c.14,s.9(13).

Information respecting automobile insurance claims

21.1. (1) Every licensed insurer that carries on in Nunavut the business of automobile insurance shall file, when required, with the Superintendent or with the statistical agency that the Superintendent may designate, information that is requested by the Superintendent respecting each claim made by an insured under a contract for automobile insurance.

Included information

(2) The information requested by the Superintendent may include information that identifies the insured and the driver involved in each accident for which a claim was made.

Access to information

(3) Despite the *Access to Information and Protection of Privacy Act*, the Superintendent may make information about an insured or about any party to an application referred to in subparagraph (a)(ii) that is collected under subsection (1) available, either directly or through an agency designated by the Superintendent and on terms and conditions satisfactory to the Superintendent, to

- (a) an insurer that
 - (i) undertakes or agrees or offers to undertake contracts of automobile insurance, and
 - (ii) has a written application signed by the insured;

- (b) auditors of the statistical agency referred to in subsection (1); or
 - (c) the insured.
- R.S.N.W.T. 1988,c.99(Supp.),s.3; S.Nu. 2007,c.8,s.8;
S.Nu. 2010,c.14,s.9(13).

Annual statement

22. (1) Every licensed insurer shall prepare annually and deliver to the Superintendent on or before the last day of February of each year, a statement of the condition of affairs of the insurer as at December 31 immediately preceding.

Form and contents

(2) The statement must

- (a) be in a form determined by the Superintendent;
- (b) show the assets, liabilities, receipts and expenditures of the insurer for the year ended on the date referred to in subsection (1) and the particulars of the business done in Nunavut during that year;
- (c) show any other information that the Superintendent considers necessary; and
- (d) be verified in a manner that may be determined by the Superintendent.

Who may verify statement

(3) In the case of a corporation, the statement shall be verified by the president, vice-president or managing director or other director appointed for that purpose by the board of directors and by the secretary or manager of the corporation.

Reply to inquiries

(4) An insurer shall, when required by the Superintendent, make prompt and explicit answer in reply to any inquiry directed to the insurer by the Superintendent in relation to the statement or in relation to the transactions of the insurer in Nunavut.

Unearned premiums

(5) Subject to subsection (6), in the case of all classes of insurance, other than life insurance, and in the case of all insurers, the statement must show as a liability of the insurer not less than 80% of the actual portions of unearned premiums on all business in force on the December 31 immediately preceding or not less than 80% of 50% of the premiums written in its policies and received in respect of contracts having one year or less to run and *pro rata* on those for longer periods.

Reverse liability on non-cancellable accident and sickness insurance

(6) In the case of non-cancellable accident and sickness insurance, the statement must show as a liability of the insurer, a reserve computed on the bases and in accordance with the methods that will place an adequate value on the liabilities thereunder, but in no case shall the value placed on the benefits under any policy be less than the value placed on the future premiums.

Status of accounts receivable and unauthorized investments

(7) The statement shall not

- (a) show as assets
 - (i) the unpaid balances owing by agents or other insurers in respect of business written before October 1 in the immediately preceding year,
 - (ii) bills receivable on account of that business,
 - (iii) unpaid capital or premium on subscribed shares of capital stock, or
 - (iv) investment in office furnishings or equipment; or
- (b) include as assets any investments not authorized by any special or general statute to which the insurer is subject.

Valuation of securities

(8) Every licensed insurer may, in its statement or in any valuation of its securities required to be made, value all of its securities having a fixed term and rate and not in default as to principal or interest according to the following rule, namely, if purchased at par, at the par value, if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made, but the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, and the Superintendent has full discretion in determining the method of calculating values according to this rule. S.N.W.T. 1998,c.24,s.12(2); S.Nu. 2010,c.14,s.9(13).

Published statements

23. No statement purporting to show the financial condition of an insurer that differs from the financial condition shown by the statement filed with the Superintendent, and no balance sheet or other statement that differs in form from the form approved by the Superintendent shall be published or circulated, and every insurer publishing such a statement is guilty of an offence. S.N.W.T. 1998,c.24,s.12(3).

Statements of financial standing

24. Every person who represents orally or in writing that the issue of a licence to an issuer or the printing or publication of an annual statement in any report or publication of the Superintendent or any other circumstance of the supervision or regulation of the business of the insurer by law or the Superintendent is a warranty or guarantee of the financial standing of the insurer or of its ability to provide for the payment of its contracts at maturity is guilty of an offence.

Definition of "variable insurance contract"

25. In sections 26 to 29 and 38, "variable insurance contract" means an annuity or life insurance contract for which all or a part of its reserves vary in amount with the market value of a specified group of assets held in a separate and distinct fund and includes a provision in a life insurance contract under which policy dividends or policy proceeds may be retained for investment in such a fund.

Prohibition

26. (1) No insurer shall issue or offer to enter into a variable insurance contract in Nunavut until

- (a) there has been filed with the Superintendent
 - (i) a specimen form of the variable insurance contract,
 - (ii) an information folder relating to the variable insurance contract, and
 - (iii) any other material that may be required under the regulations; and
- (b) a receipt evidencing the filing has been obtained from the Superintendent.

Forms

(2) The form of a variable insurance contract and an information folder must comply with the requirements of Part IV and the regulations.

Contents of information folder

(3) The information folder must contain

- (a) a brief and clear disclosure of all material facts relating to the variable insurance contract; and
 - (b) a certificate that all material facts have been disclosed signed by the chief executive officer and the chief financial officer of the insurer or other persons that may be prescribed.
- S.Nu. 2010,c.14,s.9(13).

Delivery to applicant

27. No insurer shall accept an application for a variable insurance contract until the insurer has delivered to the applicant a copy of the latest information folder relating to the variable insurance contract that is on file with the Superintendent.

New information folders

28. An insurer that issues a variable insurance contract shall

- (a) immediately after the occurrence of any material change in the contract or in any other facts set out in the latest information folder filed; and
- (b) within 13 months after the date of filing of the latest information folder, or other period of time that may be prescribed,

file with the Superintendent a new information folder in respect of the variable insurance contract.

Report to Minister

29. (1) Where it appears to the Superintendent that

- (a) an information folder or any other document filed with the Superintendent by an insurer, with respect to a variable insurance contract;

- (i) fails to comply in any substantial respect with the requirements of this Act or the regulations,
 - (ii) contains any promise, estimate, illustration or forecast that is misleading, false or deceptive, or
 - (iii) conceals or omits to state any material fact necessary in order to make any statement contained in it not misleading in the light of the circumstances in which it was made; or
- (b) the financial condition of the insurer or its method of operation in connection with the issuance of its variable insurance contracts will not afford sufficient protection to prospective purchasers of its variable insurance contracts in Nunavut,

the Superintendent shall report it to the Minister.

Prohibition order

(2) The Minister, if the Minister concurs with the report and after affording the insurer an opportunity to be heard, may order the Superintendent to prohibit the insurer from continuing to issue such variable insurance contracts in Nunavut.

S.Nu. 2010,c.14,s.9(13).

Separate accounts

30. Every insurer licensed to transact life insurance shall keep separate and distinct accounts of participating and non-participating business.

INSURANCE WITH UNLICENSED INSURERS

Insurance with unlicensed insurers

31. Despite anything in this Act, any person may insure property situated in Nunavut against fire with an unlicensed insurer, and any property insured or to be insured under this section may be inspected and any loss incurred in respect of that property adjusted, if that insurance is effected outside Nunavut and without any solicitation directly or indirectly on the part of the insurer. S.Nu. 2010,c.14,s.9(13).

GENERAL

Trafficking in life insurance policies

32. Every person, other than an insurer or its duly authorized agent, who advertises or holds himself or herself out as a purchaser of life insurance policies or of benefits under life insurance policies, or who trafficks or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation of life insurance policies to himself or herself or any other person, is guilty of an offence.

Privileged information

33. Any information, document, record, statement or thing made or disclosed to the Superintendent concerning a person licensed or applying for a licence under this Act is absolutely privileged and shall not be used as evidence in any action or proceeding in any court brought by or on behalf of that person.

Filing form of policy

34. (1) The Superintendent may require an insurer to file with the Superintendent a copy of any form of policy or of the form of application for any policy issued or used by the insurer.

Prohibition of certain policies

(2) The Superintendent shall report to the Minister any case where an insurer issues a policy or uses an application that, in the opinion of the Superintendent, is unfair, fraudulent or not in the public interest and, after hearing the insurer, the Minister may, if the Minister concurs with the report, order the Superintendent to prohibit the insurer from issuing or using that form of policy or application, and every insurer that issues that policy or uses that application after being so prohibited is guilty of an offence.

Effect of contravention of law on claim for indemnity

35. Unless the contract otherwise provides, a contravention of any criminal or other law in force in Nunavut or elsewhere does not of itself render unenforceable a claim for indemnity under a contract of insurance except where the contravention is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage but in the case of a contract of life insurance this section applies only to disability insurance undertaken as part of the contract. S.Nu. 2010,c.14,s.9(13).

Where insurer withholds payment

36. Where an insurer wrongfully withholds payment of any sum of money due to an insured under a contract of insurance, the insurer is liable to pay to the insured interest on that sum from the date it became due and payable at the prescribed rate.

OFFENCES AND PUNISHMENT

General offence and punishment

37. (1) Unless otherwise provided, every person who knowingly,

- (a) provides false information in an application under this Act or in a statement, return or answer required to be provided under this Act or the regulations;
- (b) fails to comply with an order, direction or other requirement made under this Act; or
- (c) contravenes this Act or the regulations,

and every director or officer of an insurer who knowingly concurs in that providing, failure or contravention is guilty of an offence and liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Exemption for insurer

(2) Where an insurer is convicted of an offence under subsection (1), the maximum punishment that may be imposed on the insurer is \$25,000 and not as provided in subsection (1).

Suspension of licence

(3) In addition to the punishment set out in subsection (2), where an insurer contravenes the prohibitions or fails to comply with the requirements of this Act, the Superintendent may suspend or cancel the licence of the insurer.

Punishment for carrying on business without licence

(4) Every person who

- (a) undertakes insurance or carries on business as an insurer in Nunavut;
- (b) acts on behalf of an insurer in Nunavut; or
- (c) does or performs any one or more of the acts constituting the business of insurance,

in relation to any class of insurance without being licensed for that class, is guilty of an offence and liable on summary conviction to a fine not exceeding \$25,000.

Punishment for default in making returns

(5) In case of default in making a return required by this Act to be made within a limited time, the insurer or the person required by this Act to make the return shall, in addition to the fine provided by subsection (1), incur a further fine of \$100 for every month or part of a month during which the insurer or person neglects to file the return.

Burden of proof of licence

(6) In any prosecution under this Act, whenever it appears that the accused has done an act or been guilty of an omission in respect of which the accused would be liable to a punishment under this Act or the regulations, unless the accused is duly licensed, the burden is on the accused to prove that he or she is duly licensed.

Recovery and disposition of fines

(7) The fines imposed under this Act are recoverable under summary conviction proceedings and when recovered shall be deposited to the credit of the Government of Nunavut. S.Nu. 2010,c.14,s.9(13).

REGULATIONS

Regulations

38. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) determining and defining classes of insurance and classes of licences for the purposes of this Act;
- (b) respecting the form and content of variable insurance contracts;
- (c) respecting the form, content, time of filing and delivery of information folders, the persons to whom information folders must be delivered and the persons who may sign the certificate contained in an information folder;
- (d) requiring the providing of information by an insurer or its agent to prospective purchasers of variable insurance contracts;

- (e) respecting the documents, reports, statements, agreements and other information required to be filed, provided or delivered under sections 26 to 28 and the form and content of them;
 - (f) requiring the payment of fees for licences and renewals of licenses and in respect of any function performed by the Superintendent under this Act and prescribing the amounts of those fees;
 - (g) extending the provisions of this Act or any of them to a system or class of insurance not particularly mentioned in this Act;
 - (h) governing group insurance contracts or schemes, or any class of group insurance contracts or schemes, including providing for and regulating their terms and conditions, qualifications for membership in groups and regulating the marketing of group insurance contracts or schemes;
 - (i) governing the advertising of insurance contracts, or any class of insurance contracts, including providing for and regulating the form and content of advertisements and requiring their filing;
 - (j) amending or altering the terms, conditions, provisions, exclusions and limits set out in the Schedule;
 - (k) respecting the form of the statement, balance sheet and other statements referred to in section 23;
 - (l) prescribing the rate of interest referred to in section 36; and
 - (m) generally for the better administration of this Act.
- S.N.W.T. 1998,c.24,s.12(4),(5).

PART II

CONTRACTS OF INSURANCE IN NUNAVUT

CONTRACTS OF INSURANCE

Application

39. Except where otherwise provided and where not inconsistent with other provisions of this Act, this Part applies to every contract of insurance made in Nunavut, other than contracts of

- (a) accident and sickness insurance;
- (b) life insurance;
- (c) marine insurance; and
- (d) workers' compensation insurance.

S.Nu. 2010,c.14,s.9(13).

Contracts deemed to be made in Nunavut

40. Where the subject-matter of a contract of insurance is property in Nunavut or an insurable interest of a person resident in Nunavut, the contract of insurance, if signed, countersigned, issued or delivered in Nunavut or committed to the post office or to any carrier, messenger or agent to be delivered or handed over to the insured, his or her assign or agent in Nunavut shall be deemed to evidence a contract made in Nunavut, and the

contract shall be construed according to the law of Nunavut, and all moneys payable under the contract shall be paid at the office of the chief officer or agent in Nunavut of the insurer in lawful money of Canada. S.Nu. 2010,c.14,s.9(13).

Application

41. (1) This section does not apply to contracts of fire or automobile insurance.

Terms and conditions of contract

(2) All the terms and conditions of the contract of insurance must be set out in full in the policy or by writing securely attached to it when issued, and, unless so set out, no term of the contract or condition, stipulation, warranty or proviso modifying or impairing its effect is valid or admissible in evidence to the prejudice of the insured or beneficiary.

Exemption

(3) Subsection (2) does not apply to an alteration or modification of the contract agreed on in writing by the insurer and the insured after the issue of the policy.

Contents of renewal receipt

(4) Whether the contract does or does not provide for its renewal, but it is renewed by a renewal receipt, it is a sufficient compliance with subsection (2) if the terms and conditions of the contract are set out as provided by that subsection and the renewal receipt refers to the contract by its number or date.

What regard to be given to proposal

(5) The proposal or application of the insured shall not as against the insured be deemed a part of or be considered with the contract of insurance except insofar as the court determines that it contains a material misrepresentation by which the insurer was induced to enter into the contract.

Erroneous statement in application for contract

(6) No contract of insurance shall contain or have endorsed on it, or be made subject to, any term, condition, stipulation, warranty or proviso providing that the contract shall be avoided by reason of any statement in the application for the contract, or inducing the entering into of the contract by the insurer, unless the term, condition, stipulation, warranty or proviso is and is expressed to be limited to cases in which the statement is material to the contract, and no contract shall be avoided by reason of the inaccuracy of any such statement unless it is material to the contract.

Materiality

(7) The question of materiality in a contract of insurance is a question of fact for the jury, or for the court if there is no jury, and no admission, term, condition, stipulation, warranty or proviso to the contrary contained in the application or proposal for insurance, or in the instrument of contract or in any agreement or document relating to it, has any force or validity.

Copy of proposal

42. An insurer shall on request provide the insured with a true copy of his or her application or proposal for insurance.

Inconsistency with Act

43. (1) No insurer shall make a contract of insurance inconsistent with this Act.

Rights of insured

(2) An act or omission of the insurer resulting in imperfect compliance with this Act does not render a contract invalid as against the insured.

Contents of policy

44. (1) Every policy must contain the following:

- (a) the name of the insurer;
- (b) the name of the insured;
- (c) the name of the person or persons to whom the insurance money is payable;
- (d) the amount, or the method of determining the amount, of the premium for the insurance;
- (e) the subject-matter of the insurance;
- (f) the indemnity for which the insurer may become liable;
- (g) the event on the happening of which the liability is to accrue;
- (h) the date on which the insurance takes effect;
- (i) the date on which the insurance terminates or the method by which that date is fixed or to be fixed.

Exemption

(2) Subsection (1) does not apply to contracts of guarantee insurance.

Application

45. (1) This section applies to a contract containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.

Appraisals

(2) The insured and the insurer shall each appoint an appraiser, and the two appraisers shall appoint an umpire.

Matters in disagreement

(3) The appraisers shall determine the matters in disagreement and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters.

Costs

(4) Each party to the appraisal shall pay the appraiser appointed by that party and shall bear equally the expense of the appraisal and the umpire.

Appointment by judge

(5) Where

- (a) a party fails to appoint an appraiser within seven clear days after being served with written notice to do so;
- (b) the appraisers fail to agree on an umpire within 15 days after their appointment; or
- (c) an appraiser or umpire refuses to act or is incapable of acting or dies,

a judge may appoint an appraiser or umpire, as the case may be, on the application of the insured or of the insurer. S.Nu. 2010,c.14,s.9(13).

Relief from forfeiture

46. Where

- (a) there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss and a consequent forfeiture or avoidance of the insurance in whole or in part; and
- (b) the court considers it inequitable that the insurance should be forfeited or avoided on that ground,

the court may relieve against the forfeiture or avoidance on the terms that it considers just.

How policy payable

47. Insurance money is payable in Nunavut in lawful money of Canada. S.Nu. 2010,c.14,s.9(13).

Waiver of term or condition

48. (1) No term or condition of a contract shall be deemed to be waived by the insurer in whole or in part unless the waiver is stated in writing and signed by a person authorized for that purpose by the insurer.

Idem

(2) Neither the insurer nor the insured shall be deemed to have waived any term or condition of a contract by any act relating to the appraisal of the amount of loss or to the delivery and completion of proofs or to the investigation or adjustment of any claim under the contract.

Right of claimant against insurer where execution against insured returned unsatisfied

49. (1) Where a person

- (a) incurs a liability for injury or damage to the person or property of another;
- (b) is insured against that liability; and
- (c) fails to satisfy a judgment awarding damages against him or her in respect of his or her liability,

and an execution against the person in respect of that judgment is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

Exemption

(2) Subsection (1) does not apply to motor vehicle liability policies.

Consolidation of actions

50. (1) Where several actions are brought for the recovery of money payable under a contract or contracts of insurance, the court may consolidate or otherwise deal with the actions so that there is only one action for and in respect of all the claims made in the actions.

Where infants are entitled to insurance money

(2) Where an action is brought to recover the share of one or more infants, all the other infants entitled, or the trustees, executors or guardians entitled to receive payment of the shares of the other infants, shall be made parties to the action, and the rights of all the infants shall be determined in one action.

Apportionment of sums directed to be paid

(3) In all actions where several persons are interested in the insurance money, the court or judge may apportion among the persons entitled any sum directed to be paid, and may give all necessary directions and relief.

Foreign domicile or residence

(4) Where the person entitled to receive money due and payable under a contract of insurance, except insurance of the person, is domiciled or resides in a foreign jurisdiction and payment, valid according to the law of that jurisdiction, is made to the person, the payment is valid and effectual for all purposes.

Effect of delivery of policy

51. (1) Where a policy has been delivered, the contract is as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who did not have the authority to deliver it.

Unpaid premium

(2) An insurer may sue for an unpaid premium and may deduct the amount of the unpaid premium from the amount for which the insurer is liable under the contract of insurance.

Where note or cheque for premium not honoured

(3) Where a cheque, bill of exchange or promissory note is given, whether originally or by way of renewal, for the whole or part of a premium and the cheque, bill of exchange or promissory note is not honoured according to its tenor, the insurer may terminate the contract on giving written notice by registered mail to the insured.

Forms provided by insurer

52. (1) An insurer, immediately on receipt of a request, and in any event not later than 60 days after receipt of notice of loss, shall provide to the insured or person to whom the insurance money is payable with forms on which to make the proof of loss required under the contract.

Offence

(2) Every insurer who neglects or refuses to comply with subsection (1) is guilty of an offence, and section 53 is not available to the insurer as a defence to an action brought, after the neglect or refusal, for the recovery of moneys alleged to be payable under the contract of insurance.

Effect of providing forms

(3) The providing by an insurer of forms to make proof of loss shall not be taken to constitute an admission by the insurer that a valid contract is in force or that the loss in question falls within the insurance provided by the contract.

When action may be commenced under contract

53. An action for the recovery of money payable under a contract of insurance may not be commenced until the expiration of 60 days after proof, in accordance with the provisions of the contract,

- (a) of the loss; or
- (b) of the happening of the event on which the insurance money is to become payable,

or of a shorter period that is fixed by the contract of insurance.

INSURANCE AS COLLATERAL SECURITY

Commission from insurer to mortgagee

54. (1) No mortgagee shall accept or be entitled to receive either directly or through his or her agent or employee, and no officer or employee of a mortgagee shall accept or receive, any commission or other remuneration or benefit in consideration of effecting a contract of insurance or renewal of a contract of insurance, under which contract loss, if any, is payable to him or her as mortgagee.

Payment of commission

(2) No insurer or agent or broker shall pay, allow or give any commission or other remuneration or benefit to a mortgagee or to any person in his or her employ or on his or her behalf in consideration of effecting a contract of insurance or renewal of a contract of insurance, under which contract loss, if any, is payable to him or her as mortgagee.

Offence

(3) Every insurer or other person who contravenes this section is guilty of an offence.

Right to refund of premium on termination of contract

55. (1) Where

- (a) an insured assigns the right to refund of premium that may accrue by reason of the cancellation or termination of a contract of insurance under the terms of the contract of insurance; and
 - (b) notice of the assignment is given by the assignee to the insurer,
- the insurer shall pay any such refund to the assignee notwithstanding any condition in the contract, whether prescribed under this Act or not, requiring the refund to be paid to the insured or to accompany any notice of cancellation or termination to the insured.

Statement in notice

(2) Where the condition in the contract dealing with cancellation or termination by the insurer provides that the refund shall accompany the notice of cancellation or termination, the insurer shall include in the notice a statement that in place of payment of the refund in accordance with the condition the refund is being paid to the assignee under this section.

CONTRACTS OF TITLE INSURANCE

Contracts of title insurance

56. (1) Every contract of title insurance must be in writing and, in addition to the other requirements imposed by this Act, must expressly limit the liability of the insurer to a sum stated in the contract.

Limitations and conditions

(2) Every contract of title insurance is subject to the limitations and conditions that no policy of title insurance shall be issued unless the insurer has first obtained a concurrent certificate of title to the property to be insured from a solicitor then entitled to practise in Nunavut who is not at that time in the employ of the insurer.
S.Nu. 2010,c.14,s.9(13).

GENERAL

Racial or religious discrimination

57. Every licensed insurer that discriminates unfairly between risks in Nunavut because of the race or religion of the insured is guilty of an offence.
S.Nu. 2010,c.14,s.9(13).

Payment into court

58. (1) Where an insurer cannot obtain a sufficient discharge for insurance money for which it admits liability, the insurer may apply to the Court *ex parte* for an order for the payment of it into court, and the Court may order the payment into court to be made on the terms as to costs and otherwise that the Court may direct, and may provide to what fund or name the amount shall be credited.

Discharge to insurer

(2) The receipt of the proper officer of the Court is sufficient discharge to the insurer for the insurance money paid into court pursuant to subsection (1), and the insurance money shall be dealt with according to the orders of the Court.

S.Nu. 2010,c.14,s.9(13).

PART III

FIRE INSURANCE

Application of Part

59. (1) This Part applies to insurance against loss of or damage to property arising from the peril of fire in any contract made in Nunavut except,

- (a) insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance;
- (b) where the subject-matter of the insurance is rents, charges or loss of profits;
- (c) where the peril of fire is an incidental peril to the coverage provided; or
- (d) where the subject-matter of the insurance is property that is insured by an insurer or a group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

Automobiles

(2) Despite subsection (1), this Part applies to insurance of an automobile as provided in subsection 12(2). S.Nu. 2010,c.14,s.9(13).

Extent of coverage by contract

60. (1) Subject to subsection (4) and paragraph 67(a), in any contract to which this Part applies, the contract shall be deemed to cover the insured property,

- (a) against fire, whether resulting from explosion or otherwise, not occasioned by or happening through,
 - (i) in the case of goods, their undergoing any process involving the application of heat, or
 - (ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities, whether war be declared or not, civil war, rebellion, revolution, insurrection or military power;
- (b) against lightning, but excluding destruction or loss to electrical devices or appliances caused by lightning or other electrical currents unless fire originates outside the article itself and only for the destruction or damage as occurs from the fire; and

- (c) against explosion not occasioned by or happening through any of the perils specified in subparagraph (a)(ii) of natural, coal or manufactured gas in a building not forming part of a gas works, whether fire ensues from the explosion or not.

Radioactive contamination

(2) Unless a contract to which this Part applies otherwise specifically provides, it does not cover the insured property against loss or damage caused by contamination by radioactive material directly or indirectly resulting from fire, lightning or explosion within the meaning of subsection (1).

Coverage where property removed

(3) Where property insured under a contract covering at a specified location is necessarily removed to prevent loss or damage or further loss or damage to the property, that part of the insurance under the contract that exceeds the amount of the insurer's liability for any loss incurred covers, for seven days only or for the unexpired term of the contract if less than seven days, the property removed and any property remaining in the original location in the proportions that the value of the property in each of the respective locations bears to the value of the property in them all.

Extended insurance

(4) Nothing in subsection (1) precludes an insurer giving more extended insurance against the perils mentioned in that subsection, but in that case this Part does not apply to the extended insurance.

Power to extend meaning of "lightning" in livestock contracts

(5) An insurer licensed to carry on fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of livestock insured against death or injury caused by fire or lightning, the word "lightning" shall be deemed to include other electrical currents.

Form of contract

61. After an application for insurance is made, if it is in writing, any policy sent to the insured shall be deemed to be intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars in which respect it differs from the application, in which case the insured may, within two weeks after the receipt of the notification, reject the policy.

Renewal

62. A contract may be renewed by the delivery to the insurer or agent of a renewal receipt identifying the policy by number, date or otherwise.

Notice to other persons

63. (1) Where the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer shall not cancel or alter the policy to the prejudice of that person without notice to that person.

Form of notice

(2) The length of time for and manner of giving the notice under subsection (1) is the same as notice of termination to the insured under the statutory conditions in the contract.

Definition of "policy"

64. (1) In this section, "policy" does not include interim receipts or binders.

Statutory conditions

(2) The conditions set out in this section shall be deemed to be part of every contract in force in Nunavut and shall be printed on every policy with the heading "Statutory Conditions" and no variation or omission of or addition to any statutory condition is binding on the insured.

STATUTORY CONDITIONS

Misrepresentation

1. If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

Property of others

2. Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.

Change of interest

3. The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) or change of title by succession, by operation of law, or by death.

Material changes

4. Any change material to the risk and within the control and knowledge of the insured avoids the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent, and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium, and in default of such payment the contract is no longer in force and the insurer shall return the unearned portion, if any, of the premium paid.

Termination

5. (1) This contract may be terminated,
- (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;
 - (b) by the insured at any time on request.
- (2) Where this contract is terminated by the insurer,
- (a) the insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but, in no event, shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and
 - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order or cheque payable at par.
- (5) The fifteen days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Requirement after loss

6. (1) Upon the occurrence of any loss of or damage to the insured property, the insured shall, if the loss or damage is covered by the contract, in addition to observing the requirements of conditions 9, 10 and 11,
- (a) forthwith give notice thereof in writing to the insurer;
 - (b) deliver as soon as practicable to the insurer a proof of loss verified by a statutory declaration,
 - (i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,
 - (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,
 - (iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,
 - (iv) showing the amount of other insurances and the names of other insurers,

- (v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,
- (vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract,
- (vii) showing the place where the property insured was at the time of loss;
- (c) if required, give a complete inventory of undamaged property and showing in detail quantities, cost and actual cash value;
- (d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration and furnish a copy of the written portion of any other contract.

(2) The evidence furnished under clauses (c) and (d) of subparagraph (1) of this condition shall not be considered proofs of loss within the meaning of conditions 12 and 13.

Fraud

7. Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars vitiates the claim of the person making the declaration.

Who may give notice and proof

8. Notice of loss may be given and proof of loss may be made by the agent of the insured named in the contract in case of absence or inability of the insured to give notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Salvage

9. (1) The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereon.

(2) The insurer shall contribute *pro rata* towards any reasonable and proper expenses in connection with steps taken by the insured and required under subparagraph (1) of this condition according to the respective interests of the parties.

Entry, control, abandonment

10. After loss or damage to insured property, the insurer has an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisal or particular estimate of the loss or damage, but the insurer is not entitled to

the control or possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property.

Appraisal

11. In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

When loss payable

12. The loss is payable within sixty days after completion of the proof of loss, unless the contract provides for a shorter period.

Replacement

13. (1) The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within thirty days after receipt of the proofs of loss.

(2) In that event the insurer shall commence to so repair, rebuild, or replace the property within forty-five days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

Action

14. Every action or proceeding against the insurer for the recovery of a claim under or by virtue of this contract is absolutely barred unless commenced within two years next after the loss or damage occurs.

Notice

15. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in Nunavut. Written notice may be given to the insured named in the contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada. S.N.W.T. 1995,c.11,s.25; S.Nu. 2010,c.14,s.9(13).

Limitation of liability clause

- 65.** A contract containing
- (a) a deductible clause;
 - (b) a co-insurance, average or similar clause; or
 - (c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional,

shall have printed or stamped on its face in bold print not less than 12 points in size or red ink the words "This policy contains a clause that may limit the amount payable", failing which the clause is not binding on the insured. S.N.W.T. 1991-92,c.31,s.2.

Rateable contribution

66. (1) Where on the happening of any loss or damage to property insured there is in force more than one contract covering the same interest, each of the insurers under the respective contracts is liable to the insured for its rateable proportion of the loss, unless it is otherwise expressly agreed in writing between the insurers.

Postponement of effect of policy

(2) For the purpose of subsection (1), a contract shall be deemed to be in force notwithstanding any term of the contract that the policy will not cover, come into force, attach or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

Certain restrictions valid

(3) Nothing in subsection (1) affects the validity of any divisions of the sum insured into separate items, or any limits of insurance on specified property, or any clause referred to in section 65 or any contract condition limiting or prohibiting the having or placing of other insurance.

Ascertainment of *pro rata* proportions

- (4) Nothing in subsection (1) affects the operation of any deductible clause and,
- (a) where one contract contains a deductible, the *pro rata* proportion of the insurer under that contract shall be first ascertained without regard to the clause and then the clause shall be applied only to affect the amount of recovery under that contract; and
 - (b) where more than one contract contains a deductible, the *pro rata* proportion of the insurers under those contracts shall be first ascertained without regard to the deductible clauses and then the highest deductible shall be prorated among the insurers with deductibles and these prorated amounts shall affect the amount of recovery under those contracts.

Construction

(5) Nothing in subsection (4) shall be construed to have the effect of increasing the *pro rata* contribution of an insurer under a contract that is not subject to a deductible clause.

Insurance on identified articles

(6) Despite subsection (1), insurance on identified articles is a first loss insurance as against all other insurance. S.Nu. 2010,c.14,s.9(13).

Special stipulations

- 67.** Where a contract,
- (a) excludes any loss that would otherwise fall within the coverage set out in section 60; or
 - (b) contains a stipulation, condition or warranty that is or may be material to the risk including, but not restricted to, a provision in respect to the use, condition, location or maintenance of the insured property,
- the exclusion, stipulation, condition or warranty is not binding on the insured if it is held to be unjust or unreasonable by the court before which a question relating to it is tried.

Subrogation

- 68.** (1) The insurer, on making a payment or assuming liability for a payment under a contract of fire insurance, is subrogated to all rights of recovery of the insured against any person, and may bring an action in the name of the insured to enforce those rights.

Where amount recovered is not sufficient to indemnify

- (2) Where the net amount recovered under subsection (1), after deducting the costs of recovery, is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount shall be divided between the insurer and the insured in the proportions in which the loss or damage has been borne by them respectively.

PART IV

LIFE INSURANCE

INTERPRETATION

Definitions

- 69.** In this Part,

"application" means an application for insurance or for the reinstatement of insurance;
(*proposition*)

"beneficiary" means a person, other than the insured or his or her personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration; (*bénéficiaire*)

"contract" means a contract of life insurance; (*contrat*)

"creditor's group insurance" means insurance effected by a creditor in respect of the lives of his or her debtors by which the lives of the debtors are insured severally under a single contract; (*assurance collective de créancier*)

"declaration" means an instrument signed by the insured

- (a) with respect to which an endorsement is made on the policy,
- (b) that identifies the contract, or
- (c) that describes the insurance or insurance fund or a part of it,

in which the insured designates, or alters or revokes the designation of, his or her personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable; (*déclaration*)

"family insurance" means insurance by which the lives of the insured and one or more persons related to the insured by blood, marriage or adoption are insured under a single contract between an insurer and the insured; (*assurance familiale*)

"group insurance" means insurance, other than creditor's group insurance and family insurance, by which the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person; (*assurance collective*)

"group life insured" means a person whose life is insured by a contract of group insurance but does not include a person whose life is insured under the contract as a person dependent on or related to him or her; (*personne assurée par une assurance collective sur la vie*)

"instrument" includes a will; (*acte juridique*)

"insurance" means life insurance; (*assurance*)

"insured" means

- (a) in the case of group insurance, in the provisions of this Part relating to the designation of beneficiaries and the rights and status of beneficiaries, the group life insured, and
- (b) in all other cases, the person who makes a contract with an insurer; (*assuré*)

"life insurance" includes disability insurance and accidental death insurance; (*assurance-vie*)

"will" includes codicil. (*testament*)

S.Nu. 2010,c.14,s.9(4).

APPLICATION OF PART

Application

70. (1) Despite any agreement, condition or stipulation to the contrary, this Part applies to a contract made in Nunavut or the Territories on or after July 1, 1966, and subject to subsections (2) and (3), applies to a contract made in Nunavut or the Territories before that day.

Beneficiary for value

(2) The rights and interests of a beneficiary for value under a contract that was in force immediately before July 1, 1966, are those provided in Part IV of the *Insurance Ordinance*, R.O.N.W.T. 1956, c.51, as it existed immediately before that day.

Preferred beneficiary

(3) Where the person who would have been entitled to the payment of insurance money, if the money had become payable immediately before July 1, 1966, was a preferred beneficiary within the meaning of Part IV of the *Insurance Ordinance*, R.O.N.W.T. 1956, c.51, as it existed immediately before that day, the insured may not, except in accordance with that Part,

- (a) alter or revoke the designation of a beneficiary; or
- (b) assign, exercise rights under or in respect of, surrender or otherwise deal with the contract,

but this subsection does not apply after a time at which the insurance money, if it were then payable, would be payable wholly to a person other than a preferred beneficiary within the meaning of that Part. S.Nu. 2010,c.14,s.9(13).

Group insurance

71. In the case of a contract of group insurance made with an insurer authorized to transact insurance in Nunavut at the time the contract was made, this Part applies in determining

- (a) the rights and status of beneficiaries if the group life insured was resident in Nunavut at the time he or she became insured; and
- (b) the rights and obligations of the group life insured if the group life insured was resident in Nunavut at the time he or she became insured.

S.Nu. 2010,c.14,s.9(13).

ISSUANCE AND CONTENTS OF POLICY**Issuing policy**

72. (1) An insurer entering into a contract shall issue a policy.

Documents forming contract

(2) Subject to subsection (3), the provisions in the following constitute the entire contract:

- (a) the application;
- (b) the policy;
- (c) any document attached to the policy when issued; and
- (d) any amendment to the contract agreed upon in writing after the policy is issued.

Contract of fraternal society

(3) In the case of a contract made by a fraternal society, the following constitutes the entire contract:

- (a) the policy;
- (b) the Act or instrument of incorporation of the fraternal society;
- (c) the constitution, by-laws and rules, and the amendments made to them, of a fraternal society;
- (d) the application for the contract; and
- (e) the medical statement of the applicant.

Copy of application

(4) An insurer shall, on request, provide the insured or a claimant under the contract with a copy of the application.

Application

- 73.** (1) Subsection (2) does not apply to a contract
- (a) of group insurance;
 - (b) of creditor's group insurance; or
 - (c) made by a fraternal society.

Contents of policy

(2) An insurer shall set out the following particulars in the policy:

- (a) the name or a sufficient description of the insured and of the person whose life is insured;
- (b) the amount or the method of determining the amount of the insurance money payable, and the conditions under which it becomes payable;
- (c) the amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid;
- (d) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer;
- (e) the conditions on which the contract may be reinstated if it lapses;
- (f) the options, if any,
 - (i) of surrendering the contract for cash,
 - (ii) of obtaining a loan or an advance payment of the insurance money, and
 - (iii) of obtaining paid-up or extended insurance.

Contents of group policy

74. In the case of a contract of group insurance or of creditor's group insurance, an insurer shall set out the following particulars in the policy:

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the persons whose lives are insured;

- (c) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid;
- (e) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer.

Contents of group certificate

75. In the case of a contract of group insurance, an insurer shall issue, for delivery by the insured to each group life insured, a certificate or other document in which are set out the following particulars:

- (a) the name of the insurer and an identification of the contract;
- (b) the amount or the method of determining the amount of insurance on the group life insured and on any person whose life is insured under the contract as a person dependent on or related to him or her;
- (c) the circumstances in which the insurance terminates and the rights, if any, on such termination, of the group life insured or of any person whose life is insured under the contract as a person dependent on or related to him or her.

CONDITIONS GOVERNING FORMATION OF CONTRACT

Insurable interest

76. (1) Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

Exceptions

- (2) A contract is not void for lack of insurable interest
 - (a) if it is a contract of group insurance; or
 - (b) if the person whose life is insured has consented in writing to the insurance being placed on his or her life.

Consent of person under 16 years

(3) Where the person whose life is insured is under the age of 16 years, consent to insurance being placed on the life of that person may be given by one of the parents of that person or by a person standing in the place of a parent for that person.

S.N.W.T. 1998,c.17,s.15.

Definition of "insurable interest"

77. Without restricting the meaning of the expression "insurable interest", a person has an insurable interest in his or her own life and in the life of

- (a) his or her child or grandchild;
- (b) his or her spouse;
- (c) any person on whom he or she is wholly or in part dependent for or from whom he or she is receiving support or education;

- (d) his or her employee; and
- (e) any person in the duration of whose life he or she has a pecuniary interest.

Contract taking effect

78. (1) Subject to any provision to the contrary in the application or the policy, a contract does not take effect unless

- (a) the policy is delivered to an insured, his or her assign or agent or to a beneficiary;
- (b) payment of the first premium is made to the insurer or its authorized agent; and
- (c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy was delivered.

Delivery to agent

(2) Where a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in paragraph (1)(a), it shall be deemed, but not to the prejudice of the insured, to have been delivered to the insured.

Death before delivery of policy

(3) Despite subsection (1), where an insured dies after payment of the first premium but before delivery of the policy, the policy shall be deemed to be in effect if full information on the life to be insured has been supplied and on the basis of this information a prudent insurer would have issued the policy. S.Nu. 2010,c.14,s.9(13).

Default in paying premium

79. (1) Where a cheque or other bill of exchange, or a promissory note or other written promise to pay, is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part of the premium shall be deemed not to have been paid.

Payment by registered mail

(2) Where a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by it, the remittance shall be deemed to have been received at the time of the registration of the letter.

Who may pay premium

80. (1) Except in the case of group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or of the insured may pay any premium that the insured is entitled to pay.

Period of grace

(2) Where a premium other than the initial premium is not paid at the time it is due, the premium may be paid within a period of grace of

- (a) 30 days or, in the case of an industrial contract, 28 days after and excluding the day on which the premium is due; or
- (b) the number of days, if any, specified in the contract for payment of an overdue premium,

whichever is the longer period.

Status of contract during period of grace

(3) Where the happening of the event on which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract shall be deemed to be in effect as if the premium had been paid at the time it was due, but the amount of the premium, together with interest at the rate specified in the contract, but not exceeding 6% per year, and the balance, if any, of the current year's premium, may be deducted from the insurance money.

Duty to disclose

81. (1) An applicant for insurance and a person whose life is to be insured shall each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers provided as evidence of insurability, every fact within his or her knowledge that is material to the insurance and is not so disclosed by the other.

Failure to disclose

(2) Subject to section 82, a failure to disclose or a misrepresentation of such a fact renders the contract voidable by the insurer.

Application

82. (1) This section does not apply to a misstatement of age or to disability insurance.

Uncontestability

(2) Subject to subsection (3), where a contract has been in effect for two years during the lifetime of the person whose life is insured, a failure to disclose or a misrepresentation of a fact required to be disclosed by section 81 does not, in the absence of fraud, render the contract voidable.

Uncontestability in group insurance

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact in respect of a person whose life is insured under the contract does not render the contract voidable, but, if evidence of insurability is specifically requested by the insurer, the insurance in respect of that person is voidable by the insurer unless it has been in effect for two years during the lifetime of that person, in which event it is not, in the absence of fraud, voidable.

Non-disclosure by insurer

83. Where an insurer fails to disclose or misrepresents a fact material to the insurance, the contract is voidable by the insured but in the absence of fraud the contract is not by reason of such failure or misrepresentation voidable after the contract has been in effect for two years.

Application

84. (1) This section does not apply to a contract of group insurance or of creditor's group insurance.

Misstatement of age

(2) Subject to subsection (3), where the age of a person whose life is insured is misstated to the insurer, the insurance money provided by the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age.

Limitation of insurable age

(3) Where a contract limits the insurable age and the correct age of the person whose life is insured at the date of the application exceeds the age so limited, the contract is, during the lifetime of that person but not later than five years after the date the contract takes effect, voidable by the insurer within 60 days after it discovers the error.

Misstatement of age in group insurance

85. In the case of a contract of group insurance or of creditor's group insurance, a misstatement to the insurer of the age of a person whose life is insured does not of itself render the contract voidable and the provisions, if any, of the contract with respect to age or misstatement of age apply.

Effect of suicide

86. (1) Where a contract contains an undertaking express or implied that insurance money will be paid if a person whose life is insured commits suicide, the undertaking is lawful and enforceable.

Suicide and reinstatement

(2) Where a contract provides that in case a person whose life is insured commits suicide within a certain period of time the contract is void or the amount payable under it is reduced, if the contract lapses and is subsequently reinstated on one or more occasions, the period of time commences to run from the date of the latest reinstatement.

Application

87. (1) This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

Reinstatement

(2) Where a contract lapses and the insured within two years applies for reinstatement of the contract, if within that time the insured

- (a) pays the overdue premiums and other indebtedness under the contract to the insurer, together with interest at the rate specified in the contract, but not exceeding 6% per year, compounded annually; and
- (b) produces
 - (i) evidence satisfactory to the insurer of the good health, and
 - (ii) other evidence satisfactory to the insurer of the insurability, of the person whose life was insured,

the insurer shall reinstate the contract.

Exceptions

(3) Subsection (2) does not apply where the cash surrender value has been paid or an option of taking paid-up or extended insurance has been exercised.

Application of other sections

(4) Sections 81 and 82 apply with such modifications as the circumstances require to reinstatement of a contract.

DESIGNATION OF BENEFICIARIES AND PERSONAL REPRESENTATIVES

Designation

88. (1) An insured may in a contract or by a declaration designate his or her personal representative or a beneficiary to receive insurance money.

Change in designation

(2) Subject to section 89, the insured may from time to time alter or revoke a designation by a declaration.

Deeming provision

(3) A designation in favour of the "heirs", "next of kin" or "estate" of the insured, or the use of words of similar import in a designation, shall be deemed to be a designation of the personal representative of the insured.

Designation of beneficiary irrevocably

89. (1) An insured may in a contract or by a declaration other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably, and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary and the insurance money is not subject to the control of the insured or of creditors of the insured and does not form part of the estate of the insured.

Attempted designation

(2) Where the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable.

Designation in invalid will

90. (1) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

Priorities

(2) Despite the *Wills Act*, a designation in a will is of no effect against a designation made later than the making of the will.

Revocation of designation

(3) Where a designation is contained in a will, if the will is subsequently revoked by operation of law or otherwise, the designation is revoked as a result of that.

Idem

(4) Where a designation is contained in an instrument that purports to be a will, if subsequently the instrument is valid as a will would be revoked by operation of law or otherwise, the designation is revoked as a result of that. S.Nu. 2010,c.14,s.9(13).

Trustee for beneficiary

91. (1) An insured may in a contract or by a declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration.

Payment to trustee

(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment.

Beneficiary predeceasing life insured

92. (1) Where a beneficiary predeceases the person whose life is insured, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable

- (a) to the surviving beneficiary;
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
- (c) if there is no surviving beneficiary, to the insured or his or her personal representative.

Several beneficiaries

(2) Where two or more beneficiaries are designated otherwise than alternatively, but no division of the insurance money is made, the insurance money is payable to them in equal shares.

Right to insurance money

93. A beneficiary may enforce for his or her own benefit, and a trustee appointed under subsection 91(1) may enforce as trustee, the payment of insurance money made payable to the beneficiary in the contract or by a declaration and in accordance with the provisions of it, but the insurer may set up any defence that it could have set up against the insured or the personal representative of the insured.

Insurance money free from creditors

94. (1) Where a beneficiary is designated, the insurance money, from the time of the happening of the event on which the insurance money becomes payable, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.

Execution and seizure

(2) While a designation in favour of a spouse, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the rights and interests of the insured in the insurance money and in the contract are exempt from execution or seizure.

DEALINGS WITH CONTRACT DURING LIFETIME OF INSURED

Insured dealing with contract

95. Where a beneficiary

- (a) is not designated irrevocably; or
- (b) is designated irrevocably but has attained the age of 19 years and consents,

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided in the contract or in this Part or as may be agreed upon with the insurer.

Insured entitled to dividends

96. (1) Despite the designation of a beneficiary irrevocably, the insured is entitled while living to the dividends or bonuses declared on a contract, unless the contract otherwise provides.

Insurer may use dividends

(2) Unless the insured otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force.
S.Nu. 2010,c.14,s.9(13).

Transfer of rights and interests of insured

97. (1) Despite the *Wills Act*, where in a contract or in an agreement in writing between an insurer and an insured it is provided that a person named in the contract or in the agreement has, on the death of the insured, the rights and interests of the insured in the contract,

- (a) the rights and interests of the insured in the contract do not, on the death of the insured, form part of the estate of the insured; and

- (b) on the death of the insured, the person named in the contract or in the agreement has the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

Where two or more persons named

(2) Where the contract or agreement provides that two or more persons named in the contract or in the agreement shall, on the death of the insured, have successively, on the death of each of them, the rights and interests of the insured in the contract, this section applies successively, with such modifications as the circumstances require, to each of those persons and to his or her rights and interests in the contract.

Saving

(3) Despite any nomination made pursuant to this section, the insured may, before his or her death, assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as if the nomination had not been made, and may alter or revoke the nomination by agreement in writing with the insurer. S.Nu. 2010,c.14,s.9(13).

Interest of assignee

98. (1) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, the assignee has priority of interest as against

- (a) any assignee other than one who gave notice earlier in the same manner; and
- (b) a beneficiary other than one designated irrevocably as provided in section 89 before the time the assignee gave notice to the insurer of the assignment in the manner set out in this subsection.

Effect on rights of beneficiary

(2) Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

Unconditional assignment

(3) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

Prohibition against assignment

(4) A provision in a contract to the effect that the rights or interests of the insured, or in the case of group insurance, the group life insured, are not assignable is valid.

Group life insured enforcing rights

99. A group life insured may in his or her own name enforce a right given the group life insured under a contract, subject to any defence available to the insurer against the group life insured or against the insured.

MINORS

Capacity of minors

100. Except in respect of his or her rights as beneficiary, a person who has attained the age of 16 years has the capacity of a person who has attained the age of 19 years

- (a) to make an enforceable contract; and
- (b) in respect of a contract.

Capacity of minor beneficiary

101. A beneficiary who has attained the age of 18 years has the capacity of a person who has attained the age of 19 years to receive insurance money payable to the beneficiary and to give a discharge therefor.

PROCEEDINGS UNDER CONTRACT

Proof of claim

102. Where an insurer receives sufficient evidence of

- (a) the happening of the event on which insurance money becomes payable;
- (b) the age of the person whose life is insured;
- (c) the right of the claimant to receive payment; and
- (d) the name and age of the beneficiary, if there is a beneficiary,

it shall, within 30 days after receiving the evidence, pay the insurance money to the person entitled to it.

Place of payment

103. (1) Subject to subsection (4), insurance money is payable in Nunavut.

Dollars

(2) Unless a contract otherwise provides, a reference in a contract to dollars means Canadian dollars.

Payment outside Nunavut

(3) Where a person entitled to receive insurance money is not domiciled in Nunavut, the insurer may pay the insurance money to that person or to any other person who is entitled to receive it on behalf of that person by the law of the domicile of the payee.

Exception for group insurance

(4) In the case of a contract of group insurance, insurance money is payable in the province or territory in which the group life insured was resident at the time he or she became insured. S.Nu. 2010,c.14,s.9(5),(13).

Action in Nunavut

104. Despite where a contract was made, an action on it may be brought in a court by a resident of Nunavut if the insurer was authorized to transact insurance in Nunavut at the time the contract was made or at the time the action is brought. S.Nu. 2010,c.14,s.9(13).

Limitation period

105. (1) Subject to subsection (2), an action or proceeding against an insurer for the recovery of insurance money may not be commenced

- (a) after two years from the providing of the evidence required by section 102; or
- (b) after six years from the happening of the event on which the insurance money becomes payable,

whichever period first expires.

Exception

(2) Where a declaration has been made under subsection 107(2), an action or proceeding to which reference is made in subsection (1) may not be commenced after two years from the date of the declaration.

Documents affecting title

106. (1) Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy, or a copy verified by statutory declaration, of that instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

Saving

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

Declaration as to sufficiency of proof

107. (1) Where

- (a) an insurer admits the validity of the insurance, but does not admit the sufficiency of the evidence required by section 102; and
- (b) there is no other question in issue except a question under section 108,

the insurer or the claimant may, before or after an action is brought and on at least 30 days notice, apply to the Court for a declaration as to the sufficiency of the evidence provided.

Power of Court

(2) On an application under subsection (1), the Court may make a declaration or direct what further evidence shall be provided and on the providing of the evidence, may make a declaration or, in special circumstances, may dispense with further evidence.

Declaration as to presumption of death

108. Where

- (a) a claimant alleges that the person whose life is insured should be presumed to be dead by reason of that person not having been heard of for seven years; and
- (b) there is no other question in issue except a question under section 107,

the insurer or the claimant may, before or after an action is brought and on at least 30 days notice, apply to the Court for a declaration as to presumption of the death and the Court may make the declaration.

Order

109. (1) On making a declaration under subsection 107(2) or section 108, the Court may make an order respecting the payment of the insurance money and respecting costs that it considers just and, subject to section 111, a declaration or direction or order made under this subsection is binding on the applicant and on all persons to whom notice of the application has been given.

Payment under order

(2) A payment made under an order made under subsection (1) discharges the insurer to the extent of the amount paid.

Stay of proceedings

110. Unless the Court otherwise orders, an application made under subsection 107(1) or section 108 operates as a stay of any pending action with respect to the insurance money.

Appeal

111. An appeal lies to the Court of Appeal from any declaration, direction or order made under subsection 107(2), section 108 or subsection 109(1).

Power of Court

112. Where the Court finds that the evidence provided under section 102 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in an action brought or to be brought, or may make any other order that it considers just respecting further evidence to be provided by the claimant, publication of advertisements, further inquiry or any other matter or respecting costs.

Payment into court

113. Where an insurer admits liability for insurance money and it appears to the insurer that

- (a) there are adverse claimants;
- (b) the whereabouts of a person entitled to the insurance money is unknown; or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor, who is willing to do so,

the insurer may, at any time after 30 days from the date of the happening of the event on which the insurance money becomes payable, apply to the Court *ex parte* for an order for payment of the money into court, and the Court may on such notice, if any, as it thinks necessary, make an order accordingly.

Simultaneous deaths

114. Unless a contract or a declaration otherwise provides, where the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 92(1) as if the beneficiary had predeceased the person whose life is insured.

Definition of "instalments"

115. (1) In this section, "instalments" includes insurance money held by the insurer under section 116.

Insurance money payable in instalments

(2) Subject to subsections (3) and (4), where

- (a) insurance money is payable in instalments, and
- (b) a contract, or an instrument signed by the insured and delivered to the insurer, provides that a beneficiary does not have the right to commute the instalments or to alienate or assign his or her interest in the instalments,

the insurer shall not, unless the insured subsequently directs otherwise in writing, commute the instalments or pay them to any person other than the beneficiary, and the instalments are not in the hands of the insurer, subject to any legal process except an action to recover the value of necessities supplied to the beneficiary or his or her infant children.

Commutation by beneficiary

(3) A Court may, on the application of a beneficiary and on at least 10 days notice, declare that in view of special circumstances

- (a) the insurer may, with the consent of the beneficiary, commute instalments of insurance money; or
- (b) the beneficiary may alienate or assign his or her interest in the insurance money.

Commutation after death of beneficiary

(4) After the death of the beneficiary, the personal representative of the beneficiary may, with the consent of the insurer, commute any instalments of insurance money payable to the beneficiary.

Insurer holding insurance money

- 116.** (1) An insurer may hold insurance money
- (a) subject to the order of an insured or a beneficiary; or
 - (b) on trusts or other agreements for the benefit of the insured or the beneficiary,

as provided in the contract, by an agreement in writing to which it is a party or by a declaration, with interest at a rate agreed upon in the contract, agreement or declaration or, where no rate is agreed upon, at the rate declared from time to time by the insurer in respect of insurance money so held by it.

Exception

- (2) The insurer is not bound to hold insurance money as provided in subsection (1) under the terms of a declaration to which it has not agreed in writing.

Order for payment

- 117.** (1) Where an insurer does not within 30 days after receipt of the evidence required by section 102 pay the insurance money to a person competent to receive it or into court, the Court may, on application of any person, order that the insurance money or any part of the insurance money be paid into court, or may make any other order as to the distribution of the money that it considers just.

Discharge

- (2) Payment made in accordance with an order made under subsection (1) discharges the insurer to the extent of the amount paid.

Costs

- 118.** The Court may fix without taxation the costs incurred in connection with an application or order made under section 113 or subsection 117(1), and may order them to be paid out of the insurance money or by the insurer or the applicant or otherwise as it considers just.

Where beneficiary a minor

- 119.** (1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a discharge therefor who is willing to do so, the insurer may at any time after 30 days from the date of the happening of the event on which the insurance money becomes payable pay the money, less the applicable costs mentioned in subsection (2) into court to the credit of the minor.

Costs

- (2) The insurer may retain out of the insurance money for costs incurred on payment into court under subsection (1), \$10 where the amount does not exceed \$1,000, and \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.

Procedure

(3) No order is necessary for payment into court under subsection (1), but the proper officer of the Court shall receive the money upon the insurer filing with the official an affidavit showing the amount payable and the name, date of birth and residence of the minor, and, on that payment being made, the insurer shall without delay notify the Public Trustee and deliver to the Public Trustee a copy of the affidavit.

Beneficiary under disability

120. Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid.

MISCELLANEOUS PROVISIONS

Presumption against agency

121. No officer, agent or employee of an insurer and no person soliciting insurance, whether or not he or she is an agent of the insurer, shall, to the prejudice of the insured, be deemed to be the agent of the insured in respect of any question arising out of a contract.

Insurer giving information

122. An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

PART V

AUTOMOBILE INSURANCE

INTERPRETATION

Definitions

123. In this Part,

"contract" means a contract of automobile insurance; (*contrat*)

"insured" means a person insured by a contract whether named or not and includes any person who is stated in a contract to be entitled to benefits payable under the insurance mentioned in section 156, subsection 157(1) or 158(1) whether or not described in the contract as an insured person. (*assuré*)

APPLICATION OF PART

Application of Part

124. (1) This Part applies to contracts providing automobile insurance made or renewed in Nunavut or the Territories on or after April 1, 1976.

Exemption

- (2) This Part does not apply to contracts insuring only against
- (a) loss of or damage to an automobile while in or on described premises;
 - (b) loss of or damage to property carried in or on an automobile; or
 - (c) liability for loss of or damage to property carried in or on an automobile.

Idem

(3) This Part does not apply to a contract providing insurance in respect of an automobile not required to be registered under the *Motor Vehicles Act* or the *All-terrain Vehicles Act* unless it is insured under a contract evidenced by a form of policy approved under this Part.

Idem

(4) This Part does not apply to a contract insuring solely the interest of a person who has a lien on, or has a security legal title to, an automobile and who does not have possession of the automobile. R.S.N.W.T. 1988,c.1(Supp.),s.13; S.Nu. 2010,c.14,s.9(13).

APPROVAL OF FORMS

Approval of forms by Superintendent

125. (1) No insurer shall use a form of application, policy, endorsement or renewal or continuation certificate in respect of automobile insurance other than a form approved by the Superintendent.

Insurer requiring additional information

(2) An insurer may require additional information in an approved application form, but that additional information does not constitute part of the application for the purposes of section 128.

Approval of policies in special cases

(3) Where, in the opinion of the Superintendent, any provision of this Part, including any statutory condition, is wholly or partly inappropriate to the requirements of a contract or is inapplicable by reason of the requirements of any Act, the Superintendent may approve a form of policy, or part of it, or endorsement evidencing a contract sufficient or appropriate to insure the risks required or proposed to be insured, and the contract evidenced by the policy or endorsement in the form so approved is effective and binding according to its terms notwithstanding that those terms are inconsistent with, vary, omit or add to any provision or statutory condition of this Part.

Approval of extensions

(4) Except as to matters referred to in paragraphs 138(a) and (c), the Superintendent may, if the Superintendent considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement to it that extends the insurance beyond what is established by this Part.

Standard owner's policy

(5) The Superintendent may approve a form of owner's policy containing insuring agreements and provisions in conformity with this Part for use by insurers in general, and which, for the purposes of section 127 shall be the standard owner's policy.

Revocation of approval

(6) The Superintendent may revoke an approval given under this section, and, on notification of the revocation in writing, no insurer shall after that use or deliver a form that contravenes the notification.

Reason for decision

(7) The Superintendent shall, on request of any interested insurer, specify in writing his or her reasons for granting, refusing or revoking an approval of a form.

Insurance card

(8) An insurer that issues or delivers an owner's policy in Nunavut, or any renewal of it, or any evidence of the continuation of the policy, shall issue to the insured a card evidencing the insurance, and the card shall be in a form approved by the Superintendent.

Misrepresentation

(9) No insurer shall misrepresent the particulars of an owner's policy on a card referred to in subsection (8). S.Nu. 2010,c.14,s.9(13).

APPLICATION AND POLICY

Persons forbidden to act as agent

126. No person carrying on the business of financing the sale or purchase of automobiles and no automobile dealer, insurance agent or broker and no officer or employee of such a person, dealer, agent or broker shall act as the agent of an applicant for the purpose of signing an application for automobile insurance.

Copy of application in policy

127. (1) A copy of the written application, signed by the insured or his or her agent, or, if no signed application is made, a copy of the purported application, or a copy of such part of the application or purported application as is material to the contract, shall be embodied in, endorsed on or attached to the policy when issued by the insurer.

Policy issued where no signed application

(2) If no signed written application is received by the insurer before the issue of the policy, the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, a form of application to be completed and signed by the insured and returned to the insurer.

Copy of policy

(3) Subject to subsection (5), the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, the policy or a true copy of it and every endorsement or other amendment to the contract.

Form of policy

(4) Where a written application signed by the insured or his or her agent is made for a contract, the policy evidencing the contract shall be deemed to be in accordance with the application unless the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and, in that event, the insured shall be deemed to have accepted the policy unless within seven days after the receipt of the notification, the insured informs the insurer in writing that he or she rejects the policy.

Certificate of policy

(5) Where an insurer adopts the standard owner's policy, it may, instead of issuing the policy, issue a certificate in a form approved by the Superintendent, which when issued is of the same force and effect as if it was in fact the standard owner's policy, subject to the limits and coverages shown on it by the insurer and any endorsements issued concurrently with it or after the issue of the certificate but, at the request of an insured at any time, the insurer shall provide a copy of the standard owner's policy wording as approved by the Superintendent.

Application of other provisions

(6) Where a certificate is issued under subsection (5), subsection (8) and section 154 apply with such modifications as the circumstances require.

Proof of terms of policy

(7) Where an insurer issues a certificate under subsection (5), proof of the terms of the policy may be given by production of a copy of the form of standard owner's policy approved by the Superintendent.

Endorsement on forms

(8) A copy of subsection 128(1) must be printed or stamped in conspicuous type on every application form and policy.

Misrepresentation or contravention of conditions

128. (1) Where

- (a) an applicant for a contract,
 - (i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or
 - (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated in the application;
- (b) the insured contravenes a term of the contract or commits a fraud; or
- (c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

Use of application as defence

(2) No statement of an applicant shall be used in defence of a claim under the contract unless it is contained in the signed written application for the contract, or, where no signed written application is made, in the purported application, or part of it, that is embodied in, endorsed on or attached to the policy.

Idem

(3) No statement contained in a purported copy of an application for a contract, or part of an application for a contract, other than a statement describing the risk and the extent of the insurance, shall be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to the applicant in the purported application, or part of the application.

Definition of "policy"

129. (1) In this section, "policy" does not include an interim receipt or binder.

Statutory conditions

(2) Subject to subsection 125(3) and sections 130 and 154,

- (a) the conditions set out in this section are statutory conditions and shall be deemed to be part of every contract and shall be printed in every policy with the heading "Statutory Conditions"; and
- (b) no variation or omission of or addition to a statutory condition is binding on the insured.

STATUTORY CONDITIONS

In these statutory conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not and the words "insured person" mean an insured and include any person to whom benefits may be payable under "SECTION B - ACCIDENT BENEFITS" set out in the Schedule to the *Insurance Act*.

Material change in risk

1. (1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within his knowledge.

(2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:

- (a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy and Insolvency Act* (Canada);

and in respect of insurance against loss of or damage to the automobile,

- (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
- (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

Prohibited use by insured

2. (1) The insured shall not drive or operate the automobile,
- (a) unless he is for the time being either authorized by law or qualified to drive or operate the automobile; or
 - (b) while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
 - (c) while he is under the age of sixteen years or under such other age as is prescribed by the law of the province or territory in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
 - (d) for any illicit or prohibited trade or transportation; or
 - (e) in any race or speed test.

Prohibited use by others

(2) The insured shall not permit, suffer, allow or connive at the use of the automobile,

- (a) by any person,
 - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile, or
 - (ii) while that person is under the age of sixteen years or under such other age as is prescribed by the law of the province or territory in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
- (b) by any person who is a member of the household of the insured while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
- (c) for any illicit or prohibited trade or transportation; or
- (d) in any race or speed test.

Requirements where loss or damage to persons or property

3. (1) The insured shall,

- (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident;
- (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
- (c) forward immediately to the insurer every letter, document, advice or writ received by him from or on behalf of the claimant.

(2) The insured shall not,

- (a) voluntarily assume any liability or settle any claim except at his own cost; or
- (b) interfere in any negotiations for settlement or in any legal proceeding.

(3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

Requirements where loss or damage to automobile

4. (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,

- (a) promptly give notice thereof in writing to the insurer with the fullest information obtainable at the time;
- (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
- (c) deliver to the insurer within ninety days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

(2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.

(3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,

- (a) without the written consent of the insurer; or
- (b) until the insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.

Examination of insured

(4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative all documents in his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

Insurer liable for cash value of automobile

(5) The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

Repair or replacement

(6) Except where an appraisal has been made, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

No abandonment; salvage

(7) There shall be no abandonment of the automobile to the insurer without the insurer's consent. If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

In case of disagreement

(8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

Inspection of automobile

5. The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

Time and manner of payment of insurance money

6. (1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it or, where an appraisal is made under subcondition (8) of statutory condition 4, within fifteen days after the award is rendered by the appraisers.

When action may be brought

(2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with nor until the amount of the loss has been ascertained as therein provided or by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer.

Limitation of actions

(3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile shall be commenced within two years next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within two years next after the cause of action arose and not afterwards.

Who may give notice and proofs of claim

7. Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or to make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Termination

8. (1) This contract may be terminated,
- (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered; or
 - (b) by the insured at any time on request.
- (2) Where this contract is terminated by the insurer,
- (a) the insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but in no event shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and
 - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order or cheque payable at par.
- (5) The fifteen days mentioned in clause (a) of subcondition 1 of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

Notice

9. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in Nunavut. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada. S.N.W.T. 1995,c.11,s.25; S.Nu. 2010,c.14,s.9(6)(a),(7)(a),(13).

Exceptions respecting statutory conditions

130. (1) Except as otherwise provided in the contract, the statutory conditions set out in section 129 do not apply to insurance coming within section 156, 157 or 158.

Idem

(2) Where a contract does not insure against liability for loss or damage to persons and property, statutory condition 3 in section 129 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

Idem

(3) Where a contract does not insure against loss of or damage to the automobile, statutory condition 4 in section 129 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

MOTOR VEHICLE LIABILITY POLICIES

Coverage of owner's policy, specific automobile

131. (1) Every contract evidenced by an owner's policy insures the person named in the contract and every other person who with his or her consent personally drives an automobile owned by the insured named in the contract and within the description or definition of the automobile in the contract, against liability imposed by law on the insured named in the contract or that other person for loss or damage,

- (a) arising from the ownership, use or operation of any such automobile; and
- (b) resulting from bodily injury to or the death of any person and damage to property.

Coverage of owner's policy, other automobile

(2) Where the contract evidenced by an owner's policy also provides insurance against liability in respect of an automobile not owned by the insured named in the contract, an insurer may stipulate in the contract that the insurance is restricted to the persons that are specified in the contract.

Death of person named in owner's policy

(3) Where the insured named in an owner's policy dies, the following persons shall be deemed to be the insured under the policy:

- (a) the spouse of the deceased insured if residing in the same dwelling premises at the time of his or her death;
- (b) in respect of the described automobile, a newly-acquired automobile that was acquired by the deceased insured before his or her death or a temporary substitute automobile, all as defined by the policy,
 - (i) any person having proper temporary custody of the automobile until grant of probate or administration to the personal representative of the deceased insured, and
 - (ii) the personal representative of the deceased insured.

Coverage of non-owner's policy

132. Every contract evidenced by a non-owner's policy insures the person named in the contract, and any other person that is specified in the policy, against liability imposed by law on the insured named in the contract or that other person for loss or damage,

- (a) arising from the use or operation of an automobile within the definition of the automobile in the policy, other than an automobile owned by him or her or registered in his or her name; and
- (b) resulting from bodily injury to or the death of any person and damage to property.

Persons deemed not owners

133. For the purposes of this Part, a person shall not be deemed to be the owner of an automobile for the reason only that the person

- (a) has a lien on the automobile; or
- (b) has legal title to the automobile as security.

Territorial limits

134. Insurance under sections 131 and 132 applies to the ownership, use or operation of the insured automobile within Canada and the United States and on a vessel plying between ports of those countries.

Rights of unnamed insured

135. Any person insured by but not named in a contract to which section 131 or 132 applies may recover indemnity in the same manner and to the same extent as if named in the contract as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

Additional agreements

136. Every contract evidenced by a motor vehicle liability policy shall provide that, where a person insured by the contract is involved in an accident resulting from the ownership, use or operation of an automobile in respect of which insurance is provided under the contract and resulting in loss or damage to persons or property, the insurer shall,

- (a) on receipt of notice of loss or damage caused to persons or property, make the investigations, conduct the negotiations with the claimant and effect a settlement of any resulting claims that are deemed expedient by the insurer;
- (b) defend in the name and on behalf of the insured and at the cost of the insurer any civil action that is at any time brought against the insured on account of loss or damage to persons or property;
- (c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment on that part of the judgment that is within the limits of the liability of the insurer; and
- (d) where the injury is to a person, reimburse the insured for outlay for the medical aid that is immediately necessary at the time.

Liability from ownership

137. Liability arising from contamination of property carried in an automobile shall not be deemed to be liability arising from the ownership, use or operation of that automobile.

Exceptions from liability

138. The insurer is not liable under a contract evidenced by a motor vehicle liability policy for any liability

- (a) imposed by any workers' compensation law on any person insured by the contract;
- (b) resulting from bodily injury to or the death of,
 - (i) the daughter, son or spouse of any person insured by the contract while being carried in or on or entering or getting on to or alighting from the automobile, or
 - (ii) any person insured by the contract; or
- (c) resulting from bodily injury to or the death of any employee of any person insured by the contract while engaged in the operation or repair of the automobile.

Limitation to exception from liability

139. Paragraph 138(b) does not apply where the cause of action arises on or after April 17, 1985.

Family exclusion clauses

140. (1) Subject to subsection (2), a provision in a contract evidenced by a motor vehicle liability policy providing that the insurer is not liable to indemnify a person insured by the contract for any liability resulting from bodily injury to or the death of a person described in subparagraph 138(b)(i) or (ii) is void.

Exception

(2) A provision in a contract evidenced by a motor vehicle liability policy described in subsection (1) shall have effect with respect to a cause of action arising before April 17, 1985.

Exceptions from liability

141. An insurer may provide under a contract evidenced by a motor vehicle liability policy, in either or both of the following cases, that it shall not be liable

- (a) to indemnify any person engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles for any loss or damage sustained while engaged in the use or operation of or while working on the automobile in the course of that business unless the person is the owner of the automobile or is his or her employee;
- (b) for loss of or damage to property carried in or on the automobile or to any property owned or rented by or in the care, custody or control of the insured.

Exceptions from liability

142. Subject to the limitations and exclusions of the endorsement, the insurer may provide by endorsement to a contract evidenced by a motor vehicle liability policy that it shall not be liable for loss or damage resulting from the ownership, use or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while the automobile is at the site of the use or operation of that machinery or apparatus.

Definition of "radioactive material"

143. (1) In paragraph (2)(b), "radioactive material" means

- (a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor;
- (b) radioactive waste material;
- (c) unused enriched nuclear fuel rods; or
- (d) any other radioactive material of such quantity and quality as to be harmful to persons or property if its container were destroyed or damaged.

Exceptions from liability

(2) The insurer may provide under a contract evidenced by a motor vehicle liability policy, in one or more of the following cases, that it shall not be liable while

- (a) the automobile is rented or leased to another person;
- (b) the automobile is used to carry explosives or to carry radioactive material for research, educational, development or industrial purposes or for purposes incidental to that;
- (c) the automobile is used as a taxi, public bus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire;
- (d) where the insured vehicle is an automobile other than a trailer, it is used for towing a trailer owned by the insured unless like indemnity is also provided by the insurer in respect of the trailer;
or
- (e) where the insured vehicle is a trailer, it is towed by an automobile owned by the insured unless like indemnity is also provided by the insurer in respect of the automobile.

Exception

(3) Paragraph (2)(a) does not include the use by an employee of the automobile of the employee on the business of his or her employer and for which the employee is paid.

Certain rules excepted

- (4) Paragraph (2)(c) does not include
- (a) the use by a person of his or her automobile for the carriage of another person in return for his or her carriage in the automobile of that other person;

- (b) the occasional and infrequent use by a person of his or her automobile for the carriage of another person who shares the cost of the trip;
- (c) the use by a person of his or her automobile for the carriage of a temporary or permanent domestic worker of the insured or his or her spouse;
- (d) the use by a person of his or her automobile for the carriage of a client or customer or a prospective client or customer; or
- (e) the occasional and infrequent use by the insured of his or her automobile for the transportation of school children to or from school or school activities conducted within an educational program.

Minimum liability under policy

144. (1) Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of not less than \$200,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and the loss of or damage to property.

Priorities

(2) The contract shall be interpreted to mean that where, by reason of any one accident, liability results from bodily injury or death and from loss of or damage to property,

- (a) claims against the insured arising out of bodily injury or death have priority to the extent of \$190,000 over claims arising out of loss of or damage to property; and
- (b) claims against the insured arising out of loss of or damage to property have priority to the extent of \$10,000 over claims arising out of bodily injury or death.

Minimum limits where separate limits designated

(3) The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least \$200,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of liability of at least \$200,000, exclusive of interest and costs, against liability for loss of or damage to property.

Variation of limits

(4) Nothing in this Part precludes an insurer, with respect to a limit or limits in excess of those specified in subsection (1) or (3), from increasing or reducing the limit or limits specified in the contract with respect to the use or operation of the automobile by a named person, but no reduction is effective for a limit less than that required under subsection (1) or (3).

Stipulation in motor vehicle liability policy

145. (1) Every motor vehicle liability policy issued in Nunavut must provide that, in the case of liability arising out of the ownership, use or operation of the automobile in a province or territory,

- (a) the insurer is liable up to the minimum limits established for the province or territory if those limits are higher than the limits established by the policy;
- (b) the insurer shall not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in the province or territory; and
- (c) the insured, by acceptance of the policy, constitutes and appoints the insurer his or her irrevocable attorney to appear and defend in any province or territory in which an action, arising out of the ownership, use or operation of the automobile, is brought against the insured.

Binding provision

(2) A provision in a motor vehicle liability policy in accordance with paragraph (1)(c) is binding on the insured. S.Nu. 2010,c.14,s.9(8),(13).

Excess insurance

146. (1) Nothing in this Part precludes an insurer from providing insurance under a contract evidenced by a motor vehicle liability policy restricted to a limit in excess of that provided by another designated contract evidenced by a motor vehicle liability policy, whether the designated contract is a first loss insurance or an excess insurance.

Termination of excess insurance

(2) Where the contract designated in the excess contract terminates or is terminated, the excess contract is also automatically terminated.

Agreement for partial payment of claim by insured

147. Nothing in this Part precludes an insurer from entering into an agreement with its insured under a contract evidenced by a motor vehicle liability policy providing that the insured will reimburse the insurer in an agreed amount in respect of any claim by or judgment in favour of a third party against the insured, and the agreement may be enforced against the insured according to its tenor.

Definition of "nuclear energy hazard"

148. (1) In this section, "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Atomic Energy Control Act* (Canada).

Liability when nuclear energy contract also in force

(2) Where an insured is covered, whether named in the contract or not, under a contract evidenced by a motor vehicle liability policy for loss or damage resulting from bodily injury to or the death of any person or damage to property arising directly or

indirectly out of a nuclear energy hazard and is also covered, whether named in the contract or not, against such loss or damage under a contract evidenced by a policy of nuclear energy hazard liability insurance issued by a group of insurers and in force at the time of the event giving rise to the loss or damage,

- (a) the motor vehicle liability insurance is excess to the nuclear energy hazard liability insurance, and the insurer under the contract of motor vehicle liability insurance is not liable to pay beyond the minimum limits established by section 144; and
- (b) the unnamed insured under the contract of nuclear energy liability insurance may, in respect of such loss or damage, recover indemnity under that contract in the same manner and to the same extent as if named in the contract as the insured, and for that purpose he or she shall be deemed to be a party to the contract and to have given consideration therefor.

When contract deemed in force

(3) For the purpose of this section, a contract of nuclear energy hazard liability insurance shall be deemed to be in force at the time of the event giving rise to the loss or damage, notwithstanding that the limits of liability under it have been exhausted.

Advance payments and release by claimant

149. (1) Where an insurer makes a payment on behalf of an insured under a contract evidenced by a motor vehicle liability policy to a person who is or alleges himself or herself to be entitled to recover from the insured covered by the policy, the payment constitutes, to the extent of the payment, a release by the person or his or her personal representative of any claim that the person or his or her personal representative or any person claiming through or under him or her or by virtue of the *Fatal Accidents Act* may have against the insured or the insurer.

Condition precedent

(2) Nothing in this section precludes the insurer making the payment from demanding, as a condition precedent to the payment, a release from the person or the personal representative of the person or any other person to the extent of the payment.

Payment

(3) Where the person commences an action, the court shall adjudicate on the matter first without reference to the payment but in giving judgment the payment shall be taken into account and the person shall only be entitled to judgment for the net amount, if any.

Intention

(4) The intention of this section is to permit payments to a claimant without prejudice to the defendant or his or her insurer, either as an admission of liability or otherwise, and the fact of any payment shall not be disclosed to the judge or jury until after judgment but before formal entry of the judgment.

Defence where more than one contract**150.** (1) Where

- (a) a person is insured under more than one contract evidenced by a motor vehicle liability policy, whether the insurance is first loss insurance or excess; and
- (b) a question arises under paragraph 136(b) between an insurer and the insured or between the insurers as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies liability under its contract,

the insured or any insurer may apply to the Court, and the Court shall give directions that appear proper with respect to the performance of the obligation.

Hearing

(2) On an application under subsection (1), the only parties entitled to notice of the application and to be heard on the application are the insured and his or her insurers, and no material or evidence used or taken on an application is admissible on the trial of an action brought against the insured for loss or damage to persons or property arising out of the use or operation of the automobile in respect of which the insurance is provided.

Order

(3) An order under subsection (1) does not affect the rights and obligations of the insurers in respect of payment of any indemnity under their respective policies.

Contribution

(4) Where indemnity is provided to the insured under two or more contracts and one or more of them are excess insurance, the insurers shall, as between themselves, contribute to the payment of expenses, costs and reimbursement for which provision is made in section 136 in accordance with their respective liabilities for damages awarded against the insured. S.Nu. 2010,c.14,s.9(13).

Application of insurance money under motor vehicle liability policy

151. (1) Any person who has a claim against an insured for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, notwithstanding that the person is not a party to the contract, may, on recovering a judgment for that purpose in a province or territory against the insured, have the insurance money payable under the contract applied in or towards satisfaction of the judgment and of any other judgments or claims against the insured covered by the contract and may, on behalf of himself or herself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

Limitation period

(2) An action may not be brought against an insurer under subsection (1) after two years from the final determination of the action against the insured, including appeals if any.

Other creditor excluded

(3) A creditor of the insured is not entitled to share in the insurance money payable under any contract unless the claim of the creditor is one for which indemnity is provided for by that contract.

Right to have insurance money applied

(4) The right of a person who is entitled under subsection (1) to have insurance money applied on his or her judgment or claim is not prejudiced by

- (a) an assignment, waiver, surrender, cancellation or discharge of the contract, or of any interest in it or of the proceeds of it, made by the insured after the happening of the event giving rise to a claim under the contract;
- (b) any act or default of the insured before or after that event in contravention of this Part or of the terms of the contract; or
- (c) any contravention of the *Criminal Code* or a statute of a province or territory or of any state or the District of Columbia of the United States by the owner or driver of the automobile,

and nothing mentioned in paragraphs (a) to (c) is available to the insurer as a defence in an action brought under subsection (1).

Purported policy

(5) It is not a defence to an action under this section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer and alleged by a party to the action to be such a policy is not a motor vehicle liability policy, and this section applies, with such modifications as the circumstances require, to the instrument.

Contribution among insurers

(6) The insurer may require any other insurers liable to indemnify the insured in whole or in part in respect of judgments or claims to which reference is made in subsection (1) to be made parties to the action and contribute according to their respective liabilities, whether the contribution is rateable or by way of first loss or excess insurance, as the case may be, and the insured shall on demand provide the insurer with particulars of all other insurance covering the subject-matter of the contract.

Payment into court

(7) Where any person has recovered a judgment against the insured and is entitled to bring action under subsection (1) and the insurer admits liability to pay the insurance money under the contract and the insurer considers that,

- (a) there are or may be other claimants; or
- (b) there is no person capable of giving and authorized to give a valid discharge for payment who is willing to do so,

the insurer may apply to the Court *ex parte* for an order for payment of the money into court, and the Court may, on the notice, if any, that it thinks necessary, make an order accordingly.

Effect of order

(8) The receipt of the proper officer of the Court is sufficient discharge to the insurer for the insurance money paid into court under subsection (7), and the insurance money shall be dealt with as the Court may order on application of any person interested therein.

Defence respecting excess limits relating to section 143 coverage

(9) Despite anything contained in it to the contrary, every contract evidenced by a motor vehicle liability policy shall, for the purposes of this section, be deemed to provide all the types of coverage mentioned in section 143, but the insurer is not liable to a claimant with respect to that coverage in excess of the limits mentioned in section 144.

Defence where coverage under section 141 or 142

(10) Where one or more contracts provide for coverage of a type mentioned in section 141 or 142, the insurer may,

- (a) with respect to that type of coverage; and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

Defence where excess limits

(11) Where one or more contracts provide for coverage in excess of the limits mentioned in section 144, except as provided in subsection (12), the insurer may,

- (a) with respect to the coverage in excess of those limits; and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured, notwithstanding subsection (4).

Defence where vehicle used in business of carrying passengers

(12) Where a contract provides coverage for loss or damage resulting from bodily injury to or the death of any person being carried in or on or entering or getting onto or alighting from an automobile and the automobile is operated in the business of carrying passengers for compensation or hire and is insured for that purpose, the insurer may,

- (a) with respect to that type of coverage; and
- (b) as against a claimant,

only avail itself of a defence that it is entitled to set up against the insured in respect of that part of the coverage, if any, that exceeds,

- (c) the limits mentioned in section 144; or
- (d) the minimum limits required for that type of coverage by or under any other Act,

whichever is the greater.

Insured's liability to reimburse insurer

(13) The insured shall reimburse the insurer on demand in the amount that the insurer has paid by reason of this section and that it would not otherwise be liable to pay.

Insurer may be made third party

(14) Where an insurer denies liability under a contract evidenced by a motor vehicle liability policy, it shall, on application to the Court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured enters an appearance or defence in the action.

Rights of insurer

(15) On being made a third party, the insurer may

- (a) contest the liability of the insured to any party claiming against the insured;
- (b) contest the amount of any claim made against the insured;
- (c) deliver any pleadings in respect of the claim of any party claiming against the insured;
- (d) have production and discovery from any party adverse in interest; and
- (e) examine and cross-examine witnesses at the trial,

to the same extent as if it were a defendant in the action.

Idem

(16) An insurer may avail itself of subsection (15) notwithstanding that another insurer is defending in the name and on behalf of the insured an action to which its insured is a party. S.Nu. 2010,c.14,s.9(13).

Notice of action

152. (1) Every insured against whom an action is commenced for damages occasioned by an automobile shall give notice of the action in writing to the insurer within five days after service of every notice or process in the action.

Disclosing insurance

(2) Every insured against whom an action is commenced for damages occasioned by an automobile shall, on recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of such contract within 10 days after written demand for those particulars.

PHYSICAL DAMAGE COVER**Stipulations in physical damage cover**

153. Subject to subsection 125(1), the insurer may provide in a contract exclusions and limitations, in respect of loss of or damage to or the loss of use of the automobile, that it considers necessary.

Partial payment of loss clause

154. (1) A contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use of an automobile may contain a clause to the effect that, in the event of loss, the insurer shall pay only

- (a) an agreed portion of any loss that may be sustained; or
- (b) the amount of the loss after deduction of a sum specified in the policy,

and in either case not exceeding the amount of the insurance.

Policy

(2) Where a clause is inserted in accordance with subsection (1), the following words must be printed or stamped on the face of the policy in conspicuous type:

This policy contains a partial
payment of loss clause.

Adjusting amount of claim

155. (1) Where a claim is made under a contract other than a contract evidenced by a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the contract as well as with any person having an interest indicated in the contract.

Exception

(2) Where notice is given or proof of loss is made by a person other than the insured, because the insured cannot be located or neglects or refuses or is unable to give notice and make claim under statutory conditions 4 and 7 in section 129, the insurer may, notwithstanding subsection (1) but in any event not earlier than 60 days after delivery of the proof required under clause (c) of subcondition (1) of statutory condition 4, adjust and pay the claim to the other person having an interest indicated in the contract.

LIMITED ACCIDENT INSURANCES

Definitions

156. (1) In this section,

"insured automobile" means the automobile as defined or described under the contract;
(*automobile assurée*)

"person insured under the contract" means,

- (a) in respect of a claim for damage to the insured automobile, the owner of the automobile;
- (b) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents; and
- (c) in respect of a claim for bodily injury or death, notwithstanding paragraph 138(c),
 - (i) any person while an occupant of the insured automobile,
 - (ii) the insured and, if residing in the same dwelling premises as the insured, the insured's spouse and any dependent relative of either,
 - (A) while an occupant of an uninsured automobile, or

- (B) while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by an uninsured or unidentified automobile, and
- (iii) if the insured is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured for whose regular use the insured automobile is provided, and, if residing in the same dwelling premises as such person, the person's spouse and any dependent relative of the person or the spouse,
 - (A) while an occupant of an uninsured automobile, or
 - (B) while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by an uninsured or unidentified automobile, where such director, officer, employee or partner or his or her spouse is not the owner of an automobile insured under a contract; (*personne assurée*)

"unidentified automobile" means an automobile with respect to which the identity of either the owner or driver cannot be ascertained; (*automobile non identifiée*)

"uninsured automobile" means an automobile neither the owner nor the driver of which has applicable and collectable bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or the insured's spouse. (*automobile non assurée*)

Application

(2) This section applies to all contracts evidenced by motor vehicle liability policies made or renewed on or after January 1, 1988.

Deeming provision

(3) Every contract evidenced by a motor vehicle liability policy that is subsisting on January 1, 1988, shall be deemed to provide for the payments referred to in subsection (4) in respect of an accident arising out of the use or operation of an automobile occurring on or after that date.

Uninsured automobile coverage

(4) Every contract evidenced by a motor vehicle liability policy shall provide for payment of all sums that

- (a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury resulting from an accident involving an automobile;
- (b) any person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages

- for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile; and
- (c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents, or to both the insured automobile and its contents, resulting from an accident involving an automobile;

subject to such terms, conditions, provisions, exclusions and limits as are prescribed.

Dependent relative

(5) Where a dependent relative referred to in subparagraph (c)(ii) or (iii) of the definition of "person insured under the contract" in subsection (1)

- (a) is the owner of an automobile insured under a contract; or
- (b) sustains bodily injury or dies as the result of an accident while the occupant of his or her own uninsured automobile,

that relative shall be deemed not to be a dependent relative for the purposes of this section.

Subrogation

(6) Where an amount is paid under subsection (4), the insurer

- (a) is subrogated to the rights of the person to whom the amount is paid; and
- (b) may maintain an action in its name or in the name of such person against any other person or persons responsible for the use or operation of the uninsured or unidentified automobile.

Release

(7) Any payment made or available to a person under the Schedule constitutes, to the extent of the payment, a release by the person or his or her personal representative or any person claiming through or under him or her of any claim that he or she may have under subsection (4), but in no event shall the release affect the insurer's right of subrogation or to maintain an action under subsection (6).

Regulations

(8) The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing the terms, conditions, provisions, exclusions and limits with respect to payments under subsection (4);
- (b) deeming any term, condition, provision, exclusion or limit as prescribed by a regulation made under paragraph (a) to be included in any motor vehicle liability policy made or renewed on or after the effective date of the regulation and in any motor vehicle liability policy that is subsisting on the effective date of the regulation; and

- (c) requiring that terms, conditions, provisions, exclusions and limits, as prescribed by a regulation made under paragraph (a), be attached to or included in every motor vehicle liability policy as a schedule in or to the policy.

Medical, rehabilitation and funeral benefits

157. (1) Every contract evidenced by a motor vehicle liability policy shall provide the benefits set out in subsection 1 of the Schedule subject to the limits, terms and conditions set out in the Schedule.

Release by claimant

(2) Where an insurer makes a payment under a contract of insurance referred to in subsection (1), the payment constitutes, to the extent of the payment, a release by the insured person or his or her personal representative of any claim that the insured person or his or her personal representative or any person claiming through or under him or her or by virtue of the *Fatal Accidents Act* may have against the insurer and any other person who may be liable to the insured person or his or her personal representative if that other person is insured under a contract of the same type as is specified in subsection (1).

Idem

(3) Nothing in subsection (2) precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his or her personal representative or any other person.

First loss and excess insurance

(4) The insurance mentioned in subsection (1) is a first loss insurance, and any other automobile insurance of the same type available to the injured person or in respect of a deceased person is excess insurance only.

Excess insurance

(5) The insurance mentioned in subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

Idem

(6) The insurance mentioned in subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

Deeming provision

(7) All contracts evidenced by motor vehicle liability policies made or renewed before and subsisting on January 1, 1988, shall be deemed to contain the benefits, limits, terms and conditions set out in the Schedule, but in respect only of motor vehicle accidents occurring on or after that date.

Death and disability benefits

158. (1) Every contract evidenced by a motor vehicle liability policy shall provide the death and total disability benefits set out in subsection 2 of the Schedule in the terms, conditions, provisions and exclusions and subject to the limits as set out in the Schedule.

Release by claimant

(2) Where an insurer makes a payment under a contract of insurance to which subsection (1) refers, the payment constitutes, to the extent of the payment, a release by the insured person or his or her personal representative of any claim that the insured person or his or her personal representative or any person claiming through or under him or her or by virtue of the *Fatal Accidents Act* may have against the insurer and any other person who may be liable to the insured person or his or her personal representative if that other person is insured under a contract of the same type as is specified in subsection (1).

Idem

(3) Nothing in subsection (2) precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his or her personal representative or any other person.

Deeming provision

(4) All contracts evidenced by motor vehicle liability policies made or renewed before and subsisting on January 1, 1988, shall be deemed to contain the benefits, limits, terms and conditions set out in the Schedule, but in respect only of motor vehicle accidents occurring on or after that date.

Demand for particulars of insurance

159. (1) Where a person is injured or killed in an accident in Nunavut involving an automobile, that person or his or her personal representative may serve

- (a) a demand by registered mail on the owner of the automobile; or
- (b) a demand by registered mail on the insurer of the owner of the automobile,

requiring the owner or insurer, as the case may be, to state in writing to the person making the demand whether or not that owner has insurance of the type mentioned in sections 157 and 158, or either of them, and, where the demand is made under paragraph (a), requiring the owner, if the owner has that insurance, to state the name of the insurer.

Offence

(2) Every owner or insurer who does not, within 10 days after receiving a demand made under subsection (1), comply with the demand is guilty of an offence.

S.Nu. 2010,c.14,s.9(13).

Rights of unnamed insured

160. Any person insured by but not named in a contract to which section 156, 157 or 158 applies may recover under the contract in the same manner and to the same extent as if named in the contract as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

First liability

161. (1) Where a person entitled to benefits provided by insurance under sections 157 and 158, or either of them,

- (a) is an occupant of a motor vehicle involved in an accident, the insurer of the owner of the motor vehicle is, in the first instance, liable for payment of the benefits provided by the insurance; or
- (b) is a pedestrian and is struck by a motor vehicle, the insurer of the owner of the motor vehicle is, in the first instance, liable for the payment of the benefits provided by the insurance.

Idem

(2) Nothing in this section affects the operation of subsections 157(2) to (6) and subsections 158(2) and (3).

Payment into court

162. (1) Where an insurer admits liability for insurance money payable under section 156, 157 or 158 and it appears that

- (a) there are adverse claimants;
- (b) the whereabouts of an insured person entitled is unknown; or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so,

the insurer may, at any time after 30 days after the date on which the insurance money becomes payable, apply to the Court *ex parte* for an order for payment of the money into court, and the Court may on notice, if any, that it thinks necessary, make an order accordingly.

Discharge of insurer

(2) The receipt of the proper officer of the Court is sufficient discharge to the insurer for the insurance money paid into court, and the insurance money shall be dealt with as the Court orders. S.Nu. 2010,c.14,s.9(13).

Limitation period

163. Every action or proceeding against an insurer under a contract in respect of insurance provided under section 156, 157 or 158 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than two years after the happening of the accident.

Claimant's obligation to inform

164. (1) Where a person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving or being carried in or on or entering or getting onto or alighting from or as a result of being struck by an automobile, he or she shall provide the person against whom the claim is made with full particulars of all insurance available to the claimant under contracts falling within the scope of section 157 or 158.

Release by claimant of benefits under Schedule

(2) Where a claimant is entitled to the benefit of insurance as provided in the Schedule this, to the extent of payments made or available to the claimant under the Schedule, constitutes a release by the claimant of any claim against the person liable to the claimant or the insurer of the claimant.

OTHER INSURANCE

Definition of "rateable proportion"

165. (1) In subsection (3), "rateable proportion" means,

- (a) if there are two insurers liable and each has the same policy limits, each of the insurers shall share equally in any liability, expense, loss or damage;
- (b) if there are two insurers liable with different policy limits, the insurers shall share equally up to the limit of the smaller policy limit; and
- (c) if there are more than two insurers liable, paragraphs (a) and (b) apply with such modifications as the circumstances require.

Other insurance

(2) Subject to section 148, insurance under a contract evidenced by a valid owner's policy of the kind mentioned in the definition of "owner's policy" in subsection 1(1) is in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the insured named in the contract and within the description or definition of the automobile in the policy, a first loss insurance and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

Idem

(3) Subject to subsection (2) and sections 148, 157 and 158, if the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use or operation of or against loss of or damage to an automobile or otherwise, of his or her interest in the subject-matter of the contract or any part of it, the insurer is liable only for its rateable proportion of any liability, expense, loss or damage.

SUBROGATION

Subrogation

166. (1) An insurer who makes a payment or assumes liability therefor under a contract is subrogated to all rights of recovery of the insured against any person and may bring an action in the name of the insured to enforce those rights.

Pro-rating recovery

(2) Where the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining shall be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

Action when section 154 applies

(3) Where the interest of an insured in any recovery is limited to the amount provided under a clause in the contract to which section 154 applies, the insurer shall have control of the action.

Application to Court

(4) Where the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to,

- (a) the solicitors to be instructed to bring the action in the name of the insured;
- (b) the conduct and carriage of the action or any matters pertaining to it;
- (c) an offer of settlement or the apportionment of an offer of settlement, whether action has been commenced or not;
- (d) the acceptance of money paid into court or the apportionment of money paid into court;
- (e) the apportionment of costs; or
- (f) the launching or prosecution of an appeal,

either party may apply to the Court for the determination of the matters in question, and the Court shall make an order that it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

Parties on application

(5) On an application under subsection (4) the only parties entitled to notice and to be heard on the application are the insured and the insurer, and no material or evidence used or taken on the application is admissible on the trial of an action brought by or against the insured or the insurer.

Concurrence in settlement or release

(6) A settlement or release given before or after an action is brought does not bar the rights of the insured or the insurer, as the case may be, unless they have concurred therein. S.Nu. 2010,c.14,s.9(13).

PART VI
ACCIDENT AND SICKNESS INSURANCE
INTERPRETATION

Definitions

167. In this Part,

"application" means a written application for insurance or for the reinstatement of insurance; (*proposition*)

"beneficiary" means a person designated or appointed in a contract or by a declaration, other than the insured or his or her personal representative, to whom or for whose benefit insurance money payable in the event of death by accident is to be paid; (*bénéficiaire*)

"blanket insurance" means that class of group insurance that covers loss arising from specific hazards incident to or defined by reference to a particular activity or activities; (*assurance globale*)

"contract" means a contract of insurance; (*contrat*)

"creditor's group insurance" means insurance effected by a creditor by which the lives or well-being, or the lives and well-being, of a number of his or her debtors are insured severally under a single contract; (*assurance collective de créancier*)

"declaration" means an instrument signed by the insured

- (a) with respect to which an endorsement is made on the policy;
- (b) that identifies the contract; or
- (c) that describes the insurance or insurance fund or a part of it,

in which the insured designates or alters or revokes the designation of his or her personal representative or a beneficiary as one to whom or for whose benefit shall be paid the insurance money that is payable in the event of death by accident; (*déclaration*)

"family insurance" means insurance by which the lives or well-being, or the lives and well-being, of the insured and one or more persons related to the insured by blood, marriage or adoption are insured under a single contract between an insurer and the insured; (*assurance familiale*)

"group insurance" means insurance, other than creditor's group insurance and family insurance, by which the lives or well-being, or the lives and well-being, of a number of persons are insured severally under a single contract between an insurer and an employer or other person; (*assurance collective*)

"group person insured" means a person who is insured under a contract of group insurance and on whom a right is conferred by the contract, but does not include a person who is insured under the contract as a person dependent on or related to that person; (*personne assurée par une assurance collective*)

"instrument" includes a will; (*acte juridique*)

"insurance" means accident insurance, sickness insurance, or accident insurance and sickness insurance; (*assurance*)

"insured",

- (a) in the case of group insurance means, in the provisions of this Part relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured; and
- (b) in all other cases means the person who makes a contract with an insurer; (*assuré*)

"person insured" means a person in respect of an accident to whom, or in respect of whose sickness, insurance money is payable under a contract, but does not include a group person insured; (*personne assurée*)

"will" includes codicil. (*testament*)

S.Nu. 2010,c.14,s.9(9).

APPLICATION OF PART

Application of Part

168. (1) Despite any agreement, condition or stipulation to the contrary, this Part applies to contracts made in Nunavut or the Territories on or after April 1, 1976.

Idem

- (2) In the case of contracts made before and in effect on April 1, 1976,
 - (a) this section and sections 167, 169, 170, 179, 182 to 184, 188 and sections 190 to 206 apply; and
 - (b) sections 143 to 147, 153 and 156 of the *Insurance Ordinance*, R.S.N.W.T. 1974, c.I-2, as it existed immediately before April 1, 1976, continue to apply.

Exemptions

- (3) This Part does not apply to
 - (a) accidental death insurance;
 - (b) creditor's group insurance;

- (c) disability insurance; or
- (d) insurance provided under sections 156 to 158.
S.Nu. 2010,c.14,s.9(13).

GENERAL

Group insurance

169. In the case of a contract of group insurance made with an insurer authorized to transact insurance in Nunavut at the time the contract was made, this Part applies in determining

- (a) the rights and status of beneficiaries and personal representatives as recipients of insurance money, if the group person insured was resident in Nunavut at the time he or she became insured; and
- (b) the rights and obligations of the group person insured if he or she was resident in Nunavut at the time he or she became insured.
S.Nu. 2010,c.14,s.9(13).

Issue of policy

170. An insurer entering into a contract shall issue a policy.

Exemptions

171. (1) This section does not apply to

- (a) a contract of group insurance; or
- (b) a contract made by a fraternal society.

Contents of policy

(2) An insurer shall set out the following particulars in the policy:

- (a) the name or a sufficient description of the insured and of the person insured;
- (b) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (c) the amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid;
- (d) the conditions on which the contract may be reinstated if it lapses;
- (e) the term of the insurance or the method of determining the day on which the insurance commences and terminates.

Confinement clauses

172. Where a contract of accident insurance or sickness insurance issued on or after April 1, 1976, includes a provision that a benefit payable to an insured on account of the disability of the insured and payment is conditional on the confinement of the insured, the provision does not bind the insured.

Contents of group policy

173. In the case of a contract of group insurance, an insurer shall set out the following particulars in the policy:

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the group persons insured and the persons insured;
- (c) the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid;
- (e) the term of the insurance or the method of determining the day on which the insurance commences and terminates.

Definitions

174. (1) In subsection (3),

"other contract" means another contract of group accident and sickness insurance; (*autre contrat*)

"replacing contract" means a contract of group accident and sickness insurance. (*contrat de remplacement*)

Continuation of insurance where contract terminated

(2) Where a contract of group accident and sickness insurance, or a benefit provision in the contract, is terminated, the insurer

- (a) continues to be liable to pay to or in respect of any group person insured under the contract benefits under the contract relating to
 - (i) loss of income because of disability,
 - (ii) death, or
 - (iii) dismemberment,arising from an accident or sickness that occurred before the termination of the contract or benefit provision as though the contract or benefit provision had remained in full force and effect; and
- (b) is not liable to pay a benefit for loss of income because of disability in respect of the recurrence of disability arising from an accident or sickness that occurred before the termination of the contract or benefit provision if the recurrence occurs after the termination of the contract or benefit provision and after a period of 90 days or a longer period that is provided in the contract, during which the group person insured was not disabled.

Preservation of rights where contract replaced

(3) Where a contract of group accident and sickness insurance is entered into within 31 days after the termination of another contract of group accident and sickness insurance and insures the same group or a part of the group insured under the other contract,

- (a) the replacing contract shall provide or shall be deemed to provide that any person who was insured under the other contract at the time of its termination is insured under the replacing contract from and after the termination of the other contract if
 - (i) the insurance on that person under the other contract terminated solely by reason of the termination of the other contract, and
 - (ii) the person is a member of a class eligible for insurance under the replacing contract;
- (b) every person who was insured under the other contract and who is insured under the replacing contract is entitled to receive credit for satisfaction of any deductible earned before the effective date of the replacing contract; and
- (c) no person who was insured under the other contract shall be excluded from eligibility under the replacing contract solely because of not being actively at work on the effective date of the replacing contract.

Contents of group certificate

175. (1) Except as provided in subsection (2), in the case of a contract of group insurance an insurer shall issue for delivery by the insured to each group person insured a certificate or other document in which are set out the following particulars:

- (a) the name of the insurer and a sufficient identification of the contract;
- (b) the amount or the method of determining the amount of insurance on the group person insured and on any person insured;
- (c) the circumstances under which the insurance terminates, and the rights, if any, on such termination of the group person insured and of any person insured.

Exemption

(2) This section does not apply to a contract of blanket insurance or to a contract of group insurance of a non-renewable type issued for a term of six months or less.

Exception or reduction

176. (1) Subject to section 177 and except as otherwise provided in this section, the insurer shall set out in the policy every exception or reduction affecting the amount payable under the contract, either in the provision affected by the exception or reduction, or under a heading such as "Exceptions" or "Reductions".

Idem

(2) Where the exception or reduction affects only one provision in the policy, it must be set out in that provision.

Idem

(3) Where the exception or reduction is contained in an endorsement, insertion or rider, the endorsement, insertion or rider must, unless it affects all amounts payable under the contract, make reference to the provisions in the policy affected by the exception or reduction.

Misstatement of age

(4) The exception or reduction mentioned in section 189 need not be set out in the policy.

Exemption

(5) This section does not apply to a contract made by a fraternal society.

Statutory conditions

177. Subject to section 178, the conditions set out in this section shall be deemed to be part of every contract other than a contract of group insurance, and shall be printed on or attached to the policy forming part of such contract with the heading "Statutory Conditions".

STATUTORY CONDITIONS

The contract

1. (1) The application, this policy, any document attached to this policy when issued, and any amendment to the contract agreed upon in writing after the policy is issued, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

Waiver

(2) The insurer shall be deemed not to have waived any condition of this contract, either in whole or in part, unless the waiver is clearly expressed in writing signed by the insurer.

Copy of application

(3) The insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

Material facts

2. No statement made by the insured or person insured at the time of application for this contract shall be used in defence of a claim under or to avoid this contract unless it is contained in the application or any other written statements or answers furnished as evidence of insurability.

Changes in occupation

3. (1) If after the contract is issued the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in this contract, the liability under this contract is limited to the amount that the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks and premium rates in use by the insurer at the time the person insured engaged in the more hazardous occupation.

(2) If the person insured changes his occupation from that stated in this contract to an occupation classified by the insurer as less hazardous and the insurer is so advised in writing, the insurer shall either,

- (a) reduce the premium rate; or
- (b) issue a policy for the unexpired term of this contract at the lower rate of premium applicable to the less hazardous occupation,

according to the limits, classification of risks, and premium rates used by the insurer at the date of receipt of advice of the change in occupation, and shall refund to the insured the amount by which the unearned premium on this contract exceeds the premium at the lower rate for the unexpired term.

Relation of earnings to insurance

4. Where the benefits for loss of time payable hereunder, either alone or together with benefits for loss of time under another contract, including a contract of group accident insurance or group sickness insurance or of both and a life insurance contract providing disability insurance, exceed the money value of the time of the person insured, the insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts and the excess premium, if any, paid by the insured shall be returned to him by the insurer.

Termination by insured

5. The insured may terminate this contract at any time by giving written notice of termination to the insurer by registered mail to its head office or chief agency in Nunavut, or by delivery thereof to an authorized agent of the insurer in Nunavut, and the insurer shall upon surrender of this policy refund the amount of premium paid in excess of the short rate premium calculated to the date of receipt of such notice according to the table in use by the insurer at the time of termination.

Termination by insurer

6. (1) The insurer may terminate this contract at any time by giving written notice of termination to the insured and by refunding concurrently with the giving of notice the amount of premium paid in excess of the *pro rata* premium for the expired time.

(2) The notice of termination may be delivered to the insured or it may be sent by registered mail to the latest address of the insured on the records of the insurer.

(3) Where the notice of termination is delivered to the insured, five days notice of termination shall be given; where it is mailed to the insured, ten days notice of termination shall be given, and the ten days shall begin on the day following the date of mailing of notice.

Notice and proof of claim

7. (1) The insured or a person insured, or a beneficiary entitled to make a claim, or the agent of any of them, shall,
- (a) give written notice of claim to the insurer,
 - (i) by delivery thereof, or by sending it by registered mail to the head office or chief agency of the insurer in Nunavut, or
 - (ii) by delivery thereof to an authorized agent of the insurer in Nunavut,
not later than thirty days from the date a claim arises under the contract on account of an accident, sickness or disability;
 - (b) within ninety days from the date a claim arises under the contract on account of an accident, sickness or disability, furnish to the insurer such proof as is reasonably possible in the circumstances of the happening of the accident or the commencement of the sickness or disability, and the loss occasioned thereby, the right of the claimant to receive payment, his age, and the age of the beneficiary if relevant; and
 - (c) if so required by the insurer, furnish a satisfactory certificate as to the cause or nature of the accident, sickness or disability for which claim may be made under the contract and as to the duration of such disability.

Failure to give notice or proof

(2) Failure to give notice of claim or furnish proof of claim within the time prescribed by this statutory condition does not invalidate the claim if the notice or proof is given or furnished as soon as reasonably possible, and in no event later than one year from the date of the accident or the date a claim arises under the contract on account of sickness or disability if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed.

Insurer to furnish forms for proof of claim

8. The insurer shall furnish forms for proof of claim within fifteen days after receiving notice of claim, but where the claimant has not received the forms within that time he may submit his proof of claim in the form of a written statement of the cause or nature of the accident, sickness or disability giving rise to the claim and of the extent of the loss.

Rights of examination

9. As a condition precedent to recovery of insurance moneys under this contract,
- (a) the claimant shall afford to the insurer an opportunity to examine the person of the person insured when and so often as it reasonably requires while the claim hereunder is pending; and
 - (b) in the case of death of the person insured, the insurer may require an autopsy subject to any law of the applicable jurisdiction relating to autopsies.

When moneys payable other than for loss of time

10. All moneys payable under this contract, other than benefits for loss of time, shall be paid by the insurer within sixty days after it has received proof of claim.

When loss of time benefits payable

11. The initial benefits for loss of time shall be paid by the insurer within thirty days after it has received proof of claim, and payment shall be made thereafter in accordance with the terms of the contract but not less frequently than once in each succeeding sixty days while the insurer remains liable for the payments if the person insured when required to do so furnishes before payment proof of continuing disability.

Limitation of actions

12. An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than two years after the date the insurance money became payable or would have become payable if it had been a valid claim.

S.Nu. 2010,c.14,s.9(13).

Omission or variation of statutory conditions

- 178.** (1) Where a statutory condition is not applicable to the benefits provided by the contract it may be omitted from the policy or varied so that it will be applicable.

Omission of certain statutory conditions

- (2) Statutory conditions 3, 4 and 9 may be omitted from the policy if the contract does not contain any provisions respecting the matters dealt with in those statutory conditions.

Idem

- (3) Statutory conditions 5 and 6 shall be omitted from the policy if the contract does not provide that it may be terminated by the insurer before the expiration of any period for which a premium has been accepted.

Variation of certain statutory conditions

- (4) Statutory conditions 3 to 6 and 9, and subject to the restriction in subsection (5), statutory condition 7, may be varied but, if by reason of the variation the contract is less favourable to the insured, a person insured or a beneficiary than it would be if the statutory condition had not been varied, the condition shall be deemed to be included in the policy in the form in which it appears in section 177.

Idem

(5) Clauses (a) and (b) of subcondition (1) of statutory condition 7 may not be varied in policies providing benefits for loss of time.

Idem

(6) Statutory conditions 10 and 11 may be varied by shortening the periods of time mentioned in those statutory conditions, and statutory condition 12 may be varied by lengthening the period of time mentioned in that statutory condition.

Title of statutory condition

(7) The title of a statutory condition shall be reproduced in the policy along with the statutory condition, but the number of a statutory condition may be omitted.

Contract by fraternal society

- (8) In the case of a contract made by a fraternal society,
- (a) the following shall be printed on every policy in substitution for subcondition (1) of statutory condition 1:

"The contract

1. (1) This policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, the application for the contract and the medical statement of the applicant, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions."; and

- (b) statutory condition 5 shall not be printed on the policy.

Notice of statutory conditions

179. In the case of a policy of accident insurance of a non-renewable type issued for a term of six months or less or in relation to a ticket of travel, the statutory conditions need not be printed on or attached to the policy if the policy contains the following notice printed in conspicuous type:

Despite any other provision of this contract, this contract is subject to the statutory conditions in the *Insurance Act* respecting contracts of accident insurance.

S.Nu. 2010,c.14,s.9(13).

Termination for non-payment of initial or renewal premium

180. (1) Where a policy evidencing a contract or a certificate evidencing the renewal of a contract is delivered to the insured and the initial premium or, in the case of a renewal certificate, the renewal premium, has not been fully paid,

- (a) the contract or the renewal of the contract evidenced by the certificate is as binding on the insurer as if the premium had been

- paid although delivered by an officer or an agent of the insurer who did not have authority to deliver it; and
- (b) the contract may be terminated for the non-payment of the premium by the insurer on 10 days notice of termination given in writing to the insured and mailed postage prepaid and registered to the last address of the insured on the records of the insurer, and the 10 days shall begin on the day following the date of mailing the notice.

Exemption

(2) This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

Right where premium unpaid

- 181.** (1) An insurer may
- (a) deduct unpaid premiums from an amount that it is liable to pay under a contract; or
- (b) sue the insured for unpaid premiums.

Where cheque or note for premium not paid

(2) Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the whole or part of a premium and payment is not made according to its tenor, the premium or part of the premium shall be deemed never to have been paid.

Exemption

(3) Paragraph (1)(a) does not apply to a contract of group insurance.

Idem

(4) This section does not apply to a contract made by a fraternal society.

Insurable interest

182. Without restricting the meaning of the expression "insurable interest", a person has an insurable interest in his or her own life and well-being and in the life and well-being of

- (a) his or her child or grandchild;
- (b) his or her spouse;
- (c) any person on whom he or she is wholly or in part dependent for, or from whom he or she is receiving, support or education;
- (d) his or her officer or employee; and
- (e) any person in whom he or she has a pecuniary interest.

Lack of insurable interest

183. (1) Subject to subsection (2), where at the time a contract would otherwise take effect the insured has no insurable interest, the contract is void.

Exceptions

- (2) A contract is not void for lack of insurable interest
- (a) if it is a contract of group insurance; or
 - (b) if the person insured has consented in writing to the insurance.

Consent to insurance

(3) Where the person insured is under the age of 16 years, consent to the insurance may be given by one of the parents of the person insured or by a person standing in the place of a parent for the person insured. S.N.W.T. 1998,c.17,s.15.

POLICIES ON LIVES OF MINORS

Capacity of minor

184. (1) Except in respect of his or her rights as beneficiary, a minor who has attained the age of 16 years has the capacity of a person who has attained the age of 19 years

- (a) to make an enforceable contract; and
- (b) in respect of a contract.

Capacity of minor beneficiary

(2) A beneficiary who has attained the age of 18 years has the capacity of a person who has attained the age of 19 years to receive insurance money payable to the beneficiary and to give a valid discharge therefor.

MISREPRESENTATION AND NON-DISCLOSURE

Duty to disclose

185. (1) An applicant for insurance on his or her own behalf and on behalf of each person to be insured, and each person to be insured, shall disclose to the insurer in any application, on a medical examination, if any, and in any written statements or answers provided as evidence of insurability, every fact within his or her knowledge that is material to the insurance and is not so disclosed by the other.

Failure to disclose

(2) Subject to sections 186 to 189, a failure to disclose or a misrepresentation of a fact referred to in subsection (1) renders a contract voidable by the insurer.

Group insurance failure to disclose

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of a fact referred to in subsection (1) with respect to a group person insured or person insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to section 186, voidable by the insurer.

Incontestability

- 186.** (1) Subject to section 189 and except as provided in subsection (2),
- (a) where a contract, including renewals of it, except a contract of group insurance, has been in effect continuously for two years with respect to a person insured, a failure to disclose or a misrepresentation of a fact with respect to that person required by section 185 to be disclosed does not, except in the case of fraud, render the contract voidable; and
 - (b) where a contract of group insurance, including renewals of the contract, has been in effect continuously for two years with respect to a group person insured or a person insured, a failure to disclose or a misrepresentation of a fact with respect to that group person insured or person insured required by section 185 to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.

Exemption

(2) Where a claim arises from a loss incurred or a disability beginning before a contract, including renewals of the contract, has been in force for two years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim.

Application of incontestability to reinstatement

187. Sections 185 and 186 apply, with such modifications as the circumstances require, to a failure at the time of reinstatement of a contract to disclose a misrepresentation at that time, and the period of two years to which reference is made in subsection 186(2) commences to run, in respect of a reinstatement, from the date of reinstatement.

Pre-existing conditions

188. Where a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the person insured or group person insured suffers or has suffered from a disease or physical condition that existed before the date the contract came into force with respect to that person and the disease or physical condition is not by name or specific description excluded from the insurance respecting that person,

- (a) the prior existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part for a loss incurred or a disability beginning after the contract, including renewals of the contract, has been in force continuously for two years immediately before the date of loss incurred or commencement of disability with respect to that person; and
- (b) the existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability in whole or in part if the disease or physical condition was disclosed in the application for the contract.

Misstatement of age

- 189.** (1) Subject to subsections (2) and (3), if the age of the person insured has been misstated to the insurer then, at the option of the insurer, either,
- (a) the benefits payable under the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age; or
 - (b) the premium may be adjusted in accordance with the correct age as of the date the person insured became insured.

Misstatement of age in group insurance

(2) In the case of a contract of group insurance, if there is a misstatement to the insurer of the age of a group person insured or person insured, the provisions, if any, of the contract with respect to age or misstatement of age apply.

True age

(3) Where the age of a person affects the commencement or termination of the insurance, the true age governs.

BENEFICIARIES

Designation of beneficiary

190. (1) Unless otherwise provided in the policy, an insured may in a contract or by a declaration designate his or her personal representative or a beneficiary to receive insurance money payable in the event of death by accident and may from time to time alter or revoke the designation by declaration.

Designation in invalid will

(2) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

Priorities

(3) A designation in a will is of no effect against a designation made later than the making of the will.

Revocation

(4) If a designation is contained in a will and subsequently the will is revoked by operation of law or otherwise, the designation is revoked as a result of that.

Idem

(5) If a designation is contained in an instrument that purports to be a will and subsequently the instrument, if it had been valid as a will, would have been revoked by operation of law or otherwise, the designation is revoked as a result of that.

Deeming provision

191. (1) A designation in favour of the "heirs", "next of kin" or "estate", or the use of words of similar import in a designation shall be deemed to be a designation of the personal representative.

Death of beneficiary

(2) Where a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by declaration, the share is payable

- (a) to the surviving beneficiary;
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
- (c) if there is no surviving beneficiary, to the insured or group person insured, as the case may be, or his or her personal representative.

Right to sue

(3) A beneficiary designated under section 190 may on the death by accident of the person insured or group person insured enforce for his or her own benefit, and a trustee appointed under section 192 may enforce as trustee, the payment of insurance money payable to him or her, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid, but the insurer may set up any defence that it could have set up against the insured or his or her personal representative.

Trustee for beneficiary

192. An insured may in contract or by a declaration appoint a trustee for a beneficiary, and may alter or revoke the appointment by a declaration.

Documents affecting title

193. (1) Until an insurer receives at its head or principal office in Canada an instrument or an order of any court of competent jurisdiction affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

Saving

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

Interest of assignee

(3) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, the assignee has priority of interest as against

- (a) any assignee other than one who gave notice earlier in the same manner; and
- (b) a beneficiary.

Rights and interests of assignee

(4) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given by the contract and by this Part to the insured, and shall be deemed to be the insured.

Prohibition against assignment

(5) A provision in a contract to the effect that the rights or interest of the insured, or in the case of a contract of group insurance the group person insured, are not assignable is valid.

Insurance money

194. (1) Where a beneficiary is designated, any insurance money payable to the beneficiary is not, from the time of the happening of the event on which it becomes payable, part of the estate of the insured and is not subject to the claims of the creditors of the insured.

Execution and seizure

(2) While there is in effect a designation of beneficiary in favour of any one or more of a spouse, child, grandchild or parent of the person insured or group person insured, the rights and interests of the insured in the insurance money and in the contract so far as either relate to accidental death benefits are exempt from execution or seizure.

Group person insured enforcing rights

195. A group person insured may, in his or her own name, enforce a right given by a contract to the group person insured, or to a person insured under the contract as a person dependent upon or related to the group person insured, subject to any defence available to the insurer against the group person insured or such person insured or against the insured.

Simultaneous deaths

196. Unless a contract or a declaration otherwise provides, where a person insured or group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with subsection 191(2) as if the beneficiary had predeceased the person insured or group person insured.

Payment into court

197. (1) Where the insurer admits liability for the insurance money or any part of the insurance money and it appears to the insurer that

- (a) there are adverse claimants;
- (b) the whereabouts of the person entitled is unknown; or
- (c) there is no person capable of giving or authorized to give a valid discharge therefor who is willing to do so,

the insurer may apply *ex parte* to the Court for an order for payment of money into court, and the Court may on the notice, if any, that it considers necessary, make an order accordingly.

Costs of proceedings

(2) The Court may fix without taxation the costs incurred on or in connection with an application or order made under subsection (1), and may order the costs to be paid out of the insurance money or by the insurer or otherwise as it considers just.

Discharge of insurer

(3) A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the payment.

Where beneficiary a minor

198. (1) Where an insurer admits liability for insurance money payable to a minor and there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so, the insurer may at any time after 30 days from the date of the happening of the event on which the insurance money becomes payable, pay the money less the applicable costs mentioned in subsection (2) into court to the credit of the minor.

Costs

(2) The insurer may retain, out of the insurance money for costs incurred on payment into court under subsection (1), \$10 where the amount does not exceed \$1,000, and \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.

Procedure

(3) No order is necessary for payment into court under subsection (1), but the accountant or other proper officer of the Court shall receive the money upon the insurer filing with the officer an affidavit showing the amount payable and the name, date of birth and residence of the minor, and on that payment being made, the insurer shall without delay notify the Public Trustee and deliver to the Public Trustee a copy of the affidavit.

Beneficiary under disability

199. Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid.

Payments not exceeding \$2,000

200. Despite that insurance money is payable to a person, the insurer may if the contract so provides, but subject to the rights of an assignee, pay an amount not exceeding \$2,000

- (a) to a relative by blood or connection by marriage of a person insured or the group person insured; or

(b) to any person appearing to the insurer to be equitably entitled to it by reason of having incurred expense for the maintenance, medical attendance or burial of a person insured or the group person insured, or to have a claim against the estate of a person insured or the group person insured in relation to it,
and any such payment discharges the insurer to the extent of the amount paid.
S.Nu. 2010,c.14,s.9(13).

Place of payment

201. (1) Subject to subsection (2), insurance money is payable in Nunavut.

Exception for group insurance

(2) In the case of a contract of group insurance, insurance money is payable in the province or territory in which the group person insured was resident at the time he or she became insured.

Dollars

(3) Unless the contract otherwise provides, a reference in a contract to dollars means Canadian dollars whether the contract by its terms provides for payment in Canada or elsewhere.

Payment outside Nunavut

(4) Where a person entitled to receive insurance money is not domiciled in Nunavut, the insurer may pay the insurance money to that person or to any person who is entitled to receive it on behalf of that person by the law of the domicile of the payee and any such payment discharges the insurer to the extent of the amount paid.

Payment to personal representative

(5) Where

- (a) insurance money is by the contract payable to a person who has died or to his or her personal representative; and
- (b) that deceased person was not at the date of his or her death domiciled in Nunavut,

the insurer may pay the insurance money to the personal representative of the deceased person appointed under the law of his or her domicile, and any such payment discharges the insurer to the extent of the amount paid. S.Nu. 2010,c.14,s.9(10),(13).

Action in Nunavut

202. Regardless of the place where a contract was made, a claimant who is a resident of Nunavut may bring an action in Nunavut if the insurer was authorized to transact insurance in Nunavut at the time the contract was made or at the time the action is brought. S.Nu. 2010,c.14,s.9(13).

Insurer giving information

203. An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

Undue prominence

204. The insurer shall not in the policy give undue prominence to any provision or statutory condition as compared to other provisions or statutory conditions, unless the effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy.

Relief from forfeiture

205. Where

- (a) there has been imperfect compliance with a statutory condition as to any matter or thing to be done or omitted by the insured, person insured or claimant with respect to the loss insured against and a consequent forfeiture or avoidance of the insurance in whole or in part; and
- (b) any Court before which a question relating to that is tried considers it inequitable that the insurance should be forfeited or avoided on that ground,

the Court may relieve against the forfeiture or avoidance on the terms that it considers just.

Presumption against agency

206. No officer, agent, employee or servant of the insurer, and no person soliciting insurance, whether or not that person is an agent of the insurer, shall to the prejudice of the insured, person insured or group person insured, be deemed to be the agent of the insured or of the person insured or group person insured in respect of any question arising out of the contract.

PART VII

LIVESTOCK INSURANCE

Application of Part

207. This Part applies to livestock insurance and to any insurer carrying on the business of livestock insurance in Nunavut. S.Nu. 2010,c.14,s.9(13).

Property that may be insured

208. Every insurer licensed for the transaction of livestock insurance may, within the limits and subject to the conditions imposed by the licence, insure against loss of livestock, by fire, lightning, accident, disease or other means, except that of design on the part of the insured, or by the invasion of an enemy or by insurrection.

Application of provisions as to fire insurance

209. The following provisions of Part III apply to livestock insurance contracts:

- (a) the provisions as to the form and contents of the policy;
- (b) the provisions as to the conditions, including the statutory conditions, except where inapplicable to the nature of the risk.

Term of contract

210. (1) Contracts of insurance shall not in any case exceed the term of two years.

Renewing policies

(2) A contract made for one year or any shorter period may be renewed from time to time at the discretion of the directors by renewal receipt instead of by policy, on the assured paying the required premium and all payments or renewals must be made at or before the end of the period for which the policy was issued or renewed, otherwise the policy is void.

Term of renewal

(3) No renewal receipt shall extend the contract beyond two years from the date of the policy.

PART VIII

FRATERNAL SOCIETIES

Licence

211. (1) No fraternal society shall, without a licence, carry on the business of life insurance in Nunavut.

Issuing of licences

(2) The Superintendent may, on the terms and conditions that the Superintendent considers in the public interest, issue licences to fraternal societies to carry on the business of life insurance in Nunavut.

Societies deemed not to be fraternal societies

(3) The following shall be deemed not to be fraternal societies within the meaning of this Part and shall not be required or entitled to be licensed as such:

- (a) a corporation not otherwise provided for in this Act that has by or under the authority of an Act of Canada created a fund for paying a gratuity on the happening of death, sickness, infirmity, casualty, accident, disability or any change of physical or mental condition;
- (b) a corporation not otherwise provided for in this Act that has by or under the authority of an Act of Canada an insurance and provident society or association, or an insurance or guarantee fund in connection with the corporation;
- (c) a corporation that undertakes or offers to undertake contracts of insurance other than with its own members exclusively, or for

- more than \$5,000 payable on the death of any one member other than a funeral benefit, or any contracts of insurance with its members other than
- (i) life insurance,
 - (ii) contracts for the payment of mortuary or funeral benefits, or
 - (iii) old age insurance;
- (d) a corporation in which the insurance fund is used for the purposes of a mercantile or business enterprise, or for mercantile profit, or a society formed on the lodge system, whose insurance fund is held other than as a trust fund for the members insured;
 - (e) a society in which the persons insured do not exercise, either directly or through representatives elected for a term not exceeding four years, effective control over the insurance fund of the society, or in which the officers or other persons having the disposition, control or possession of the insurance fund are elected or appointed for a longer period than four years;
 - (f) any corporation that undertakes contracts of insurance but is not formed exclusively for that purpose and that does not for the purpose of such contracts keep distinct and separate funds, securities, books and vouchers.
- S.Nu. 2010,c.14,s.9(13).

PART VIII.1

RECIPROCAL OR INTER-INSURANCE EXCHANGES

Definitions

211.01. In this Part,

"attorney" means a person authorized by a power of attorney to act for subscribers; (*fondé de pouvoir*)

"contract" means a reciprocal contract of indemnity or inter-insurance; (*contrat*)

"subscribers" means persons exchanging with each other contracts as provided in section 211.02. (*souscripteurs*)

R.S.N.W.T. 1988,c.37(Supp.),s.5.

Contracts

211.02. (1) Subject to this Part, a person may exchange with other persons in Nunavut and elsewhere contracts for any class of insurance for which an insurance company may be licensed under this Act except accident insurance, guarantee insurance, life insurance and sickness insurance.

Insurer

(2) A person who exchanges contracts with other persons under this Part is not an "insurer" as defined in this Act. R.S.N.W.T. 1988,c.37(Supp.),s.5; S.Nu. 2010,c.14,s.9(13).

Execution of contract

211.03. A person acting as attorney under a power of attorney, where the form of power of attorney has been filed under paragraph 211.07(1)(c), may execute contracts on behalf of subscribers. R.S.N.W.T. 1988,c.37(Supp.),s.5.

Court action

211.04. Despite any term or condition in a power of attorney or a contract, any action or proceeding in respect of the power of attorney or contract may be maintained in any court of competent jurisdiction in Nunavut. R.S.N.W.T. 1988,c.37(Supp.),s.5; S.Nu. 2010,c.14,s.9(13).

Name of exchange

211.05. No person shall execute a contract as part of a reciprocal or inter-insurance exchange unless the name or designation of the exchange is, in the opinion of the Superintendent, unlikely to result in confusion or deception with an exchange or insurer that has been licensed under this Act or elsewhere. R.S.N.W.T. 1988,c.37(Supp.),s.5.

Requirement for licence

211.06. Unless a licence under this Part has been issued and is in force, no person shall

- (a) act as attorney or for or on behalf of an attorney, in the exchange of reciprocal contracts of indemnity or inter-insurance, or in acts or transactions in connection with such contracts; or
- (b) exchange a contract with any other person.

R.S.N.W.T. 1988,c.37(Supp.),s.5.

Filing requirements

211.07. (1) A person who intends to exchange contracts with other persons in Nunavut and elsewhere shall, through his or her attorney, file with the Superintendent

- (a) an affidavit setting out
 - (i) the name of the attorney,
 - (ii) the name or designation under which the contracts are to be issued,
 - (iii) the classes of insurance to be effected or exchanged under the contracts, and
 - (iv) the location of the office from which the contracts are to be issued;
- (b) the form of the policy under the contract;
- (c) the form of power of attorney under which the contracts are to be effected or exchanged;
- (d) a financial statement in the form approved by the Superintendent;

- (e) evidence satisfactory to the Superintendent that it is the practice of the exchange to require its subscribers to maintain in the hands of the attorney, as a condition of membership in the exchange, a premium deposit reasonably sufficient for the risk assumed by the exchange;
- (f) evidence satisfactory to the Superintendent that the management of the affairs of the exchange is subject to the supervision of an advisory board or committee of the subscribers in accordance with the terms of the power of attorney; and
- (g) evidence satisfactory to the Superintendent that the exchange is licensed by the province or territory that, in the opinion of the Superintendent, is the principal place of operation of the exchange.

Initial application and renewal

(2) The financial statement referred to in paragraph (1)(d) and the evidence referred to in paragraphs (1)(e) and (f) are,

- (a) in an initial application, to be in relation to the operation of the exchange outside Nunavut; and
- (b) in an application for a renewal of a licence, to include information about the operation of the exchange in Nunavut.

R.S.N.W.T. 1988,c.37(Supp.),s.5; S.Nu. 2010,c.14,s.9(13).

Licence

211.08. (1) The Superintendent shall issue a licence to an exchange that complies with this Part and pays the prescribed fee.

Application of section 16

(2) Section 16 applies to a licence issued under subsection (1) and a reference to "insurer" in that section shall be deemed to refer to an "exchange".

R.S.N.W.T. 1988,c.37(Supp.),s.5.

Service

211.09. If the office from which the contracts are to be issued is outside Nunavut, service on the Superintendent of notice or process in any action or proceeding in Nunavut in respect of contracts effected by an exchange shall be deemed to be service on the subscribers who are members of the exchange at the time of service.

R.S.N.W.T. 1988,c.37(Supp.),s.5; S.Nu. 2010,c.14,s.9(13).

Liability

211.10. No exchange shall undertake any liability on a contract except on behalf of a subscriber. R.S.N.W.T. 1988,c.37(Supp.),s.5.

Reinsurance

211.11. No attorney or exchange shall effect reinsurance of any risks undertaken by the exchange in any other reciprocal or inter-insurance exchange.

R.S.N.W.T. 1988,c.37(Supp.),s.5.

Suspension or cancellation of licence

- 211.12.** (1) The Superintendent may suspend or cancel the licence of an exchange where
- (a) the exchange, a subscriber or attorney of the exchange fails or refuses to comply with or contravenes this Act; or
 - (b) the licence of the exchange is suspended or cancelled by the province or territory that, in the opinion of the Superintendent, is the principal place of business of the exchange.

Effect

- (2) A suspension or cancellation under subsection (1) does not affect the validity of
- (a) a contract effected before the suspension or cancellation; or
 - (b) the rights and obligations of subscribers under the contract.

Notice

- (3) The Superintendent shall give notice of a suspension or cancellation under subsection (1) in at least two successive issues of the *Nunavut Gazette* as soon as reasonably possible after the suspension or cancellation.

R.S.N.W.T. 1988,c.37(Supp.),s.5; S.Nu. 2010,c.14,s.9(13).

Appeal

- 211.13.** (1) An exchange, subscriber or attorney that is aggrieved by a decision of the Superintendent may appeal the decision to the Court.

Certificate of decision and evidence

- (2) Where a decision is appealed under subsection (1), the Superintendent shall certify to the Clerk the decision appealed from together with the reasons for the decision and the evidence on which the decision was made.

Procedure on appeal

- (3) The appeal shall be conducted in accordance with the procedure for appeals from tribunals set out in the *Judicature Act*. R.S.N.W.T. 1988,c.37(Supp.),s.5; S.N.W.T. 1998,c.34,Sch.C,s.13(2); S.Nu. 2010,c.14,s.9(13).

Fire insurance

- 211.14.** (1) Despite anything in this Act, a person may insure against fire, property situated in Nunavut in an exchange not licensed under this Act if the insurance is effected outside Nunavut and without any solicitation in Nunavut directly or indirectly by the exchange or its attorney.

Inspection and right to adjust

- (2) Property insured under subsection (1) may be inspected and any loss incurred in respect of property insured under subsection (1) may be adjusted.

R.S.N.W.T. 1988,c.37(Supp.),s.5; S.Nu. 2010,c.14,s.9(13).

Regulations

211.15. The Commissioner, on the recommendation of the Minister, may make regulations prescribing the fee referred to in subsection 211.08(1).
R.S.N.W.T. 1988,c.37(Supp.),s.5.

PART IX

AGENTS, BROKERS AND ADJUSTERS

LICENCES OF INSURANCE AGENTS

Licensing agent

212. (1) The Superintendent may issue a licence to any person who has complied with this Act authorizing that person to carry on business as an insurance agent subject to this Act, the regulations and the terms of the licence.

Classes of licences

- (2) Licences issued under subsection (1) shall be of three classes, namely,
- (a) licences for life insurance, or life and accident insurance, or life and accident and sickness insurance;
 - (b) licences for accident and sickness insurance; and
 - (c) licences for all classes of insurance other than life insurance.

Issue of licence

(3) On written notice to the Superintendent that a licensed insurer has appointed a person to act as agent for the insurer in Nunavut and on due application of that person and payment by that person of the prescribed fee, the Superintendent shall, if the Superintendent is satisfied that the applicant is a suitable person to receive a licence and intends to hold himself or herself out publicly and carry on business in good faith as an insurance agent, issue to the applicant a licence that must state in substance that the holder is, during the term of the licence, authorized to carry on in Nunavut the business of an insurance agent.

Notice of appointment of agent

- (4) A notice of appointment of an agent by an insurer must
- (a) be on a form provided by the Superintendent;
 - (b) state that the person appointed has been authorized in writing by the insurer to act as agent in the soliciting of and negotiating for insurance; and
 - (c) be accompanied by a sworn statement of the person appointed on a form provided by the Superintendent that sets out
 - (i) the name, age, residence and present occupation of the person appointed,
 - (ii) the occupation of the person appointed for the five years immediately preceding the date of the notice,

- (iii) particulars of any other employment in which the person appointed is engaged, and
- (iv) any other information that the Superintendent may require.

Limitations of licence

(5) Where the applicant is the appointed agent of an insurer carrying on in Nunavut

- (a) the business of life insurance, or life and accident insurance, or life and accident and sickness insurance, the licence shall expressly limit the authorization of the agent to the class of insurance for which the insurer is licensed; and
- (b) any class or classes of insurance business other than life insurance, the licence shall expressly exclude the business of life insurance,

but nothing in this Act prevents the issue to the same applicant of two licences including all classes of insurance if due application has been made for two licences.

Notice of termination of agency

(6) Where the agency, on notice of which a licence is issued, is terminated, notice in writing must be given without delay by the insurer to the Superintendent of the termination with the reason for the termination, and upon that, the licence is suspended, but it may be revived subject to the approval of the Superintendent on

- (a) filing of notice of a new agency appointment; and
- (b) payment of the prescribed fee.

Failure to give notice

(7) An insurer who fails to notify the Superintendent within 30 days after the termination of an agency appointment as required by subsection (6) is guilty of an offence. S.Nu. 2010,c.14,s.9(13).

Disentitlement to licence

213. (1) An agent whose licence is revoked is not eligible for a new licence for a period of one year after the revocation.

Expiration of licence

(2) A licence issued under section 212 or 218 expires at the prescribed time, unless sooner suspended or revoked.

Renewal

(3) Subject to subsection (1), a licence may, in the discretion of the Superintendent, be renewed for a succeeding year on

- (a) due application on a form provided by the Superintendent giving the information that the Superintendent may require, accompanied by a certificate of appointment of agent of a licensed insurer; and
- (b) payment of the prescribed fee,

without requiring the submission of the detailed information specified in subsection 212(4).

Authority of agents

214. (1) The holder of a licence under section 212, 213 or 218 as agent for insurance other than life insurance may, during the term and validity of the licence, act as agent for any licensed insurer within the limits imposed by the licence, and may act as an insurance broker in dealing with licensed insurers without other or additional licences.

Authority of life insurance agent

(2) A life insurance agent may be licensed to act as agent for more than one insurer transacting life insurance, and the name of each insurer shall be specified in the licence, but where that agent is unable to negotiate insurance on behalf of an applicant for insurance with the insurers for which that agent is the authorized agent, that agent has the right to procure that insurance from another insurer if the other insurer obtains in each case the consent in writing of the insurers for which that agent is the authorized agent, and files a copy of the consent with the Superintendent.

Collectors

215. A collector of insurance premiums who does not solicit application for or the renewal or continuance of insurance contracts or act or aid in negotiating such contracts or the renewal of them may carry on that business without a licence for it if his or her collection fee does not exceed 5% of any amount collected.

Officers of fraternal societies

216. (1) An officer or a salaried employee of the head office of a duly licensed fraternal society who does not receive commission may, without a licence, solicit insurance contracts on behalf of the society.

Members of fraternal societies

(2) Any member who is not an officer or salaried employee described in subsection (1) may, without a licence, solicit insurance contracts on behalf of the fraternal society, unless that member

- (a) devotes or intends to devote more than one-half of his or her time to soliciting such contracts; or
- (b) has in the previous licence year solicited and procured life insurance contracts on behalf of the society in an amount in excess of \$20,000.

Salaried officers and employees acting without licence

217. Unless the Superintendent otherwise directs, an officer or salaried employee of a licensed insurer who does not receive commissions may, without a licence, act for that insurer in the negotiation of any contracts of insurance or in the negotiation of the continuance or renewal of any contracts that the insurer may lawfully undertake, but

- (a) officers or employees whose applications for licences as insurance agents or salespersons have been refused or whose licences have been revoked or suspended may not so act without the written approval of the Superintendent; and

- (b) in the cases of insurers authorized to undertake life insurance, only the officers and salaried employees of the head office who do not receive commissions may so act without a licence.

Licensing of transportation ticket agents

218. Despite anything in this Act, the Superintendent may issue a licence to a transportation company authorizing it, by its employees in Nunavut, to act as an agent for a licensed insurer with respect to accident insurance and any other classes of insurance that the Superintendent approves. S.Nu. 2010,c.14,s.9(13).

Offence

219. (1) Every person who acts as an agent without a licence, or while his or her licence is suspended, is guilty of an offence.

Idem

(2) Every person who, without a licence issued under section 212 or 218 or renewed under subsection 213(3) or while his or her licence is suspended, carries on the business of an insurance broker with licensed insurers, is guilty of an offence.

Regulations

220. (1) The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing requirements, qualifications and conditions for the issuing or renewal of licences;
- (b) providing for the holding of examinations for applicants for licences or renewals of licences;
- (c) classifying applicants for licences and restricting or prohibiting the licensing of any class of applicant;
- (d) prescribing the grounds on which a licence may be revoked, suspended or not renewed;
- (e) regulating the method of handling premiums collected and requiring and regulating accounts and records to be maintained by agents;
- (f) requiring agents to supply information and make returns to the Superintendent;
- (g) requiring an agent to provide a bond or other security and fixing the amount, form, requirements and terms of it;
- (h) respecting forms and providing for their use;
- (i) prescribing the time when a licence issued under section 212 or 218 expires; and
- (j) respecting any matter necessary or advisable to carry out effectively the intent and purpose of sections 212 to 219.

Scope of regulations

(2) Regulations made under subsection (1) are in addition to the provisions of sections 212 to 219 notwithstanding that the regulations concern a matter provided for in these sections. S.N.W.T. 1998,c.24,s.12(4).

LICENCES OF INSURANCE SALESPERSONS

Licences

221. (1) The Superintendent may issue, to any person who has complied with this Act, a licence authorizing that person to act as a salesperson on behalf of a licensed insurance agent in negotiating contracts of insurance or in the negotiation of the continuance or renewal of any contracts that the agent may lawfully undertake.

Type of insurance

(2) Licences issued under subsection (1) shall be for any classes of insurance, other than life insurance.

Issue of licence

(3) On written notice to the Superintendent that a licensed insurance agent has appointed a person as a salesperson to act on behalf of the agent and on due application of that person and payment by that person of the prescribed fee, the Superintendent shall, if the Superintendent is satisfied that the applicant

- (a) is a suitable person to receive a licence; and
- (b) has not been refused a licence as an insurance agent or had such a licence suspended or revoked,

issue to the applicant a licence stating in substance that the holder is, during the term of the licence, authorized to act in Nunavut as a salesperson of the agent.

Form of notice of appointment

(4) A notice of appointment by a licensed agent, other than a life insurance agent, must

- (a) be on a form provided by the Superintendent;
- (b) state that the person appointed has been authorized in writing by the agent to act as a salesperson in the soliciting of and negotiating for insurance; and
- (c) be accompanied by a sworn statement of the person appointed on a form provided by the Superintendent that sets out
 - (i) the name, age and residence of the person appointed,
 - (ii) the amount of monthly salary the person appointed is to receive for such employment,
 - (iii) the present occupation and occupation for the five years immediately preceding the date of notice of the person appointed,
 - (iv) particulars of any other employment in which the person appointed is engaged, and
 - (v) any other information that the Superintendent may require.

Life insurance

(5) The licence shall expressly exclude the business of life insurance, but nothing in this Act prevents the issuance to the same applicant of a licence as a life insurance agent, if due application is made on written notice of appointment by a licensed insurer.

Notice of termination of employment

(6) Where a licensed salesperson ceases to be employed by the appointing agent, notice in writing shall without delay be given by the agent to the Superintendent of the termination of employment with the reason for the termination, and on the notice being given to the Superintendent, the licence is suspended, but the licence may be revived subject to the approval of the Superintendent on

- (a) filing a notice of the appointment of the salesperson by another agent; and
- (b) payment of the prescribed fee.

Failure to give notice

(7) Every agent who fails to notify the Superintendent within 30 days after the termination of the appointment of the salesperson as required by subsection (6) is guilty of an offence. S.Nu. 2010,c.14,s.9(13).

Expiration of licence

222. (1) A licence issued under section 221 expires on a day fixed by the Superintendent, unless sooner suspended or revoked.

Renewal

(2) A licence issued under section 221 may, in the discretion of the Superintendent, be renewed for a succeeding year on

- (a) due application on a form provided by the Superintendent giving the information that the Superintendent may require, accompanied by a certificate of a licensed agent respecting the appointment of the salesperson; and
- (b) payment of the prescribed fee,

without requiring the submission of the detailed information specified in subsection 221(4).

For whom salesperson may act

(3) The holder of a licence issued under section 221 may, during the term and validity of the licence, act as salesperson only for the agent by whom he or she is appointed and within the limits of the licence of that agent for classes of insurance other than life insurance.

Offence

(4) Every person who acts as a salesperson of an insurance agent without a licence, or while his or her licence is suspended, is guilty of an offence.

LICENCES OF INSURANCE BROKERS

Licence to broker

223. (1) The Superintendent may, on the payment of the prescribed fee, issue to any person, who is licensed as an agent, a licence to act as a broker to negotiate, continue or renew contracts of insurance in Nunavut with insurers not authorized to transact business in Nunavut.

Application

(2) The applicant for a broker's licence shall file with the Superintendent a written application on a form provided by the Superintendent.

Issuance of licence

(3) If the Superintendent is satisfied with the statement and information required by subsection (2), the Superintendent shall issue a licence to act as a broker to the applicant.

Expiration of licence

(4) A licence issued under subsection (3) expires on the prescribed date, unless sooner suspended or revoked.

Renewal of licence

(5) The Superintendent may renew a licence issued under subsection (3) for each succeeding year on

- (a) the payment of the prescribed fee;
- (b) the submission of a written application; and
- (c) the submission of a written report, in a form acceptable to the Superintendent, on all business placed by the broker with unlicensed insurers during the previous licence period.

Security

(6) Every person shall, before receiving a licence issued under subsection (3), execute and deliver to the Superintendent security to the satisfaction of the Superintendent, in the sum of not less than \$2,000, that the licence holder will comply with all the requirements of this Act and the regulations.

Status of broker

(7) Subject to section 225, a broker shall not be presumed to be the agent of the insurer or the agent of the insured by reason of the issue to the broker of a licence under this section.

Offence

(8) Every person who, without a licence issued under this section or while his or her licence is suspended, carries on the business of an insurance broker with insurers not authorized to transact business in Nunavut is guilty of an offence.

S.Nu. 2010,c.14,s.9(13).

Dealing with unlicensed insurers

224. (1) If sufficient insurance in respect of any matter or thing in Nunavut cannot be obtained from insurers licensed to do business in Nunavut, any licensed broker may place insurance with unlicensed insurers.

Statement of insured

(2) Before placing insurance with an unlicensed insurer, a broker shall obtain from the insured a signed and dated statement

- (a) describing fully the nature of the insurance and the amount of insurance required;
- (b) stating that the insurance cannot be obtained from licensed insurers; and
- (c) stating that application for the insurance was previously made to and refused by named insurers licensed in Nunavut.

Submission to Superintendent

(3) A broker shall, within 10 days after the placing of the insurance with an unlicensed insurer, submit to the Superintendent

- (a) a statement setting out
 - (i) the name of the insured,
 - (ii) the nature of the insurance,
 - (iii) the full names of the unlicensed insurers, and
 - (iv) the amount of insurance placed with each and the rate and amount of premium paid to each; and
- (b) the statement referred to in subsection (2).

Books of account

(4) A broker shall keep a separate account of insurance placed by the broker under his or her licence and keep the accounts open to inspection by the Superintendent or any person authorized by the Superintendent.

Monthly return

(5) Within 10 days after the end of each month, a broker shall make a return under oath to the Superintendent in the form and manner required by the Superintendent, containing particulars of all insurance placed under subsection (1) by the broker during the month.

Tax on premiums

(6) In respect of all premiums on insurance placed under subsection (1), a broker shall pay to the Superintendent, at the time of making a monthly return, the taxes that would be payable if the premiums had been received by a licensed insurer.

Release of security

(7) On it being shown to the satisfaction of the Superintendent that all insurance placed under subsection (1) by a broker is no longer in force or has been reinsured, the broker is entitled to a release or cancellation of his or her security.

Forfeiture of licence

(8) Every broker who contravenes this section forfeits his or her licence and is guilty of an offence. S.Nu. 2010,c.14,s.9(13).

PROVISIONS RELATING TO AGENTS AND BROKERS GENERALLY

Agent or broker receiving premiums

225. (1) An agent or broker shall, for the purpose of receiving any premium for a contract of insurance, be deemed to be the agent of the insurer notwithstanding any conditions or stipulations to the contrary.

Exemption

(2) Subsection (1) does not apply to life insurance.

Fraudulent representations

226. Every agent or broker who knowingly procures, by fraudulent representations, payment or the obligation for payment of any premium on any insurance policy is guilty of an offence.

Personal liability of agent for unlawful contracts

227. An agent or broker is personally liable to the insured on all contracts of insurance unlawfully made by or through him or her directly or indirectly with any insurer not licensed to undertake insurance in Nunavut in the same manner as if the agent or broker were the insurer. S.Nu. 2010,c.14,s.9(13).

LICENCES OF INSURANCE ADJUSTERS

Licences of insurance adjusters

228. (1) The Superintendent may, on the payment of the prescribed fee, issue to any suitable person a licence to act as an adjuster, but a person licensed as an insurance agent or broker under this Part shall not receive a licence to act as an insurance adjuster.

Prohibition against public adjusters of motor accident claims

229. (1) Subject to subsection (2), no person shall, on behalf of himself or herself or another person, directly or indirectly,

- (a) solicit the right to negotiate, or negotiate or attempt to negotiate, for compensation, the settlement of a claim for loss or damage arising out of a motor vehicle accident resulting from bodily injury to or death of any person or damage to property on behalf of a claimant; or
- (b) hold himself or herself out as an adjuster, investigator, consultant or otherwise as an adviser, on behalf of any person having a claim against an insured for which indemnity is provided by a motor vehicle liability policy.

Exemption

(2) This section does not apply to a barrister or solicitor acting in the usual course of that profession.

PROVISIONS RELATING TO AGENTS, BROKERS
AND ADJUSTERS GENERALLY

Acting as agent, broker or adjuster without authority

- 230.** (1) Every person is guilty of an offence who
- (a) not being duly licensed as an agent, broker or adjuster, represents or holds himself or herself out to the public as being such an agent, broker or adjuster, or as being engaged in the insurance business by means of advertisements, cards, circulars, letterheads, signs or other methods; or
 - (b) being duly licensed as an agent, broker or adjuster, advertises as described in paragraph (a), or carries on such business in any other name than that stated in the licence.

Agent or broker holding money in trust

- (2) An agent or broker who
- (a) acts in negotiating, renewing or continuing a contract of insurance with a licensed insurer; and
 - (b) receives any money or substitute for money for payment to a person in respect of the contract of insurance,

shall be deemed to hold that money in trust for the person entitled to it, and, if the agent or broker fails to pay the money over to that person within 15 days after written demand made on the agent or broker for the money less his or her commission and any deductions to which the agent or broker is entitled, that failure is, in the absence of evidence to the contrary, proof that the agent or broker has used or applied the money for a purpose other than paying it over to the person entitled.

Agent or broker holding premium in trust

- (3) An agent or broker who
- (a) acts in negotiating, renewing or continuing a contract of insurance, other than life insurance, with a licensed insurer; and
 - (b) receives any money or substitute for money as a premium for the contract of insurance from the insured,

shall be deemed to hold the premium in trust for the insurer, and, if the agent or broker fails to pay the premium over to the insurer within 15 days after written demand made on the agent or broker for the premium, less his or her commission and any deductions to which, by the written consent of the company, the agent or broker is entitled, that failure is, in the absence of evidence to the contrary, proof that the agent or broker has used or applied the premium for a purpose other than paying it over to the insurer.

Payment of compensation

231. (1) No insurer, and no officer, employee or agent of an insurer, and no broker, shall directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in Nunavut, or negotiating the continuance or renewal of that insurance, or for attempting to do so, who, at the date of placing or negotiating the insurance, is not a duly licensed insurance agent or broker or a person acting under subsection 217 and every person who knowingly contravenes this subsection is guilty of an offence.

Agreement as to premium other than as in policy

(2) No insurer, and no officer, employee or agent of an insurer, and no broker shall directly or indirectly make or attempt to make an agreement as to the premium to be paid for a policy other than as set out in the policy, or pay, allow or give, or offer or agree to pay, allow or give, a rebate of the whole or part of the premium stipulated by the policy, or any other consideration or thing of value intended to be in the nature of a rebate of premium, to any person insured or applying for insurance in respect of life, person or property in Nunavut, and every insurer or other person who contravenes this subsection is guilty of an offence.

Exceptions

(3) Nothing in this section affects any payment by way of dividend, bonus, profit or savings that is provided for by the policy, or shall be construed so as to prevent an insurer compensating a bona fide salaried employee of its head office or branch office in respect of insurance issued by the employing insurer on the life of that employee or on the property or interests in Nunavut of that employee or so as to require that such employee shall be licensed as an agent under this Act to affect that insurance.

S.Nu. 2010,c.14,s.9(13).

Inducing insured with respect to life insurance

232. (1) Every person who induces or attempts to induce, directly or indirectly, an insured to

- (a) lapse;
- (b) surrender for cash paid up or extended insurance, or other valuable consideration; or
- (c) subject to substantial borrowing whether in a single loan or over a period of time,

any contract with one insurer of life insurance that contains provision for cash surrender and paid-up values for the purposes of effecting a contract of life insurance with another insurer is guilty of an offence.

Misleading statements, comparisons or coercion

(2) Every person licensed as an agent for life insurance is guilty of an offence who

- (a) makes a false and misleading statement or representation in the solicitation or registration of insurance;

- (b) makes or delivers any incomplete comparison of any policy or contract of insurance with that of any other insurer in the solicitation or registration of insurance; or
- (c) coerces or proposes, directly or indirectly, to coerce a prospective buyer of life insurance through the influence of a professional or a business relationship or otherwise to give a preference with respect to the policy of life insurance that would not otherwise be given on the effecting of a life insurance contract.

Returns to Superintendent

233. Every licensed insurer shall make a return under oath to the Superintendent in the form and at the times that the Superintendent requires showing all persons, partnerships and corporations to whom it has, within the period that the form of return requires, paid or allowed or agreed to pay or allow, directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in Nunavut, or negotiating the continuance or renewal of that insurance, or for attempting to do so.

S.Nu. 2010,c.14,s.9(13).

Revocation or suspension

234. (1) The Superintendent may after a hearing, revoke the licence of an agent, salesperson, broker or adjuster, suspend it for a period not exceeding its unexpired term or revoke it while so suspended where the Superintendent determines that the licence holder

- (a) contravened this Act or the regulations;
- (b) made a material misstatement in the application for the licence;
- (c) is guilty of a fraudulent practice; or
- (d) has demonstrated incompetence or untrustworthiness to transact the business for which the licence was issued.

Notice

(2) The Superintendent shall notify the licence holder in writing of any revocation or suspension and may publish a notice of such revocation or suspension in the manner that the Superintendent considers necessary for the protection of the public.

Application

235. (1) This section applies in respect of licences for agents, brokers and adjusters.

Advisory board

(2) The Superintendent may, and shall when so requested in writing by an applicant or licence holder, appoint three persons to act as an advisory board for the purpose of assisting the Superintendent in deciding whether to issue, renew, revoke or suspend a licence.

Composition of advisory board

- (3) The advisory board shall be composed of
- (a) a representative of insurers;
 - (b) a representative of agents, brokers or adjusters, as the case may be; and
 - (c) a representative of the Superintendent.

Hearing and report

(4) The advisory board shall hold a hearing and report its findings to the Superintendent together with recommendations on the matter that it sees fit.

Presiding member

(5) The representative of the Superintendent shall preside over the advisory board and for the purpose of the hearing, has all the powers of the Superintendent under section 255.

Appeal

236. (1) Where the Superintendent refuses to issue a licence applied for by an insurer, agent, salesperson, broker or adjuster, the Superintendent shall state the reasons for the decision in writing and any person who considers himself or herself aggrieved by the decision of the Superintendent may appeal it to the Minister.

Effect of decision pending appeal

(2) Where an appeal is made, the decision of the Superintendent does not take effect until after the hearing and disposition by the Minister.

Limited or conditional licence

237. The Superintendent may issue a licence to an agent, salesperson, broker or adjuster subject to any limitations and conditions that the Superintendent may determine.

REGULATIONS

Regulations

238. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) regulating the replacement of an existing life insurance contract by another contract of life insurance;
 - (b) respecting the duties of insurers and agents in connection with replacement of life insurance contracts;
 - (c) prescribing the fees to be prescribed for the purposes of this Part; and
 - (d) prescribing the date on which a licence issued under subsection 223(3) expires.
- S.N.W.T. 1998,c.24,s.12(4).

PART X

UNFAIR AND DECEPTIVE ACTS
AND PRACTICES IN THE BUSINESS OF INSURANCE

Definitions

239. In this Part,

"person" means a person engaged in the business of insurance and includes the Facility Association and any individual, corporation, association, partnership, member of the society known as Lloyds, fraternal society, agent, broker or adjuster; (*personne*)

"unfair or deceptive acts or practices in the business of insurance" includes

- (a) the commission of any act prohibited under this Act or the regulations;
- (b) any unfair discrimination between individuals of the same class and of the same expectation of life, the amount or payment or return of premiums, or rates charged by it for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable thereon or in the terms and conditions thereof;
- (c) any unfair discrimination in any rate or schedule of rates between risks in Nunavut of essentially the same physical hazards in the same territorial classification;
- (d) any illustration, circular, memorandum or statement that misrepresents, or by omission is so incomplete that it misrepresents, the terms, benefits or advantages of any policy or contract of insurance issued or to be issued;
- (e) any false or misleading statement as to the terms, benefits or advantages of any contract or policy of insurance issued or to be issued;
- (f) any incomplete comparison of any policy or contract of insurance with that of any other insurer for the purpose of inducing, or intending to induce, an insured to lapse, forfeit or surrender a policy or contract;
- (g) any payment, allowance or gift, or any offer to pay, allow or give, directly or indirectly, any money or thing of value as an inducement to any prospective insured to insure;
- (h) any charge by a person for a premium allowance or fee other than as stipulated in a contract of insurance on which a sales commission is payable to that person; and
- (i) any consistent practice or conduct that results in unreasonable delay or resistance to the fair adjustment and settlement of claims.
(*actes ou pratiques malhonnêtes ou trompeurs dans le commerce des assurances*)

S.Nu. 2010,c.14,s.9(11),(13).

Prohibition

240. No person shall engage in any unfair or deceptive act or practice in the business of insurance.

Investigation by Superintendent

241. The Superintendent may examine and investigate the affairs of every person engaged in the business of insurance in Nunavut in order to determine whether the person has been, or is, engaged in any unfair or deceptive act or practice.

S.Nu. 2010,c.14,s.9(13).

Order of Superintendent

242. (1) Where it appears to the Superintendent that a person is engaging in any unfair or deceptive act or practice in the business of insurance, the Superintendent may order that the person cease engaging in his or her business or any part of that business named in the order.

Terms, conditions and revocation of order

(2) An order under subsection (1) may be made subject to the terms and conditions that the Superintendent may specify in the order, and the order may be revoked when the Superintendent is satisfied that the unfair and deceptive acts or practices are corrected and not likely to recur.

Hearing

(3) No order shall be made under subsection (1) without a hearing unless in the opinion of the Superintendent the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire 15 days after the date of the making of it or a longer time that is consented to by the person entitled to the hearing.

Service and effect of order

(4) A notice of every order made under this Part must be served on every person named in the order and on any other persons that the Superintendent considers appropriate and, upon that, no person shall engage in that part of the business of insurance that is the subject of the order.

Offence and punishment

243. Every person who contravenes an order of the Superintendent made under this Part is, in addition to any other consequence or remedy provided by law, guilty of an offence punishable in the same manner as if the person were undertaking insurance or carrying on business in Nunavut without holding a licence to do so.

S.Nu. 2010,c.14,s.9(13).

PART XI

INSURANCE PREMIUM TAX

Definitions

244. In this Part,

"annuity contract" means a contract that provides for the payment of an income for a specified period or for life and under the terms of which the sole benefit stated to be payable by reason of death does not exceed the sum of the amounts paid as consideration for the contract together with interest; (*contrat de rente*)

"insurance company" means a person or corporation carrying on in Nunavut the business of insurance within the meaning of this Act, and includes a reciprocal or inter-insurance exchange, syndicates or underwriters operating on the plan known as "Lloyds", but does not include a fraternal society; (*compagnie d'assurance*)

"taxation year" means the year in which premiums are receivable in respect of business transacted in Nunavut. (*année d'imposition*)

R.S.N.W.T. 1988,c.37(Supp.),s.6; S.Nu. 2010,c.14,s.9(12),(13).

Definition of "business transacted in Nunavut"

245. (1) In subsection (2), "business transacted in Nunavut" means

- (a) in the case of property insurance, all contracts on which premiums are receivable from, or in respect of, persons whose property was situated in Nunavut at the time their premiums became payable; and
- (b) in the case of other insurance, all contracts on which premiums are receivable from, or in respect of, persons who were resident in Nunavut at the time their premiums became payable.

Amount of tax

(2) Every insurance company shall pay to the Government of Nunavut a tax equal to 3% of the gross premiums receivable by it during the taxation year in respect of business transacted in Nunavut by the company, after deducting from the gross premiums

- (a) an amount equal to the cash value of dividends paid and credited to its policy holders in that taxation year; and
- (b) an amount equal to the premiums returned in that taxation year.

Exceptions

(3) The tax imposed under this section is not payable

- (a) by a company transacting life insurance, on amounts receivable as consideration for an annuity contract;
- (b) in respect of premiums receivable under a contract of marine insurance; or

- (c) by a reinsurer in respect of reinsurance premiums and or credited to it by an insurer.
S.N.W.T. 1991-92,c.31,s.3; S.Nu. 2010,c.14,s.9(13).

Levy on insurance companies

246. Every insurance company transacting the business of fire insurance within the meaning of this Act shall, in addition to taxes required to be paid under subsection 245(2), pay to the Superintendent each year a sum equal to 1% of the gross premiums receivable by it during the taxation year, excluding return premiums and cancellations calculated on its fire insurance business in Nunavut as reported to the Superintendent. S.N.W.T. 1991-92,c.31,s.4; S.Nu. 2010,c.14,s.9(13).

When tax payable

- 247.** (1) An insurance company that is liable to pay a tax under this Act shall, on or before March 15 in the year following the taxation year,
- (a) file a return, in a form to be provided by the Superintendent showing the amount of tax payable by the company in respect of the taxation year; and
 - (b) remit to the Superintendent the amount of the tax, if any, payable by it in respect of the taxation year.

Verification of return

(2) The return required under subsection (1) must be verified by the oath or affirmation of the president, manager, secretary or chief agent of the insurance company in Canada.

Interest on overdue taxes

248. Where any tax payable under this Act is not paid in full on the date on which payment is due, the insurance company shall pay to the Superintendent the amount due, together with interest on the amount of the tax unpaid at the rate of 6% per year from the date on which the tax was due until payment is made.

Returns

- 249.** Where the Superintendent
- (a) so wishes in order to enable the Superintendent to determine the correctness of any return made under this Act; or
 - (b) wishes further information concerning a return,
- the Superintendent may require the president, manager, secretary or agent of the insurance company to file a further statement under oath within 30 days.

Inspectors

250. (1) The Superintendent may appoint inspectors to examine into the business, affairs, books and papers of an insurance company insofar as they relate to any business transactions in consequence of which the company may be liable to taxation under this Act.

Production of books

(2) The insurance company and the officers, employees or agents of the insurance company shall produce to the inspectors for inspection by them all books, papers, letters and documents, relating to any business transactions in consequence of which the company may be liable to taxation under this Act.

Examination

(3) An inspector may examine under oath any officer, employee, or agent of an insurance company respecting any business transactions referred to in subsection (1) and may administer the oath accordingly.

Offence and punishment

(4) Every officer, employee or agent of an insurance company who refuses, neglects or omits to produce as required under subsection (2) any books, papers, letters or documents, or who refuses to answer a question put to him or her under subsection (3), is guilty of an offence and liable on summary conviction to a fine not exceeding \$200 in respect of each offence and, in default of payment, to imprisonment for a term not exceeding six months.

Cancellation of licence

251. If any insurance company

- (a) neglects or refuses to make a return within the time fixed by this Act;
- (b) neglects or refuses to provide to the Superintendent any further statement or other information required after making the return; or
- (c) makes a return and provides the further statement or other information referred to in paragraph (b), but it is found by the Superintendent that the return or statement made by the insurance company is glaringly inaccurate, and that the amount on which the tax should be paid has been wilfully understated,

the Superintendent may, in addition to subjecting the insurance company to the punishment provided in this Act, order the cancellation of the licence or certificate of registration under which the insurance company transacts business in Nunavut, upon which the licence, certificate of registration is absolutely revoked and becomes void for all purposes. S.Nu. 2010,c.14,s.9(13).

Offences and punishment

252. (1) Every insurance company liable to taxation under this Act that refuses or neglects or whose chief agent or attorney, as the case may be, refuses or neglects to make any return or statement or pay the tax as required by this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding \$50 for each day during which the refusal or neglect continues and, in addition, shall pay the tax required to be paid under this Act.

Act or omission of company

(2) In construing and enforcing this section, the act, omission, neglect or failure of an officer, employee, agent or attorney of, or any other person acting for, an insurance company liable to taxation under this Act shall be deemed to be the act, omission, neglect or failure of the insurance company if the officer, employee, agent or other person so acting was acting within the scope of his or her employment or instructions.

Status of unpaid taxes

(3) Unpaid taxes are a debt due to the Government of Nunavut and may be sued for in a court of competent jurisdiction. S.Nu. 2010,c.14,s.9(13).

Regulations

253. On the recommendation of the Minister, the Commissioner may make regulations that are necessary for the purpose of carrying out the provisions of this Part and, without restricting the generality of this power to make regulations, may make regulations

- (a) respecting the form and content of all returns, reports and statements required by the Superintendent for the due administration of this Part;
- (b) respecting the forms and contents of any documents required for use under this Part; and
- (c) respecting the definition of terms used in this Part and not defined in this Part.

PART XII

ADMINISTRATION

Superintendent

254. (1) The Minister shall appoint a Superintendent of Insurance.

Duties of Superintendent

(2) The Superintendent shall

- (a) act under the instructions of the Minister;
- (b) exercise the powers and perform the duties imposed on the Superintendent under this or any other Act;
- (c) have the general supervision of the business of insurance in Nunavut; and
- (d) ensure that the laws relating to the conduct of insurance in Nunavut are enforced and obeyed.

Acting Superintendent

(3) The Superintendent may designate a person in his or her office to act as Superintendent during the absence or inability of the Superintendent.
S.Nu. 2010,c.14,s.9(13).

Powers of Superintendent respecting evidence

255. For the purposes of performing the duties of Superintendent and in the exercise of the powers of Superintendent under this Act or under any other Act relating to insurance, the Superintendent

- (a) may require to be made and may take and receive affidavits, statutory declarations and depositions;
- (b) may examine witnesses on oath; and
- (c) has the same power to summon persons to attend as witnesses, and to enforce their attendance, and to compel them to produce books, documents and things, and to give evidence as any court has in civil cases.

Oaths

256. An oath required by this Act to be taken may be administered and certified to by the Superintendent or by any person authorized to administer oaths in Nunavut. S.Nu. 2010,c.14,s.9(13).

Holding shares

257. Neither the Superintendent nor any person in his or her office shall be interested as a shareholder, directly or indirectly, in any insurance company doing business in Nunavut. S.Nu. 2010,c.14,s.9(13).

Action against Superintendent

258. (1) No person shall, without the written permission of the Minister, bring an action or commence any proceeding against the Superintendent for anything done or omitted to be done in the performance or intended performance of a duty of the Superintendent under this Act or any other Act that imposes a duty on the Superintendent.

Power of Superintendent to bring action

(2) The Superintendent may bring actions and commence proceedings in his or her name of office for the enforcement of this Act or for the recovery of a fee or penalty payable under this Act.

Leave

(3) No action or proceeding for the recovery of any fee or penalty payable under this Act shall be commenced without the leave of the Superintendent.

Record keeping

259. (1) The Superintendent shall keep

- (a) a register of all licensed insurers, in which shall appear
 - (i) the name of the insurer,
 - (ii) the address of the head office,
 - (iii) the address of the principal office in Canada,
 - (iv) the name and address of the chief agent in Nunavut,

- (v) the number of the issued licence and particulars of the classes of insurance for which the insurer is licensed, and
- (vi) any other information that the Superintendent considers necessary;
- (b) a record of all agents, brokers, salespersons and adjusters licensed under this Act; and
- (c) a record of the information required by subsection 9(4).

Inspection of records

(2) The register and records referred to in subsection (1) must be open to public inspection at the times and on the payment of the fees that are prescribed.

S.Nu. 2010,c.14,s.9(13).

Publication in *Nunavut Gazette*

260. (1) The Superintendent may cause to be published annually in the *Nunavut Gazette* a list of the insurers licensed at the date of the list, and may from time to time cause notice of the licence of an insurer not before licensed and notice of suspension or cancellation or revivor of licence to be given by publication in the *Nunavut Gazette*.

Evidence of licence status

(2) A certificate under the signature and seal of office of the Superintendent stating that

- (a) on a stated day a named insurer was or was not licensed under this Act;
- (b) an insurer was originally issued a licence; or
- (c) the licence of an insurer was renewed, suspended, revived, revoked or cancelled on a stated day,

is admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate.

Evidence of filing of documents

(3) A certificate of the filing of any document in the office of the Superintendent is admissible in evidence as proof, in the absence of evidence to the contrary, of the filing if signed or purporting to be signed by the Superintendent. S.Nu. 2010,c.14,s.9(13).

Decision of Superintendent

261. (1) Every decision of the Superintendent on an application for a licence must be in writing and notice of the decision must be given to the insurer without delay.

Copy of decision

(2) The insurer or any person interested is entitled on payment of the prescribed fee, to a certified copy of a decision of the Superintendent.

Stenographic report

(3) The evidence and proceedings in any matter before the Superintendent may be reported by a stenographer sworn before the Superintendent to faithfully report the evidence and proceedings.

Appeal

262. (1) Subject to subsection (4), an insurer, the Facility Association, an agent, a salesperson, a broker or an adjuster that is aggrieved by a decision of the Superintendent may appeal the decision to the Court.

Certification of decision and evidence

(2) The Superintendent shall certify, to the Clerk, the decision appealed from together with the reasons for the decision and the evidence on which the decision was made.

Procedure on appeal

(3) The appeal shall be conducted in accordance with the procedure for appeals from tribunals set out in the *Judicature Act*.

Limitation on appeal

(4) Subsection (1) does not apply to a decision of the Superintendent referred to in subsection 236(1). S.N.W.T. 1998,c.34,Sch.C,s.13(3); S.Nu. 2010,c.14,s.9(13).

Inquiries by Superintendent

263. The Superintendent may direct to an insurer any inquiry touching the contracts or financial affairs of the insurer, and the insurer shall make prompt and explicit answer to any such inquiry, and, in case of refusal or neglect to answer, is guilty of an offence.

Access to books

264. The Superintendent or any person authorized under the signature of the Superintendent or seal of office shall, at all reasonable times, have access to all books, securities and documents of an insurer, agent or broker that relate to contracts of insurance, and every officer or person in charge, possession, custody or control of such books, securities or documents who refuses or neglects to afford such access is guilty of an offence.

Duty to provide information on request

265. (1) It is the duty of the officers and agents of a licensed insurer, and of persons licensed under this Act, and of any insured, to provide the Superintendent on the request of the Superintendent with full information relating to any contract of insurance issued by the insurer or to the insured or relative to any settlement or adjustment under any such contract.

Inspection

- (2) The Minister may instruct the Superintendent to
- (a) visit the head office or chief agency from which the contract referred to in subsection (1) was issued or the office of the adjuster; and
 - (b) inquire into the contract, settlement or adjustment referred to in subsection (1).

Access to books

(3) The provisions of section 264 apply to an inquiry under subsection (2), with such modifications as the circumstances require.

Inspection of insurers

- 266.** (1) The Superintendent, or any person authorized by the Superintendent, may
- (a) visit the head office or chief office of any licensed insurer;
 - (b) examine the statements of the condition and affairs of the insurer; and
 - (c) make such inquiries as are necessary to ascertain
 - (i) the condition and ability of the insurer to provide for the payment of its contracts as they mature, and
 - (ii) whether the insurer has complied with all the provisions of this Act applicable to its transactions,

and shall report to the Minister all matters arising from the examination and inquiries requiring the attention and decision of the Minister.

Duty of officers and agents

(2) The officers and agents of an insurer shall cause the books and records of the insurer to be opened for the inspection of the Superintendent and shall otherwise facilitate the examination so far as it is in their power.

Production of books

(3) In order to facilitate the inspection of the books and records of the insurer, the Superintendent may, with the approval of the Minister, require the insurer to produce the books and records at the head office or chief office of the insurer or at any other convenient place that the Superintendent directs, and the officer or officers of the insurer who have custody of the books and records are entitled to be paid by the insurer for the expenses of that attendance.

Examination of affairs of insurer

(4) The Superintendent may, with the approval of the Minister, cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets or liabilities of an insurer and the cost of the preparation and valuation shall be paid by the insurer on the issuance of a certificate of the Superintendent approved by the Minister.

Expenses of examination

(5) Where the office of an insurer at which an examination is made under this section is outside Nunavut, the insurer shall pay the account in connection with the examination, on the issuance of a certificate of the Superintendent approved by the Minister. S.Nu. 2010,c.14,s.9(13).

Service of notice or process

267. (1) Where the head office of a licensed insurer is located outside Nunavut, notice or process in an action or proceeding in Nunavut may be served on

- (a) the chief agent of the insurer in Nunavut; or
- (b) the Superintendent where no appointment of a chief agent is then in effect,

and that service shall be deemed service on the insurer in the case of a corporation and on members of the insurer in the case of an unincorporated body or association.

Insurer to file address

(2) Every licensed insurer shall file in the office of the Superintendent notice of a post office address to which any notice or process referred to subsection (1) may be forwarded by the Superintendent and shall notify the Superintendent of any change in the address filed. S.Nu. 2010,c.14,s.9(13).

Forwarding notice or process

268. The Superintendent shall without delay after the receipt of any notice or process referred to in section 267 forward it to the insurer by registered mail addressed in the manner last notified to the Superintendent for this purpose by the insurer.

Publication by Superintendent

269. The Superintendent may publish from time to time notices, reports, correspondence, results of hearings, decisions and any other matter considered by the Superintendent to be in the public interest.

Annual report

270. (1) The Superintendent shall prepare for the Minister an annual report on the conduct of insurance in Nunavut including the information that the Minister directs.

Publication

(2) The Minister may direct that the annual report of the Superintendent be printed and published. S.Nu. 2010,c.14,s.9(13).

Agreements

271. The Minister may enter into an agreement with a compensation association respecting a plan to compensate policy holders and eligible claimants of insolvent insurers.

Regulations

272. The Commissioner, on the recommendation of the Minister, may make regulations prescribing fees that are to be prescribed for the purposes of this Part.

SCHEDULE

(Paragraphs 7(1)(a), 38(j), subsections 129(2),
156(7), 157(1), (7), 158(1), (4), 164(2))

MANDATORY MEDICAL AND REHABILITATION BENEFITS, AND ACCIDENT
BENEFITS IN MOTOR VEHICLE LIABILITY POLICIES

SECTION B — ACCIDENT BENEFITS

Subsections 1 and 2 are subject to the special provisions, definitions and exclusions set out in subsection 3.

The insurer agrees to pay to or with respect to each insured person, as defined in this section, who sustains bodily injury or death by an accident arising out of the use or operation of an automobile:

SUBSECTION 1 — MEDICAL, REHABILITATION AND FUNERAL EXPENSES

1. All reasonable expenses incurred within four years from the date of the accident as a result of such injury for necessary medical, surgical, dental, chiropractic, where the chiropractic services are recommended by a legally qualified medical practitioner, hospital, professional nursing and ambulance service and for any other service within the meaning of insured services under the *Hospital Insurance and Health and Social Services Administration Act* and for such other services and supplies which are, in the opinion of the legally qualified medical practitioner of the insured person's choice and that of the Insurer's medical advisor, essential for the treatment, occupational retraining or rehabilitation of said person, to the limit of \$25,000 per person.
2. Funeral expenses incurred up to the amount of \$1,000 in respect of the death of any one person.

The insurer shall not be liable under this subsection for those portions of such expenses payable or recoverable under any medical, surgical, dental or hospitalization plan or law or, except for similar insurance provided under another automobile insurance contract, under any other insurance contract or certificate issued to or for the benefit of any insured person.

SUBSECTION 2 — DEATH BENEFITS AND LOSS OF INCOME PAYMENTS

Part I — Death Benefits

- A. Subject to the provisions of this Part, for death that ensues within 180 days of the accident or within 104 weeks of the accident if there has been continuous disability during that period, an amount based on the status at the date of the accident of the deceased in a household where a spouse or dependants survive — as follows:

Head of the household.....	\$10,000
Spouse of the Head of the Household.....	\$10,000
Dependant within the meaning of subparagraph b of subparagraph 3 of paragraph B	\$2,000

In addition, with respect to death of the head of the household, where there are two or more survivors — spouse or dependants — the principal sum payable is increased \$2,500 for each survivor other than the first and where there is one survivor — spouse or dependant — the principal sum payable is increased \$1,500.

B. For the purposes of this Part,

(1) "Spouse of the head of the household" means the spouse with the lesser income from employment in the twelve months preceding the date of the accident.

(2) "spouse" has the meaning assigned to it by section 1 of the *Family Law Act*, except that a reference to "at least two years" shall be read as a reference to "at least three years". (*conjoint*)

(3) "dependant" means,

- (a) the spouse of the head of the household who resides with the head of the household;
- (b) a person,
 - (i) under the age of nineteen years who resides with and is principally dependant upon the head of the household or the spouse of the head of the household for financial support,
 - (ii) nineteen years of age or over who, because of mental or physical infirmity, is principally dependent upon the head of the household or the spouse of the head of the household for financial support, or
 - (iii) nineteen years of age or over who, because of full-time attendance at a school, college or university, is principally dependent upon the head of the household or the spouse of the head of the household for financial support; or
- (c) a parent or relative,
 - (i) of the head of the household, or
 - (ii) of the spouse of the head of the household, residing in the same dwelling premises and principally dependent upon the head of the household or the spouse of the head of the household for financial support.

(4) The total amount payable shall be paid to a person who is the head of the household or the spouse of the head of the household, as the case may be, if that person survives the deceased by at least thirty days.

(5) The total amount payable with respect to death where no head of the household or spouse survives the deceased by at least thirty days shall be divided equally among the surviving dependants.

(6) No amount is payable on death under this Part if no head of the household or dependant survives the deceased by at least thirty days.

Part II — Loss of Income

Subject to the provisions of this Part, a weekly payment for the loss of income from employment for the period during which the insured person suffers substantial inability to perform the essential duties of his occupation or employment, provided,

- (a) such person was employed at the date of the accident;
- (b) within thirty days from the date of the accident the insured person suffers substantial inability to perform the essential duties of his occupation or employment; and
- (c) no payments shall be made for the first seven days of such inability or for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that such injury continuously prevents such person from engaging in any occupation or employment for which he is reasonably suited by education, training or experience, the Insurer agrees to make such weekly payments for the duration of such inability to perform the essential duties.

Amount of weekly payment — The amount of a weekly payment shall be the lesser of,

- (a) \$140 per week; or
- (b) eighty per cent of the insured person's gross weekly income from employment, less any payments for loss of income from employment received by or available to such person under,
 - (i) the laws of any jurisdiction, and
 - (ii) wage or salary continuation plans available to the person by reason of his employment,but no deduction shall be made for any increase in such payment due to a cost of living adjustment subsequent to the insured person's substantial inability to perform the essential duties of his occupation or employment.

For the purpose of this Part,

(1) There shall be deducted from an insured person's gross weekly income any payments received by or available to him from part-time or other employment or occupation subsequent to the date of the accident;

(2) A principal unpaid housekeeper residing in the household not otherwise engaged in occupation or employment for wages or profit, if injured, shall be deemed disabled only if completely incapacitated and unable to perform any of his or her household duties and, while so incapacitated, shall receive a benefit at the rate of \$100 per week for not more than twelve weeks;

- (3) A person shall be deemed to be employed,
- (a) if actively engaged in an occupation or employment for wages or profit at the date of the accident; or
 - (b) if nineteen years of age or over and under the age of sixty-five years, so engaged for any six months out of the preceding twelve months;

(4) A person receiving a weekly payment who, within thirty days of resuming his occupation or employment is unable to continue such occupation or employment as a result of such injury, is not precluded from receiving further weekly payments; and

(5) Where the payments for loss of income payable hereunder, together with payments for loss of income under another contract of insurance other than a contract of insurance relating to any wage or salary continuation plan available to an insured person by reason of his employment, exceed the actual loss of income of the insured person, the Insurer is liable only for that proportion of the payments for loss of income stated in this policy that the actual loss of income of the person insured bears to the aggregate of the payments for loss of income payable under all such contracts.

SUBSECTION 3 — DEFINITIONS, EXCLUSIONS AND SPECIAL PROVISIONS OF THIS SECTION

- (1) "Insured person" defined

In this Section, the words "insured person" mean,

- (a) any person while an occupant of the described automobile or of a newly acquired or temporary substitute automobile as defined in this policy;
- (b) the insured and, if residing in the same dwelling premises as the insured, his or her spouse and any dependent relative of either while an occupant of any other automobile; provided that,
 - (i) the insured is an individual or are spouses,
 - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles at the time of the accident,
 - (iii) such other automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the insured,
 - (iv) such other automobile is not owned, hired or leased by an employer of the insured or by an employer of any person or

- persons residing in the same dwelling premises as the insured, and
- (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery;
- (c) in subsections (1) and (2) of this section only, any person, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck, in Canada, by the described automobile or a newly acquired or temporary substitute automobile as defined in the policy;
 - (d) in subsections (1) and (2) of this section only, the named insured, if an individual and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured, not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that,
 - (i) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles at the time of the accident,
 - (ii) that automobile is not owned or regularly or frequently used by the insured or by any person or persons residing in the same dwelling premises as the named insured,
 - (iii) that automobile is not owned, hired, or leased by an employer of the insured or by an employer of any person or persons residing in the same dwelling premises as the named insured;
 - (e) if the insured is a corporation, unincorporated association, or partnership, any employee or partner of the insured for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while an occupant of any other automobile; and
 - (f) in subsections (1) and (2) of this section only, any employee or partner of the insured, for whose regular use the described automobile is furnished, and his or her spouse and any dependent relative of either, residing in the same dwelling premises as such employee or partner, while not the occupant of an automobile or of railway rolling-stock that runs on rails, who is struck by any other automobile; provided that, in respect of (e) and (f) above,
 - (i) neither such employee nor partner or his or her spouse is the owner of an automobile,
 - (ii) such person is not engaged in the business of selling, repairing, maintaining, servicing, storing, or parking automobiles at the time of the accident,
 - (iii) such other automobile is not owned or regularly or frequently used by the employee or partner, or by any person or persons residing in the same dwelling premises as such employee or partner,

- (iv) such other automobile is not owned, hired, or leased by the insured or by an employer of any person or persons residing in the same dwelling premises as such employee or partner of the insured,
- in respect of (e) above only,
- (v) such other automobile is not used for carrying passengers for compensation or hire or for commercial delivery.

(2) Exclusions

- (a) The Insurer shall not be liable under this Section for bodily injury to or death of any person,
 - (i) resulting from the suicide of such person or attempted suicide, whether sane or insane; or
 - (ii) who is entitled to receive the benefits of any workers' compensation law or plan; or
 - (iii) caused directly or indirectly by radioactive material;
- (b) The Insurer shall not be liable under subsection (1) or Part II of subsection (2) of this section for bodily injury or death,
 - (i) sustained by any person who is convicted of an offence under section 255 of the *Criminal Code* (Canada) (driving while impaired by alcohol or a drug or driving with more than 80 milligrams of alcohol in 100 millilitres of blood) occurring at the time of the accident; or
 - (ii) sustained by any person driving the automobile who is not for the time being either authorized by law or qualified to drive the automobile.

(3) Notice and proof of claim

The insured person or his agent, or the person otherwise entitled to make claim or his agent, shall,

- (a) give written notice of claim to the Insurer by delivery thereof or by sending it by registered mail to the chief agency or head office of the Insurer in Nunavut, within thirty days from the date of the accident or as soon as practicable thereafter;
- (b) within ninety days from the date of the accident for which the claim is made, or as soon as practicable thereafter, furnish to the Insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident and the loss occasioned thereby; and
- (c) if so required by the Insurer, furnish a certificate as to the cause and nature of the accident for which the claim is made and as to the duration of the disability caused thereby from a medical practitioner legally qualified to practise.

(4) Medical reports

The Insurer has the right and the claimant shall afford to the Insurer, an opportunity to physically examine the insured person when and as often as it reasonably requires while the claim is pending, and also, in the case of the death of the insured person, to make an autopsy subject to the law relating to autopsies.

(5) Release

Notwithstanding any release provided for under the relevant sections of the *Insurance Act*, the Insurer may demand, as a condition precedent to payment of any amount under this section of the policy, a release in favour of the insured and the Insurer from liability to the extent of such payment from the insured person or his personal representative or any other person.

(6) When moneys payable

- (a) All amounts payable under this section, other than benefits under Part II of subsection (2), shall be paid by the Insurer within thirty days after it has received proof of claim. The initial benefits for loss of income under Part II of subsection (2) shall be paid within thirty days after the Insurer has received proof of claim, and payments shall be made thereafter within each thirty-day period while the Insurer remains liable for payments if the insured person, whenever required to do so, furnishes prior to payment proof of continuing disability;
- (b) No person shall bring an action to recover the amount of a claim under this section unless the requirements of provisions 3 and 4 of this subsection are complied with, nor until the amount of the loss has been ascertained as provided in this Section;
- (c) Every action or proceeding against the Insurer for the recovery of a claim under this section shall be commenced within two years from the date on which the cause of action arose and not afterwards.

(7) Limitation on benefit payable

Where a person is entitled to benefits under more than one contract providing insurance of the type set forth in subsection (1) or (2), he or his personal representative or any person claiming through or under him may recover only an amount equal to one benefit.

In so far as applicable, the general provisions, exclusions and statutory conditions of the policy also apply.

S.N.W.T. 1997,c.12,s.15; S.Nu. 2010,c.14,s.9(13); S.Nu. 2011,c.25,s.11.