

Chapter 6

AN ACT TO AMEND CERTAIN ACTS RESPECTING CODES AND STANDARDS

(Assented to March 14, 2017)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

PART 1

BUILDING CODE ACT

1. **The *Building Code Act* is amended by this Part.**
2. **Subsection 1(1) is amended**
 - (a) **in the definition of “building official” by adding “or under a by-law made under section 105 of the *Cities, Towns and Villages Act* or section 105 of the *Hamlets Act*” after “under section 21; and**
 - (b) **in the English version of the definition of “engineer” by striking out “practice” and substituting “practise”;**
 - (c) **by adding the following in alphabetical order:**

“investigation” means an investigation, including entry, search and seizure, under section 7.1; (*investigation*)

3. **The heading “Code of Standards” preceding section 4 is repealed and the following substituted:**

Codes and Standards

4. **Section 4 is amended**
 - (a) **in paragraph (b) by striking out “code of standards” and substituting “code or standard”; and**
 - (b) **in paragraph (c) by adding “or standard” after “a code”.**
5. **Section 6 is amended**
 - (a) **by adding the following after subsection (1):**

Application does not comply

(1.1) Where an application has been made under subsection (1) but the proposed building or construction does not comply with this Act, the regulations and the Code, a building official shall issue

- (a) a decision rejecting the application; or

- (b) a permit under subsection (1) for the portion of the proposed building or construction that complies with this Act, the regulations and the Code and a decision rejecting the rest of the application.
- (b) **in the English version of subsection (3)**
 - (i) **by striking out the semi-colon at the end of subparagraph (a)(iv) and substituting a comma;**
 - (ii) **by striking out “twelve months” in subparagraph (b)(i) and substituting “12 months”;**
- (c) **in the French version of paragraph (3)(a), by renumbering the last two subparagraphs as (iv) and (v).**

6. Section 7 is amended

- (a) **in subsection (1) by striking out “For the purpose” and substituting “Subject to section 8, for the purpose”; and**
- (b) **in the English version of subsection (3) by striking out “paragraph (1)(d)” and substituting “paragraph (1)(e)”.**

7. The following is added after section 7:

Investigations

Entry and search

7.1. (1) Subject to section 8, if a building official believes, on reasonable grounds, that an offence under this Act has been committed, the building official may enter and search any building or place for the purpose of obtaining evidence in relation to that offence under this Act if

- (a) the occupant or person in charge of the building or place consents;
- (b) the entry or search is authorized by a warrant; or
- (c) with respect to a place that is not a dwelling, the building official has reasonable grounds to believe that distance, urgency, the likelihood of removal or destruction of the evidence and other relevant factors do not reasonably permit the obtaining of a warrant or consent.

Powers during search

- (2) In carrying out a search under this section, a building official may
 - (a) be accompanied by a person who has special or expert knowledge on any matter to which this Act or the regulations relate;
 - (b) conduct any test, make any inquiry and take any sample, measurement, photograph or video recording that the building official considers necessary;
 - (c) use or cause to be used any computer system and examine any data contained in or available on the computer system;
 - (d) on giving a receipt, seize any document, data or thing if
 - (i) the seizure is authorized by a warrant, or

- (ii) distance, urgency, the likelihood of the removal or destruction of the document, data or thing as evidence or other relevant factors do not reasonably permit the obtaining of a warrant.

Included powers

- (3) The power to seize under paragraph (2)(d) includes the power to
 - (a) reproduce or cause to be reproduced any document or data;
 - (b) print or export any document or data for examination or copying; and
 - (c) use or cause to be used any copying equipment at the building or place to make copies of the document or data.

Information, documents or data

7.2. The powers under sections 7 and 7.1 may not be used with respect to information, documents or data except to the extent that doing so is

- (a) necessary for the purposes of an inspection or investigation; or
- (b) authorized by a warrant.

8. Section 8 is amended

- (a) **in subsection (1) by adding “or (b) or subsection 7.1(1)” after “paragraph 7(1)(a)”;**
- (b) **in the English version of subsection (1) by striking out “in the following circumstances:”; and**
- (c) **in subsection (2) by striking out “a danger” and substituting “an imminent and serious danger”.**

9. Section 9 is amended

- (a) **by striking out paragraphs (1)(a) and (b) and substituting the following:**
 - (a) a building official cannot obtain the occupier’s or owner’s consent to enter the building or place or has been refused entry into the building or place; and
 - (b) there are reasonable grounds to believe that entry to the building or place is necessary to further an inspection, investigation, order or proceeding under this Act.
- (b) **in paragraph (2)(b) by striking out “investigation or proceeding” and substituting “inspection”;**
- (c) **by adding the following after subsection (2):**

Order for seizure during investigation

(2.1) On an application that may be made without notice to the owner, a justice of the peace or judge may issue an order authorizing the seizure of a document or thing by any person referred to in the order if the justice or judge is satisfied that there are reasonable grounds to

believe that the seizure of the document or thing is necessary to further an investigation or proceeding under this Act.

- (d) **in subsections (3) and (4) by adding “or (2.1)” after “subsection (2)”;**
- (e) **in subsection (7) by adding “inspection,” before “investigation”.**

10. Subsection 10(2) is repealed and the following substituted:

Notice respecting right to apply to chief building official

(2) In making an order made under subsection (1), the building official shall provide notice of the right to apply to the chief building official for a review or reconsideration under section 16.1.

11. Section 11 is amended

- (a) **in paragraph (2)(e) by striking out “to the Advisory Committee for a ruling under section 17” and substituting “to the chief building official for a review or reconsideration under section 16.1”;**
- (b) **in the English versions of subsections (3) and (5) by striking out “may remove” wherever it appears and substituting “shall remove”;** and
- (c) **in subsection (5) by striking out “shall post a copy of the stop work order” and substituting “shall ensure that a copy of the stop work order is posted”.**

12. Section 12 is amended

- (a) **in paragraph (2)(e) by striking out “to the Advisory Committee for a ruling under section 17” and substituting “to the chief building official for a review or reconsideration under section 16.1”;** and
- (b) **in the English version of subsection (3) by striking out “may remove” and substituting “shall remove”.**

13. Subsection 13(3) is repealed and the following substituted:

Review by chief building official

(3) An emergency order may be reviewed or reconsidered by the chief building official in accordance with section 16.1.

No stay

(4) Despite subsection 17(7) or any order made under that subsection, an application for a ruling of the Advisory Committee under sections 17 and 18 respecting an emergency order or a decision respecting an emergency order does not operate as a stay of the emergency order or the decision.

14. The English version of paragraph 15(b) is amended by striking out “official building” and substituting “building official”.

15. The following is added after section 16:

Review and reconsideration of orders

Review of orders by building officials

16.1. (1) A person who is subject to a decision or order made under this Act by a building official other than the chief building official may apply to have the decision or order reviewed by the chief building official by filing a written application within seven days after the day on which the decision or order is served on the person.

Reconsideration of orders by chief building official

(2) A person who is subject to a decision or order made under this Act by the chief building official, other than one confirmed or varied under this section, may apply to the chief building official for reconsideration of the decision or order by filing a written application for reconsideration within seven days after the day on which the decision or order is served on the person.

Contents of application

- (3) The application for review or reconsideration must set out
- (a) the reasons for the application;
 - (b) a summary of any facts relevant to the application;
 - (c) whether the decision or order should be revoked or what changes should be made to it; and
 - (d) the contact information of the applicant.

Process

(4) The chief building official shall consider the application, including any oral or written evidence submitted by the applicant or available to the chief building official to support or repudiate any allegation contained in the application.

No stay

(5) Unless otherwise ordered by the chief building official, an application for review or reconsideration does not operate as a stay of the decision or order being reviewed or reconsidered.

Extrinsic evidence

(6) If the chief building official intends to rely on evidence other than that submitted by the applicant in considering an application, the chief building official shall provide that evidence to the applicant and allow the applicant to respond with further evidence.

Decision

(7) The chief building official shall, within 10 days after receiving the application for reconsideration, make a decision whether to confirm, vary or rescind the decision or order.

Copy to applicant

(8) The chief building official shall provide the applicant, and any other affected party, with a written copy of the decision made under subsection (7), with reasons, as soon as practicable.

Notice of right to apply

(9) In providing a decision under subsection (8), the chief building official shall provide notice of the right to apply to the Advisory Committee for a ruling under section 17.

16. Section 17 is amended

(a) by repealing subsection (1) and substituting the following:

Definitions

(01) In this section and sections 18 to 20,

“decision”, other than in reference to a decision of the Advisory Committee, means

- (a) a decision made under section 16.1; or
- (b) a decision made under another Act, where an Act provides that the decision may be appealed to the Advisory Committee. (*décision*)

“official” means

- (a) the chief building official; or
- (b) a public officer appointed under another Act, where an Act provides that the decisions of that public officer may be appealed to the Advisory Committee. (*fonctionnaire*)

Application for Advisory Committee ruling

(1) A person aggrieved by the decision of an official may, within 30 days after receipt of that decision, apply to the Advisory Committee for a ruling on any of the following grounds:

- (a) in the case of a decision of the chief building official,
 - (i) the denial or cancellation of a permit;
 - (ii) an interpretation of the technical requirements of the Code or the sufficiency of compliance with those requirements;
 - (iii) the making of an order pursuant to sections 10 to 13;
- (b) in the case of a decision of another official, the grounds specified in the Act providing for the right of appeal to the Advisory Committee.

- (b) in paragraph (2)(b) by striking out “building”;**
- (c) by adding the following after subsection (2):**

Parties

(2.1) The person making the application and the official are the parties in a proceeding before the Advisory Committee.

(d) adding the following after subsection (4):

Ruling of a panel

(4.1) A ruling of a panel is a ruling of the Advisory Committee.

(e) by repealing subsection (5) and substituting the following:

Conflict of interest

(5) A person shall not participate in a hearing as a member of the Advisory Committee or a panel, or as an expert, if

- (a) he or she is the official whose decision is the subject of the application, or the subordinate or representative of that official; or
- (b) he or she has or has had an interest in the decision that is the subject of the application.

(f) in subsection (7) by

- (i) striking out “Advisory Committee” and substituting “Chair”;**
- and**
- (ii) striking out “building”.**

17. Sections 18 and 19 are repealed and the following substituted:

Ruling

- 18.** Following the hearing of an application under section 17, the Advisory Committee shall
- (a) where the Advisory Committee considers the decision of the official to be reasonable, confirm the decision of the official; or
 - (b) where the Advisory Committee considers the decision of the official to be unreasonable, substitute its own decision for the decision of the official, after giving due consideration to arguments put forth by the applicant.

Appeal to Court

- 19.** (1) A ruling of the Advisory Committee may be appealed to the Nunavut Court of Justice.

Procedure on appeal

(2) The appeal shall be conducted in accordance with the procedure for appeals from tribunals set out in the *Judicature Act*, except that

- (a) despite subsection 86(1) of the *Judicature Act*, the notice of appeal must be filed in the Court and served on all parties directly affected by the appeal within 10 days after service of the ruling on the person filing the notice; and
- (b) section 89 of the *Judicature Act* does not apply.

Parties

- (3) The persons who were parties to the proceeding before the Advisory Committee, and any other persons the Court may specify, are parties to an appeal.

Standard of review

(4) The standard of review on an appeal is reasonableness, except on questions of jurisdiction where the standard of review is correctness.

No stay

(5) Unless otherwise ordered by the Court, an appeal does not operate as a stay of the ruling of the Advisory Committee.

Decision of Court

(6) The Court may, subject to subsection (4), confirm, reverse or vary the ruling of the Advisory Committee, and may make any other order that the Court considers appropriate.

18. The heading preceding section 20 is amended by striking out “to the Code”.

19. Section 20 is amended

(a) by repealing subsection (1) and substituting the following:

Application for Advisory Committee recommendation

(1) A person who feels it is justified may apply to the Advisory Committee suggesting the Committee recommend an amendment to

- (a) the Code; or
- (b) a code, standard, guideline or procedure adopted under an Act that authorizes the Advisory Committee to receive applications and make recommendations with respect to that code, standard, guideline or procedure.
- (b) in paragraph (2)(b) by adding “unless the applicant is the Minister or an official, ” at the beginning of the paragraph;**
- (c) in subsection (3) by striking out “subsections 17(3) to (10)” and substituting “subsections 17(3) to (4.1) and (6) to (10)”;**
- (d) in paragraph (4)(b) by adding “or other place” after “a building”; and**
- (e) in the French version of subsection (5) by striking out “10 jours de” and substituting “10 jours suivant”;**
- (f) by repealing subsection (6) and substituting the following:**

Recommendation

(6) Where the Advisory Committee is satisfied it is reasonable in the circumstances, it may recommend amending the Code or a document referred to in paragraph (1)(b)

- (a) as requested; or
- (b) as agreed by the Advisory Committee and the person making the request.
- (g) in subsection (7) by adding “or a document referred to in paragraph (1)(b)” after “the Code”.**

20. The following is added after subsection 21(2):

Building official appointed under municipal by-law

(3) A building official appointed under a by-law made under section 105 of the *Cities, Towns and Villages Act* or section 105 of the *Hamlets Act* shall perform the duties and may exercise the powers of a building official only within the municipality where he or she is appointed.

21. Subsections 23(2) to (4) are repealed and the following substituted:

Composition

(2) The Advisory Committee is composed of the following members appointed by the Minister:

- (a) a representative of the Department responsible for the administration of this Act;
- (b) other prescribed members.

22. Paragraph 24(d) is amended by adding “or another Act” after “the Minister”.

23. Section 25 is amended

- (a) **in subsection (1) by adding “or an investigation under section 7.1” after “an inspection under section 7”;**
- (b) **repealing subsection (3) and substituting:**

Refusal to consent to entry into private dwelling

(3) A refusal to consent to entry into the occupied part of a private dwelling does not constitute refusing entry, obstructing or interfering under this section, unless the refusal is made in a manner that prevents or hinders an entry where

- (a) the entry is authorized by a warrant; or
- (b) the building official has reasonable grounds to believe exigent circumstances, as defined in subsection 8(2), exist.

24. The French version of paragraph 26(2)(a) is amended by adding a comma after “d’une part”.

25. The English version of section 27 is amended by striking out “not done” and substituting “omitted”.

26. Section 31 is amended

- (a) **by adding the following after paragraph (1)(d):**
 - (d.1) respecting the composition of the Advisory Committee;

(b) by adding the following after subsection (1):

Transitional regulations

(1.1) The Commissioner, on the recommendation of the Minister, may make transitional regulations respecting any existing buildings, constructions, permits or other matters to which this Act applies that were governed by

- (a) section 5.1, paragraphs 23(1)(a) and (a.01) or subsections 23(2) to (4) of the *Fire Prevention Act* prior to their repeal by this Act; or
- (b) a by-law made under section 105 of the *Hamlets Act* or section 105 of the *Cities, Towns and Villages Act* prior to their repeal by *An Act to Amend certain Acts respecting Codes and Standards*.

Same

(1.2) Without restricting the generality of subsection (1.1), regulations made under that subsection may, with respect to a matter referred to in that subsection,

- (a) provide for exemptions from the application of any provision of this Act and the regulations;
- (b) provide for the continuation of any provision of the repealed enactments, or regulations or by-laws made under them, as if they had not been repealed;
- (c) provide for anything authorized under this Act or the repealed enactments, as if they had not been repealed.

- (c) **in subsection (2) by adding “or (1.1)” after “subsection (1)”.**

27. The following is added after section 31:

Statutory Instruments Act

31.1 The *Statutory Instruments Act* does not apply to an order made or a form approved under this Act.

28. Sections 32 to 34, 36 and 37 are repealed.

PART 2

TECHNICAL STANDARDS AND SAFETY ACT

29. The *Technical Standards and Safety Act* is amended by this Part.

30. Section 4 is amended by adding the following definitions in alphabetical order:

“Advisory Committee” means the Nunavut Building Advisory Committee established under the *Building Code Act*; (*comité consultatif*)

“investigation” means an investigation, including entry, search and seizure, under section 15.1; (*enquête*)

31. Sections 15 and 16 and the heading preceding them are repealed and the following substituted:

INSPECTIONS AND INVESTIGATIONS

Inspection without warrant

15. Subject to section 15.2, for the purpose of ensuring compliance with this Act, the regulations or an order made under this Act or of determining whether an unsafe condition exists, an inspector may, at any reasonable time and without a warrant

- (a) enter lands, premises or another place;
- (b) enter in or on adjoining structures, lands, premises, or other places necessary for the purpose of conducting an inspection;
- (c) be accompanied and assisted by a person who may be of assistance to him or her in carrying out an inspection;
- (d) deal with records and things in the manner specified in section 17;
- (e) conduct any test, make any inquiry and take any sample, measurement, photograph or video recording that the inspector considers necessary; and
- (f) require the owner or any person performing or responsible for the operation or installation to take and supply at his, her or its expense such tests and samples as the inspector considers necessary.

Entry and search for the purpose of investigation

15.1. (1) Subject to section 15.2, if an inspector believes, on reasonable grounds, that an offence under this Act has been committed, the inspector may enter and search any lands, premises or other place for the purpose of obtaining evidence in relation to that offence under this Act if

- (a) the occupant or person in charge of the place consents;
- (b) the entry or search is authorized by a warrant; or
- (c) with respect to a place that is not a dwelling, the inspector has reasonable grounds to believe that distance, urgency, the likelihood of removal or destruction of the evidence and other relevant factors do not reasonably permit the obtaining of a warrant or consent.

(2) In carrying out a search under this section, an inspector may

- (a) be accompanied and assisted by a person who may be of assistance to him or her in carrying out an investigation;
- (b) conduct any test, make any inquiry and take any sample, measurement, photograph or video recording that the inspector considers necessary;
- (c) use or cause to be used any computer system and examine any data contained in or available on the computer system;
- (d) on giving a receipt, seize any document, data or thing if
 - (i) the seizure is authorized by a warrant, or

- (ii) distance, urgency, the likelihood of the removal or destruction of the document, data or thing as evidence or other relevant factors do not reasonably permit the obtaining of a warrant.

- (3) The power to seize under paragraph (2)(d) includes the power to
 - (a) reproduce or cause to be reproduced any document or data;
 - (b) print or export any document or data for examination or copying; and
 - (c) use or cause to be used any copying equipment at the building or place to make copies of the document or data.

Entry into dwelling

15.2. (1) Despite paragraphs 15(1)(a) and (b) and subsection 15.1(1), an inspector shall not enter a dwelling except

- (a) with the consent of the occupier;
- (b) under the authority of a warrant; or
- (c) where the inspector has reasonable grounds to believe that exigent circumstances exist.

(2) An inspector who wishes to enter a dwelling with the consent of the occupier shall inform the occupier that he or she may refuse his or her consent.

(3) For the purpose of paragraph (1)(c), “exigent circumstances” means that the conditions for obtaining a warrant would result in an immediate and serious danger to persons or property or in the removal, loss or destruction of evidence.

Warrant

16. (1) On an application that may be made without notice to the occupier or owner, a justice of the peace or judge may issue a warrant authorizing the entry of a place by any person referred to in the warrant if the justice or judge is satisfied that

- (a) an inspector cannot obtain the occupier’s or owner’s consent to enter a private dwelling or has been refused entry to a private dwelling; and
- (b) there are reasonable grounds to believe that entry to the dwelling is necessary to further an inspection, investigation or proceeding under this Act.

(2) A person authorized to enter a place under a warrant issued under subsection (1) may use such force as is reasonably necessary to execute the warrant and may call on peace officers to assist in its execution.

32. Subsection 17(6) is amended by adding “or seizes” after “removes”.

32.1. The following is added after section 17:

Information, records, documents or data

17.1. The powers under sections 15, 15.1 and 17 may not be used with respect to information, records, documents or data except to the extent that doing so is

- (a) necessary for the purposes of an inspection or investigation; or
- (b) authorized by a warrant.

33. Section 19 is amended

- (a) **in paragraph (a) by adding “or investigation” after “an inspection”; and**
- (b) **in paragraph (c) by striking out “the inspection” and substituting “an inspection or an investigation”.**

34. Section 20 is repealed and the following substituted:

Exclusion of liability

20. No proceeding shall be commenced in any court against an inspector, a chief inspector, the Advisory Committee or a member of the Advisory Committee for anything done or omitted in good faith by them in the exercise of their powers or the carrying out of their duties under this Act or the regulations.

35. Section 21 is amended by adding “or investigation” after “inspection” wherever it appears.

36. Subsection 22(3) is amended by striking out “or other matter”.

37. Subsection 23(1) is amended by striking out “If it appears to a chief inspector” and substituting “If a chief inspector has reasonable grounds to believe”.

38. Section 27 is amended by adding the following after subsection (6):

(7) Following a hearing under subsection (6), the chief inspector may confirm, vary or rescind a safety order.

(8) Where an inspector or chief inspector is satisfied that the conditions justifying a safety order no longer exist, the inspector or chief inspector may rescind the safety order.

39. Section 39 is amended

- (a) **by repealing subsection (2) and substituting the following:**

(2) A revocation, suspension or refusal to renew under subsection (1) takes effect

- (a) where, in the chief inspector’s opinion, there is or may be a threat to public safety or to the safety of any person or property, immediately;
- (b) in any other case, the later of the date of the final decision in a hearing and the expiration of the period for filing an appeal.

- (b) **by repealing subsections (5) and (6).**

40. Sections 40 to 46 and the heading preceding section 40 are repealed and the following substituted:

REVIEW AND APPEAL

Application to Advisory Committee

40. (1) A person aggrieved by the decision of a chief inspector made following a hearing may apply to the Advisory Committee for a ruling on any of the following grounds:

- (a) the denial, non-renewal, cancellation or suspension of a permit;
- (b) the imposition of conditions or restrictions on a permit;
- (c) the incorrect application of a rule in a code, standard, guideline or procedure adopted in accordance with paragraph 56(1)(q) or section 57.

(2) If an application or appeal relates to the destruction of an article, neither the appellant nor the respondent shall dispose of the article pending the application or appeal.

(3) The relevant procedure under the *Building Code Act* applies to applications and rulings under this section.

(4) Despite subsection 17(7) of the *Building Code Act* or any order made under that subsection, an application for a ruling of the Advisory Committee pursuant to subsection (1) respecting an order made under section 27 or a decision respecting such an order does not operate as a stay of the order or the decision.

Appeal

41. The ruling of the Advisory Committee may be appealed to the Nunavut Court of Justice in the manner set out in section 19 of the *Building Code Act*.

DISCLOSURE OF INFORMATION

41. Section 47 is amended

- (a) **in subsection (1) by**
 - (i) **adding “, other than a chief inspector,” after “An inspector”, and**
 - (ii) **adding “or powers” after “duties”;**
- (b) **in the English version of paragraph (4)(a) by striking out “the court” and substituting “a court”.**

42. Section 52 is repealed and the following substituted:

Administrative penalty

52. (1) An inspector may apply to a chief inspector for an administrative penalty to be applied against a person where it appears to the inspector that the person

- (a) is not complying or has not complied with
 - (i) this Act or the regulations,
 - (ii) a term or condition of a permit, or
 - (iii) a decision or safety order of an inspector or chief inspector;

- (b) is obstructing or has obstructed an inspector in the pursuit of his or her duties as authorized by this Act and the regulations; or
- (c) has made a false statement or furnished false information under this Act or the regulations.

(2) A chief inspector may order that a person pay a prescribed administrative penalty where the chief inspector is satisfied that the person, by act or omission, did or continues to do anything referred to in paragraphs (1)(a) to (c).

- (3) An order under subsection (2) may provide for the payment of
- (a) a separate administrative penalty for each occurrence of an act or omission; and
 - (b) a separate administrative penalty for each provision of this Act or regulations, each term or condition of a permit, or each provision of a decision or safety order that is or was not complied with.

(4) A person who considers himself or herself aggrieved by an order of the chief inspector under subsection (2) may, within 30 days after the order comes to the person's attention, appeal the order to the Nunavut Court of Justice.

(5) The questions on appeal under this section shall be limited to jurisdiction and whether the person, by act or omission, did or continues to do anything referred to in paragraphs (1)(a) to (c).

- (6) In an appeal under this section
- (a) the standard of review is reasonableness;
 - (b) a finding of fact or the discharge of a presumption is to be made on a balance of probabilities;
 - (c) no proof of intention, negligence or other mental element is required for a finding that a person, by act or omission, did or continues to do anything referred to in paragraphs (1)(a) to (c); and
 - (d) no defence of due diligence or other defence based on a mental element shall be admitted or used to rebut a finding that a person, by act or omission, did or continues to do anything referred to in paragraphs (1)(a) to (c).

43. The following is added after section 53:

Payment does not constitute admission

53.1. The payment of an administrative penalty

- (a) does not constitute an admission of the act or omission for which the administrative penalty was imposed; and
- (b) shall not be used as evidence in the prosecution of any offence.

44. Subsection 56(1) is amended

- (a) in the French version of paragraph (d) by striking out “chefs” and substituting “chef”;
- (b) in the English version of subparagraph (e)(i) by striking out “; and” and substituting a comma;
- (c) in the English version of subparagraph (e)(ii) by striking out the semi-colon and substituting a comma;
- (d) by repealing paragraph (s) and substituting the following:
- (s) prescribing administrative penalties, including by range;

45. The following is added after subsection 57(3):

(4) The Advisory Committee may receive applications and make recommendations to amend any code, standard, guideline or procedure adopted under this section in the manner provided for in section 20 of the *Building Code Act*.

46. The following is added after section 57:

Statutory Instruments Act

57.1. The *Statutory Instruments Act* does not apply to an order or decision made or form approved under this Act.

PART 3

AMENDMENTS TO MUNICIPAL LEGISLATION AND FINAL PROVISIONS

Cities, Towns and Villages Act

47. Section 105 of the *Cities, Towns and Villages Act* is repealed and the following substituted:

Building control

- 105.** (1) Subject to subsection (2), a council may, by by-law, prohibit or regulate
- (a) the construction, alteration, repair and demolition of buildings and structures; and
 - (b) excavations.

Content of by-law

- (2) A by-law made under subsection (1)
- (a) may not be made without the approval of the Minister;
 - (b) may not in any way alter or render inoperable any part of
 - (i) the Code as defined in the *Building Code Act*, and
 - (ii) other codes and standards adopted in accordance with section 4 of that Act;

- (c) must provide for the appointment of building officials to perform the duties and exercise the powers of building officials under the *Building Code Act*;
- (d) must provide that only persons who possess the qualifications prescribed under the *Building Code Act* may be appointed as building officials under the by-law;
- (e) may provide for additional duties to be performed or powers to be performed by building officials appointed under the by-law; and
- (f) may provide for the charging of fees.

Invalidation of by-law

(3) The Minister may, by order, invalidate a by-law, including a portion of a by-law, made under subsection (1).

Effect of invalidation

- (4) Where the Minister has invalidated a by-law under subsection (3),
- (a) the by-law is of no force and effect;
 - (b) the invalidation has no effect on a permit issued or decision made under the *Building Code Act* before the invalidation by a building official appointed under the by-law; and
 - (c) for greater certainty, the council may, subject to a new approval under paragraph (2)(a), make a new by-law under subsection (1).

By-law in effect

- (5) Where a by-law under subsection (1) is in effect in a municipality,
- (a) the building officials appointed under that by-law
 - (i) shall perform the duties and may exercise the powers of building officials under the *Building Code Act* and its regulations within the municipality, and
 - (ii) shall follow any reasonable direction of the chief building official appointed under the *Building Code Act* in the performance of their duties and the exercise of their powers under that Act; and
 - (b) the council and municipality shall ensure that
 - (i) sufficient building officials are appointed under the by-law to effectively carry out those duties, powers and directions, and
 - (ii) building officials appointed under the by-law are provided with a document establishing their appointment.

Appeal of decision of building official

(6) For greater certainty, a decision made by building official appointed under a by-law made under this section with respect to any duty or power under the *Building Code Act* is reviewable and appealable in the same manner as a decision of a building official appointed under that Act.

Hamlets Act

48. Section 105 of the *Hamlets Act* is repealed and the following substituted:

Building control

- 105.** (1) Subject to subsection (2), a council may, by by-law, prohibit or regulate
- (a) the construction, alteration, repair and demolition of buildings and structures; and
 - (b) excavations.

Content of by-law

- (2) A by-law made under subsection (1)
- (a) may not be made without the approval of the Minister;
 - (b) may not in any way alter or render inoperable any part of
 - (i) the Code as defined in the *Building Code Act*, and
 - (ii) other codes and standards adopted in accordance with section 4 of that Act;
 - (c) must provide for the appointment of building officials to perform the duties and exercise the powers of building officials under the *Building Code Act*;
 - (d) must provide that only persons who possess the qualifications prescribed under the *Building Code Act* may be appointed as building officials under the by-law;
 - (e) may provide for additional duties to be performed or powers to be performed by building officials appointed under the by-law; and
 - (f) may provide for the charging of fees.

Invalidation of by-law

- (3) The Minister may, by order, invalidate a by-law, including a portion of a by-law, made under subsection (1).

Effect of invalidation

- (4) Where the Minister has invalidated a by-law under subsection (3),
- (a) the by-law is of no force and effect;
 - (b) the invalidation has no effect on a permit issued or decision made under the *Building Code Act* before the invalidation by a building official appointed under the by-law; and
 - (c) for greater certainty, the council may, subject to a new approval under paragraph (2)(a), make a new by-law under subsection (1).

By-law in effect

- (5) Where a by-law under subsection (1) is in effect in a municipality,
- (a) the building officials appointed under that by-law
 - (i) shall perform the duties and may exercise the powers of building officials under the *Building Code Act* and its regulations within the municipality, and

- (ii) shall follow any reasonable direction of the chief building official appointed under the *Building Code Act* in the performance of their duties and the exercise of their powers under that Act; and
- (b) the council and municipality shall ensure that
 - (i) sufficient building officials are appointed under the by-law to effectively carry out those duties, powers and directions, and
 - (ii) building officials appointed under the by-law are provided with a document establishing their appointment.

Appeal of decision of building official

(6) For greater certainty, a decision made by building official appointed under a by-law made under this section with respect to any duty or power under the *Building Code Act* is reviewable and appealable in the same manner as a decision of a building official appointed under that Act.

Coming into force

49. (1) Subject to this section, Parts 1 and 2 of this Act come into force on Assent.

(2) Paragraph 2(a) and section 20 of this Act come into force at the same time as sections 47 and 48 of this Act.

(3) Section 21 and paragraph 26(a) of this Act come into force on a day to be fixed by order of the Commissioner.

(4) Where a provision of Part 1 or Part 2 of this Act amends a section that is entirely not in force, or adds a new section, the new or amended section comes into force in accordance with section 39 of the *Building Code Act* or section 59 of the *Technical Standards and Safety Act*, as the case may be.

50. Sections 47 and 48 of this Act come into force immediately after sections 4 and 17 of the *Building Code Act* come into force.