

CONSOLIDATION OF MIDWIFERY PROFESSION ACT

S.Nu. 2008,c.18

In force July 31, 2009: SI-003-2009

(Current to: August 13, 2013)

The following provisions have been deleted for the purposes of this consolidation:
s.57 to 61 (Consequential Amendments)

AS AMENDED BY:

S.Nu. 2011,c.11,s.1

s.1 in force March 10, 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).

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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.

TABLE OF CONTENTS**PART 1****PRACTICE OF REGISTERED MIDWIVES**

Interpretation

Definitions	1	
Practice of Midwifery		
Practice of midwifery	2	
Scope of practice	3	
Primary health care provider	4	
Duties performed and powers exercised	5	
Prohibition	6	(1)
Authorized actions		(2)
Traditional Inuit Midwifery		
Traditional Inuit midwifery	6.1	(1)
Instruction		(2)

PART 2**MIDWIFERY REGISTRATION COMMITTEE**

Midwifery Registration Committee

Midwifery Registration Committee	7	(1)
Composition		(2)
Term		(3)
Majority		(4)
Secretary		(5)
Chairperson and vice-chairperson		(6)
Absence of chairperson		(7)
Quorum		(8)
Conflict of interest of Committee member		(9)
Duties of Committee		
Duties of Committee	8	
Standards of practice and competence	9	(1)
Decision of Minister		(2)

PART 3

REGISTRATION

Midwifery Register

Midwifery Register	10	(1)
Information from Register		(2)
Paramountcy		(3)

Eligibility for Registration

Eligibility for registration and certificate	11	(1)
Exception		(2)
Non-practising certificate	12	(1)
Prohibition		(2)
Temporary certificate	13	(1)
Terms and conditions		(2)

Application for Registration

Application for registration	14	(1)
Material to be provided		(2)
Registration	15	(1)
Referral of application to Committee		(2)

Professional Liability Insurance

Professional liability insurance	16	
----------------------------------	----	--

Renewal of Certificate

Expiry of certificates of registration	17	(1)
Expiry of temporary certificate		(2)
Renewal of general certificate of registration	18	(1)
Renewal of non-practising certificate of registration		(2)
Renewal of temporary certificate of registration		(3)
Application for renewal	19	(1)
Material to be provided		(2)
Renewal	20	(1)
Referral to Committee		(2)

Referral to Committee

Notice to applicant	21	
Written submission	22	(1)

Review of application		(2)
Registration or renewal		(3)
Applicant not eligible		(4)
Notice to applicant		(5)

Failure to Renew

Failure to renew	23	(1)
Reinstatement		(2)

Appeal

Appeal	24	(1)
Notice		(2)
Decision of Nunavut Court of Justice		(3)

PART 4

PRACTICE AUDITS

Practice Audits

Definitions	25	
Appointment of practice auditors	26	(1)
Practice audit		(2)
Entry and inspection		(3)
Inspection powers		(4)
Records and things removed		(5)
Certified copies		(6)
Assistance		(7)
Limitation		(8)
Identification		(9)
Application to Nunavut Court of Justice		(10)
Report to Committee		(11)
Representations to Committee		(12)
Decision of Committee	27	(1)
Notice of decision		(2)

PART 5

REVIEW OF CONDUCT

Interpretation

Definitions	28	
-------------	----	--

Unprofessional Conduct

Unprofessional conduct	29	
Board of Inquiry		
Board of Inquiry	30	(1)
President of Board of Inquiry		(2)
Members of Board of Inquiry		(3)
Term		(4)
Majority of Board of Inquiry		(5)
Quorum		(6)
Secretary		(7)
Board may retain assistance		(8)
Conflict of interest of member of Board of Inquiry		(9)
Notifications		
Notification	31	(1)
Form of notification		(2)
Notification issued by Registrar		(3)
Timely resolution		(4)
Continuing jurisdiction		(5)
Notice		(6)
Review and inquiry	32	(1)
Conflict of interest of Registrar		(2)
Dismissal of notification		(3)
Notice of dismissal		(4)
Referral to President		(5)
Conflict of interest of President		(6)
Reference to "President"		(7)
Suspension		
Suspension pending decision	33	(1)
Notice of order		(2)
Notice		(3)
Order revoked		(4)
Appeal		(5)
Notice of appeal		(6)
Decision of Nunavut Court of Justice		(7)
Costs of appeal		(8)

Investigation

Investigation	34	(1)
Notice		(2)
Powers of President or investigator		(3)
Application to Nunavut Court of Justice		(4)
Failure to respond or comply		(5)
Report to President		(6)
Completion of investigation	35	(1)
Notice of decision		(2)

Alternative Dispute Resolution

Referral to alternative dispute resolution	36	(1)
Approval of agreement		(2)
Revocation		(3)

Hearing

Designation of members to a hearing panel	37	(1)
Majority of hearing panel		(2)
Hearing panel may retain assistance		(3)
Hearing without delay		(4)
Notice of hearing		(5)
Rules of natural justice	38	(1)
Attendance and legal representation		(2)
Hearing open to public		(3)
Additional matters		(4)
Opportunity to respond		(5)
Rules of evidence	39	(1)
Oath or affirmation		(2)
Compellable witness		(3)
Examination of witness		(4)
Use of evidence		(5)
Attendance of witnesses and production of documents	40	(1)
Notice		(2)
Testimony of non-resident witness		(3)
Witness fees		(4)
Civil contempt	41	(1)
Unprofessional conduct		(2)
Hearing in absence of investigated person	42	

Decision and Order

Dismissal of notification	43	(1)
Order where finding of unprofessional conduct		(2)

Costs and fine	44	
Decision in writing	45	(1)
Service of decision and notice		(2)
Examination of record		(3)
Contravention of order	46	(1)
Suspension or prohibition for non-payment		(2)
Suspension effective when notice served		(3)
Recovery of fine or costs	47	

Appeal

Appeal	48	(1)
Notice of appeal by investigated person		(2)
Notice of appeal by person who gave notification		(3)
Appeal on the record		(4)
Decision of Nunavut Court of Justice	49	(1)
Costs of appeal		(2)
Stay pending appeal	50	

PART 6

GENERAL

Liability

Liability	51	
-----------	----	--

Administration

Service of notice or document	52	
Certificate admissible in evidence	53	(1)
Certified copies		(2)

Emergencies

Emergency services	54	(1)
Protection from action		(2)

Offences and Punishment

Prohibition	55	(1)
Services of registered midwife		(2)
Practising while suspended		(3)
Offence and punishment		(4)
Limitation period		(5)
Burden of proof		(6)

Regulations

Regulations	56
Deleted	57
Deleted	58
Deleted	59
Deleted	60
Deleted	61

COMMENCEMENT

Coming into force	62
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MIDWIFERY PROFESSION ACT

PART 1

PRACTICE OF REGISTERED MIDWIVES

Interpretation

Definitions

1. In this Act,

"Committee" means the Midwifery Registration Committee established under section 7;
(*comité*)

"health care professional" means a health care professional as defined in section 13 of the
Evidence Act; (*professionnel de la santé*)

"Midwifery Register" means the Midwifery Register referred to in subsection 10(1);
(*registre des sages-femmes*)

"registered midwife" means a person who is registered in the Midwifery Register under
subsection 15(1); (*sage-femme autorisée*)

"Registrar" means the Registrar of Health Professions appointed under
paragraph 77(2)(c) of the *Dental Profession Act*. (*registraire*)

Practice of Midwifery

Practice of midwifery

2. The practice of midwifery means the application of midwifery knowledge, skills and judgment to assess, monitor and provide care to
- (a) women of reproductive age in respect of health promotion, pregnancy, labour, delivery and the postpartum period; and
 - (b) newborn babies and infants.

Scope of practice

3. A registered midwife is entitled to, in the course of practising midwifery,
- (a) counsel, support, advise, examine, monitor and care for women during pregnancy, labour, delivery and the postpartum period;
 - (b) carry out assessments necessary to confirm and monitor pregnancies;
 - (c) advise on and secure the further assessments necessary for the earliest possible identification of pregnancies at risk;
 - (d) identify the conditions in the woman, fetus or newborn that necessitate consultation with or referral to a medical practitioner or other health care professional;

- (e) monitor the condition of the fetus during labour;
- (f) manage labour and conduct vaginal deliveries;
- (g) examine and care for the infant in the eight week period following birth;
- (h) perform, order, collect samples for and interpret the results of screening and diagnostic tests authorized in the regulations;
- (i) perform minor surgical and invasive procedures and physical examinations authorized in the regulations;
- (j) take emergency measures when necessary;
- (k) prescribe and administer drugs and substances authorized in the regulations;
- (l) order, prescribe and fit medical equipment and devices authorized in the regulations;
- (m) on the order of a medical practitioner relating to the midwifery care of a specific client, administer drugs and substances by the route and in the dosage specified by the medical practitioner;
- (n) provide counselling and education in respect of health promotion, childbearing, newborn and infant care and family planning; and
- (o) deliver contraceptive services.

Primary health care provider

4. A registered midwife may practise midwifery as a primary health care provider who

- (a) is directly accessible to clients without referral from another health care professional;
- (b) is authorized to provide health care services within the practice of midwifery without being supervised by another health care professional; and
- (c) shall consult with medical practitioners or other health care professionals where medical conditions exist or arise that may require management outside the scope of midwifery practice.

Duties performed and powers exercised

5. The duties performed and the powers exercised by a registered midwife under sections 3 and 4 are subject to this Act, the regulations, the standards of practice and standards of competence approved by the Minister and the terms and conditions imposed on the registered midwife's certificate of registration.

Prohibition

6. (1) Subject to subsection (2), no person except a registered midwife shall engage in the practice of midwifery.

Authorized actions

(2) Nothing in this Act prevents a person from performing any action within the scope of practice of midwifery

- (a) in an emergency; or
- (b) under the authority of another Act.

Traditional Inuit Midwifery

Traditional Inuit midwifery

6.1. (1) The Minister shall develop instructional content based on traditional Inuit midwifery knowledge, skills and judgment for

- (a) midwifery training and refresher programs; and
- (b) midwifery professional development programs.

Instruction

(2) Every person who delivers a midwifery training or refresher program or a midwifery professional development program shall ensure that

- (a) the curriculum includes the instructional content developed under subsection (1); and
- (b) persons who have experience in the practice of traditional Inuit midwifery are invited to instruct students and share their knowledge.

PART 2

MIDWIFERY REGISTRATION COMMITTEE

Midwifery Registration Committee

Midwifery Registration Committee

7. (1) The Midwifery Registration Committee is established.

Composition

(2) The Committee is composed of

- (a) at least three persons who are registered midwives or are registered and in good standing as midwives under an Act or regulation of a province or other territory;
- (b) at least one person who is not a midwife and is not an employee of the Government of Nunavut; and
- (c) the Registrar.

Term

(3) A member of the Committee referred to in paragraph (2)(a) or (b) shall be appointed by the Minister for a term established by the Minister.

Majority

(4) A majority of the members of the Committee must be registered midwives or persons who are registered and in good standing as midwives under an Act or regulation of a province or other territory.

Secretary

(5) The Registrar is the Secretary to the Committee.

Chairperson and vice-chairperson

(6) The Minister shall designate a chairperson and a vice-chairperson from among the members of the Committee.

Absence of chairperson

(7) If the chairperson is absent or unable to act or that office is vacant, the vice-chairperson may act as the chairperson and may exercise all the powers and may perform all the duties of the chairperson.

Quorum

(8) A quorum of the Committee consists of

- (a) two members who are registered midwives or persons who are registered and in good standing as midwives under an Act or regulation of a province or other territory; and
- (b) the Registrar.

Conflict of interest of Committee member

(9) A member of the Committee who has a conflict of interest in respect of a matter that is before the Committee shall

- (a) disclose the general nature of the conflict of interest to the Committee; and
- (b) refrain from attempting to influence the disposition of the matter or participating in consideration of the matter.

Duties of Committee

Duties of Committee

8. The Committee shall

- (a) exercise its powers and perform its duties under this Act and the regulations in accordance with the public interest;
- (b) review and decide on applications for registration and renewal of registration in the Midwifery Register;
- (c) advise the Minister on matters of policy and legislation respecting
 - (i) services that may be provided by registered midwives, including any conditions or restrictions applicable to those services,
 - (ii) eligibility requirements for registration in the Midwifery Register and for certificates of registration,

- (iii) eligibility requirements for the renewal of registration in the Midwifery Register and for the renewal of certificates of registration,
- (iv) midwifery training and refresher programs and examinations,
- (v) midwifery continuing competence and professional development, and
- (vi) proposed regulations under this Act;
- (d) promote continuing competence and professional development of registered midwives; and
- (e) promote the incorporation of traditional Inuit midwifery knowledge, skills and judgment in
 - (i) midwifery training and refresher programs,
 - (ii) midwifery professional development programs, and
 - (iii) the practice of midwifery.

Standards of practice and competence

9. (1) The Committee may recommend to the Minister standards of practice and standards of competence respecting the practice of midwifery.

Decision of Minister

(2) On receiving the standards of practice and standards of competence recommended by the Committee, the Minister may

- (a) approve, reject or vary the standards; or
- (b) refer the standards, or any issue, back to the Committee for further consideration.

PART 3

REGISTRATION

Midwifery Register

Midwifery Register

10. (1) The Registrar shall maintain a Midwifery Register, in which shall be entered

- (a) the name, business address, business telephone number and practice status of each registered midwife;
- (b) the terms and conditions imposed on each certificate of registration;
- (c) a notation of each suspension, cancellation and reinstatement of a certificate of registration; and
- (d) the result of each discipline proceeding.

Information from Register

(2) A person may obtain, during regular office hours, the following information from the Midwifery Register:

- (a) the information referred to in paragraphs (1)(a) and (b);
- (b) the information referred to in paragraph (1)(c) relating to a suspension that is in effect; and
- (c) the result of each discipline proceeding completed within six years immediately preceding the date on which the information is obtained from the Register
 - (i) in which a certificate of registration was suspended or cancelled,
 - (ii) in which terms or conditions were imposed on a certificate of registration,
 - (iii) in which a registered midwife undertook to limit his or her practice of midwifery, or
 - (iv) in which a registered midwife was reprimanded or required to pay a fine.

Paramountcy

(3) If there is a conflict or inconsistency between subsection (2) and the *Access to Information and Protection of Privacy Act*, subsection (2) prevails to the extent of the conflict or inconsistency.

Eligibility for Registration

Eligibility for registration and certificate

11. (1) Subject to this Act, an applicant is eligible to be registered in the Midwifery Register and to receive a general certificate of registration if

- (a) the applicant is of good character;
- (b) the applicant is a Canadian citizen, a permanent resident or otherwise legally entitled to engage in employment in Canada;
- (c) the applicant holds valid certification approved by the Committee in neonatal resuscitation, adult and infant cardiopulmonary resuscitation and obstetric emergency skills;
- (d) the applicant
 - (i) is a graduate of a midwifery education program in Canada that is approved by the Minister, and, if the applicant graduated more than two years immediately preceding the date of application, has
 - (A) maintained competence by actively engaging in the practice of midwifery in accordance with the standards of practice and standards of competence approved by the Minister, or
 - (B) satisfactorily completed a refresher program approved by the Committee within one year preceding the date of application,
 - (ii) is a graduate of a midwifery education program outside of Canada that is approved by the Minister, and, within one year immediately preceding the date of application, has

- satisfactorily completed an assessment process approved by the Committee that is designed to assess midwifery knowledge and skills, or
- (iii) is registered and in good standing or is eligible for registration as a midwife entitled to practise midwifery under an Act or regulation of a province or other territory;
- (e) the applicant provides satisfactory evidence that any deficit in the applicant's ethics, competence or fitness to practise midwifery as revealed by the matters disclosed under subsection 14(2) has been remedied; and
- (f) the applicant has obtained the professional liability insurance required by section 16.

Exception

(2) An applicant who does not meet the requirements of paragraph (1)(d) is eligible to be registered in the Midwifery Register and to receive a general certificate of registration if the applicant

- (a) satisfactorily completes any training or examinations required by the Committee under paragraph 22(4)(a); or
- (b) consents to any terms or conditions on his or her certificate of registration imposed by the Committee under paragraph 22(4)(b).

Non-practising certificate

12. (1) An applicant who does not intend to practise midwifery is eligible to be registered in the Midwifery Register and to receive a non-practising certificate of registration if

- (a) the applicant meets the requirements of paragraphs 11(1)(a), (b) and (e); and
- (b) the applicant
 - (i) is a graduate of a midwifery education program that is approved by the Minister, or
 - (ii) is registered and in good standing or is eligible for registration as a midwife under an Act or regulation of a province or other territory.

Prohibition

(2) A registered midwife who holds a non-practising certificate of registration is not entitled to practise midwifery.

Temporary certificate

13. (1) An applicant is eligible to be registered in the Midwifery Register and to receive a temporary certificate of registration for a period specified by the Committee not exceeding 90 days if the applicant meets the requirements of paragraphs 11(1)(a), (b) and (c), subparagraph 11(1)(d)(iii) and paragraphs 11(1)(e) and (f).

Terms and conditions

(2) A temporary certificate of registration is subject to the terms and conditions imposed by the Committee.

Application for Registration

Application for registration

- 14.** (1) A person may apply to the Registrar, in a form approved by the Registrar, to
- (a) be registered in the Midwifery Register; and
 - (b) receive a certificate of registration.

Material to be provided

(2) An applicant shall provide the following with an application under subsection (1):

- (a) evidence satisfactory to the Registrar that the applicant meets the eligibility requirements for registration;
- (b) evidence satisfactory to the Registrar of the applicant's identity;
- (c) three references in a form approved by the Registrar;
- (d) information in respect of the applicant about any
 - (i) denial of registration by a professional regulatory body,
 - (ii) current investigation or any proceeding or finding respecting the conduct, competence or fitness to practise of the applicant related to his or her practice of a profession,
 - (iii) conviction for a criminal offence, and
 - (iv) professional liability insurance claim;
- (e) a statement by the applicant authorizing the Registrar, or a person designated by the Registrar, to make enquiries of any person, government or body in respect of the evidence or information provided by the applicant and authorizing any person to whom inquiries are made to provide any information requested; and
- (f) payment of the prescribed fee.

Registration

- 15.** (1) On application and payment of the prescribed fee, the Registrar shall, if satisfied that the applicant meets the requirements for registration set out in this Act,
- (a) register the applicant in the Midwifery Register; and
 - (b) issue a certificate of registration to the applicant.

Referral of application to Committee

(2) The Registrar shall refer an application for registration to the Committee where

- (a) the Registrar is not satisfied that the applicant is eligible for registration under this Act; or
- (b) the application is in respect of a temporary certificate of registration.

Professional Liability Insurance

Professional liability insurance

16. A registered midwife who holds a general certificate of registration or a temporary certificate of registration shall be insured by professional liability insurance with an insurer acceptable to the Minister and in an amount that is at least the minimum level of coverage required by the Minister.

Renewal of Certificate

Expiry of certificates of registration

17. (1) The following certificates of registration expire on March 31 next following the day on which the certificate was issued or renewed:

- (a) a general certificate of registration;
- (b) a non-practising certificate of registration.

Expiry of temporary certificate

(2) A temporary certificate of registration expires on the date specified on the certificate.

Renewal of general certificate of registration

18. (1) A registered midwife is eligible for annual renewal of his or her general certificate of registration if he or she

- (a) continues to meet the eligibility requirements for the certificate under section 11;
- (b) has actively engaged in the practice of midwifery in accordance with this Act, the regulations and the standards of practice and standards of competence approved by the Minister; and
- (c) has complied with any terms and conditions imposed on his or her certificate of registration and with any undertaking referred to in paragraph 43(2)(d) or direction referred to in paragraph 43(2)(f), (g) or (h).

Renewal of non-practising certificate of registration

(2) A registered midwife is eligible for annual renewal of his or her non-practising certificate of registration if he or she continues to meet the eligibility requirements for the certificate under section 12.

Renewal of temporary certificate of registration

(3) A registered midwife is eligible for one renewal of his or her temporary certificate of registration for a period specified by the Committee not exceeding 90 days if he or she

- (a) continues to meet the eligibility requirements for the certificate under section 13; and
- (b) meets the requirements of paragraphs (1)(b) and (c).

Application for renewal

19. (1) A person may apply to the Registrar, in a form approved by the Registrar, for renewal of his or her certificate of registration.

Material to be provided

(2) An applicant shall provide the following with an application under subsection (1):

- (a) evidence satisfactory to the Registrar that the applicant meets the eligibility requirements for renewal;
- (b) evidence satisfactory to the Registrar of the applicant's identity;
- (c) information in respect of the applicant not provided to the Registrar in an earlier application about any
 - (i) denial of registration by a professional regulatory body,
 - (ii) current investigation or any proceeding or finding respecting the conduct, competence or fitness to practise of the applicant related to his or her practice of a profession,
 - (iii) conviction for a criminal offence, and
 - (iv) professional liability insurance claim;
- (d) a statement by the applicant authorizing the Registrar, or a person designated by the Registrar, to make enquiries of any person, government or body in respect of the evidence or information provided by the applicant and authorizing any person to whom inquiries are made to provide any information requested;
- (e) payment of the prescribed fee.

Renewal

20. (1) On application made before the expiry of a certificate of registration and on payment of the prescribed fee, the Registrar shall, if satisfied that the applicant meets the requirements for renewal set out in this Act, renew the certificate of registration of the applicant.

Referral to Committee

(2) The Registrar shall refer an application for renewal of a certificate of registration to the Committee where

- (a) the Registrar is not satisfied that the applicant meets the requirements for renewal set out in this Act; or
- (b) the application is in respect of a certificate of registration issued or renewed under paragraph 22(4)(b).

Referral to Committee

Notice to applicant

21. Where the Registrar refers an application to the Committee under subsection 15(2) or subsection 20(2), the Registrar shall provide the applicant written

- (a) notice of and reasons for the referral; and

- (b) notice of the applicant's right to make a written submission to the Committee.

Written submission

22. (1) An applicant whose application is referred to the Committee may, within 30 days after receiving the notice of the referral, or within such longer period as may be specified in the notice, make a written submission to the Committee.

Review of application

(2) The Committee shall review an application referred to it by the Registrar and consider the submission of the applicant, if any.

Registration or renewal

(3) Where the Committee determines that the applicant meets the eligibility requirements under this Act, the Committee shall, as the case may be,

- (a) register the applicant in the Midwifery Register and direct the Registrar to issue a certificate of registration to the applicant; or
- (b) renew the certificate of registration of the applicant.

Applicant not eligible

(4) Where the Committee determines that an applicant does not meet the eligibility requirements under this Act, the Committee may

- (a) defer the application until the applicant satisfactorily completes the training and examinations specified by the Committee within the time period specified by the Committee;
- (b) register the applicant in the Midwifery Register and issue a certificate of registration, or renew the certificate of registration of the applicant, as the case may be,
 - (i) for the period specified by the Committee, and
 - (ii) subject to the terms and conditions imposed by the Committee; or
- (c) refuse the application.

Notice to applicant

(5) Where the Committee defers or refuses an application, or issues or renews a certificate of registration subject to terms or conditions, it shall provide the applicant

- (a) written reasons for the determination; and
- (b) written notice of the right to appeal.

Failure to Renew

Failure to renew

23. (1) A registered midwife who fails to renew his or her certificate of registration shall be removed from the Midwifery Register.

Reinstatement

(2) Where a person has been removed from the Midwifery Register under subsection (1), the Registrar may reinstate his or her registration and issue a certificate of registration to the person on

- (a) application to reinstate the person's registration made within 60 days after removal from the Midwifery Register under subsection (1); and
- (b) payment of the prescribed fee for reinstatement and the prescribed fee for renewal.

Appeal

Appeal

24. (1) A person whose

- (a) application is deferred under paragraph 22(4)(a),
- (b) certificate of registration is issued or renewed subject to terms and conditions under paragraph 22(4)(b), or
- (c) application is refused under paragraph 22(4)(c),

may appeal the decision to the Nunavut Court of Justice within 30 days after receiving notice of the decision.

Notice

(2) Notice of an appeal under subsection (1) must be served on the Registrar.

Decision of Nunavut Court of Justice

(3) On hearing an appeal, the Nunavut Court of Justice may

- (a) make any decision that in its opinion should have been made; or
- (b) refer the matter back to the Committee for further consideration in accordance with any direction of the Court.

PART 4

PRACTICE AUDITS

Practice Audits

Definitions

25. In this Part,

"practice audit" means a review of the practice of a registered midwife for the purpose of determining whether he or she is practising midwifery in compliance with this Act, the regulations, the standards of practice and the standards of competence approved by the Minister and the terms and conditions imposed on the registered midwife's certificate of registration; (*vérification*)

"practice auditor" means a person appointed by the Committee under subsection 26(1) to conduct practice audits under this Part. (*vérificateur*)

Appointment of practice auditors

26. (1) The Committee may appoint one or more persons as practice auditors for the purposes of this Act.

Practice audit

(2) The Committee may direct a practice auditor to conduct a practice audit in respect of a registered midwife.

Entry and inspection

(3) For the purpose of conducting a practice audit, a practice auditor may, at any reasonable time, enter and inspect the office or other workplace premises of a registered midwife.

Inspection powers

- (4) For the purpose of an inspection under subsection (3), a practice auditor may
- (a) inspect any thing;
 - (b) require a person to produce all or part of a document for inspection or copying;
 - (c) use or cause to be used any computer system and examine any data contained or available to the computer system;
 - (d) reproduce or cause to be reproduced any record or data;
 - (e) print or export any record or data for examination or copying;
 - (f) use or cause to be used any copying equipment at the place to make copies of the record or data;
 - (g) after providing a receipt, remove for review and copying a record or other thing that is relevant to the inspection; and
 - (h) question a person on matters relevant to the inspection.

Records and things removed

- (5) A record or other thing that has been removed for review and copying
- (a) shall be made available to the person from whom it was removed, for review and copying, on request and at a time and place that are convenient for the person and for the practice auditor; and
 - (b) shall be returned to the person from whom it was removed within a reasonable time.

Certified copies

(6) A copy of a record that purports to be certified by a practice auditor is admissible in evidence without proof of the office or signature of the practice auditor and is, in the absence of evidence to the contrary, proof of the original record.

Assistance

- (7) The owner or the person in charge of a thing or the occupant or person in charge of a place being inspected under this Act, and any person found in the place, shall
- (a) give the practice auditor all reasonable assistance to enable the practice auditor to carry out his or her functions; and
 - (b) provide the practice auditor with any information in relation to the administration of this Act that the practice auditor may reasonably require.

Limitation

(8) Nothing in this Act allows the entry or inspection, with or without a warrant, of living quarters in a dwelling place.

Identification

(9) A practice auditor conducting a practice audit shall produce, on request, evidence of his or her appointment.

Application to Nunavut Court of Justice

(10) Where a person refuses or fails to respond to an inquiry or to comply with a demand made under subsection (4), the practice auditor may apply to the Nunavut Court of Justice for an order requiring the person to respond to the inquiry or to comply with the demand.

Report to Committee

(11) On completing a practice audit, a practice auditor shall report his or her findings in writing to the Committee and to the registered midwife whose practice was the subject of the audit.

Representations to Committee

(12) A registered midwife whose practice was the subject of an audit may make written representations to the Committee within 14 days after receiving the written report of the practice auditor.

Decision of Committee

- 27.** (1) On the review of a practice auditor's report and the representations, if any, of the registered midwife whose practice was the subject of the audit, the Committee may
- (a) determine that no action is required;
 - (b) provide advice and make recommendations to the registered midwife in respect of his or her practice of midwifery;
 - (c) enter into an agreement with the registered midwife providing for
 - (i) the imposition of any terms and conditions on the registered midwife's certificate of registration that the Committee determines are necessary to protect the public interest,
 - (ii) an assessment of the registered midwife's capacity or fitness to practise, or

- (iii) counselling, treatment or a course of study or training for the registered midwife; or
- (d) notify the Registrar of evidence received by the Committee that an act or omission of the registered midwife may constitute unprofessional conduct.

Notice of decision

(2) On notifying the Registrar under paragraph (1)(d), the Committee shall provide the registered midwife whose practice was the subject of the audit, in writing, notice of and reasons for its decision.

PART 5

REVIEW OF CONDUCT

Interpretation

Definitions

28. In this Part,

"Board of Inquiry" means the Board of Inquiry established under subsection 30(1); (*comité d'enquête*)

"hearing panel" means a hearing panel designated by the President under subsection 37(1); (*sous-comité d'audience*)

"investigated person" means a registered midwife or former registered midwife in respect of whose conduct an investigation is conducted or a hearing is held under this Part; (*personne visée par l'enquête*)

"investigator" means a person appointed by the President under paragraph 34(1)(b) to conduct an investigation into a notification; (*enquêteur*)

"notification" means a notification that an act or omission of a registered midwife may constitute unprofessional conduct that is given to the Registrar under paragraph 27(1)(d) or subsection 31(1) or issued by the Registrar under subsection 31(3); (*notification*)

"President" means the President of the Board of Inquiry appointed by the Minister under subsection 30(2). (*président*)

Unprofessional Conduct

Unprofessional conduct

29. For the purposes of this Act, unprofessional conduct means conduct that fails to meet accepted standards of midwifery practice or harms the integrity of the midwifery profession and includes an act or omission of a registered midwife that

- (a) demonstrates a lack of knowledge, skill or judgment in the practice of midwifery;
- (b) is detrimental to the best interests of the public;
- (c) constitutes engaging in the practice of midwifery when his or her capacity to practise, in accordance with accepted standards, is impaired by a disability or a condition, including an addiction or an illness;
- (d) contravenes this Act, the regulations, the standards of practice or the standards of competence approved by the Minister or the terms and conditions imposed on his or her certificate of registration;
- (e) contravenes an order of the President or of a hearing panel; or
- (f) contravenes an agreement made under paragraph 35(1)(b) or reached in an alternative dispute resolution process under section 36.

Board of Inquiry

Board of Inquiry

30. (1) The Board of Inquiry is established.

President of Board of Inquiry

(2) The Minister shall appoint as President of the Board of Inquiry, for a term established by the Minister,

- (a) a registered midwife; or
- (b) a person who is registered and in good standing as a midwife under an Act or regulation of a province or other territory.

Members of Board of Inquiry

(3) The Minister shall appoint not less than five persons as members of the Board of Inquiry in addition to the President, of whom

- (a) at least three members are registered midwives or persons who are registered and in good standing as midwives under an Act or regulation of a province or other territory;
- (b) at least one member is not a midwife and is not an employee of the Government of Nunavut; and
- (c) at least one member is a member of the public service appointed by the Minister.

Term

(4) A member of the Board of Inquiry shall be appointed for a term established by the Minister.

Majority of Board of Inquiry

(5) A majority of the members of the Board of Inquiry must be registered midwives or persons who are registered and in good standing as midwives under an Act or regulation of a province or other territory.

Quorum

(6) A majority of the members of the Board of Inquiry is a quorum.

Secretary

(7) The Minister shall appoint a member of the public service as the Secretary to the Board of Inquiry.

Board may retain assistance

(8) The Board of Inquiry may retain any legal or other assistance that it considers necessary for carrying out its duties.

Conflict of interest of member of Board of Inquiry

(9) A member of the Board of Inquiry who has a conflict of interest in respect of a matter that is before the Board of Inquiry or a hearing panel shall

- (a) disclose the general nature of the conflict of interest to the Board of Inquiry; and
- (b) refrain from attempting to influence the disposition of the matter or participating in consideration of the matter.

Notifications**Notification**

31. (1) A person may give a notification to the Registrar that an act or omission of a registered midwife may constitute unprofessional conduct.

Form of notification

(2) A notification given under subsection (1) must be

- (a) in writing;
- (b) signed by the person giving it; and
- (c) accompanied by the mailing address of the person giving it.

Notification issued by Registrar

(3) In the absence of a notification given under subsection (1) or paragraph 27(1)(d), the Registrar may, if he or she has evidence that an act or omission of a registered midwife may constitute unprofessional conduct, issue a notification.

Timely resolution

(4) A notification must be dealt with in a timely manner in accordance with this Part and the regulations.

Continuing jurisdiction

(5) A notification about a person who is no longer registered under this Act that relates to an act or omission occurring while the person was registered under this Act may be dealt with under this Part if the notification is given or issued within two years after the day on which the person ceased to be registered.

Notice

(6) On receiving a notification under subsection (1) or paragraph 27(1)(d) or issuing a notification under subsection (3), the Registrar shall provide the person who is the subject of the notification

- (a) written notice of the notification; and
- (b) written information about the substance of the notification.

Review and inquiry

32. (1) Subject to subsection (2), the Registrar shall review and inquire into a notification to the extent that he or she determines is warranted for the purposes of this section.

Conflict of interest of Registrar

(2) Where the Registrar has a conflict of interest in respect of a notification, he or she shall refer the notification to the President.

Dismissal of notification

- (3) The Registrar shall dismiss a notification if he or she finds that
- (a) the allegations made in the notification do not pertain to conduct regulated under this Act; or
 - (b) the notification is frivolous or vexatious.

Notice of dismissal

(4) On dismissing a notification under this section, the Registrar shall provide the person who is the subject of the notification and the person who gave the notification, if any, in writing, notice of and reasons for the dismissal.

Referral to President

(5) Where the Registrar does not dismiss a notification under subsection (3), he or she shall refer the notification to the President.

Conflict of interest of President

(6) Where the President has a conflict of interest in respect of a notification, the President shall

- (a) notify the Minister, who shall appoint an alternate person to exercise the powers and perform the duties of the President in respect of the notification; and
- (b) refrain from participating in any investigation, proceeding or decision in respect of the notification.

Reference to "President"

(7) Where the Minister appoints an alternate person under paragraph (6)(a), a reference to the President in respect of the notification in sections 33 to 36, subsections 37(1), 40(3) and 46(1) and section 51 shall be read as a reference to the alternate person.

Suspension

Suspension pending decision

33. (1) Where the conduct of a registered midwife is under review or investigation, the President may, pending the outcome of the proceedings under this Part, order that

- (a) the registered midwife's registration be suspended, where the President is satisfied that a suspension is necessary to protect the public interest; or
- (b) any terms or conditions be imposed on the registered midwife's certificate of registration that the President determines are necessary to protect the public interest.

Notice of order

(2) On making an order under subsection (1), the President shall provide the registered midwife

- (a) written notice of and reasons for the order; and
- (b) a written notice of the right to appeal.

Notice

(3) An order made under subsection (1) is not effective until notice of the order is served on the person affected by it.

Order revoked

(4) The President shall revoke an order made under subsection (1) if satisfied that the order is no longer necessary to protect the public interest.

Appeal

(5) A registered midwife whose registration is suspended under paragraph (1)(a) or who has terms or conditions imposed on his or her certificate of registration under paragraph (1)(b) may appeal the order to the Nunavut Court of Justice within 30 days after receiving notice of the order.

Notice of appeal

(6) Notice of an appeal under subsection (5) must be served on the Registrar.

Decision of Nunavut Court of Justice

- (7) On hearing an appeal, the Nunavut Court of Justice may
- (a) confirm, revoke or vary the order;
 - (b) refer the matter, or any issue, back to the President for further consideration; or
 - (c) provide any direction that it considers appropriate.

Costs of appeal

(8) The Nunavut Court of Justice may make any order as to the costs of an appeal that it considers appropriate.

Investigation

Investigation

- 34.** (1) On receiving a notification from the Registrar, the President shall
- (a) investigate the notification; or
 - (b) appoint an investigator to investigate the notification.

Notice

(2) The President shall provide the person who is the subject of the notification and the person who gave the notification, if any, written notice of the investigation.

Powers of President or investigator

- (3) The President or an investigator investigating a notification may
- (a) retain any legal or other assistance that he or she considers necessary for carrying out his or her duties;
 - (b) make oral or written inquiries of any person who may have information relevant to the notification;
 - (c) demand the production for examination of documents, records and other materials that may be relevant to the notification;
 - (d) copy and keep copies of any documents, records and other materials produced under paragraph (c); and
 - (e) investigate any matter in addition to the notification that arises in the course of the investigation and that may constitute unprofessional conduct by the investigated person.

Application to Nunavut Court of Justice

(4) Where a person refuses or fails to respond to an inquiry or to comply with a demand made under subsection (3), the President may apply to the Nunavut Court of Justice for an order requiring the person to respond to the inquiry or to comply with the demand.

Failure to respond or comply

(5) Where an investigated person fails or refuses, without reasonable cause, to respond to any inquiry or to comply with a demand made under subsection (3), the

President may refer the notification to the Board of Inquiry, and the failure or refusal may be found to be unprofessional conduct.

Report to President

(6) On completing an investigation, the investigator shall report his or her findings in writing to the President.

Completion of investigation

35. (1) On the completion of an investigation and the review of an investigator's report, if any, the President shall

- (a) dismiss the notification where the President is satisfied that there is insufficient evidence of unprofessional conduct to provide a reasonable basis for further action;
- (b) where the investigated person is a registered midwife, enter into an agreement with the registered midwife providing for
 - (i) the imposition of any terms and conditions on his or her certificate of registration that the President determines are necessary to protect the public interest,
 - (ii) an assessment of the registered midwife's capacity or fitness to practise, or
 - (iii) counselling, treatment or a course of study or training for the registered midwife; or
- (c) refer the notification to the Board of Inquiry.

Notice of decision

(2) The President shall provide the investigated person, the Registrar and the person who gave the notification, if any, in writing, notice of and reasons for the decision made under subsection (1).

Alternative Dispute Resolution

Referral to alternative dispute resolution

36. (1) Despite any provision of this Act, the President may, at any time after a notification given under subsection 31(1) is referred to the President but before a hearing into the notification is complete, refer the notification to an alternative dispute resolution process if

- (a) the issues raised by the notification are strictly a matter of concern to the person who gave the notification and the investigated person;
- (b) the person who gave the notification and the investigated person agree to the referral; and
- (c) the President is satisfied that the referral is appropriate in the circumstances.

Approval of agreement

(2) No agreement reached in an alternative dispute resolution process is effective unless the President approves the terms and conditions of the agreement.

Revocation

(3) Where the issues raised by a notification referred to an alternative dispute resolution process under subsection (1) are not resolved within 60 days of the referral, the President may revoke the referral.

Hearing

Designation of members to a hearing panel

37. (1) On referring a notification to the Board of Inquiry, the President shall, without delay,

- (a) designate not less than three members of the Board of Inquiry to form a hearing panel to hear the issues raised by the notification;
- (b) designate a member of the hearing panel as chairperson of the panel; and
- (c) refer the notification to the hearing panel.

Majority of hearing panel

(2) A majority of the members of a hearing panel must be registered midwives or persons who are registered and in good standing as midwives under an Act or regulation of a province or other territory.

Hearing panel may retain assistance

(3) A hearing panel may retain any legal or other assistance that it considers necessary for carrying out its duties.

Hearing without delay

(4) A hearing panel shall, without delay, hold a hearing into the issues raised by a notification that is referred to it.

Notice of hearing

(5) A hearing panel shall, at least 30 days before the date of a hearing, serve on the investigated person, the Registrar and the person who gave the notification, if any, a notice of hearing

- (a) stating the date, time and place at which the hearing will be held; and
- (b) identifying the substance of the issues in respect of which the hearing will be held.

Rules of natural justice

38. (1) A hearing panel shall conduct its proceedings in accordance with the rules of natural justice.

Attendance and legal representation

(2) The investigated person and the person who gave the notification, if any, may, at a hearing before a hearing panel,

- (a) attend and be heard; and
- (b) be represented by legal counsel.

Hearing open to public

(3) A hearing must be open to the public unless the hearing panel is of the opinion that

- (a) the interests of a person other than the investigated person may be detrimentally affected if the hearing, or part of the hearing, is not held in private; and
- (b) the desirability of avoiding public disclosure of financial, personal or other matters in the interest of the person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

Additional matters

(4) A hearing panel may hear any matter in addition to the issues raised by the notification referred to it that arises in the course of its proceedings and that may constitute unprofessional conduct by the investigated person.

Opportunity to respond

(5) Where a hearing panel hears an additional matter referred to in subsection (4), it shall give the investigated person a reasonable opportunity to respond to the matter.

Rules of evidence

39. (1) A hearing panel is not bound by the rules of law respecting evidence applicable to judicial proceedings and evidence may be given before it in any manner that it considers proper.

Oath or affirmation

(2) A member of a hearing panel has the power to administer an oath or affirmation to a witness who is to give evidence before the hearing panel.

Compellable witness

(3) The investigated person and any other person who, in the opinion of a hearing panel, has knowledge in respect of the issues raised by a notification, are compellable witnesses at a hearing into the issues.

Examination of witness

(4) A witness may be examined on oath or affirmation on all matters relevant to a hearing of a hearing panel and shall not be excused from answering a question on the ground of professional privilege or on the ground that the answer might

- (a) tend to incriminate the witness;
- (b) subject the witness to punishment under this Act; or

- (c) tend to establish the liability of the witness
 - (i) in a civil proceeding at the instance of the Government of Nunavut or of any person, or
 - (ii) to prosecution under any Act.

Use of evidence

(5) Any evidence given in accordance with subsection (4) may not be used to incriminate the person who gave it in any other proceedings, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

Attendance of witnesses and production of documents

40. (1) Where a hearing panel requires the attendance of a witness or the production of documents, records or other materials, the hearing panel shall serve a written notice on the witness that states

- (a) that the witness is required to attend;
- (b) the date, time and place at which the witness is required to attend; and
- (c) the documents, records and other materials, if any, that the witness is required to produce.

Notice

(2) On the written request of the investigated person, the hearing panel shall, without charge, issue and deliver to that person the notices that he or she may require for the attendance of witnesses or the production of documents, records or other materials.

Testimony of non-resident witness

(3) For the purpose of obtaining the testimony of a witness who is outside of Nunavut, the Nunavut Court of Justice may, on *ex parte* application by the President or the investigated person, make an order appointing an examiner to obtain the evidence of the witness under the Rules of the Nunavut Court of Justice, with any modifications that the circumstances may require.

Witness fees

(4) A witness, other than the investigated person, who has been served with a notice to attend or a notice for the production of documents, records or other materials, is entitled to be paid the usual fees payable to witnesses in an action in the Nunavut Court of Justice by the party requiring the witness to attend or produce.

Civil contempt

41. (1) Proceedings for civil contempt of court may be brought, in accordance with the Rules of the Nunavut Court of Justice, against a witness

- (a) who fails
 - (i) to attend before a hearing of a hearing panel after receiving a notice to attend, or
 - (ii) to produce documents, records or other materials as required by a notice to produce them; or

- (b) who refuses
 - (i) to be sworn, or
 - (ii) to answer any question directed to be answered by a hearing panel.

Unprofessional conduct

(2) If the witness referred to in subsection (1) is the investigated person, the failure or refusal may be held by the hearing panel to be unprofessional conduct.

Hearing in absence of investigated person

42. On receiving proof of service of the notice of hearing on the investigated person in accordance with subsection 40(1), a hearing panel may, in the absence of the investigated person,

- (a) proceed with the hearing; and
- (b) act and decide on the matter being heard as if the investigated person were in attendance.

Decision and Order

Dismissal of notification

43. (1) Where, on concluding a hearing, a hearing panel finds that the conduct of the investigated person is not unprofessional conduct, the hearing panel shall dismiss the notification.

Order where finding of unprofessional conduct

(2) Where, on concluding a hearing, a hearing panel finds that the conduct of the investigated person constitutes unprofessional conduct, the hearing panel may, by order,

- (a) reprimand the person;
- (b) suspend the registration and certificate of registration of the person for a specified period;
- (c) suspend the registration and certificate of registration of the person until the Committee is satisfied
 - (i) that the person has completed a specified course of studies or obtained supervised practical experience,
 - (ii) as to the general competence of the person to practise midwifery, or
 - (iii) that a disability or condition is unlikely to result in further unprofessional conduct;
- (d) accept, in place of a suspension, the person's undertaking to limit the practice of midwifery by the person for a specified period or until the Committee is satisfied that the limit is no longer required;
- (e) impose any terms or conditions on the person's certificate of registration that the hearing panel determines are necessary to protect the public interest for a specified period or until the Committee is satisfied that the terms or conditions are no longer required;

- (f) direct the person to complete a specified course of studies or to satisfy the Committee as to the competence of the person to practise midwifery;
- (g) direct the person to satisfy the Committee that a disability or condition has been, or is being, successfully treated, or that the disability or condition does not impair the person's capacity to provide midwifery services in accordance with this Act, the regulations and the standards of practice and standards of competence approved by the Minister;
- (h) direct the person to take counselling or to undergo treatment that, in the opinion of the hearing panel, is appropriate;
- (i) remove the person from the Midwifery Register and cancel the person's certificate of registration; or
- (j) make any further or other order that it considers appropriate.

Costs and fine

44. A hearing panel may, in addition to or instead of making an order under subsection 43(2), order the investigated person pay to the Government of Nunavut, within the time specified in the order,

- (a) all or part of the costs of the hearing;
- (b) a fine not exceeding
 - (i) \$5,000, where the panel has made one finding of unprofessional conduct arising out of the hearing, or
 - (ii) \$10,000, where the panel has made two or more findings of unprofessional conduct arising out of the hearing; or
- (c) both costs and a fine.

Decision in writing

45. (1) A hearing panel shall, without delay at the conclusion of a hearing, issue a written decision setting out any order made by it that includes

- (a) the findings of fact made by the hearing panel; and
- (b) the reasons for the decision and any order.

Service of decision and notice

(2) On issuing a written decision under subsection (1), a hearing panel shall

- (a) serve on the investigated person and the person who gave the notification, if any,
 - (i) a copy of the decision, and
 - (ii) a notice of the right to appeal; and
- (b) provide to the Registrar
 - (i) a copy of the decision, and
 - (ii) the record of the hearing.

Examination of record

(3) The investigated person and the person who gave the notification, if any, may examine the record of the hearing or any part of the record.

Contravention of order

46. (1) Where the President is satisfied that a registered midwife has contravened or failed to comply with an order under subsection 43(2), he or she may, without a further hearing, order that the registration of the registered midwife be suspended subject to any terms and conditions he or she considers appropriate.

Suspension or prohibition for non-payment

(2) If a person ordered to pay an amount under section 44 fails to pay the amount within the time specified in the order, the Registrar may suspend or prohibit the registration of the person in the Midwifery Register until the amount is paid.

Suspension effective when notice served

(3) A suspension under this section is not effective until notice of the suspension is served on the person affected by it.

Recovery of fine or costs

47. A fine or costs ordered to be paid under section 44 is a debt due to the Government of Nunavut and may be recovered by the Government of Nunavut by civil action for debt.

Appeal

Appeal

48. (1) An investigated person or a person who gave a notification may appeal a decision or order of a hearing panel to the Nunavut Court of Justice within 30 days after receiving notice of the decision or order.

Notice of appeal by investigated person

(2) Notice of an appeal under subsection (1) by an investigated person must be served on the Registrar and the person who gave the notification, if any.

Notice of appeal by person who gave notification

(3) Notice of an appeal under subsection (1) by a person who gave a notification must be served on the Registrar and the investigated person.

Appeal on the record

(4) An appeal of a decision or order of a hearing panel shall be based on the record of the hearing before the hearing panel and on the decision or order of the hearing panel.

Decision of Nunavut Court of Justice

49. (1) On hearing an appeal, the Nunavut Court of Justice may

- (a) make any finding of fact that in its opinion should have been made;
- (b) confirm, revoke or vary the decision or order;
- (c) refer the matter, or any issue, back to the hearing panel for further consideration in accordance with any direction of the Court; or

- (d) provide any direction that it considers appropriate.

Costs of appeal

(2) The Nunavut Court of Justice may make any order as to the costs of an appeal that it considers appropriate.

Stay pending appeal

50. A decision or order of a hearing panel remains in effect pending an appeal unless the Nunavut Court of Justice, on application, stays the decision or order pending the appeal.

PART 6

GENERAL

Liability

Liability

51. No proceedings lie against the Registrar, the President, an investigator, a member of the Committee, a member of the Board of Inquiry, a member of a hearing panel or a person engaged or employed by the Committee, the Board of Inquiry or a hearing panel for anything done or not done by that person in good faith in the exercise of powers or the performance of duties or functions under this Act.

Administration

Service of notice or document

52. Where a notice or other document is required to be served on a person under this Act or the regulations, the notice or document may be

- (a) served personally on the person; or
- (b) sent by registered mail to the last known mailing address of the person.

Certificate admissible in evidence

53. (1) A certificate respecting a matter dealt with by this Act that purports to be issued by the Registrar is admissible in evidence without proof of the office or signature of the Registrar and is, in the absence of evidence to the contrary, proof of the facts set out in it.

Certified copies

(2) A copy of a certificate respecting a matter dealt with by this Act that purports to be certified by the Registrar is admissible in evidence without proof of the office or signature of the Registrar and is, in the absence of evidence to the contrary, proof of the original document.

Emergencies

Emergency services

54. (1) Nothing in the *Dental Profession Act*, the *Medical Profession Act*, the *Nursing Act* or the *Pharmacy Act* prohibits a registered midwife from

- (a) in the course of administering emergency medical aid or treatment, doing anything for which a licence is required under those Acts; or
- (b) doing anything in an emergency in an attempt to relieve the pain and suffering of a person.

Protection from action

(2) A registered midwife shall not be held liable for civil damages as a result of acts or omissions performed in good faith under subsection (1) unless it is established that injuries or death were caused by gross negligence on his or her part.

Offences and Punishment

Prohibition

55. (1) No person except a registered midwife shall

- (a) use the title "registered midwife", a variation or abbreviation of that title or an equivalent in another language; or
- (b) represent or hold out, expressly or by implication, that he or she is a registered midwife.

Services of registered midwife

(2) No person shall knowingly employ or engage a person to provide the services of a registered midwife unless the person so employed or engaged is a registered midwife.

Practising while suspended

(3) No person whose registration under this Act is suspended or cancelled shall directly or indirectly engage in the practice of midwifery.

Offence and punishment

(4) Every person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction

- (a) for a first offence, to a fine not exceeding \$2,000;
- (b) for a second offence, to a fine not exceeding \$4,000; and
- (c) for a third or subsequent offence, to a fine not exceeding \$6,000 or to imprisonment for a term not exceeding three months or to both.

Limitation period

(5) A prosecution for an offence under this Act or the regulations may not be commenced more than two years after the day on which the offence is alleged to have been committed.

Burden of proof

(6) In a prosecution under this Act, a person against whom a charge is laid has the burden of proving that, at the time of the alleged offence, the person was a registered midwife.

Regulations**Regulations**

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

- (a) respecting screening and diagnostic tests that a registered midwife may perform, order, collect samples for and interpret under paragraph 3(h);
- (b) respecting minor surgical and invasive procedures and physical examinations that a registered midwife may perform under paragraph 3(i);
- (c) respecting drugs and substances that a registered midwife may prescribe and administer under paragraph 3(k);
- (d) respecting the prescribing and administering of drugs and substances by a registered midwife;
- (e) respecting medical equipment and devices that a registered midwife may order, prescribe and fit under paragraph 3(l);
- (f) respecting midwifery training and refresher programs and examinations, including the incorporation of traditional Inuit midwifery knowledge, skills and judgment;
- (g) respecting midwifery continuing competence and professional development, including the incorporation of traditional Inuit midwifery knowledge, skills and judgment;
- (h) respecting alternative dispute resolution processes for the resolution of the issues raised by notifications of unprofessional conduct;
- (i) respecting investigations into the conduct of registered midwives;
- (j) respecting the records required to be kept by registered midwives and the length of time that any records must be kept;
- (k) respecting fees to be paid under this Act;
- (l) respecting the content of forms required under this Act; and
- (m) respecting any matter considered necessary or advisable to carry out the intent and purpose of this Act.

Note

**The following provisions have been deleted for the purposes of this consolidation:
s.57 to 61 (Consequential Amendments)**

COMMENCEMENT

Coming into force

62. This Act or any provision of this Act comes into force on a day or days to be fixed by order of the Commissioner.

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