

7(1) A (subpoena) shall not issue out of any court requiring the attendance of the Minister or any employee of the Province in his official capacity under this Act, nor shall any document in his official custody or possession be produced without an order of the court or a judge thereof.

#### Section 40

The present provision reads as follows:

36 On application by a partner the Court may decree dissolution of the partnership in any of the following cases:

(a) when a partner is shown to the satisfaction of the Court to be mentally incompetent, in which case the application may be made on behalf of that partner by his committee or (next friend) or person having title to intervene as well as by any other partner;

#### Section 41

(1) The present provision reads as follows:

“persons beneficially interested” includes a Public Administrator appointed under this Act, a public trustee, a Committee appointed under the *Infirm Persons Act*, the Administrator of Estates appointed under the *Mental Health Act*, and a guardian of an (infant);

(2) The present provision reads as follows:

49 Where an (infant) is the sole executor under a will, administration with the will annexed shall be granted to the guardian of the (infant) or to such other person as the Court thinks fit until the (infant) has attained the age of majority, at which time, and not before, letters probate of the will may be granted to him.

7(1) Aucun tribunal ne peut délivrer un (subpoena) prescrivant la comparution du Ministre ou d'un employé de la province dans l'exercice de ses fonctions au titre de la présente loi et les documents qu'ils gardent ou détiennent en vertu de leurs fonctions ne peuvent être produits sans une ordonnance du tribunal ou d'un des juges qui le compose.

#### Article 40

La disposition actuelle est ainsi libellée:

36 À la demande d'un associé, le tribunal peut ordonner la dissolution de la société en nom collectif dans l'un ou l'autre des cas suivants:

a) lorsqu'il est établi de façon satisfaisante pour le tribunal qu'un associé est mentalement incapable, auquel cas la demande peut être formulée pour le compte de cet associé par son curateur, (par son proche ami) ou par une personne ayant qualité pour intervenir, ainsi que par tout autre associé;

#### Article 41

(1) La version anglaise de la disposition actuelle est ainsi libellée:

«persons beneficially interested» includes a Public Administrator appointed under this Act, a public trustee, a Committee appointed under the *Infirm Persons Act*, the Administrator of Estates appointed under the *Mental Health Act*, and a guardian of an (infant);

(2) La version anglaise de la disposition actuelle est ainsi libellée:

49 Where an (infant) is the sole executor under a will, administration with the will annexed shall be granted to the guardian of the (infant) or to such other person as the Court thinks fit until the (infant) has attained the age of majority, at which time, and not before, letters probate of the will may be granted to him.

(3) The present provision reads as follows:

**50** The guardian of the (infant) or the person appointed under section 49 to whom such administration is granted has the same powers as an administrator has by virtue of an administration granted to him during the minority of the next-of-kin.

(4) The present provision reads as follows:

**63** Where an executor or administrator has produced evidence to the satisfaction of the Court that the debts of the deceased have been paid and the residue of the estate has been duly distributed, the Court may make an order directing the bond or other security furnished by the executor or administrator to be delivered up to be cancelled, but where an (infant) or infirm person was or is entitled to a part of the estate under the distribution, the order shall not be made until after such notice as the Court directs has been given to his guardian, committee, and to any person beneficially interested in the estate.

(5)(a) The present provision reads as follows:

**65(4)** Not fewer than seven days' notice of an application for the order referred to in subsection (3) shall be given to the personal representative, and where the application is to be made to the Court the notice shall also be given to the guardian, if (infants) are concerned, and to such if any of the persons beneficially interested in the estate as the Court directs.

(5)(b) The present provision reads as follows:

**65(11)** A (subpoena) may be issued to enforce the attendance of witnesses to give evidence on any proceeding under this section.

(6) The present provision reads as follows:

(3) La version anglaise de la disposition actuelle est ainsi libellée:

**50** The guardian of the (infant) or the person appointed under section 49 to whom such administration is granted has the same powers as an administrator has by virtue of an administration granted to him during the minority of the next-of-kin.

(4) La disposition actuelle est ainsi libellée:

**63** Sur démonstration par l'exécuteur testamentaire ou par l'administrateur que les dettes du défunt ont été payées et que la partage régulier du solde net de la succession a été effectué, la Cour peut ordonner la remise pour annulation du cautionnement ou de toute autre garantie fournie par l'exécuteur testamentaire ou par l'administrateur; toutefois, dans le cas où un (enfant) mineur ou une personne infirme a droit ou avait droit de participer au partage de la succession, la Cour ne rend l'ordonnance qu'après notification donnée, suivant ses directives, au tuteur du mineur, au curateur de l'infirme et à toute autre personne ayant un intérêt à titre de bénéficiaire.

(5)(a) La disposition actuelle est ainsi libellée:

**65(4)** Le représentant personnel doit être avisé au moins sept jours à l'avance de la présentation de la demande de prise de l'ordonnance visée au paragraphe (3); toutefois, lorsque la Cour a été saisie de la demande, l'avis doit aussi être donné au tuteur si des mineurs sont en cause et éventuellement, à toute personne, que désigne la Cour, ayant un intérêt à titre de bénéficiaire dans la succession.

(5)(b) La disposition actuelle est ainsi libellée:

**65(11)** La comparution des témoins lors d'une procédure quelconque peut être assurée, en vertu du présent article, par voie de subpoena.

(6) La disposition actuelle est ainsi libellée:

66(3) Not fewer than seven days' notice of the application made pursuant to subsection (2) shall be given to the personal representative and to the guardian, if (infants) are concerned, and to such if any of the persons beneficially interested in the estate as the Court directs.

(7) The present provision reads as follows:

71(5) Where a person entitled to notice under subsection (4) is an (infant) or is of unsound mind and is not a patient in a psychiatric facility under the *Mental Health Act*, his notice shall be served upon his guardian not fewer than twenty-one days before the day appointed for the passing of the accounts, and unless such notice is so given such person is not bound by the passing of the accounts.

#### Section 42

(1) The present provision reads as follows:

36 Every attornment of a tenant of any lands to a stranger claiming title to the estate of the landlord is void, and the possession of the landlord shall not be deemed or construed to be affected in any way by the attornment, but nothing herein contained extends to vacate or affect an attornment made pursuant to, or in consequence of a judgment, (decree) or order of The Court of Queen's Bench of New Brunswick, or made with the privity and consent of the landlord, or to any mortgagee after the mortgage is become forfeited, or under the *Landlord and Tenant Act*.

(2) The present provision reads as follows:

64(2) Where, on application to prove a will in solemn form, by (decree) or order of a probate court probate is refused or revoked on the ground of the invalidity of the will, such (decree) or order shall enure for the benefit of the heirs or other persons against whose interest in real estate the will

66(3) Le représentant personnel, le tuteur des (enfants) en cause et toute personne ay intérêt à titre de bénéficiaire dans la succession a lieu, doivent être avisés au moins sept jours la présentation de la demande faite conformément au paragraphe (2).

(7) La version anglaise de la disposition act est ainsi libellée:

71(5) Where a person entitled to notice under subsection (4) is an (infant) or is of unsound mind and is not a patient in a psychiatric facility under the *Mental Health Act*, his notice shall be served upon his guardian not fewer than twenty-one days before the day appointed for the passing of the accounts, and unless such notice is so given such person is not bound by the passing of the accounts.

#### Article 42

(1) La version anglaise de la disposition actuelle est ainsi libellée:

36 Every attornment of a tenant of any lands to a stranger claiming title to the estate of the landlord is void, and the possession of the landlord shall not be deemed or construed to be affected in any way by the attornment, but nothing herein contained extends to vacate or affect an attornment made pursuant to, or in consequence of a judgment, (decree) or order of The Court of Queen's Bench of New Brunswick, or made with the privity and consent of the landlord, or to any mortgagee after the mortgage is become forfeited, or under the *Landlord and Tenant Act*.

(2) La version anglaise de la disposition actuelle est ainsi libellée:

64(2) Where, on application to prove a will in solemn form, by (decree) or order of a probate court probate is refused or revoked on the ground of the invalidity of the will, such (decree) or order shall enure for the benefit of the heirs or other persons against whose interest in real estate the will

might operate, and that will shall not be received in evidence in any suit or proceeding in relation to the real estate, save in a proceeding by way of appeal from such (decree) or order.

#### **Section 43**

(1) The present provision reads as follows:

17(1.1) Where the persons entitled to bring an action is at the time the cause of action arises an (infant), mentally incompetent or of unsound mind, the limitation period referred to in subsection (1) does not commence to run until such person becomes of the age of majority, mentally competent or of sound mind, as the case may be.

#### **Section 44**

(1) The present provision reads as follows:

101(2) No order shall be made or process entered, and no proceedings shall be taken in any court, whether by way of injunction, (*certiorari*, prohibition, *quo warranto*), or otherwise, to question, review, prohibit or restrain the Board, the Arbitration Tribunal or an adjudicator in any of its or his proceedings.

#### **Section 45**

(1) The present provision reads as follows:

9(5) Every execution issued under the provisions of this Act shall be made returnable at any regular meeting of the Board within one year from the day of the issue thereof, and shall be in the same form, with the necessary variations, as a (writ of *fieri facias*) issued out of The Court of Queen's Bench of New Brunswick.

(2) The present provision reads as follows:

might operate, and that will shall not be received in evidence in any suit or proceeding in relation to the real estate, save in a proceeding by way of appeal from such (decree) or order.

#### **Article 43**

(1) La version anglaise de la disposition anglaise est ainsi libellée:

17(1.1) Where the persons entitled to bring an action is at the time the cause of action arises an (infant), mentally incompetent or of unsound mind, the limitation period referred to in subsection (1) does not commence to run until such person becomes of the age of majority, mentally competent or of sound mind, as the case may be.

#### **Article 44**

(1) La disposition actuelle est ainsi libellée:

101(2) Aucune ordonnance ne peut être rendue, aucune action intentée et aucune procédure entamée devant un tribunal, par voie d'injonction, (de *certiorari*, de prohibition, de *quo warranto*), ou autrement, pour contester, réviser, supprimer ou restreindre les pouvoirs de la Commission, du Tribunal d'arbitrage ou d'un arbitre dans l'une quelconque de leurs procédures.

#### **Article 45**

(1) La disposition actuelle est ainsi libellée:

9(5) Tout bref d'exécution délivré en application des dispositions de la présente loi est rapportable à une réunion ordinaire de la Commission tenue dans un délai d'un an à compter de la date où il est délivré, et, avec les variantes nécessaires, revêt la forme (d'un bref de *fieri facias*) délivré par la Cour du Banc de la Reine du Nouveau-Brunswick.

(2) La version anglaise de la disposition actuelle est ainsi libellée:

**13** A copy of any order, finding or (decree) of the Board in respect to a public utility, certified by the secretary, shall be filed by the Board within two weeks of the making thereof with the Minister.

(3)(a) The present provision reads as follows:

**23(1)** At a hearing or enquiry, the Board may hear evidence upon oath, and compel the attendance before it of witnesses, by (subpoena) under the hand and seal of the Chairman of the Board, and may, by (*subpoena duces tecum*), compel the production by a witness of any papers, books or documents.

(3)(b) The present provision reads as follows:

**23(2)** A witness who is served with a (subpoena) and paid the amount of money allowed in The Court of Queen's Bench of New Brunswick to a witness for travel and attendance, is subject to the same penalties for disobeying such (subpoena) as he would be liable to had the (subpoena) been issued out of The Court of Queen's Bench of New Brunswick.

(4) The present provisions read as follows:

**25(1)** A person aggrieved by any decision or order of the Board may apply to The Court of Queen's Bench of New Brunswick or the Court of Appeal, or if a public utility to the Court of Appeal, for the removal thereto by an order of (*certiorari*) of any such decision or order, and the Court shall have power thereupon to decide any question of fact upon the evidence taken before the Board, and may confirm, modify, vary or reverse such decision or order.

**25(2)** When application for an order of (*certiorari*) is made the applicant shall, if required by the Board, file with the clerk of the Court for the judicial district in which the application is made a bond, in such sum as may be approved by a judge of the Court, conditional to pay all costs and expenses of such proceeding, which costs and ex-

**13** A copy of any order, finding or (decree) of the Board in respect to a public utility, certified by the secretary, shall be filed by the Board within two weeks of the making thereof with the Minister.

(3)(a) La disposition actuelle est ainsi libellée:

**23(1)** Lors d'une audience ou d'une enquête, la Commission peut entendre les dépositions faites sous serment, obliger des témoins à comparaître par voie de (subpoena) portant la signature et le sceau du président de la Commission, et peut, par un (subpoena duces tecum), obliger un témoin à produire des pièces, livres ou documents.

(3)(b) La disposition actuelle est ainsi libellée:

**23(2)** Le témoin à qui est signifié un (subpoena) et qui a reçu les frais de déplacement et de présence alloués à un témoin devant la Cour du Banc de la Reine du Nouveau-Brunswick est passible, pour désobéissance à ce (subpoena), des mêmes peines pécuniaires que si le subpoena émanait de la Cour du Banc de la Reine du Nouveau-Brunswick.

(4) Les dispositions actuelles sont ainsi libellées:

**25(1)** Une personne lésée par une décision ou par une ordonnance de la Commission, peut demander à la Cour du Banc de la Reine du Nouveau-Brunswick ou à la Cour d'appel, ou dans le cas d'une entreprise de service public à la Cour d'appel, que cette décision ou cette ordonnance y soit renvoyée par ordonnance (de *certiorari*); la Cour peut alors trancher toute question de fait en se fondant sur la preuve présentée à la Commission, et peut confirmer, modifier, changer ou renverser cette décision ou cette ordonnance.

**25(2)** En cas de demande d'ordonnance de *certiorari*, le requérant doit, si la Commission l'exige, déposer auprès du greffier de la Cour de la circonscription judiciaire où la demande est faite, un cautionnement dont le montant peut être approuvé par un juge de la Cour en garantie du paiement de tous les frais et dépens de la procédure, et la Cour est par

penses the Court is hereby empowered to award in case the decision or order is substantially confirmed.

**25(3)** Application for an order of (*certiorari*), when made by a public utility to the Court of Appeal, shall be made at the session thereof next after such decision or order, if ten days intervene between such decision or order and such session, otherwise to the next session thereof.

#### Section 46

(1) The present provisions read as follows:

**10(1)** Where it appears that a minor or person not *in esse* may be interested in opposing the claim of the applicant, the judge may appoint a (guardian *ad litem*) to represent such minor or person not *in esse*, and such minor or person not *in esse* is bound by the adjudication.

**10(2)** The judge may order that the costs of the (guardian *ad litem*) be paid by the applicant.

(2) The present provision reads as follows:

**32** Where a person who, if not under disability, might have made an application, given a consent, done any act, or been party to any proceeding under this Act, is an (infant), or a person mentally incompetent, the guardian of the (infant) or committee of the estate of the person mentally incompetent may make such application, give such consent, do such act and be party to such proceeding as such person might if free from disability and shall otherwise represent such person for the purposes of this Act, and if the (infant) has no guardian or the person mentally incompetent no committee of his estate, the Court or judge may appoint a person with like power to act for the (infant), or person mentally incompetent.

la présente loi habilitée à allouer ces frais et dépens si la décision ou l'ordonnance est confirmée dans une large mesure.

**25(3)** Si la demande d'ordonnance de *certiorari* est faite par une entreprise de service public à la Cour d'appel, elle ne peut être faite que durant la session qui suit la date de la décision ou de l'ordonnance, s'il s'écoule une période d'au moins dix jours entre cette décision ou ordonnance et cette session; sinon, elle doit être faite durant la session suivante.

#### Article 46

(1) La disposition actuelle est ainsi libellée:

**10(1)** Lorsqu'il apparaît qu'il peut être de l'intérêt d'un mineur ou d'une personne conçue de s'opposer à la demande du requérant, le juge peut nommer un (tuteur *ad litem*) pour représenter le mineur ou la personne conçue et ce mineur ou cette personne conçue est lié par la décision.

**10(2)** Le juge peut ordonner que les frais du (tuteur *ad litem*) soient payés par le requérant.

(2) La version anglaise de la disposition actuelle est ainsi libellée:

**32** Where a person who, if not under disability, might have made an application, given a consent, done any act, or been party to any proceeding under this Act, is an (infant), or a person mentally incompetent, the guardian of the (infant) or committee of the estate of the person mentally incompetent may make such application, give such consent, do such act and be party to such proceeding as such person might if free from disability and shall otherwise represent such person for the purposes of this Act, and if the (infant) has no guardian or the person mentally incompetent no committee of his estate, the Court or judge may appoint a person with like power to act for the (infant), or person mentally incompetent.

## Section 47

(1) The present provision reads as follows:

**13** Every registrar shall have a seal of office to be approved by the Minister of Justice or other person appointed for that purpose, and on request shall furnish an exemplification or certified copy under his hand and seal of office of any instrument deposited, registered or filed in his office as registrar, which exemplification or certified copy shall, subject to the provisions of this Act or any Act relating thereto, be received as *prima facie* evidence of such instrument, and of the registration thereof, in every court in this Province, in the same manner and with the same effect as if the original thereof was produced; and no registrar or deputy shall be required to produce any papers in his custody as registrar or deputy registrar unless ordered by a judge of The Court of Queen's Bench of New Brunswick, which order shall be produced to the registrar or deputy registrar and accompany the (subpoena), if any, served upon him requiring the production.

(2) The present provision reads as follows:

**53** The registrar shall not be obliged to attend any court with the registry book in order to prove that any instrument has been registered therein, or for other purpose, unless the judge presiding, or appointed to preside, shall for special reasons appearing to him sufficient order the production of such registry book, nor unless a copy of such order is served with the (subpoena).

(3) The present provision reads as follows:

**61** Process of (subpoena) may be issued from The Court of Queen's Bench of New Brunswick, or any other court having jurisdiction, in the form as near as may be to that now in use for a cause in Court, to compel the attendance of any witness, or the pro-

## Article 47

(1) La disposition actuelle est ainsi libellée:

**13** Tout conservateur a un sceau officiel qui doit être approuvé par le ministre de la Justice ou une autre personne nommée à cet effet; il doit, sur demande, fournir signée et scellée de sa propre main une ampliation ou une copie certifiée conforme de tout instrument produit, enregistré ou déposé à son bureau en sa qualité de conservateur; cette ampliation ou copie certifiée conforme constitue, sous réserve des dispositions de la présente loi ou de toute loi s'y rapportant, une preuve *prima facie* de cet instrument et de son engistrement devant tout tribunal de la province, de la même façon et avec le même effet que si l'original en était produit; et nul conservateur ou conservateur adjoint ne peut être requis de produire tous documents placés sous sa garde à titre de conservateur ou de conservateur adjoint, à moins qu'un juge de la Cour du Banc de la Reine du Nouveau-Brunswick ne le lui ordonne, laquelle ordonnance doit être produite au conservateur ou à son adjoint et accompagner le (subpoena) qui lui est signifié; le cas échéant, et qui lui enjoint de produire le document.

(2) La disposition actuelle est ainsi libellée:

**53** Le conservateur n'est pas tenu de se présenter devant un tribunal avec le registre d'enregistrement dans le but de prouver qu'un instrument y est bien enregistré ou à toute autre fin, à moins que le juge qui préside le tribunal ou qui est nommé à la présidence ne lui ordonne de produire ce registre pour des raisons spéciales qui lui semblent suffisantes et qu'une copie de cette ordonnance ne lui soit signifiée avec le (subpoena).

(3) La disposition actuelle est ainsi libellée:

**61** La Cour du Banc de la Reine du Nouveau-Brunswick ou toute autre cour compétente, peut décerner un (bref de subpoena), en une forme aussi proche que possible de celle utilisée pour une cause devant un tribunal, afin de contraindre un témoin à

duction of any conveyance or instrument for the proof thereof, that the same may be registered agreeably to the provisions of this Act; disobedience to such (subpoena) may be punished by such court in the usual manner.

#### **Section 48**

(1) The present provision reads as follows:

**3(1)** Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property; but where necessities are sold and delivered to an (infant), or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

(2) The present provision reads as follows:

**40(2)** The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or (decree) for the price of the goods.

(3) The present provision reads as follows:

**49(1)** In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or (decree) direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods in payment of damages.

**49(2)** The judgment or (decree) may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court seems just, and the application by the plaintiff may be made at any time before judgment or (decree).

comparaître ou d'imposer la production d'un acte de transfert ou d'un instrument attestant ce transfert, pour que ces derniers puissent être enregistrés conformément aux dispositions de la présente loi; ce tribunal peut punir de la façon habituelle toute désobéissance à ce (subpoena).

#### **Article 48**

(1) La version anglaise de la disposition actuelle est ainsi libellée:

**3(1)** Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property; but where necessities are sold and delivered to an (infant), or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

(2) La version anglaise de la disposition actuelle est ainsi libellée:

**40(2)** The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or (decree) for the price of the goods.

(3) La version anglaise des dispositions actuelles est ainsi libellée:

**49(1)** In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or (decree) direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods in payment of damages.

**49(2)** The judgment or (decree) may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court seems just, and the application by the plaintiff may be made at any time before judgment or (decree).



## Section 49

(1) The present provision reads as follows:

21(1) The Board, or any person to whom as its representative it delegates such authority, may examine any person, company, property, or thing whatsoever at any time in order to ascertain whether any fraudulent act or any offence against this Act or the regulations has been, is being or is about to be committed, and for such purpose has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce documents, records and things as is vested in The Court of Queen's Bench of New Brunswick or a judge thereof for the trial of civil causes, save that the rules of court or of law relating to the service of (subpoenas) upon and to the payment of (conduct money) or (witness fees) to witnesses do not apply, and save further that no person is entitled to claim any privilege in respect of any document, record or thing asked for, given or produced, on the ground that he may be incriminated or exposed to a penalty or to civil litigation thereby, and no evidence given is privileged except under the *Evidence Act* and the *Canada Evidence Act*, chapter E-10 of the Revised Statutes of Canada, 1970, and save further that no provisions of the *Evidence Act* exempts any bank or any officer thereof from the operation of this section.

(2) The present provision reads as follows:

23(2) The application of the Board under subsection (1) may be made, without any action being instituted, by either

(a) an *ex parte* motion for an interim injunction, that shall, if granted, remain in full force for ten days from the date thereof, unless the time is extended or the (originating summons) mentioned in paragraph (b) is sooner heard and determined; or

## Article 49

(1) La disposition actuelle est ainsi libellée:

21(1) La Commission, ou toute personne à laquelle elle délègue un tel pouvoir pour la représenter peut examiner toute personne, toute compagnie, tous biens ou toute affaire quels qu'ils soient, à tout moment, en vue de vérifier si un acte frauduleux ou une infraction à la présente loi ou aux règlements a été, est ou est sur le point d'être commis et, à cette fin, a le même pouvoir de citer et de contraindre à comparaître des témoins, et de les obliger à déposer sous serment et à produire des documents, dossiers et objets que celui dont dispose la Cour du Banc de la Reine du Nouveau-Brunswick ou un juge de celle-ci pour l'instruction des procès en matière civile; toutefois, les règles de pratique ou les règles de droit concernant la signification de (subpoenas) aux témoins et le (paiement de frais de déplacement ou indemnités à ceux-ci) ne s'appliquent pas, et, en outre, nul n'est fondé à exciper d'aucun privilège en ce qui concerne tout document, dossier ou objet demandé, donné ou produit, pour le motif qu'il peut être de ce fait incriminé ou exposé à une sanction pénale ou à un procès en matière civile, et aucune déposition faite ne jouit d'immunité sauf en application de la Loi sur la preuve et de la Loi sur la preuve au Canada, chapitre E-10 des Statuts révisés du Canada de 1970, et aucune disposition de la Loi sur la preuve ne dispense une banque ou un dirigeant de celle-ci de l'application du présent article.

(2) La disposition actuelle est ainsi libellée:

23(2) La demande que fait la Commission en application du paragraphe (1) peut l'être, sans qu'aucune poursuite ne soit engagée,

a) au moyen d'un requête *ex parte* tendant à obtenir une injonction provisoire qui doit, si elle est prononcée, conserver son entier effet pendant dix jours à compter de sa date, à moins que la durée ne soit prolongée ou que le (bref introductif d'instance) mentionnée à l'alinéa b) ne soit entendu et jugé plus tôt; ou

(b) an (originating summons), that, if an interim injunction has been granted, shall be served within five and be returnable within ten days from the date of the interim injunction.

(3) The present provision reads as follows:

**38** No action whatever, and no proceedings by way of injunction, (mandamus), (prohibition) or other extraordinary remedy shall lie or be instituted against any person, whether in his public or private capacity, or against any company, in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the regulations, where such person is the Board or its representative or the Registrar or a broker's auditor, or where such person or company was proceeding under the written or verbal direction or consent of any one of them, or under an order of The Court of Queen's Bench of New Brunswick, or a judge thereof, made under the provisions of this Act.

#### Section 50

(a) The present provision reads as follows:

**4(3)** In an action brought to recover an amount under said bond or security, any and every order or (decree) of the Court, made in reference to any matter in respect to which the said bond shall have been given as security, or that may come in question in a suit upon such bond, shall be taken and deemed to be conclusive evidence of the facts found or stated in such order or (decree), although the company shall not have been a party to the particular proceeding in which such order or (decree) was made, and in any such suit upon said bond or security the defendant shall not be allowed to plead, or set up, any laches upon the part of any person at whose instance, or for whose protection, the bond or security was given, without an order of a judge of The Court of Queen's Bench of New

b) au moyen d'un (bref introductif d'instance) qui, si une injonction provisoire a été prononcée, doit être signifié dans les cinq jours et renvoyé devant le tribunal dans les dix jours de cette injonction provisoire.

(3) La disposition actuelle est ainsi libellée:

**38** Aucune action quelle qu'elle soit, et aucune procédure par voie d'injonction, de (mandamus, de prohibition) ou d'un autre recours extraordinaire n'est recevable ni ne peut être intentée contre toute personne, en sa qualité publique ou privée, ni contre toute compagnie, en ce qui concerne tout acte ou omission relatifs à l'application ou à l'exécution des dispositions de la présente loi ou des règlements, lorsque cette personne est la Commission ou son représentant, le registraire ou un vérificateur des comptes d'un courtier, ou lorsque cette personne ou compagnie a agi en vertu d'une instruction écrite ou verbale ou de l'approbation de l'un quelconque d'eux, ou en vertu d'une ordonnance de la Cour du Banc de la Reine du Nouveau-Brunswick ou d'un juge de celle-ci, rendu en application des dispositions de la présente loi.

#### Article 50

(a) La version anglaise de la disposition actuelle est ainsi libellée:

**4(3)** In an action brought to recover an amount under said bond or security, any and every order or (decree) of the Court, made in reference to any matter in respect to which the said bond shall have been given as security, or that may come in question in a suit upon such bond, shall be taken and deemed to be conclusive evidence of the facts found or stated in such order or (decree), although the company shall not have been a party to the particular proceeding in which such order or (decree) was made, and in any such suit upon said bond or security the defendant shall not be allowed to plead, or set up, any laches upon the part of any person at whose instance, or for whose protection, the bond or security was given, without an order of a judge of The Court of Queen's Bench of New

Brunswick allowing such laches to be pleaded or set up, which order shall be granted only after notice to the parties interested.

(b) The present provision reads as follows:

4(4) The enforcement of any bond, obligation or contract given under this Act to, or in the name of a clerk of The Court of Queen's Bench of New Brunswick may be by suit in the name of the said clerk subject to any order of the Court, and for the benefit of any person interested; or where such bond or security is given in respect to any proceeding that would, prior to July 1, 1966, have been assigned to the Chancery Division, any person interested may apply by petition or otherwise to the Court or a judge thereof for relief, and, upon due notice of the application to all parties interested, the Court may make such order as to the payment by the company of any sum due under or secured by such bond or security, or of any part thereof, which order shall be subject to the like appeal, as in cases of other orders or (decrees) made in the said Court, and shall be enforceable by execution, and may also be enforced in the same manner as any other order or (decree) by the said Court.

#### Section 51

(a) The present provision reads as follows:

8(1) Where a cause of action survives against the estate of a deceased person, and there is no personal representative of the deceased person against whom such an action may be brought or continued in this Province, a court of competent jurisdiction, or any judge thereof, may,

(a) on the application of a person entitled to bring or continue such an action, and

(b) on such notice as the court or judge may consider proper,

appoint an (administrator *ad litem*) of the estate of the deceased person.

Brunswick allowing such laches to be pleaded or set up, which order shall be granted only after notice to the parties interested.

(b) La version anglaise de la disposition actuelle est ainsi libellée:

4(4) The enforcement of any bond, obligation or contract given under this Act to, or in the name of a clerk of The Court of Queen's Bench of New Brunswick may be by suit in the name of the said clerk subject to any order of the Court, and for the benefit of any person interested; or where such bond or security is given in respect to any proceeding that would, prior to July 1, 1966, have been assigned to the Chancery Division, any person interested may apply by petition or otherwise to the Court or a judge thereof for relief, and, upon due notice of the application to all parties interested, the Court may make such order as to the payment by the company of any sum due under or secured by such bond or security, or of any part thereof, which order shall be subject to the like appeal, as in cases of other orders or (decrees) made in the said Court, and shall be enforceable by execution, and may also be enforced in the same manner as any other order or (decree) by the said Court.

#### Article 51

(a) La disposition actuelle est ainsi libellée:

8(1) Lorsqu'une cause d'action survit contre la succession d'un défunt et que le défunt n'a pas de représentant personnel contre qui une action puisse être intentée ou continuée dans la province, un tribunal compétent ou tout juge de ce tribunal peut,

a) à la demande d'une personne qui a le droit d'intenter ou de continuer cette action, et

b) après avoir donné un avis jugé suffisant par le tribunal ou le juge,

nommer un (administrateur *ad litem*) de la succession du défunt.

(b) The present provisions read as follows:

8(2) The (administrator *ad litem*) is an administrator against whom such an action may be brought or continued and by whom such an action may be defended.

8(3) The (administrator *ad litem*) as defendant in any such action may take any steps that a defendant may ordinarily take in an action, including third party proceedings and the bringing, by way of counterclaim, of any action that survives for the benefit of the estate of the deceased person.

(c) The present provision reads as follows:

8(4) Any judgment obtained by or against the (administrator *ad litem*) has the same effect as a judgment in favour of or against the deceased person, or his personal representative, as the case may be, but it has no effect for or against the (administrator *ad litem*) in his personal capacity.

### Section 52

The present provision reads as follows:

3 An application under this Act may be made by (originating summons).

### Section 53

The present provision reads as follows:

1(1) Where an Act of the Legislature of New Brunswick, the legislature of any other province of Canada or the Parliament of Canada, or the letters patent issued under any such Act, authorizes or purports to authorize a company incorporated thereunder to execute the office of executor, administrator, trustee, assignee, or guardian of an (infant),

(b) Les dispositions actuelles sont ainsi libellées:

8(2) L'(administrateur *ad litem*) est un administrateur contre qui cette action peut être intentée ou continuée et qui peut présenter une défense contre cette action.

8(3) L'(administrateur *ad litem*) peut, quand il est défendeur dans une action de cette nature, utiliser tous les moyens dont dispose ordinairement un défendeur dans une action, notamment une procédure par voie de mise en cause ainsi que l'introduction, par voie de demande reconventionnelle, d'une action qui survit au profit de la succession du défunt.

(c) Les dispositions actuelles sont ainsi libellées:

8(4) Tout jugement obtenu par ou contre l'(administrateur *ad litem*) a le même effet qu'un jugement obtenu pour ou contre le défunt ou son représentant personnel, selon le cas, mais n'est d'aucun effet pour ou contre l'(administrateur *ad litem*) à titre personnel.

### Article 52

La disposition actuelle est ainsi libellée:

3 Une demande sous le régime de la présente loi peut être faite par (assignation introductive d'instance).

### Article 53

La version anglaise de la disposition actuelle est ainsi libellée:

1(1) Where an Act of the Legislature of New Brunswick, the legislature of any other province of Canada or the Parliament of Canada, or the letters patent issued under any such Act, authorizes or purports to authorize a company incorporated thereunder to execute the office of executor, administrator, trustee, assignee, or guardian of an (infant),

or committee of a mentally incompetent person, if the Lieutenant-Governor in Council approves of the company being accepted by The Court of Queen's Bench of New Brunswick as a trust company for the purposes of that Court, the Court or any judge thereof and every other Court or judge having authority to appoint a person to execute any such office, may with the consent of the company appoint the company either solely or jointly with any person or persons to execute any of those offices with respect to any estate or person under the authority of the Court or judge, or may grant to the company probate of any will in which the company is named executor, but no company that has issued, or has authority to issue, debentures, shall be approved as aforesaid.

#### **Section 54**

(1) The present heading is replaced.

(2)(a) The present provision reads as follows:

**14(1)** Where property is held in trust for an (infant) either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of nineteen years or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the (infant's) parent or guardian, or otherwise apply for or towards the (infant's) maintenance, education or benefit, the income of such property or any part thereof, whether or not there is any other fund applicable to the same purpose or any person bound by law to provide for the (infant's) maintenance or education.

(2)(b) The present provision reads as follows:

**14(3)** This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the (infant) arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

or committee of a mentally incompetent person, if the Lieutenant-Governor in Council approves of the company being accepted by the Court of Queen's Bench of New Brunswick as a trust company for the purposes of that Court, the Court or any judge thereof and every other Court or judge having authority to appoint a person to execute any such office, may with the consent of the company appoint the company either solely or jointly with any person or persons to execute any of those offices with respect to any estate or person under the authority of the Court or judge, or may grant to the company probate of any will in which the company is named executor, but no company that has issued, or has authority to issue, debentures, shall be approved as aforesaid.

#### **Article 54**

(1) La rubrique actuelle est remplacée.

(2)(a) La version anglaise de la disposition actuelle est ainsi libellée:

**14(1)** Where property is held in trust for an infant either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of nineteen years or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the (infant's) parent or guardian, or otherwise apply for or towards the (infant's) maintenance, education or benefit, the income of such property or any part thereof, whether or not there is any other fund applicable to the same purpose or any person bound by law to provide for the (infant's) maintenance or education.

(2)(b) La version anglaise de la disposition actuelle est ainsi libellée:

**14(3)** This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the (infant) arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3) The present provision reads as follows:

15 In any of the following cases, namely:

(b) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person, is an (infant) or is out of New Brunswick or cannot be found,

(4) The present provision reads as follows:

17 Where a person entitled to or possessed of land, or entitled to a contingent right in land, by way of security for money is an (infant), the Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an (infant) trustee.

(5) The present provision reads as follows:

20(2) This section shall, when necessary, apply to the interests of (infants) and mentally incompetent persons in lands directed to be partitioned.

(6) The present provision reads as follows:

23(1) In any of the following cases, namely:

(b) when a trustee entitled alone, or jointly with another person, to stock, or to a chose in action

(i) is an (infant),

the Court may make an order vesting the right to transfer, or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the Court may appoint,

(3) La version anglaise de la disposition actuelle est ainsi libellée:

15 In any of the following cases, namely:

(b) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person, is an (infant) or is out of New Brunswick or cannot be found,

(4) La version anglaise de la disposition actuelle est ainsi libellée:

17 Where a person entitled to or possessed of land, or entitled to a contingent right in land, by way of security for money is an (infant), the Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an (infant) trustee.

(5) La version anglaise de la disposition actuelle est ainsi libellée:

20(2) This section shall, when necessary, apply to the interests of (infants) and mentally incompetent persons in lands directed to be partitioned.

(6) La version anglaise de la disposition actuelle est ainsi libellée:

23(1) In any of the following cases, namely:

(b) when a trustee entitled alone, or jointly with another person, to stock, or to a chose in action

(i) is an (infant),

the Court may make an order vesting the right to transfer, or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the Court may appoint,

(7) The present provision reads as follows:

**28** When an (infant) or mentally incompetent person is entitled to money payable in discharge of any lands, stock or chose in action conveyed, assigned or transferred under this Act, the person by whom such money is payable, may pay the same into Court, in trust, in any cause then depending concerning such money, or, if there is no cause, to the credit of such (infant) or mentally incompetent person, subject to the order or disposition of the Court.

(8)(a) The present provision reads as follows:

**40(2)** On an application to pay money into Court, or to deposit securities in Court under this Act, the application shall file in the Court an affidavit entitled, "In The Court of Queen's Bench of New Brunswick," "In the matter of (specifying shortly the trust and the instrument creating it)", which affidavit shall set forth

(d) the names and addresses, as far as known to the deponent, of all persons interested in or entitled to the moneys or securities in question; and whether or not such persons are under any disability by reason of (infancy), or unsoundness of mind, to the best of his knowledge and belief,

(8)(b) The present provision reads as follows:

**40(3)** Every order made on such application shall direct the applicant forthwith to give notice thereof to such persons interested, and in such manner as the Court shall direct, and such order may direct such notice to be given by prepaid letter through the post, to the several persons interested in or entitled to the moneys or securities paid into or deposited in Court whose names and places of residence are stated by affidavit, as provided by paragraph (1)(d), except that in the case of (infants) or persons

(7) La version anglaise de la disposition actuelle est ainsi libellée:

**28** When an (infant) or mentally incompetent person is entitled to money payable in discharge of any lands, stock or chose in action conveyed, assigned or transferred under this Act, the person by whom such money is payable, may pay the same into Court, in trust, in any cause then depending concerning such money, or, if there is no cause, to the credit of such (infant) or mentally incompetent person, subject to the order or disposition of the Court.

(8)(a) La version anglaise de la disposition actuelle est ainsi libellée:

**40(2)** On an application to pay money into Court, or to deposit securities in Court under this Act, the application shall file in the Court an affidavit entitled, «In The Court of Queen's Bench of New Brunswick,» «In the matter of (specifying shortly the trust and the instrument creating it)», which affidavit shall set forth

(d) the names and addresses, as far as known to the deponent, of all persons interested in or entitled to the moneys or securities in question; and whether or not such persons are under any disability by reason of (infancy), or unsoundness of mind, to the best of his knowledge and belief,

(8)(b) La version anglaise de la disposition actuelle est ainsi libellée:

**40(3)** Every order made on such application shall direct the applicant forthwith to give notice thereof to such persons interested, and in such manner as the Court shall direct, and such order may direct such notice to be given by prepaid letter through the post, to the several persons interested in or entitled to the moneys or securities paid into or deposited in Court whose names and places of residence are stated by affidavit, as provided by paragraph (1)(d), except that in the case of (infants) or persons

of unsound mind, such notice shall be given to the guardian, if any, of the (infants), and to the committee of any mentally incompetent person, or to such person or persons as the Court may direct.

### **Section 55**

The present provision reads as follows:

5(1) A (subpoena) shall not issue out of any court requiring the attendance of the Minister or any employee of the Province in his official capacity under this Act, nor shall any document in his official custody or possession be produced without an order of the court or a judge thereof.

### **Section 56**

(1) The present provision reads as follows:

9 Without issuing a (writ of summons), the claimant may apply to a judge of The Court of Queen's Bench of New Brunswick and upon the production to the judge of an affidavit verifying his claim and showing that the claim has been duly filed, also stating the particulars of the claim, and showing that the claimant has fully performed his contract, and that the amount is justly due and owing to him, and that payment thereof has been demanded and refused, the judge may thereupon, if he thinks it in the interest of justice to do so, make an order under his hand directing that a writ of attachment issue to the sheriff of the county in which the logs timber or lumber are, commanding the sheriff to attach, seize, take and safely keep the logs, timber or lumber, whereupon a writ of attachment, in the form prescribed by regulation, shall issue out of The Court of Queen's Bench of New Brunswick.

(2)(a) and (b) The present provisions read as follows:

26(1) When taxed costs, exclusive of necessary disbursements by the sheriff and clerk's fees and necessary (witness fees, according to the scale of fees in The Court of Queen's Bench of New Bruns-

of unsound mind, such notice shall be given to the guardian, if any, of the infants, and to the committee of any mentally incompetent person, or to such person or persons as the Court may direct.

### **Article 55**

La disposition actuelle est ainsi libellée:

5(1) Aucun tribunal ne peut délivrer un (subpoena) prescrivant la comparution du Ministre ou d'un employé de la province dans l'exercice de ses fonctions au titre de la présente loi et les documents qu'ils gardent ou détiennent en vertu de leurs fonctions ne peuvent être produits sans une ordonnance du tribunal ou d'un des juges qui le composent.

### **Article 56**

(1) La disposition actuelle est ainsi libellée:

9 Sans décerner un (bref d'assignation), le demandeur peut s'adresser au juge de la Cour du Banc de la Reine du Nouveau-Brunswick sur présentation au juge d'un affidavit établissant l'authenticité de sa revendication, prouvant que celle-ci a été dûment déposée, indiquant également les détails de la revendication et prouvant que le demandeur a pleinement exécuté son contrat, que le montant lui est légitimement dû et que le paiement en a été demandé et refusé, le juge peut alors, s'il pense qu'il est dans l'intérêt de la justice de le faire, rendre une ordonnance signée de sa main ordonnant qu'un bref de saisie soit adressé au shérif du comté où se trouve le bois en grume, bois peu ouvré ou bois d'oeuvre, sur quoi un bref de saisie établi selon la formule que prescrit le règlement doit être décerné par la Cour du Banc de la Reine du Nouveau-Brunswick.

(2)(a) et (b) Les dispositions actuelles sont ainsi libellées:

26(1) Lorsque les frais et dépens taxés, non compris les dépenses nécessaires faites par le shérif, les droits du greffier et (indemnités nécessaires de témoins), (en conformité du barème des droits de la



wick), of the proceedings to enforce a lien under this Act that are payable out of the amount realized by the proceedings for the satisfaction of the lien exceed twenty-five per cent of the amount so realized, such costs upon application of any party to the proceedings interested in the payment thereof shall be reduced by the judge, so that the same do not in the aggregate exceed the said twenty-five per cent, and no more costs than such reduced amount shall be recovered between party and party, or solicitor and client.

**26(2)** The costs exclusive of sheriff's fees, clerk's fees, and necessary (witness fees) that may be taxed to any claimant proving a claim under this Act, shall not exceed twenty-five per cent of the amount of his claim.

(3) The present provision reads as follows:

**27** Any (decree) or order made by a judge under this Act is subject to appeal in the same manner and subject to the same provisions as actions in The Court of Queen's Bench of New Brunswick.

#### **Section 57**

(1) The present provision reads as follows:

**10(6)** A parent, guardian or a person who has had placed under his care an (infant) child of a deceased worker may file an application for compensation for that child and that application is a valid election on behalf of that child.

(2) The present provision reads as follows:

**34(1)** Except as provided in section 36 the Board has exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and as to any matter or thing in respect to which any power, authority or discretion is con-

Cour du Banc de la Reine du Nouveau-Brunswick), des procédures visant à faire valoir un droit de rétention prévu par la présente loi, qui sont payables sur le montant réalisé au moyen de ces procédures dépassent vingt-cinq pour cent du montant ainsi réalisé, ces frais et dépens, à la demande de toute partie aux procédures intéressée à leur paiement, doivent être réduits par le juge de façon à ne pas dépasser en tout ces vingt-cinq pour cent et nuls autres frais et dépens que ce montant réduit ne doivent être recouverts à titre de frais entre les parties, ou entre avocat et client.

**26(2)** Les frais et dépens, non compris les droits de shérif, les droits de greffier et (indemnités nécessaires de témoins), qui peuvent être taxés en faveur de tout demandeur qui prouve une créance en application de la présente loi, ne peuvent dépasser vingt-cinq pour cent du montant de sa créance.

(3) La version anglaise de la disposition actuelle est ainsi libellée:

**27** Any (decree) or order made by a judge under this Act is subject to appeal in the same manner and subject to the same provisions as actions in The Court of Queen's Bench of New Brunswick.

#### **Article 57**

(1) La version anglaise de la disposition actuelle est ainsi libellée:

**10(6)** A parent, guardian or a person who has had placed under his care an (infant) child of a deceased worker may file an application for compensation for that child and that application is a valid election on behalf of that child.

(2) La version anglaise de la disposition actuelle est ainsi libellée:

**34(1)** Except as provided in section 36 the Board has exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and as to any matter or thing in respect to which any power, authority or discretion is confer-

ferred upon the Board, and the action or decision of the Board thereon shall be final and conclusive and shall not be open to question or review in any court, and no proceedings by or before the Board shall be restrained by injunction, (prohibition) or other process or proceeding in any court or be removable by (*certiorari*) or otherwise into any court.

#### **Section 58**

Certain provisions of this Act are to come into force on proclamation.

red upon the Board, and the action or decision of the Board thereon shall be final and conclusive and shall not be open to question or review in any court, and no proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by (*certiorari*) or otherwise into any court.

#### **Article 58**

Certaines dispositions de la présente loi entrent en vigueur sur proclamation.

4th Session, 50th Legislature,  
New Brunswick,  
35 Elizabeth II, 1986

4<sup>e</sup> session 50<sup>e</sup> Législature,  
Nouveau-Brunswick,  
35 Elizabeth II, 1986

# BILL

# PROJET DE LOI

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AN ACT RESPECTING THE REMOVAL OF  
ARCHAIC TERMINOLOGY FROM THE ACTS  
OF NEW BRUNSWICK

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LOI PORTANT SUPPRESSION DE  
TERMINOLOGIE ARCHAÏQUE DANS LES  
LOIS DU NOUVEAU-BRUNSWICK

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Read first time

Première lecture

Read second time

Deuxième lecture

Committee

Comité

Read third time

Troisième lecture

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HON. DAVID R. CLARK Q.C.

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L'HON. DAVID R. CLARK, C.R.

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