

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

(Appellant/Respondent on Cross-Appeal)

-and-

BRITISH COLUMBIA INVESTMENT MANAGEMENT CORPORATION

Respondent

(Respondent/Appellant on Cross-Appeal)

-and-

HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF BRITISH COLUMBIA

Respondent

(Respondent/Respondent on Cross-Appeal)

-and-

ATTORNEY GENERAL OF ONTARIO and  
ATTORNEY GENERAL OF ALBERTA

Interveners

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**FACTUM OF THE RESPONDENT, HER MAJESTY THE QUEEN  
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**  
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

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## PART I – OVERVIEW AND STATEMENT OF FACTS

### A. Overview

1. This case is about provincial Crown immunity from federal taxation. It is about whether assets held under a statutory trust by a provincial Crown agent are immune from taxation under the *Excise Tax Act*, whether by virtue of statutory immunity or the immunity under section 125 of the *Constitution Act, 1867*. Section 125 provides that “No Land or Property belonging... to any Province shall be Liable to Taxation.”
2. The British Columbia Investment Management Corporation (“bcIMC”), a provincial Crown agent, performs investment management services in respect of assets it holds in trust. The Attorney General of Canada (“Canada”) says that the trust must pay tax under the *Excise Tax Act* on those services because, under that Act, a trust is deemed to be a separate person from the trustee (bcIMC). Canada also argues that the trust assets do not belong to bcIMC, a provincial Crown agent and the legal owner of the assets, and therefore do not receive the constitutional protection of section 125.
3. The Province says that the provision that deems a trust to be a separate person cannot be used to make a provincial Crown agent liable to tax. Part IX of the *Excise Tax Act* is binding on the provincial Crown and its agents in respect of obligations to collect and remit tax but not in respect of obligations to pay it. The Province also says, as both lower courts held, that the only person to whom the trust assets belong is bcIMC, a provincial Crown agent. The Province says that both immunities apply such that a provincial Crown agent does not have to pay tax on services performed in respect of statutory trust assets it owns.
4. The British Columbia Supreme Court chambers judge had the jurisdiction to decide both the constitutional validity and applicability of the Act to bcIMC (the “constitutional issue”) and whether bcIMC was bound to the relevant agreements between Canada and the Government of British Columbia (the “agreements issue”). The Tax Court did not have the jurisdiction to decide the agreements issue. The chambers judge exercised his discretion to take jurisdiction over the constitutional issue so that both issues could be determined in the same proceeding.

As the Court of Appeal concluded, there is no reason to interfere with this exercise of discretion.

## **B. Statement of Facts**

5. The Province generally agrees with the facts set out in Part 1.B. of Canada’s factum except as specifically noted below. For ease of reference, the Province also states below the facts it submits are germane to this appeal.
6. bcIMC is a corporate person created by statute.<sup>1</sup> It was created as a provincial Crown agent and statutory trustee to carry on a trust business and investment management services in respect of the public sector pension plans (the “Public Sector Plans”)<sup>2</sup> as provided under the *Public Sector Pension Plans Act* (the “PSPPA”).<sup>3</sup>
7. Before bcIMC existed, the British Columbia Minister of Finance did what bcIMC does now and has done since its creation.<sup>4</sup> Before the PSPPA was introduced, creating bcIMC, the Minister held the funds of the Public Sector Plans (the “Pension Funds”) in trust and could invest them.<sup>5</sup> The Minister established and operated pooled investment portfolios in which various monies, including the Pension Funds, could be “combined in common for the

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<sup>1</sup> [Public Sector Pension Plans Act, SBC 1999, c 44 \(“PSPPA”\), s 16\(3\)](#); [British Columbia Investment Management Corporation v Canada \(Attorney General\), 2016 BCSC 1803 \(“BCSC Reasons”\), paras 7, 11, 14](#) (Appellant’s Record (“AR”), Vol I, Tab 1); [British Columbia Investment Management Corporation v Canada \(Attorney General\), 2018 BCCA 47 \(“BCCA Reasons”\), para 4](#) (AR, Vol I, Tab 2).

<sup>2</sup> PSPPA, ss [1](#), [2](#), [16](#), [18](#); *Financial Administration Act*, RSBC 1996, c 138 (“FAA”), [s 1](#), “pension fund” and “trust fund”; [BCSC Reasons, para 8](#) (AR, Vol I, Tab 1); [BCCA Reasons, para 8](#) (AR, Vol I, Tab 2). The four public sector pension plans covered by the PSPPA are the college plan, the municipal plan, the public service plan and the teachers’ plan: PSPPA, [s 1](#).

<sup>3</sup> PSPPA, ss [16\(1\)](#), [16\(5\)](#); [BCSC Reasons, paras 7, 14](#) (AR, Vol I, Tab 1); [BCCA Reasons, paras 4, 101](#) (AR, Vol I, Tab 2).

<sup>4</sup> *Financial Administration Act, as it read April 1, 1999*, RSBC 1996, c 138, Parts 1 and 5; [BCSC Reasons, paras 10, 11, 12, 106 and 135](#) (AR, Vol I, Tab 1); [BCCA Reasons, para 5](#) (AR, Vol I, Tab 2).

<sup>5</sup> Affidavit of Paul Flanagan #1 (“Flanagan Affidavit”) (AR, Vol IV, Tab 22, para 6).

purpose of investment by means of investment units of participation” in such portfolios under Part 5 of the *Financial Administration Act* (the “investment unit participation system”).<sup>6</sup>

8. bcIMC was created to be the trustee of a statutory trust for the purpose of investing funds using the investment unit participation system, as the Minister was formerly empowered to do.<sup>7</sup> The boards of trustees for the Public Sector Plans (the “Boards”) hold the Pension Funds<sup>8</sup> which are used to acquire investment units of participation in the portfolios of assets held by bcIMC. All the assets in the portfolios, the assets relevant to this appeal, are held by bcIMC in trust.<sup>9</sup>
9. The ownership of the assets in the portfolios is prohibited from being attributed to a participating fund.<sup>10</sup> No person, besides bcIMC, has any ownership interest, beneficial or otherwise, in the portfolio assets. As the Court of Appeal stated, in affirming the British Columbia Supreme Court’s findings on asset ownership: “There is no clear beneficial interest in the [portfolio assets]...that is distinct from bcIMC’s legal interest...”<sup>11</sup>
10. The Province deliberately chose for bcIMC to hold the portfolio assets in trust and deliberately chose that ownership of the portfolio assets not be attributed to a participating

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<sup>6</sup> [Financial Administration Act, as it read April 1, 1999](#), RSBC 1996, c 138, Parts 1 and 5; [BCSC Reasons, paras 10, 11, 12, 106 and 135](#) (AR, Vol I, Tab 1); [BCCA Reasons, para 5](#) (AR, Vol I, Tab 2); [PSPPA, s 18.1](#); [Pooled Investment Portfolios Regulation](#) (“Regulation”), [s 3](#).

<sup>7</sup> [Regulation](#), generally.

<sup>8</sup> Flanagan Affidavit, Exhibit “C”, College Pension Plan Joint Trust Agreement, s 3 (AR, Vol IV, Tab 22, pp 75 to 77), Exhibit “E”, Municipal Pension Plan Joint Trust Agreement, ss 3.2, 3.3, and 4.1 (AR, Vol IV, Tab 22, pp 159 to 161), Exhibit “G”, Public Service Pension Plan Joint Trust Agreement, ss. 3.2, 3.3, 4.1 (AR, Vol V, Tab 22, pp 90 to 92), Exhibit “I”, Teachers’ Pension Plan Joint Trust Agreement, ss 3.2, 3.3, and 4.1 (AR, Vol V, Tab 22, pp 196-198) (collectively, the “Joint Trust Agreements”).

<sup>9</sup> Regulation, [s 4\(1\)](#); [BCSC Reasons, para 8](#) (AR, Vol I, Tab 1); [BCCA Reasons, paras 1, 11, 12](#) (AR, Vol I, Tab 2).

<sup>10</sup> Regulation, [s 4\(4\)](#); [BCSC Reasons, para 8](#) (AR, Vol I, Tab 1); [BCCA Reasons, para 109](#) (AR, Vol I, Tab 2).

<sup>11</sup> [BCCA Reasons, para 109](#) (AR, Vol I, Tab 2).



fund. The Province chose to use a trust structure investing the Pension Funds that would *not* have all the characteristics of a private law trust.<sup>12</sup>

11. The Public Sector Plans own the investment units they acquire.<sup>13</sup> Their interest in is in those investment units.<sup>14</sup> Neither the Public Sector Plans nor the plan members have any interest, beneficial or otherwise, in the portfolio assets held by bcIMC.
  
12. The Boards hold the Pension Funds for the benefit of the members of the Public Sector Plans.<sup>15</sup> The interest of the members in the Pension Funds is different from the interest of members of other (non-public sector) pension plans. Their interest is limited by the exemption of the Public Sector Plans from certain provisions of British Columbia’s pension regulatory legislation and the applicability, instead, of provisions of the Joint Trust Agreements and pension rules made pursuant to those agreements.<sup>16</sup> On termination of at least three of the Public Sector Plans, any surplus assets of the Pension Funds are used for pension improvements or benefits to the members; such assets are not allocated to the members.<sup>17</sup> What the members of the Public Sector Plans are entitled to are the defined benefits set out in the rules governing the pension plans (the Pension Plan Rules).<sup>18</sup>

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<sup>12</sup> PSPPA, ss [2](#), [16](#), [18.1](#).

<sup>13</sup> [BCSC Reasons, para 8](#) (AR, Vol I, Tab 1); [BCCA Reasons, para 12](#) (AR, Vol I, Tab 2).

<sup>14</sup> [BCSC Reasons, para 8](#), 132 (AR, Vol I, Tab 1); [BCCA Reasons, para 109](#) (AR, Vol I, Tab 2).

<sup>15</sup> [BCSC Reasons, para 132](#) (AR, Vol I, Tab 1); [BCCA Reasons, para 9](#) (AR, Vol I, Tab 2); Flanagan Affidavit, Exhibit “C”, College Pension Plan Joint Trust Agreement, s 3 (AR, Vol IV, Tab 22, pp 75-77), Exhibit “E”, Municipal Pension Plan Joint Trust Agreement, ss 3.2, 3.3 (AR, Vol IV, Tab 22, p 159), Exhibit “G”, Public Service Pension Plan Joint Trust Agreement, ss 3.2, 3.3 (AR, Vol V, Tab 22, pp 90-91), Exhibit “I”, Teachers’ Pension Plan Joint Trust Agreement, ss 3.2, 3.3 (AR, Vol V, Tab 22, pp 196-197).

<sup>16</sup> [PSPPA, s 3](#); [Pension Benefit Standards Regulations, BC Reg 433/93, ss 3\(10\), Schedule 1](#); [Pension Benefit Standards Act, SBC 1991, c 15, s 45](#); [Pension Benefits Standards Regulation, BC Reg 71/2015, s 11](#); [Pension Benefit Standards Act, SBC 2012, c 30, s 107](#).

<sup>17</sup> Flanagan Affidavit, Exhibit “E”, Municipal Pension Plan Joint Trust Agreement, s 14.4 (AR, Vol IV, Tab 22, p 183), Exhibit “G”, Public Service Pension Plan Joint Trust Agreement, s 13.5 (AR, Vol V, Tab 22, p 110), Exhibit “I”, Teachers’ Pension Plan Joint Trust Agreement, s 13.5 (AR, Vol V, Tab 22, pp 215-216). Note: the College Pension Plan Joint Trust Agreement does

13. The assets in the portfolios are not the only assets held in trust by the Province or a provincial Crown agent. The Province maintains various trust funds in the Ministry of Finance in accounts kept separately from other public money. The Province has a Funds Management Agreement with bcIMC under which bcIMC performs services for the Province, including investment management services, with respect to certain funds placed with bcIMC by the Province. The funds placed with bcIMC include some trust funds, such as the BC Public Service Long Term Disability Plan.<sup>19</sup> These funds are funds held by the Province in trust. They are not the Pension Funds.
14. In response to paragraph 10 of Canada’s factum, the Province says that the use of the words “arm’s length boards of trustees” is not clear about from whom the Boards are arm’s length. The composition of each of the Boards is set out in the Joint Trust Agreements for each of the Public Sector Plans. The Boards are generally comprised of representatives of the public sector employers and unions or organizations who represent the public sector employees covered by the Public Sector Plans.<sup>20</sup> In any case, both the British Columbia Pension

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not appear to have a similar provision to the provisions of the other Joint Trust Agreements noted previously in this footnote: Flanagan Affidavit, Exhibit “C”, College Pension Plan Joint Trust Agreement (AR, Vol IV, Tab 22, pp 70-89).

<sup>18</sup> [PSPPA](#) and [Regulation](#) generally: these are silent regarding any entitlement of plan members or ownership interest of plan members in assets in portfolio(s); Flanagan Affidavit, Exhibit “D”, College Pension Plan Rules (AR, Vol IV, Tab 22, pp 91 to 146), Exhibit “F”, Municipal Pension Plan Rules (AR, Vol V, Tab 22, pp 2 to 78), Exhibit “H”, Public Service Pension Plan Rules (AR, Vol V, Tab 22, pp 119 to 184), Exhibit “J”, Teachers’ Pension Plan Rules (AR, Vol VI, Tab 22, pp 2 to 52) (collectively, the “Pension Plan Rules). The Pension Plan Rules provide for the defined benefits that pension plan members receive.

<sup>19</sup> Affidavit #1 of Stuart Newton, generally and Exhibit “A”, Funds Management Agreement between bcIMC and the Province of British Columbia, Schedule “B3”, dated October 25, 2016 (AR, Vol X, Tab 25, pp 50 and 76).

<sup>20</sup> Flanagan Affidavit, Exhibit “C”, College Pension Plan Joint Trust Agreement, s 3 (AR, Vol IV, Tab 22, pp 75 to 77), Exhibit “E”, Municipal Pension Plan Joint Trust Agreement, s 4.1 (AR, Vol IV, Tab 22, pp 160 to 161), Exhibit “G”, Public Service Pension Plan Joint Trust

Corporation, who provides pension plan administration services to the Boards, and bcIMC are agents of the provincial Crown. Their relationship to the government is prescribed by statute.<sup>21</sup>

15. In response to paragraph 17 of Canada’s factum, the Province says that bcIMC does not receive payment from the Boards for its services in respect of the pooled investment portfolios. Rather, it recovers its costs and expenditures from the assets in the portfolios. bcIMC only charges a board directly for services in respect of segregated funds managed by bcIMC on behalf of the board; such segregated funds are not at issue in this case.<sup>22</sup>

16. In response to paragraph 22 of Canada’s factum, the Province says that bcIMC is the legal owner of the assets in the portfolios. The British Columbia Supreme Court and the Court of Appeal for British Columbia both found that bcIMC was the legal owner of the assets in the portfolios. The British Columbia Supreme Court found that the Boards did not have any interest or ownership in the assets. In affirming this finding, the Court of Appeal for British Columbia found that there was no clear beneficial interest in the assets distinct from bcIMC’s legal interest.<sup>23</sup> The Province also says that bcIMC does not acquire units of pooled investment portfolios on behalf of the Boards. bcIMC acquires and holds the assets in pooled portfolios that it establishes or that were continued under the PSPPA. bcIMC allocates units of the pooled portfolios to the participating funds in proportion to their investment in the portfolios.<sup>24</sup>

17. In response to paragraph 30 of Canada’s factum, the Province disagrees with the statement that “there is no dispute that the investment management services that bcIMC is mandated to

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Agreement, section 4.1 (AR, Vol V, Tab 22, pp 91 to 92), Exhibit “I”, Teachers’ Pension Plan Joint Trust Agreement, section 4.1 (AR, Vol V, Tab 22, pp 197 to 198).

<sup>21</sup> PSPPA, ss [2](#), [5](#), [16](#).

<sup>22</sup> Affidavit #1 of Claudine Gagnon (“Gagnon Affidavit”), Exhibit “F”, Funds Investment and Management Agreement, Schedule “A” (AR, Vol III, Tab 20, pp 222-223); [BCCA Reasons, para 13](#) (AR, Vol I, Tab 2); Affidavit #2 of David Woodward, para 15 (AR, Vol III, Tab 19, p 40).

<sup>23</sup> [BCSC Reasons, paras 8, 132](#) (AR, Vol I, Tab 1); [BCCA Reasons, paras 109, 113](#) (AR, Vol I, Tab 2).

<sup>24</sup> [PSPPA, s 18.1](#); Regulation, ss [2](#), [4](#), [5](#), [6](#) and generally.

supply are taxable for GST purposes.” bcIMC is mandated to perform investment management services in respect of the assets it holds. These services are not taxable because a person does not and cannot transact with itself.<sup>25</sup> There is no supply and no recipient. bcIMC is simply doing these things. Further, even if bcIMC could be considered to be supplying investment management services to itself, the investment management services that bcIMC is mandated to perform are not taxable because bcIMC, a provincial Crown agent, is not liable to tax.

18. In response to paragraphs 38 and 39 of Canada’s factum, the Province notes that Canada describes bcIMC’s obligation to collect tax but neglects to articulate that the obligation to collect tax only arises if the recipient of the services is obliged to pay tax. The Minister of National Revenue concluded that the recipient of the services was someone other than bcIMC, that is, the trust as a separate person (deemed so under the *Excise Tax Act*, the “ETA”). The Minister of National Revenue concluded that the trust, as recipient, was liable to pay tax under Part IX of the ETA (the “GST”).

19. Both the British Columbia Supreme Court and the Court of Appeal for British Columbia found that bcIMC was created to continue what had been the Minister of Finance’s role in the investment unit participation system.<sup>26</sup> Both of the lower Courts found that bcIMC is the legal owner of the assets in the portfolios and that the Boards have no interest, beneficial or otherwise, in those assets.<sup>27</sup> The lower Courts both concluded that the provisions of the ETA deeming a trust to be a person could not separate the Crown from its assets so as to defeat the immunity from taxation that bcIMC enjoys as a provincial Crown agent.<sup>28</sup>

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<sup>25</sup> [Crawford v AGBC, \[1960\] S.C.R. 346 at 358.](#)

<sup>26</sup> [BCSC Reasons, paras 10, 12, 135](#) (AR, Vol I, Tab 1); [BCCA Reasons, paras 5, 115](#) (AR, Vol I, Tab 2).

<sup>27</sup> [BCSC Reasons, paras 8, 132](#) (AR, Vol I, Tab 1); [BCCA Reasons, para 109](#) (AR, Vol I, Tab 2).

<sup>28</sup> [BCSC Reasons, paras 130-131](#) (AR, Vol I, Tab 1); [BCCA Reasons, paras 113-114](#) (AR, Vol I, Tab 2).

**PART II – QUESTIONS IN ISSUE**

20. The Province takes the following positions on the questions Canada puts in issue:
- a. The issue in this appeal is whether Part IX of the ETA<sup>29</sup> applies to impose a tax liability on bcIMC on its management of the assets it administers. The extent to which the provisions of Part IX of the ETA impose a collection obligation on bcIMC are only relevant if tax is payable by bcIMC in the first place. It is not. By operation of section 17 of the federal *Interpretation Act*, a federal enactment is only binding on the Crown or its agent if the enactment says it is. By its wording, Part IX of the ETA, including the definition of “person” which creates the legal fiction that a trust is a separate person from the trustee, does not apply to bcIMC, a provincial Crown agent, to the extent that it would impose a tax liability on bcIMC.
  - b. Subjecting the investment management services provided by bcIMC in respect of the assets to GST offends section 125 of the *Constitution Act, 1867*. The assets belong to bcIMC, a provincial Crown agent. Tax on services provided in respect of those assets is tax on property belonging to a provincial Crown agent. Property belonging to a provincial Crown agent is immune from taxation as property belonging to the Province is immune. The assets are property immune from taxation under section 125.
  - c. The British Columbia Supreme Court did not err in deciding to exercise jurisdiction to determine whether the assets and bcIMC were constitutionally immune from federal taxation.

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<sup>29</sup> [Excise Tax Act, RSC 1985, c E-15.](#)

## PART III – ARGUMENT

### A. Standard of Review

21. The questions of whether bcIMC and the assets are immune from taxation by virtue of statutory immunity or by virtue of constitutional immunity are questions of law. The standard of review is correctness.<sup>30</sup>
22. The provincial superior courts and the federal courts have concurrent jurisdiction to hear challenges to the constitutional validity of federal legislation.<sup>31</sup> The Province agrees with Canada that the decision of the chambers judge to consider bcIMC's claim was discretionary and is entitled to deference from appellate courts. Appellate courts should not interfere with that exercise of discretion if the judge has given sufficient weight to all relevant considerations.<sup>32</sup>

### B. The issue in this appeal is who is liable to pay the GST, not who is liable to collect it

23. Canada argues in paragraphs 51 to 65 of its factum that bcIMC has no immunity from obligations to collect tax as a supplier.<sup>33</sup> The Province does not dispute that the Province and provincial Crown agents have collection and remittance obligations when making taxable supplies to taxable recipients under the ETA.<sup>34</sup>
24. However, the liability to collect as a supplier only arises if the recipient is liable to pay tax. Section 221(1) of the ETA imposes the obligation to collect tax.

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<sup>30</sup> [Housen v Nikolaisen](#), 2002 SCC 33, [2002] 2 SCR 235 at para 8 [*Housen*].

<sup>31</sup> [Strickland v Canada \(Attorney General\)](#), 2015 SCC 37, [2015] 2 SCR 713 at paras 12 and 64 [*Strickland*]; [Reza v Canada](#), [1994] 2 SCR 394 at 405 [*Reza*].

<sup>32</sup> [Reza](#), *supra* note 31 at 404; [BCCA Reasons at para 66](#) (AR, Vol I, Tab 2).

<sup>33</sup> Canada's Factum, paras 51-65.

<sup>34</sup> [ETA, s 122\(b\)](#).

### Collection of tax

**221 (1)** Every person who makes a taxable supply shall, as agent of Her Majesty in right of Canada, collect the tax under Division II **payable by the recipient in respect of the supply.** [emphasis added]<sup>35</sup>

25. Accordingly, a person is only liable to collect tax if that person makes a taxable supply to a person who is liable to pay tax under Division II of Part IX of the ETA (the GST). If the recipient is not liable to tax, the supplier has no obligation to collect.
26. The issue is, therefore, whether the ETA imposes an obligation on bcIMC to *pay* tax on its management of the assets it holds. In other words, does the ETA tax bcIMC on services that it provides to itself?

### C. The Province and its agents are immune from taxation under the ETA

*bcIMC, as a Crown agent, enjoys the same immunity as the Crown*

27. A Crown agent enjoys the same immunity, whether statutory or constitutional, as the Crown itself, as long as it is acting within the purposes for which the legislature made it an agent of the Crown.<sup>36</sup> Crown agents receive the same immunity that the Crown does because the Crown is choosing to undertake its governmental activity through an agent rather than undertake the activity directly for policy purposes. The choice of government to undertake its governmental activities must be protected as if the government itself was acting.<sup>37</sup>
28. bcIMC is the Province's agent for the purpose of holding the assets in trust and managing those assets.<sup>38</sup> There is no suggestion otherwise.

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<sup>35</sup> [ETA, s 221\(1\)](#).

<sup>36</sup> [Nova Scotia Power Inc. v R](#), 2004 SCC 51, [2004] 3 SCR 53 at para 14 [*Nova Scotia Power*], citing [R v Eldorado Nuclear Ltd.](#), [1983] 2 SCR 551, [Canadian Broadcasting Corp. v The Queen](#), [1983] 1 SCR 339 and [Alberta Government Telephones v Canada \(Canadian Radio-television and Telecommunications Commission\)](#), [1989] 2 SCR 225 [*Alberta Government Telephones*].

<sup>37</sup> Peter W. Hogg, Patrick J. Monahan & Wade K. Wright, *Liability of the Crown*, 4<sup>th</sup> ed (Toronto: Thomson Reuters Limited, 2011), pp 464-465 (Respondent's Book of Authorities ("RBA"), Tab 8).

<sup>38</sup> PSPPA, [s 16](#); [Canada v Insurance Corp. of British Columbia](#), 2002 FCA 104 at para 16.

*bcIMC is statutorily immune to taxation under the ETA*

29. The Province is presumptively immune to the taxing provisions of the ETA. Section 17 of the federal *Interpretation Act* sets out a statutory presumption of Crown immunity from federal enactments:

No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner, except as mentioned or referred to in the enactment.<sup>39</sup>

30. The common law immunity of the Crown enshrined in section 17 of the federal *Interpretation Act* includes Her Majesty in right of a Province.<sup>40</sup> For the purposes of immunity, Her Majesty in right of a Province includes agents of Her Majesty in right of a Province.<sup>41</sup>

31. By operation of section 17 of the federal *Interpretation Act* and section 122(b) of the ETA, Part IX of the ETA does not apply to the Province or its agents to the extent of imposing a tax liability. Section 122 of the ETA provides as follows:

PART IX

Goods and Services Tax

Application

122 This Part is binding

- a) on Her Majesty in right of Canada; and
- b) on Her Majesty in right of a province in respect of obligations as a supplier to collect and to remit tax in respect of taxable supplies made by Her Majesty in right of the province.

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<sup>39</sup> [Interpretation Act, RSC 1985, c I-21, s 17](#); Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexisCanada Inc., 2014) at 857 [*Sullivan*] (RBA, Tab 9).

<sup>40</sup> [Alberta Government Telephones](#), *supra* note 36 at 274.

<sup>41</sup> [Nova Scotia Power](#), *supra* note 36.



32. Accordingly, the Province and its agents are not bound by the provisions of Part IX, including the provision that deems a trust to be a person, to the extent that they create a tax liability for the Province or its agents.<sup>42</sup>
33. Additionally, the purpose of the ETA would not be wholly frustrated if the Province is not bound by its taxing provisions.<sup>43</sup> The GST continues to be exigible on all taxable recipients (that is, those who are not the provincial Crown or its agents).
34. The presumption of statutory Crown immunity as reflected in section 17 of the *Interpretation Act* has not been rebutted. No provision in Part IX of the ETA applies to the Province in respect of any obligation on the part of the Province to pay tax.
- The legal fiction that makes a trust a person under the ETA cannot defeat bcIMC's statutory immunity*
35. A trust at common law and equity (a “private trust”) is not a person. A private trust is a relationship. It is the trustee who can deal with the property of the trust under the terms of the trust as dictated by the settlor who disposed of the trust property to the trustee.<sup>44</sup>
36. bcIMC manages the investment of the assets in the portfolios. In reality, there is no “supplier” or “recipient” of investment management services because a person does not transact with itself.<sup>45</sup> Managing the assets is simply an activity that bcIMC performs.
37. However, the ETA deems a person to include a trust.<sup>46</sup> Consequently, Canada says that there are now two persons acting: bcIMC and the statutory trust as a deemed person. Canada says

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<sup>42</sup> [Brant v R, \[1998\] GSTC 101 \(FCTD\)](#) at paras 35, 39 [*Brant*]; [Friends of the Oldman River Society v Canada \(Minister of Transport\), \[1992\] 1 SCR 3](#) at para 50 [*Oldman River*]; [Reference re Excise Tax Act \(Canada\), \[1992\] 2 SCR 445 \[GST Reference\]](#) at 481; [ETA, s 123, “person”](#).

<sup>43</sup> [Alberta Government Telephones](#), *supra* note 36 at 281-283; [Oldman River](#), *supra* note 42 at para 52; [Brant](#), *supra* note 42 at para 37.

<sup>44</sup> Donovan W.M. Waters, QC, Mark R. Gillen & Lionel D. Smith, eds, *Waters' Law of Trusts in Canada*, 4<sup>th</sup> ed (Toronto: Thomson Reuters Canada Limited, 2012), pp 3, 6 [*Waters*] (RBA, Tab 4); Dennis Pavlich, *Trusts in Common-Law Canada* (Markham: LexisNexis Canada Inc., 2014) at 2-4 (RBA, Tab 3); Eileen E. Gillese, Court of Appeal for Ontario, *The Law of Trusts*, 3<sup>rd</sup> ed (Toronto: Irwin Law Inc., 2014) at 10-11 (RBA, Tab 5).

<sup>45</sup> [ETA, s 123, "recipient", "supplier" and "supply"](#); [Crawford](#), *supra* note 25 at 358; [BCCA Reasons at paras 73 and 110](#) (AR, Vol I, Tab 2).

that the statutory trust is a person who pays consideration for the taxable supply of investment management services and is the “recipient” of the taxable supplies.

38. Canada’s argument is that the ETA’s deeming of the trust to be a person defeats the immunity enjoyed by the Province and its agents from the taxing provisions of the ETA.
39. Absent the definition of “person” in the ETA which deems a trust to be a person, and section 267.1(5) of the ETA, which deems anything done by a trustee to have been done by the trust and not the trustee, the only person acting in this case would be bcIMC.<sup>47</sup> Because a person cannot transact with itself, bcIMC would not be a recipient of any service. Since tax is only payable by the recipient of a taxable supply, these transactions could only be subject to tax if the trust is deemed to be a separate person from the trustee (bcIMC).<sup>48</sup>
40. Canada’s argument that bcIMC is liable to tax under the ETA requires splitting the legal personality of the Crown’s agent into two persons, one of whom Canada says is not the Crown agent: the deemed trust person. The definition of “person” and section 267.1(5) are in Part IX of the ETA which does not apply to the Province or its agent except as it relates to the obligation to collect and remit tax. These provisions cannot be applied to create a tax liability for the Province or its agent.
41. Statutory immunity cannot be defeated in this way. This doctrine “does not lend itself to imaginative exceptions.”<sup>49</sup>
42. bcIMC, as a Crown agent, is indivisible for the purposes of statutory immunity. Whether the person is bcIMC, the legal person, or the statutory trust, a deemed person, the personality or identity of that person is that of a Crown agent who is immune from the imposition of tax under Part IX of the ETA.

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<sup>46</sup> [ETA, s 123, “person”](#).

<sup>47</sup> [ETA, ss 123, “person”](#) and [267.1\(5\)](#); [PSPPA, ss 16, 18.1](#); [Regulation, s 4](#).

<sup>48</sup> [ETA, ss. 165\(1\) and \(2\)](#); [BCCA Reasons at paras 73 and 110](#) (AR, Vol I, Tab 2).

<sup>49</sup> [Alberta Government Telephones, supra note 36 at 291](#); [Canadian Broadcasting Corporation v Nova Scotia Review Board, \(1991\), 102 NSR \(2d\) 174, 1991 CanLII 2560 \(NSCA\)](#) at para 23 (cited to CanLII).

*bcIMC is also constitutionally immune from taxation under the ETA*

43. Canada and the Province are prohibited from taxing one another. Section 125 of the *Constitution Act, 1867* states:

No Lands or Property belonging to Canada or any Province shall be liable to Taxation.<sup>50</sup>

44. The immunity under section 125 extends to transactional taxes, such as the GST, that would purport to tax transactions involving the Crown.<sup>51</sup> As this Court noted in the [Reference re Exported Natural Gas Tax](#):

Section 125 provides, in broad terms, that no lands or property of the federal or provincial Crown shall be “liable to taxation”. The purpose of this immunity...is to prevent one level of government from appropriating to its own use the property of the other, or the fruits of that property. This immunity would be illusory if it applied only to taxes “on property” but not to a tax on the Crown in respect of a transaction affecting its property or on the transaction itself. The immunity would be illusory since, by the simple device of framing a tax as “in personam” rather than “in rem”, one level of government could with impunity tax away the fruits of property owned by the other. The fundamental constitutional protection framed by s. 125 cannot depend on subtle nuances of form.<sup>52</sup>

45. The immunity under section 125 is intended to protect the property held by the Crown so that the Crown can fulfill its governmental duties. It should not be defeated by attempts to finely categorize the nature or motive of the Crown activity. As the constitutional scholar, Peter W. Hogg, points out, in discussing the suggestion that there should be an exception to the protection of section 125 when the government is involved in “commercial” activities, the government rarely gets involved in activities for purely non-governmental reasons. He comments that “[t]he government is usually drawn in by regulatory or public policy objectives. Indeed the fact that a government has decided to embark on a particular activity indicates a deliberate judgment that the activity should become governmental.”<sup>53</sup>

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<sup>50</sup> [Constitution Act, 1867 \(UK\), 30 & 31 Victoria, c. 3, s 125](#) [*Constitution Act, 1867*].

<sup>51</sup> [BCCA Reasons at para 92](#) (AR, Vol I, Tab 2), quoting [Reference re Exported Natural Gas Tax, \[1982\] 1 SCR 1004 at 1078](#) [*Natural Gas Reference*].

<sup>52</sup> [Natural Gas Reference, supra](#) note 51.

<sup>53</sup> Peter W. Hogg, *Constitutional Law of Canada*, 5<sup>th</sup> ed. *Supplemented* (Toronto: Thomson Reuters, 2016) at 31.13(d) [Hogg, *Constitutional Law*] (RBA, Tab 7).

46. Therefore, the use to which the Crown's or its agent's property is put does not determine whether the property is immune under section 125. What determines the section 125 immunity is whether the property in question belongs to the Crown or its agent.
47. The property that would be taxed is the assets in the pooled investment portfolios. bcIMC manages those assets and recovers its costs and expenditures from the assets in those portfolios.<sup>54</sup>
48. The assets belong to bcIMC, a provincial Crown agent who holds them in trust. Section 125 of the *Constitution Act, 1867* prohibits their taxation.<sup>55</sup>

*That bcIMC holds the assets in trust does not defeat bcIMC's constitutional immunity*

49. bcIMC is the legal owner of the assets in the portfolios. Canada does not dispute bcIMC's legal ownership but argues that the assets do not belong to bcIMC because they are held in trust for private citizens. The assets are not held in trust by bcIMC for private citizens. No private citizens and, in fact, no identifiable person or persons has a "clear beneficial interest" in the assets of the portfolios "that is distinct from bcIMC's legal interest."<sup>56</sup>
50. The participating funds have no beneficial interest or independent ownership interest in the assets. The participating funds are used to purchase units of participation in the portfolios. The only interest the participating funds (the Boards) have is as unit holders. It is only the value of their units to which they are ever entitled.<sup>57</sup> Ownership in any asset in a portfolio

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<sup>54</sup> [PSPPA, s 24](#); Gagnon Affidavit, Exhibit "F", Funds Investment and Management Agreement, Schedule "A" (AR, Vol III, Tab 20, pp 222-223).

<sup>55</sup> [Westbank First Nation v British Columbia Hydro and Power Authority, \[1999\] 3 SCR 134 at paras 20, 46.](#)

<sup>56</sup> [BCCA Reasons at para 109](#) (AR, Vol I, Tab 2); [Schmidt v Air Products Canada Ltd., \[1994\] 2 SCR 611](#) at 642 [*Schmidt*]; [Buschau v Rogers Communications Inc., 2006 SCC 28, \[2006\] 1 SCR 973](#) at paras 17, 20 [*Rogers*].

<sup>57</sup> Regulation, ss [4\(4\)](#), [7](#), [8](#), [11](#), [14](#); [Lehndorff General Partner Ltd., Re](#), (1993), 17 CBR (3d) 24, 1993 CarswellOnt 183 (ONSCJ Gen Div) (cited to Carswell) at para 17 (RBA, Tab 2).

must not be attributed to a participating fund.<sup>58</sup> The portfolio assets do not belong to the participating funds.

51. The Legislature has created a scheme where the plan members do not have an interest in the assets of the statutory trust that is comparable to that of a beneficiary of a private trust. The members of the pension plans who are entitled to a defined benefit under the Public Sector Plans have no beneficial interest in the assets of the portfolios owned by bcIMC. That the pension plans are for the members' ultimate benefit cannot be equated to having a beneficial interest in the assets of the portfolios in light of the statutory framework which specifically states that ownership in any asset must not be attributed to a participating fund. Those members are entitled to their defined benefits under the Pension Plan Rules and no more.<sup>59</sup> The portfolio assets do not belong to the pension plan members.
52. Further, the Legislature has created a scheme where plan members' interest in the Pension Funds is different even from such interests of members of non-public sector pension plans. On winding up of a regulated non-public sector pension plan, members and others may be entitled to surplus assets. On winding up of at least three of the Public Sector Plans, members are entitled only to pension improvements or benefits, not to the Pension Funds themselves.<sup>60</sup>
53. In this case involving a statutory pension investment trust, there are no beneficiaries in the private trust law sense.<sup>61</sup> Like other statutory constructs, such as limited partnerships, the statutory trust takes some elements of its private law relative but creates unique

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<sup>58</sup> Regulation, ss [1](#), [4](#), [5](#).

<sup>59</sup> Flanagan Affidavit, Exhibits "D", "F", "H" and "J", Pension Plan Rules (AR, Vol IV, Tab 22, pp 91 to 146, Vol V, pp 2 to 78 and pp 119 to 184, and Vol VI, pp 2 to 52).

<sup>60</sup> [Pension Benefit Standards Regulations, BC Reg 433/93, ss 3\(10\), Schedule 1](#); [Pension Benefit Standards Act, SBC 1991, c 15, s 45](#); [Pension Benefits Standards Regulation, BC Reg 71/2015, s 11](#); [Pension Benefit Standards Act, SBC 2012, c 30, s 107](#); Flanagan Affidavit, Exhibit "E", Municipal Pension Plan Joint Trust Agreement, s 14.4 (AR, Vol IV, Tab 22, p 183), Exhibit "G", Public Service Pension Plan Joint Trust Agreement, s 13.5 (AR, Vol V, Tab 22, p 110), Exhibit "T", Teachers' Pension Plan Joint Trust Agreement, s 13.5 (AR, Vol V, Tab 22, pp 215-216).

<sup>61</sup> [Rogers, supra note 56](#); [Schmidt, supra note 56](#).

characteristics not found outside the statute.<sup>62</sup> Unlike a private trust,<sup>63</sup> the statutory trust under which the assets are held by bcIMC can exist without the need for a beneficiary or beneficiaries. The statutory trust functions as set out in the legislative scheme. Since it is not necessary to create a beneficial interest, the PSPPA and the Regulation do not create one.<sup>64</sup>

54. The British Columbia Supreme Court found and the Court of Appeal for British Columbia affirmed that bcIMC is the legal owner of the assets and that no one has a “clear beneficial interest” in the assets of the portfolios “that is distinct from bcIMC’s legal interest.”<sup>65</sup> There was no palpable and overriding error of mixed fact and law in these findings.<sup>66</sup>

55. The assets belong to bcIMC, their legal owner. This is not a case where the person who claims the immunity is a private party or where the beneficial interest is owned by a private party.<sup>67</sup> It is bcIMC, a provincial Crown agent, who would be liable for the tax and who claims the immunity.<sup>68</sup> Section 125 protects from taxation both the beneficial and legal interests in property belonging to the Province.<sup>69</sup>

56. At paragraph 81 of its factum, Canada refers to the decisions in [Calgary & Edmonton Land Co.](#) and [Smith v Vermillion Hills](#), in support of the proposition that “*the application of section 125 turns on whether bcIMC or the provincial Crown is the beneficial owner of the assets, not on whether the statute clearly identifies a separate beneficial interest.*”

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<sup>62</sup> [Lehndorff](#), *supra* note 57 (RBA Tab 2).

<sup>63</sup> A charitable trust is an exception to the requirement for a specific beneficiary in an equitable trust: [Waters](#), *supra* note 44 at 664 (RBA, Tab 4); [Schmidt](#), *supra* note 56 at 640-641.

<sup>64</sup> [BCCA Reasons](#) (AR, Vol I, Tab 2).

<sup>65</sup> [BCSC Reasons at paras 8, 132](#) (AR, Vol I, Tab 1); [BCCA Reasons at para 109](#) (AR, Vol I, Tab 2).

<sup>66</sup> [Housen](#), *supra* note 30 at para 37.

<sup>67</sup> [Quirt v the Queen \(1891\)](#), 19 SCR 510 [[Quirt](#)]; [Smith v. Rur. Mun. of Vermilion Hills, 1916 CanLII 420 \(UK JCPC\) \[Smith\]](#); [Calgary and Edmonton Land Co. v Alberta \(Attorney-General\) \(1911\)](#), 45 SCR 170 [[Calgary](#)].

<sup>68</sup> [PSPPA](#).

<sup>69</sup> [Quirt](#), *supra* note 67; [Smith](#), *supra* note 67; [Calgary](#), *supra* note 67.

57. Canada mischaracterizes these cases. They simply stand for the proposition that, if a third party (not the Crown or its agent) has a clear interest in property, that interest can be taxed, notwithstanding that the Crown has a bare legal interest or other remainder interest in the property. These cases say that a property interest clearly held by someone other than the Crown is not protected by section 125 of the *Constitution Act, 1867*. For this reason, the Court of Appeal for British Columbia properly held these cases to be inapplicable since, with respect to the portfolio assets, there is no person other than bcIMC who has a property interest or any ownership interest in the assets.<sup>70</sup>
58. The courts do not look at broad questions of economic benefit or impact to determine the applicability of section 125. It is the legal incidence of the tax that matters.<sup>71</sup> If it is the Crown's interest in property, legal or beneficial, that will be taxed, section 125 applies.<sup>72</sup>
59. The assets belong to bcIMC, a Crown agent, and do not belong, in law or equity, to anyone else. They are not liable to taxation under section 125 of the *Constitution Act, 1867*.
60. The provisions of the ETA that deem a trust to be a person cannot be used to defeat the constitutional immunity enshrined in section 125. Even if they can be considered to apply to the Crown, they should not be interpreted so as to impose tax on property belonging to a Crown agent. If a statute can be read in a way that is constitutional and in a way that is not, the constitutional interpretation is to be preferred. It is presumed that Parliament intended to enact legislation that is constitutional.<sup>73</sup>
61. The fact that Part IX of the ETA is drafted to exclude the Province from taxation is consistent with the constitutional immunity provided by section 125 of the *Constitution Act, 1867* and is

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<sup>70</sup> [BCSC Reasons, paras 8, 132](#) (AR, Vol I, Tab 1); [BCCA Reasons, paras 107-109](#) (AR, Vol I, Tab 2).

<sup>71</sup> Hogg, *Constitutional Law*, *supra* note 53 at 31-13(a) FN 172 (RBA, Tab 7); [City of Vancouver v A.G. Canada, \[1944\] S.C.R. 23 at 33](#); *City of Halifax v Fairbanks*, [1928] A.C. 117 (JCPC) at para 4 (RBA Tab 1).

<sup>72</sup> [Quirt](#), *supra* note 67, cited by the Court of Appeal for British Columbia: [BCCA Reasons, paras 105-106](#), (AR, Vol I, Tab 2).

<sup>73</sup> *Sullivan*, *supra* note 39 at 524 (RBA, Tab 9).

consistent with the presumption that legislatures enact laws that are constitutionally compliant.<sup>74</sup>

62. The logical result of Canada's argument that bcIMC's holding property in trust defeats the section 125 immunity from taxation is that property held by the provincial Crown itself in trust would be subject to taxation. The Province and its agents hold a substantial amount of property in trust. If Canada's argument prevails, the constitutional protection from taxation provided in section 125 could be significantly eroded, allowing one level of government to tax away the fruits of the property of another.<sup>75</sup>

#### **D. The British Columbia Supreme Court had jurisdiction to determine the Immunity Claim**

63. The British Columbia Supreme Court is a superior court of general jurisdiction. As a court of general jurisdiction, the British Columbia Supreme Court has jurisdiction in all cases, civil and criminal, federal and provincial, arising in British Columbia. The general jurisdictional function of all provincial superior courts preceded Confederation and was expressly continued "as if the Union had not been made".<sup>76</sup>

64. The British Columbia Supreme Court has the jurisdiction to deal with any and every legal matter that arises in British Columbia.<sup>77</sup>

65. Canada's constitution gives Parliament the power to establish certain additional courts, including courts for the better administration of the laws of Canada. It has done so by

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<sup>74</sup> *Sullivan*, *supra* note 39 (RBA, Tab 9).

<sup>75</sup> Affidavit #1 of Stuart Newton ("Newton Affidavit") (AR, Vol X, Tab 25, pp 49 to 51); *Natural Gas Reference*, *supra* note 51.

<sup>76</sup> [Constitution Act, 1867, Preamble](#) and ss [96](#), [129](#) and [146](#); [British Columbia Terms of Union \(reprinted in R.S.C. 1985, App II, No. 10\), Schedule, at para 10](#); [Law and Equity Act, RSBC 1996, c 253](#), ss [1](#), [2](#), [4](#), [7](#), [8](#), [9](#); [Supreme Court Act, RSBC 1996, c 443, s 9](#).

<sup>77</sup> [Canada \(Attorney General\) v Law Society \(British Columbia\)](#), [1982] 2 SCR 307 at 327 [*Law Society*].



enacting the *Federal Courts Act*, which continues the Federal Court and the Federal Court of Appeal, and the *Tax Court of Canada Act*, which continues the Tax Court.<sup>78</sup>

66. The Federal Court, the Federal Court of Appeal, and the Tax Court are courts of the same nature. They are statutory courts and possess only the power and jurisdiction conferred on them by their respective constating statutes.<sup>79</sup>

67. In contrast, the British Columbia Supreme Court has general, plenary jurisdiction. It does not receive its jurisdiction from any statute. Its general jurisdiction is inherent in the nature of the Court itself.<sup>80</sup>

68. The general jurisdiction of provincial superior courts includes the power to superintend over the constitutional validity and applicability of federal legislation. The power to do so is a hallmark of provincial superior courts, including the British Columbia Supreme Court, and cannot be removed by Parliament.<sup>81</sup>

69. While Parliament has the constitutional authority to grant the Tax Court the jurisdiction to consider and interpret the constitution in administering and granting relief under the ETA and other federal tax statutes, in doing so, the general jurisdiction of provincial superior courts to determine the constitutional validity or applicability of federal legislation cannot be diminished or impaired.<sup>82</sup>

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<sup>78</sup> [Constitution Act, 1867, s 101](#); [Federal Courts Act, RSC 1985, c F-7, ss 3, 4](#). [Tax Court of Canada Act, RSC 1985, c T-2, s 3](#).

<sup>79</sup> [Canada \(Attorney General\) v TeleZone Inc., 2010 SCC 62, \[2010\] 3 SCR 585 \[TeleZone\]](#); [Windsor \(City\) v Canadian Transit Co., 2016 SCC 54, \[2016\] 2 SCR 617 at paras 32-33 \[Windsor\]](#).

<sup>80</sup> I. H. Jacob, “The Inherent Jurisdiction of the Court” (1970) 23 *Curr Legal Probs* 23 at 27–28 (RBA, Tab 6); [TeleZone, supra note 79](#) at para 43; [MacMillan Bloedel Ltd. v Simpson, \[1995\] 4 SCR 725](#) at paras 28-33.

<sup>81</sup> [Law Society, supra note 77](#) at 327; [Paul L’Anglais Inc. v Canada \(Conseil canadien des relations du travail\), \[1983\] 1 SCR 147 at 159, 161-162](#).

<sup>82</sup> [Strickland, supra note 31](#) at paras 12 and 64; [Constitution Act, 1867, s 101](#).

70. The provincial superior court and the Federal Court (including the Tax Court of Canada) have concurrent jurisdiction to hear challenges to the constitutional validity of federal legislation.<sup>83</sup>

**E. The Chambers Judge Appropriately Exercised His Discretion to Hear bcIMC’s Immunity Claim**

71. Since the British Columbia Supreme Court had jurisdiction to hear bcIMC’s application, its decision to consider bcIMC’s claim was discretionary. This court should not interfere with that exercise of discretion if the chambers judge has given sufficient weight to all relevant considerations.<sup>84</sup>

72. There is no basis to conclude that the chambers judge failed to give appropriate weight to or failed to consider all relevant considerations.

73. bcIMC sought both a declaration of immunity from the application of the ETA and a declaration that the Reciprocal Taxation Agreement (“RTA”) and the Comprehensive Integrated Tax Coordination Agreement (“CITCA”) did not apply to it. The Tax Court of Canada would have had no jurisdiction to consider the application of the agreements.<sup>85</sup>

74. Contrary to what is suggested in paragraphs 90 to 94 of Canada’s factum, the “essential nature” of bcIMC’s claim cannot be characterized only as an attempt to obtain relief from liability under the ETA. bcIMC’s liability under the RTA and the CITCA is a separate issue with respect to which the Tax Court could not have ruled.

75. As part of the proceeding in the British Columbia Supreme Court, bcIMC filed a notice of constitutional question giving notice that its petition sought a declaration based on section 125 of the *Constitution Act, 1867*, and that it intended “to question, based on its constitutional immunity from federal taxation, the applicability of the [ETA] to its pooled investment portfolios and the assets it holds in those portfolios.” The constitutional question

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<sup>83</sup> [Strickland, supra note 31](#); [Reza, supra note 31](#) at 405.

<sup>84</sup> [Reza, supra note 31](#) at 404.

<sup>85</sup> [BCCA Reasons at para 67](#) (AR, Vol I, Tab 2).

of whether the ETA is constitutionally inapplicable to bcIMC was squarely before the chambers judge.<sup>86</sup>

76. Section 12(1) of the *Tax Court of Canada Act* provides that the Tax Court “has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under” the ETA and other specified statutes. The relief sought by bcIMC in its petition, however, was not relief under the ETA, but relief under the *Constitution Act, 1867* and, in particular, section 125 thereof. As this Court said in the [Windsor](#) case:

A party seeking relief under constitutional law is not seeking relief “under an Act of Parliament or otherwise” within the meaning of s. 23 [of the *Federal Courts Act*]. I agree with the City and the interveners, including the Attorney General of Canada, that constitutional law cannot be said to be federal law for the purposes of s. 23 (see also, e.g., P. W. Hogg, *Constitutional Law of Canada* (5th ed. Supp.), at p 7-27; B. J. Saunders, D. J. Rennie and G. Garton, *Federal Courts Practice 2014*, (2013) at p 9).<sup>87</sup>

77. Although [Windsor](#) was decided in the context of section 23 of the *Federal Courts Act*, the analysis and the conclusion are the same when the context is section 12(1) of the *Tax Court of Canada Act*.

78. In this case, the application to the British Columbia Supreme Court raised distinct and separate justiciable issues from those that would or could be addressed by the Tax Court. There was a basis upon which the chambers judge could conclude that the questions before him were related and inter-dependent and that non-tax issues might predominate in the litigation. In such a case, it was appropriate for the chambers judge to consider bcIMC’s application.<sup>88</sup>

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<sup>86</sup> Notice of Constitutional Question filed by bcIMC in British Columbia Supreme Court (Record of the Respondent, Her Majesty the Queen in right of the Province of British Columbia, Vol 1, Tab 1, p 1); [Constitutional Question Act, RSBC 1996, c 68, s 8](#).

<sup>87</sup> [Windsor, supra note 79 at para 59; Tax Court of Canada Act, supra note 78, s 12\(1\)](#).

<sup>88</sup> [BCCA Reasons, para 55](#) (AR, Vol I, Tab 2), citing [Leroux v Canada Revenue Agency, 2012 BCCA 63](#) at paras 20 and 23-24 and [Stewart v Clark, 2013 BCCA 359 at para 77; BCSC Reasons, paras 98-99](#) (AR, Vol I, Tab 1)

79. Further, when bcIMC first brought its application, no reassessment had been issued and the jurisdiction of the Tax Court had not been engaged. By the time the reassessment was issued in October 30, 2015, there had already been extensive preparation and numerous court appearances. The matter was well developed and advanced in the British Columbia Supreme Court. Judicial economy and fairness favoured the chambers judge's decision to hear bcIMC's application.<sup>89</sup>
80. At paragraphs 86 and 87 of its factum, Canada relies on the decision of this court in [Addison & Leyen Ltd.](#)<sup>90</sup> for the proposition that the courts should be cautious in permitting proceedings outside of the tax appeal process. This court noted the value of having a specialized court consider tax appeals. There is nothing in the record to suggest that the chambers judge acted incautiously in deciding to hear bcIMC's claim. In any event, as the Court of Appeal for British Columbia notes,<sup>91</sup> the questions before the chambers judge – whether bcIMC enjoys constitutional or statutory immunity – are not ones that so clearly call upon the particular expertise of the Tax Court as do assessment cases generally. The British Columbia Supreme Court decided to take jurisdiction and determine all of bcIMC's claims for relief in one proceeding. In doing so, there is nothing to indicate that the chambers judge failed to consider or give appropriate weight to relevant considerations. The chambers judge was entitled to exercise this discretion and did so on appropriate grounds. There is no reason to interfere with this exercise of discretion.

#### **PART IV – SUBMISSIONS ON COSTS**

81. The Province submits that costs should be awarded in the cause, at all levels of court. The Province requests its costs in this Court and in the courts below.

#### **PART V – ORDER SOUGHT**

82. The Province asks that Canada's appeal be dismissed. The judgment of the Court of Appeal for British Columbia should stand.

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<sup>89</sup> [BCCA Reasons, para 67](#) (AR, Vol I, Tab 2); [BCSC Reasons, paras 27-34](#) (AR, Vol I, Tab 1).

<sup>90</sup> [Canada v Addison & Leyen Ltd., 2007 SCC 33, \[2007\] 2 SCR 793.](#)

<sup>91</sup> [BCCA Reasons, para 67](#) (AR, Vol I, Tab 2).

**PART VI – SUBMISSIONS ON THE IMPACT OF ANY SEALING OR  
CONFIDENTIALITY ORDER**

83. Not Applicable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of March, 2019.

Per:



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Somtula Kirkpatrick

David R. Poore

*For*

## PART VII – TABLE OF AUTHORITIES

## CASELAW

No.	Authority	Paragraph Reference
1.	<a href="#"><i>Alberta Government Telephones v Canada (Canadian Radio-television and Telecommunications Commission)</i>, [1989] 2 SCR 225.</a>	27, 30, 33, 41
2.	<a href="#"><i>Brant v R</i>, [1998] GSTC 101 (FCTD).</a>	32, 33
3.	<a href="#"><i>British Columbia Investment Management Corporation v Canada (Attorney General)</i>, 2016 BCSC 1803.</a>	6, 7, 8, 9, 11, 12, 16, 19, 54, 57, 79, 80
4.	<a href="#"><i>British Columbia Investment Management Corporation v Canada (Attorney General)</i>, 2018 BCCA 47.</a>	2, 3, 4, 6, 7, 8, 9, 11, 12, 15, 16, 19, 22, 36, 39, 44, 49, 53, 54, 57, 58, 74, 79, 80, 81
5.	<a href="#"><i>Buschau v. Rogers Communications Inc.</i>, 2006 SCC 28, [2006] 1 SCR 973.</a>	49, 53
6.	<a href="#"><i>Calgary and Edmonton Land Co. v Alberta (Attorney-General)</i> (1911), 45 SCR 170.</a>	55, 56
7.	<a href="#"><i>Canada (Attorney General) v Law Society (British Columbia)</i>, [1982] 2 SCR 307.</a>	64, 68
8.	<a href="#"><i>Canada (Attorney General) v TeleZone Inc.</i>, [2010] SCC 62, [2010] 3 SCR 585.</a>	66, 67
9.	<a href="#"><i>Canada v Addison &amp; Leyen Ltd.</i>, 2007 SCC 33, [2007] 2 SCR 793.</a>	80
10.	<a href="#"><i>Canada v Insurance Corp. of British Columbia</i>, 2002 FCA 104.</a>	28
11.	<a href="#"><i>Canadian Broadcasting Corp. v The Queen</i>, [1983] 1 SCR 339.</a>	27
12.	<a href="#"><i>Canadian Broadcasting Corporation v Nova Scotia Review Board</i>, 1991 CanLII 2560 (NSCA).</a>	41
13.	<i>City of Halifax v Fairbanks</i> , [1928] AC 117 (JCPC).	58
14.	<a href="#"><i>City of Vancouver v AG Canada</i>, [1944] SCR 23.</a>	58

No.	Authority	Paragraph Reference
15.	<a href="#"><i>Crawford v AGBC</i>, [1960] SCR 346.</a>	17, 36
16.	<a href="#"><i>Friends of the Oldman River Society v Canada (Minister of Transport)</i> [1992] 1 SCR 3.</a>	32, 33
17.	<a href="#"><i>Housen v Nikolaisen</i>, 2002 SCC 33, [2002] 2 SCR 35.</a>	21, 54
18.	<i>Lehndorff General Partner Ltd., Re</i> , (1993), 17 CBR (3d) 24, 1993 CarswellOnt 183 (ONSCJ Gen Div) (cited to Carswell).	50, 53
19.	<a href="#"><i>Leroux v Canada Revenue Agency</i>, 2012 BCCA 63.</a>	78
20.	<a href="#"><i>MacMillan Bloedel Ltd. v Simpson</i>, [1995] 4 SCR 725.</a>	67
21.	<a href="#"><i>Nova Scotia Power Inc. v R</i>, 2004 SCC 51, [2004] 3 SCR 53.</a>	27, 30
22.	<a href="#"><i>Paul L'Anglais Inc. v Canada (Conseil canadien des relations du travail)</i>, [1983] 1 SCR 147.</a>	68
23.	<a href="#"><i>Quirt v the Queen</i> (1891), 19 SCR 510.</a>	55, 58
24.	<a href="#"><i>R v Eldorado Nuclear Ltd.</i>, [1983] 2 SCR 551.</a>	27
25.	<a href="#"><i>Reference Re: Excise Tax Act (Canada)</i>, [1992] 2 SCR 445.</a>	32
26.	<a href="#"><i>Reference re Exported Natural Gas Tax</i>, [1982] 1 SCR 1004.</a>	44, 62
27.	<a href="#"><i>Reza v Canada</i>, [1994] 2 SCR 394.</a>	22, 70, 71
28.	<a href="#"><i>Schmidt v Air Products Canada Ltd.</i>, [1994] 2 SCR 611.</a>	49, 53
29.	<a href="#"><i>Smith v. Rur. Mun. of Vermilion Hills</i>, 1916 CanLII 420 (UK JCPC).</a>	55, 56
30.	<a href="#"><i>Stewart v Clark</i>, 2013 BCCA 359.</a>	78
31.	<a href="#"><i>Strickland v Canada (Attorney General)</i>, 2015 SCC 37, [2015] 2 SCR 713.</a>	22, 69, 70
32.	<a href="#"><i>Westbank First Nation v British Columbia Hydro and Power</i></a>	48

No.	Authority	Paragraph Reference
	<a href="#">Authority</a> , [1999] 3 SCR 134.	
33.	<a href="#">Windsor (City) v Canadian Transit Co.</a> , 2016 SCC 54, [2016] 2 SCR 617	66, 76, 77

## SECONDARY SOURCES

No.	Source	Paragraph Reference
1.	Dennis Pavlich, <i>Trusts in Common-Law Canada</i> (Markham: LexisNexis Canada Inc., 2014), pp 2-4.	35
2.	Donovan W.M. Waters, ed, <i>Waters' Law of Trusts in Canada</i> , 4 <sup>th</sup> ed (Toronto: Thomson Reuters Canada Limited, 2012) at 3, 6	35, 53
3.	Eileen E. Gillese, Court of Appeal for Ontario, <i>The Law of Trusts</i> , 3 <sup>rd</sup> ed (Toronto: Irwin Law Inc., 2014), pp 10-11.	35
4.	I. H. Jacob, "The Inherent Jurisdiction of the Court" (1970) 23 <i>Curr Legal Probs</i> 23.	67
5.	Peter W. Hogg, <i>Constitutional Law of Canada</i> , 5 <sup>th</sup> ed. <i>Supplemented</i> (Toronto: Thomson Reuters, 2016), pp 31-31 -31-36.	45, 58
6.	Peter W. Hogg, Patrick J. Monahan & Wade K. Wright, <i>Liability of the Crown</i> , 4 <sup>th</sup> ed (Toronto: Thomson Reuters Limited, 2011), pp 464-465.	27
7.	Ruth Sullivan, <i>Sullivan on the Construction of Statutes</i> , 6th ed (Markham: LexisNexisCanada Inc., 2014), pp 523-526, 531-533, 857.	29, 60, 61

## STATUTES, RULES, ETC.

No.	Statute, Rule, Etc.	Section, Rule, Etc.
1.	<a href="#">British Columbia Terms of Union</a> (reprinted in R.S.C. 1985, App. II, No. 10)	(English) <a href="#">Schedule</a> (French) <a href="#">Schedule</a>
2.	<a href="#">Constitution Act, 1867, Preamble</a>	(English) <a href="#">Preamble</a> (French) <a href="#">Preamble</a>



No.	Statute, Rule, Etc.	Section, Rule, Etc.
3.	<a href="#"><i>Constitution Act, 1867 (UK), 30 &amp; 31 Victoria, c. 3</i></a>	(English) <a href="#">s 96</a> (French) <a href="#">s 96</a>  (English) <a href="#">s 101</a> (French) <a href="#">s 101</a>  (English) <a href="#">s 125</a> (French) <a href="#">s 125</a>  (English) <a href="#">s 129</a> (French) <a href="#">s 129</a>  (English) <a href="#">s 146</a> (French) <a href="#">s 146</a>
4.	<a href="#"><i>Constitutional Question Act, RSBC 1996, c 68</i></a>	<a href="#">s 8</a>
5.	<a href="#"><i>Excise Tax Act, RSC 1985, c E-15</i></a>	(English) <a href="#">s 122(b)</a> (French) <a href="#">s 122(b)</a>  (English) <a href="#">s 123</a> “ <a href="#">person</a> ” (French) <a href="#">s 123</a> “ <a href="#">personne</a> ”  (English) <a href="#">s 123</a> “ <a href="#">recipient</a> ” (French) <a href="#">s 123</a> “ <a href="#">acquéreur</a> ”  (English) <a href="#">s 123</a> “ <a href="#">supplier</a> ” (French)  (English) <a href="#">s 123</a> “ <a href="#">supply</a> ” (French) <a href="#">s 123</a> “ <a href="#">fourniture</a> ”  (English) <a href="#">s 165(1)</a> (French) <a href="#">s 165(1)</a>  (English) <a href="#">s 165(2)</a> (French) <a href="#">s 165(2)</a>  (English) <a href="#">s 221(1)</a> (French) <a href="#">s 221(1)</a>  (English) <a href="#">s 267.1(5)</a> (French) <a href="#">s 267.1(5)</a>

No.	Statute, Rule, Etc.	Section, Rule, Etc.
6.	<a href="#"><i>Federal Courts Act</i>, RSC 1985, c F-7</a>	(English) <a href="#">s 3</a> (French) <a href="#">s 3</a>  (English) <a href="#">s 4</a> (French) <a href="#">s 4</a>  (English) <a href="#">s 23</a> (French) <a href="#">s 23</a>
7.	<a href="#"><i>Financial Administration Act</i>, RSBC 1996, c 138 (“FAA”)</a> , “pension fund” and “trust fund”	<a href="#">s 1</a>
8.	<a href="#"><i>Financial Administration Act</i></a> , as it read April 1, 1999, RSBC 1996, c 138	<a href="#">Part 1</a> and <a href="#">Part 5</a>
9.	<a href="#"><i>Interpretation Act</i>, RSC 1985, c I-21</a>	(English) <a href="#">s 17</a> (French) <a href="#">s 17</a>
10.	<a href="#"><i>Law and Equity Act</i>, RSBC 1996, c 253</a>	<a href="#">s 1, s 2, s 4, s 7, s 8, s 9</a>
11.	<a href="#"><i>Pension Benefit Standards Act</i>, SBC 1991, c 15</a>	<a href="#">s 45</a>
12.	<a href="#"><i>Pension Benefit Standards Act</i>, SBC 2012, c 30</a>	<a href="#">s 107</a>
13.	<a href="#"><i>Pension Benefit Standards Regulations</i>, BC Reg 433/93</a>	<a href="#">s 3(10), Schedule 1</a>
14.	<a href="#"><i>Pension Benefits Standards Regulation</i>, BC Reg 71/2015</a>	<a href="#">s 11</a>
15.	<a href="#"><i>Pooled Investment Portfolios Regulation</i></a> , BC Reg 447/99	<a href="#">s 1, s 2, s 3, s 4(1), s 4(2), s 4(3), s 4(4), s 5, s 6, s 7, s 8, s 11 s 14</a>
16.	<a href="#"><i>Public Sector Pension Plans Act</i>, SBC 1999, c 44</a>	<a href="#">s 1, s 2 s 3, s 5, s 16, s 16(1), s 16(3), s 16(5), s 17, s 18, s 18(4), s 18.1, s 24</a>
17.	<a href="#"><i>Supreme Court Act</i>, RSBC 1996, c 443</a>	<a href="#">s 9</a>

No.	Statute, Rule, Etc.	Section, Rule, Etc.
18.	<a href="#"><i>Tax Court of Canada Act, RSC 1985, c T-2</i></a>	(English) <a href="#">s 3</a> (French) <a href="#">s 3</a>  (English) <a href="#">s 12(1)</a> (French) <a href="#">s 12(1)</a>

## PART VIII – STATUTES, REGULATIONS, RULES, ETC.

<i>British Columbia Terms of Union, reprinted in R.S.C. 1985, App. II, No. 10 para. 10</i>	
<p><b><u>Schedule</u></b></p> <p>10. The provisions of the “<a href="#">British North America Act, 1867</a>” (<i>Constitution Act, 1867</i>) shall (except those parts thereof which are in terms made, or by reasonable intendment may be held to be specially applicable to and only affect one and not the whole of the Provinces now comprising the Dominion, and except so far as the same may be varied by this Minute) be applicable to British Columbia in the same way and to the like extent as they apply to the other Provinces of the Dominion, and as if the colony of British Columbia had been one of the Provinces originally united by the said Act</p>	<p><b><u>Cédule</u></b></p> <p>10. Les dispositions de « l’Acte de l’Amérique du Nord britannique, 1867 » (<i>Loi constitutionnelle de 1867</i>), devront être (sauf les parties de cet Acte qui sont, en termes formels, ou, par interprétation, pourraient être réputées spécialement applicables à une seule et non à la totalité des provinces constituant actuellement la Confédération, et sauf en tant qu’elles peuvent être modifiées par la présente résolution), applicables à la Colombie Britannique, de la même manière et au même degré qu’elles s’appliquent aux autres provinces de la Puissance, et comme si la colonie de la Colombie Britannique eût été, dès l’origine, l’une des provinces confédérées sous l’autorité de l’Acte précité.</p>

<i>The Constitution Act, 1867 (UK), 30 &amp; 31 Victoria, c 3, Preamble</i>	
<p><b><u>Preamble</u></b></p> <p>Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:</p> <p>And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:</p> <p>And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:</p> <p>And whereas it is expedient that Provision be made for the eventual Admission into the</p>	<p><b><u>Préambule</u></b></p> <p>Considérant que les provinces du Canada, de la Nouvelle-Écosse et du Nouveau-Brunswick ont exprimé le désir de contracter une Union Fédérale pour ne former qu'une seule et même Puissance (<i>Dominion</i>) sous la couronne du Royaume-Uni de la Grande-Bretagne et d'Irlande, avec une constitution reposant sur les mêmes principes que celle du Royaume-Uni:</p> <p>Considérant de plus qu'une telle union aurait l'effet de développer la prospérité des provinces et de favoriser les intérêts de l'Empire Britannique:</p> <p>Considérant de plus qu'il est opportun, concurremment avec l'établissement de l'union par autorité du parlement, non seulement de décréter la constitution du pouvoir législatif de la Puissance, mais aussi de définir la nature de son gouvernement exécutif:</p>

<i>The Constitution Act, 1867 (UK), 30 &amp; 31 Victoria, c 3, Preamble</i>	
Union of other Parts of British North America:	Considérant de plus qu'il est nécessaire de pourvoir à l'admission éventuelle d'autres parties de l'Amérique du Nord britannique dans l'union:

<i>The Constitution Act, 1867 (UK), 30 &amp; 31 Victoria, c 3, s. 96</i>	
<p><b>Appointment of Judges</b></p> <p><a href="#">96.</a> The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.</p>	<p><b>Nomination des juges</b></p> <p><a href="#">96.</a> Le gouverneur-général nommera les juges des cours supérieures, de district et de comté dans chaque province, sauf ceux des cours de vérification dans la Nouvelle-Écosse et le Nouveau-Brunswick.</p>

<i>The Constitution Act, 1867 (UK), 30 &amp; 31 Victoria, c 3, s. 101</i>	
<p><b>General Court of Appeal, etc.</b></p> <p><a href="#">101.</a> The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.</p>	<p><b>Cour générale d'appel, etc.</b></p> <p><a href="#">101.</a> Le parlement du Canada pourra, nonobstant toute disposition contraire énoncée dans la présente loi, lorsque l'occasion le requerra, adopter des mesures à l'effet de créer, maintenir et organiser une cour générale d'appel pour le Canada, et établir des tribunaux additionnels pour la meilleure administration des lois du Canada.</p>

<i>The Constitution Act, 1867 (UK), 30 &amp; 31 Victoria, c 3, s. 125</i>	
<p><b>Exemption of Public Lands, etc.</b></p> <p><a href="#">125.</a> No Lands or Property belonging to Canada or any Province shall be liable to Taxation.</p>	<p><b>Terres publiques, etc., exemptées des taxes</b></p> <p><a href="#">125.</a> Nulle terre ou propriété appartenant au Canada ou à aucune province en particulier ne sera sujette à la taxation.</p>

*The Constitution Act, 1867 (UK), 30 & 31 Victoria, c 3, s. 129*

**Continuance of existing Laws, Courts, Officers, etc.**

**129.** Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act.

**Les lois, tribunaux et fonctionnaires actuels continueront d'exister, etc.**

**129.** Sauf toute disposition contraire prescrite par la présente loi, toutes les lois en force en Canada, dans la Nouvelle-Écosse ou le Nouveau-Brunswick, lors de l'union, tous les tribunaux de juridiction civile et criminelle, toutes les commissions, pouvoirs et autorités ayant force légale, et tous les officiers judiciaires, administratifs et ministériels, en existence dans ces provinces à l'époque de l'union, continueront d'exister dans les provinces d'Ontario, de Québec, de la Nouvelle-Écosse et du Nouveau-Brunswick respectivement, comme si l'union n'avait pas eu lieu; mais ils pourront, néanmoins (sauf les cas prévus par des lois du parlement de la Grande-Bretagne ou du parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande), être révoqués, abolis ou modifiés par le parlement du Canada, ou par la législature de la province respective, conformément à l'autorité du parlement ou de cette législature en vertu de la présente loi.

*The Constitution Act, 1867 (UK), 30 & 31 Victoria, c 3, s. 146*

**Power to admit Newfoundland, etc., into the Union**

**146.** It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen

**Pouvoir d'admettre Terre-Neuve, etc.**

**146.** Il sera loisible à la Reine, de l'avis du très-honorable Conseil Privé de Sa Majesté, sur la présentation d'adresses de la part des chambres du Parlement du Canada, et des chambres des législatures respectives des colonies ou provinces de Terre-Neuve, de l'Île du Prince Édouard et de la Colombie Britannique, d'admettre ces colonies ou provinces, ou aucune d'elles dans l'union, et, sur la présentation d'adresses de la part des chambres du parlement du Canada, d'admettre la Terre de Rupert et le Territoire du Nord-Ouest, ou l'une ou l'autre de ces possessions, dans l'union, aux termes et conditions, dans chaque cas, qui seront exprimés dans les adresses et que la

***The Constitution Act, 1867 (UK), 30 & 31 Victoria, c 3, s. 146***

thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

Reine jugera convenable d'approuver, conformément à la présente; les dispositions de tous ordres en conseil rendus à cet égard, auront le même effet que si elles avaient été décrétées par le parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande

***Constitutional Question Act, [RSBC 1996, c 68](#)***

**Notice of questions of validity or applicability**

**8.** (1) In this section:

"**constitutional remedy**" means a remedy under section 24 (1) of the *Canadian Charter of Rights and Freedoms* other than a remedy consisting of the exclusion of evidence or consequential on such exclusion;

"**law**" includes an enactment and an enactment within the meaning of the *Interpretation Act* (Canada).

(2) If in a cause, matter or other proceeding

- (a) the constitutional validity or constitutional applicability of any law is challenged, or
- (b) an application is made for a constitutional remedy,

the law must not be held to be invalid or inapplicable and the remedy must not be granted until after notice of the challenge or application has been served on the Attorney General of Canada and the Attorney General of British Columbia in accordance with this section.

(3) If in a cause, matter or other proceeding the validity or applicability of a regulation is challenged on grounds other than the grounds referred to in subsection (2) (a), the regulation must not be held to be invalid or inapplicable until after notice of the challenge has been served on the Attorney General of British Columbia in accordance with this section.

(4) The notice must

- (a) be headed in the cause, matter or other proceeding,
- (b) state
  - (i) the law in question, or
  - (ii) the right or freedom alleged to be infringed or denied,
- (c) state the day on which the challenge or application under subsection (2) or (3) is to be argued, and
- (d) give particulars necessary to show the point to be argued.

(5) The notice must be served at least 14 days before the day of argument unless the court

**Constitutional Question Act, [RSBC 1996, c 68](#)**

authorizes a shorter notice.

- (6) If in a cause, matter or other proceeding to which this section applies the Attorney General of British Columbia appears, the Attorney General is a party and, for the purpose of an appeal from an adjudication respecting the validity or applicability of a law, or respecting entitlement to a constitutional remedy, has the same rights as any other party.
- (7) If in a cause, matter or other proceeding to which this section applies the Attorney General of Canada appears, the Attorney General of Canada is a party and, for the purpose of an appeal from an adjudication respecting the validity or applicability of a law, or respecting entitlement to a constitutional remedy, has the same rights as any other party.

**Excise Tax Act (Canada), [1992] 2 SCR 445, s. 122(b) and s.123**

**Part IX Goods and Services Tax**

**Application**

**122.** This Part is binding

- (a) on Her Majesty in right of Canada;
- and
- (b) on Her Majesty in right of a province in respect of obligations as a supplier to collect and to remit tax in respect of taxable supplies made by Her Majesty in right of the province.
- (c) [Repealed.]

**DIVISION I - INTERPRETATION**

**Definitions**

**123 (1)** In section 121, this Part and Schedules V to X,

“person” means an individual, a partnership, a corporation, the estate of a deceased individual, a trust, or a body that is a society, union, club, association, commission or other organization

**Partie IX Taxe sur les produits et services**

**Sa Majesté**

**122.** La présente partie lie:

- a) Sa Majesté du chef du Canada;
- b) Sa Majesté due chef d’une province en ce qui concerne une obligation à titre de fournisseur de percevoir et de verser la taxe relative aux fournitures taxables qu’elle effectue.
- c) [Abrogé, 1993, ch. 27, art. 9]

**SECTION I - Définitions et interprétation**

**Définitions**

**123 (1)** Les définitions qui suivent s’appliquent à l’article 121, à la présente partie et aux annexes V à X.

“person” Particulier, société de personnes, personne morale, fiducie ou succession, ainsi que l’organisme qui est un syndicat, un club, une association, une commission ou autre organisation; ces notions sont visées dans des formulations générales, impersonnelles ou



***Excise Tax Act (Canada), [1992] 2 SCR 445, s. 122(b) and s.123***

<p>of any kind; (<i>personne</i>)</p> <p>“recipient” of a supply of property or a service means</p> <p>(a) where consideration for the supply is payable under an agreement for the supply, the person who is liable under the agreement to pay that consideration,</p> <p>(b) where paragraph (a) does not apply and consideration is payable for the supply, the person who is liable to pay that consideration, and</p> <p>(c) where no consideration is payable for the supply,</p> <p>(i) in the case of a supply of property by way of sale, the person to whom the property is delivered or made available,</p> <p>(ii) in the case of a supply of property otherwise than by way of sale, the person to whom possession or use of the property is given or made available, and</p> <p>(iii) in the case of a supply of a service, the person to whom the service is rendered,</p> <p>and any reference to a person to whom a supply is made shall be read as a reference to the recipient of the supply; (<i>acquéreur</i>)</p> <p>“supplier”, in respect of a supply, means the person making the supply; (<i>Version anglaise seulement</i>)</p> <p>“supply” means, subject to sections 133 and 134, the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition; (<i>fourniture</i>)</p>	<p>comportant des pronoms ou adjectifs indéfinis. (person)</p> <p><i>acquéreur</i></p> <p>a) Personne qui est tenue, aux termes d’une convention portant sur une fourniture, de payer la contrepartie de la fourniture;</p> <p>b) personne qui est tenue, autrement qu’aux termes d’une convention portant sur une fourniture, de payer la contrepartie de la fourniture;</p> <p>c) si nulle contrepartie n’est payable pour une fourniture :</p> <p>(i) personne à qui un bien, fourni par vente, est livré ou à la disposition de qui le bien est mis,</p> <p>(ii) personne à qui la possession ou l’utilisation d’un bien, fourni autrement que par vente, est transférée ou à la disposition de qui le bien est mis,</p> <p>(iii) personne à qui un service est rendu.</p> <p>Par ailleurs, la mention d’une personne au profit de laquelle une fourniture est effectuée vaut mention de l’acquéreur de la fourniture. (<i>recipient</i>)</p> <p>« <i>fourniture</i> » Sous réserve des articles 133 et 134, livraison de biens ou prestation de services, notamment par vente, transfert, troc, échange, louage, licence, donation ou aliénation. (<i>supply</i>)</p>
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<i>Excise Tax Act (Canada), [1992] 2 SCR 445, s. 165</i>	
<p><b>Imposition of goods and services tax</b></p> <p><b>165(1).</b> Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 5% on the value of the consideration for the supply</p> <p><b>Tax in participating province</b></p> <p>(2) Subject to this Part, every recipient of a taxable supply made in a participating province shall pay to Her Majesty in right of Canada, in addition to the tax imposed by subsection (1), tax in respect of the supply calculated at the tax rate for that province on the value of the consideration for the supply.</p>	<p><b>Taux de la taxe sur les produits et services</b></p> <p><b>165(1).</b> Sous réserve des autres dispositions de la présente partie, l'acquéreur d'une fourniture taxable effectuée au Canada est tenu de payer à Sa Majesté du chef du Canada une taxe calculée au taux de 5 % sur la valeur de la contrepartie de la fourniture.</p> <p><b>Taux de la taxe dans les provinces participantes</b></p> <p>(2) Sous réserve des autres dispositions de la présente partie, l'acquéreur d'une fourniture taxable effectuée dans une province participante est tenu de payer à Sa Majesté du chef du Canada, outre la taxe imposée par le paragraphe (1), une taxe calculée au taux de taxe applicable à la province sur la valeur de la contrepartie de la fourniture.</p>

<i>Excise Tax Act (Canada), [1992] 2 SCR 445, s. 221(1)</i>	
<p><b>Collection of tax</b></p> <p><b>221(1)</b> Every person who makes a taxable supply shall, as agent of Her Majesty in right of Canada, collect the tax under Division II payable by the recipient in respect of the supply.</p>	<p><b>Perception</b></p> <p><b>221(1)</b> La personne qui effectue une fourniture taxable doit, à titre de mandataire de Sa Majesté du chef du Canada, percevoir la taxe payable par l'acquéreur en vertu de la section II.</p>

<i>Excise Tax Act (Canada), [1992] 2 SCR 445, s. 267.1(5)</i>	
<p><b>Activities of a trustee</b></p> <p><b>267.1(5)</b> For the purposes of this Part, where a person acts as trustee of a trust,</p> <ul style="list-style-type: none"> <li>a) anything done by the person in the person's capacity as trustee of the trust is deemed to have been done by the trust and not by the person; and</li> <li>b) notwithstanding paragraph (a), where the person is not an officer of the trust, the</li> </ul>	<p><b>Activités du fiduciaire</b></p> <p><b>267.1(5)</b> Les présomptions suivantes s'appliquent dans le cadre de la présente partie lorsqu'une personne agit à titre de fiduciaire d'une fiducie:</p> <ul style="list-style-type: none"> <li>a) tout acte qu'elle accomplit à ce titre est réputé accompli par la fiducie et non par elle;</li> <li>b) malgré l'alinéa a), si elle n'est pas un cadre de la fiducie, elle est réputée fournir à celle-ci</li> </ul>

<i>Excise Tax Act (Canada), [1992] 2 SCR 445, s. 267.1(5)</i>	
<p>person is deemed to supply a service to the trust of acting as a trustee of the trust and any amount to which the person is entitled for acting in that capacity that is included in computing, for the purposes of the Income Tax Act, the person's income or, where the person is an individual, the person's income from a business, is deemed to be consideration for that supply.</p>	<p>un service de fiduciaire et tout montant auquel elle a droit à ce titre et qui est inclus, pour l'application de la Loi de l'impôt sur le revenu, dans le calcul de son revenu ou, si elle est un particulier, dans le calcul de son revenu tiré d'une entreprise est réputé être un montant au titre de la contrepartie de cette fourniture.</p>

<i>Federal Courts Act, RSC 1985, c F-7, s. 3, s 4 and s. 23</i>	
<p><b>Federal Court – Appeal Division continued</b></p> <p><b>3.</b> The division of the Federal Court of Canada called the Federal Court — Appeal Division is continued under the name “Federal Court of Appeal” in English and “Cour d’appel fédérale” in French. It is continued as an additional court of law, equity and admiralty in and for Canada, for the better administration of the laws of Canada and as a superior court of record having civil and criminal jurisdiction.</p> <p><b>Federal Court – Trial Division continued</b></p> <p><b>4.</b> The division of the Federal Court of Canada called the Federal Court — Trial Division is continued under the name “Federal Court” in English and “Cour fédérale” in French. It is continued as an additional court of law, equity and admiralty in and for Canada, for the better administration of the laws of Canada and as a superior court of record having civil and criminal jurisdiction.</p> <p><b>Bills of exchange and promissory notes — aeronautics and interprovincial works and undertakings</b></p> <p><b>23.</b> Except to the extent that jurisdiction has been otherwise specially assigned, the Federal Court has concurrent original jurisdiction, between subject and subject as well as</p>	<p><b>Maintien : section d’appel</b></p> <p><b>3.</b> La Section d’appel, aussi appelée la Cour d’appel ou la Cour d’appel fédérale, est maintenue et dénommée « Cour d’appel fédérale » en français et « Federal Court of Appeal » en anglais. Elle est maintenue à titre de tribunal additionnel de droit, d’equity et d’amirauté du Canada, propre à améliorer l’application du droit canadien, et continue d’être une cour supérieure d’archives ayant compétence en matière civile et pénale</p> <p><b>Mainien : Section de première instance</b></p> <p><b>4.</b> La section de la Cour fédérale du Canada, appelée la Section de première instance de la Cour fédérale, est maintenue et dénommée « Cour fédérale » en français et « Federal Court » en anglais. Elle est maintenue à titre de tribunal additionnel de droit, d’equity et d’amirauté du Canada, propre à améliorer l’application du droit canadien, et continue d’être une cour supérieure d’archives ayant compétence en matière civile et pénale</p> <p><b>Lettres de change et billets à ordre — Aéronautique et ouvrages interprovinciaux</b></p> <p><b>23.</b> Sauf attribution spéciale de cette compétence par ailleurs, la Cour fédérale a compétence concurrente, en première instance, dans tous les cas — opposant notamment des</p>

<i>Federal Courts Act</i> , RSC 1985, c F-7, s. 3, s 4 and s. 23	
<p>otherwise, in all cases in which a claim for relief is made or a remedy is sought under an Act of Parliament or otherwise in relation to any matter coming within any of the following classes of subjects:</p> <p>(a) bills of exchange and promissory notes, where the Crown is a party to the proceedings;</p> <p>(b) aeronautics; and</p> <p>(c) works and undertakings connecting a province with any other province or extending beyond the limits of a province</p>	<p>administrés — de demande de réparation ou d'autre recours exercé sous le régime d'une loi fédérale ou d'une autre règle de droit en matière:</p> <p>a) de lettres de change et billets à ordre lorsque la Couronne est partie aux procédures;</p> <p>b) d'aéronautique;</p> <p>c) d'ouvrages reliant une province à une autre ou s'étendant au-delà des limites d'une province.</p>

<b>Financial Administration Act, RSBC 1996, c 138</b>
<p><u><a href="#">Definitions</a></u></p> <p>1. “pension fund” means</p> <p>(a) a pension fund established under Part 2 or 3 of the <i>Members' Remuneration and Pensions Act</i> or continued under the <i>Public Sector Pension Plans Act</i>,</p> <p>(b) any pension fund held in trust by the government or a public officer, and</p> <p>(c) any prescribed pension fund that has been established for the benefit of employees of a government body;</p> <p>“trust fund” means</p> <p>(a) money held in trust by the government or a public officer, and</p> <p>(b) pension funds, sinking funds maintained by the government, money received for another person and money paid to the government as a deposit to ensure the doing of any act or thing;</p>

*Financial Administration Act, RSBC 1996, c 138 – Part 1 As at April 1, 1999*

**Part 1 — Definition and Application**

**Definitions**

**1** In this Act:

**"appropriation"** means

- (a) an appropriation in a *Supply Act*,
- (b) a provision in this or another Act that expressly
  - (i) authorizes or directs payment from or out of the consolidated revenue fund,
  - (ii) authorizes payment from or out of a special fund, or
  - (iii) dispenses with the need for another appropriation, or
- (c) an appropriation by special warrant under section 24;

**"banking instrument"** means a cheque, draft, telegraphic or electronic transfer or other similar instrument;

**"chief investment officer"** means the person appointed as the chief investment officer under the *Public Service Act*;

**"consolidated revenue fund"** means the **consolidated** revenue fund referred to in section 12;

**"currency"** means the currency of a country or any other unit of monetary value;

**"designated institution"** means an institution designated under section 79 (1) (d);

**"fiscal year"**, when used to mean the fiscal year of the government, means the period from April 1 in one year to March 31 in the next year;

**"general fund"** means the general fund, referred to in section 12 (2), of the consolidated revenue fund;

**"government"** does not include government corporations;

**"government body" means**

- (a) a government corporation,
- (b) a hospital district board or a board of school trustees,
- (c) a designated educational institution as defined in the *Educational Institution Capital Finance Act*, and
- (d) any other local or Provincial public authority designated by regulation of the Lieutenant Governor in Council;

**"government corporation"** means a corporation

- (a) that is, under an Act, an agent of the government,
- (b) of which the government owns, directly or indirectly, more than 50% of the issued

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voting shares, or

(c) that is controlled by the government, and for the purpose of this definition a corporation is controlled by the government when a majority of the members of the corporation or of its board of directors or board of management consists of either or both of the following:

- (i) persons appointed as members by the Lieutenant Governor in Council, by a minister or by an Act;
- (ii) public officers acting as public officers;

**"minister"** means a member of the Executive Council;

**"Minister of Finance and Corporate Relations"** means the minister who has administration of this Act;

**"ministry"** means

- (a) a ministry of the executive government of British Columbia, or
- (b) a branch of the executive government of British Columbia that is not part of a ministry but is designated by the Lieutenant Governor in Council as a ministry for the purposes of this Act;

**"money received for another person"** means money that is paid to the government or a public officer under an agreement or undertaking, or by way of gift or bequest, and that is to be paid to another person specified in the agreement or undertaking or by the donor of the gift or bequest, but does not include money received as reimbursement for or as a contribution towards expenditures made by the government;

**"pension fund"** means

- (a) a pension fund established under the *Legislative Assembly Allowances and Pension Act*, *Pension (College) Act*, *Pension (Municipal) Act*, *Pension (Public Service) Act* or *Pension (Teachers) Act*,
- (b) any pension fund held in trust by the government or a public officer, and
- (c) any prescribed pension fund that has been established for the benefit of employees of a government body;

**"pooled investment portfolio"** means a portfolio of investments or loans, or both, established under section 43;

**"property"** does not include money or securities;

**"public debt"** means direct debt obligations of the government;

**"public money"** means all money received, held or collected by, for or on behalf of the government and includes

- (a) revenues of the government,
- (b) special funds,

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(c) money borrowed by the government or received through the issue and sale of securities, and

(d) trust funds,

but does not include money received, held or collected by a government corporation other than by way of taxes or licence fees under an enactment;

**"public officer"** includes a minister and a person employed in the public service of British Columbia;

**"public property"** means all property belonging to the government, but does not include property belonging to a government corporation;

**"securities"** means bonds, debentures, deposit certificates, promissory notes, treasury bills or other evidences of indebtedness, shares and stock, and includes any documents commonly known as securities;

**"special account"** means an account in the general fund where the authorization to spend money from the account is located in an Act other than a *Supply Act*;

**"special fund"** means a fund designated as a special fund by the Lieutenant Governor in Council;

**"Treasury Board"** means the Treasury Board continued by this Act;

**"trust funds"** means

(a) money held in trust by the government or a public officer, and

(b) pension funds, sinking funds maintained by the government, money received for another person and money paid to the government as a deposit to ensure the doing of any act or thing;

**"vote"** means an appropriation under a *Supply Act* identified in the main or supplementary estimates as a vote.

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**Part 5 — Assets**

**Section 040 — Investments**

**40** (1) If money of the consolidated revenue fund is not immediately required for payments, it may, on terms and conditions the Minister of Finance and Corporate Relations considers advisable, be invested by that minister in one or more of the following:

(a) securities that are obligations of or guaranteed by Canada, a province or the United States of America;

(b) fixed deposits, notes, certificates and other short term paper of or guaranteed by a savings institution, including swapped deposit transactions in the currency of the

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United States of America;

(c) securities issued by the Municipal Finance Authority of British Columbia;

(d) commercial paper issued by a company incorporated under the laws of Canada or of a province, the securities of which are rated in the highest rating category by at least 2 recognized security rating institutions;

(e) financial options and financial futures, including currency and fixed income instruments.

(2) If an asset that is an investment, other than an investment authorized under subsection (1), is transferred to the general fund from the British Columbia Endowment Fund, the Minister of Finance and Corporate Relations **may** retain that investment in the general fund until it matures or is otherwise realized.

(3) If an investment described in subsection (2) carries with it investment rights or obligations of any kind, the Minister of Finance and Corporate Relations may

(a) exercise those rights or fulfill those obligations,

(b) retain investments in the general fund acquired through the exercise of those rights or the fulfillment of those obligations, and

(c) exercise any further rights or fulfill any further obligations, and retain any further investments in the general fund, that may be acquired or incurred under this subsection.

(4) If money of a trust fund is not immediately required for payments, it may, on terms and conditions the Minister of Finance and Corporate Relations considers advisable, be invested by the person having authority to invest the money,

(a) in any investment permitted under subsection (1), or

(b) subject to regulations of the Lieutenant Governor in Council, in any of the classes of investments permitted under section 15 of the *Trustee Act*.

(5) Despite any other enactment, a person who has authority to invest money of a trust fund, special fund or other fund, other public money or money of a government body or designated institution may, with the agreement of the Minister of Finance and **Corporate** Relations, place the money with that minister, as agent of the person, for investment.

(6) Subject to subsection (8) and excepting money of the general fund, if the Minister of Finance and Corporate Relations has the authority to invest the money of a trust fund, special fund or other fund, other public money or the money of a government body or designated institution, that minister may invest or loan the money and in doing so must exercise the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person.

(7) Money of a trust fund must not be invested or loaned under subsection (6) unless the trust fund is specified by regulation under subsection (8).

(8) The Lieutenant Governor in Council may, on recommendation by the trustees of a trust



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fund, by regulation, specify the trust fund as one to which subsection (6) applies.

(9) Subject to the regulations of the Lieutenant Governor in Council, if the Minister of Finance and Corporate Relations acquires securities through the exercise of an authority under this section or section 43 or 44 to invest the money of a trust fund, special fund or other fund, other public money or the money of a government body or designated institution, that minister may loan the securities if the loan is secured by collateral security satisfactory to that minister.

(10) For the purposes of this section and sections 43 and 44,

(a) if this section, section 43 or 44 or any other enactment gives the authority to make an investment,

(i) the authority is deemed to include the authority to make a loan if the loan is secured by anything in which the money could be invested under this section, and

(ii) provisions in this Act or any other enactment, as they apply to the investment, apply to a loan referred to in subparagraph (i),

(b) if this section, section 43 or 44 or any other enactment gives the authority to make an investment or loan,

(i) the authority is deemed to include the authority to acquire a right or interest in the investment or loan, and

(ii) provisions in this Act or any other enactment, as they apply to the investment or loan, apply to a right or interest referred to in subparagraph (i), and

(c) if this section, section 43 or 44 or any other enactment gives the authority to make an investment, the authority is deemed to include the power to invest in securities that are obligations of or guaranteed by the government.

(11) Nothing in this section requires the disposition of investments or loans that were lawfully made.

**Section 041 — Functions of the chief investment officer**

**41** (1) The functions of the chief investment officer are to perform and exercise the following:

(a) investment powers, duties and functions of the Minister of Finance and Corporate Relations designated by the Lieutenant Governor in Council in respect of trust funds, funds of government bodies and funds of designated institutions;

(b) powers, duties and functions of the Minister of Finance and Corporate Relations that are delegated by that minister in respect of funds other than those funds referred to in paragraph (a).

(2) If a power, duty or function is designated under subsection (1), the power, duty or function may no longer be exercised or performed by the Minister of Finance and Corporate Relations.

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**Section 042 — Delegation by chief investment officer**

**42** The chief investment officer may delegate to persons employed or retained by the government any powers, duties or functions given to the chief investment officer under this Part.

**Section 043 — Pooled investment portfolios**

**43** (1) Subject to the regulations, the Minister of Finance and Corporate Relations may establish and operate pooled investment portfolios in which the money from trust funds, special funds or other funds, other public money and the money of government bodies and designated institutions may be combined in common for the purpose of investment by means of investment units of participation in a pooled investment portfolio.

(2) The Lieutenant Governor in Council may make regulations respecting pooled investment portfolios, including regulations that

(a) empower the Minister of Finance and Corporate Relations to exercise, with respect to pooled investment portfolios, those powers that the Lieutenant Governor in Council considers necessary or advisable, including the power, subject to subsection (5), to require that money of a trust fund, special fund or other fund, other public money and money of a government body be placed with that minister for investment in one or more pooled investment portfolios, and

(b) establish systems or rules for regulating and determining what interest or share in a pooled investment portfolio is attributable to the general fund, to a trust fund, special fund or other fund, to other public money or to a government body or designated institution.

(3) Subject to subsections (5) and (6), if the Minister of Finance and Corporate Relations has the authority to invest money, that minister may invest the money in a pooled investment portfolio.

(4) The costs and expenses incurred by the Minister of Finance and Corporate Relations under section 44 (5) in operating or administering a pooled investment portfolio may be paid directly from the portfolio.

(5) The Minister of Finance and Corporate Relations must not invest or require the investment of the money of a government body in a pooled investment portfolio unless

(a) a power to invest money of the government body is conferred on that minister by or under another Act or another section of this Act,

(b) that minister is empowered to act as a trustee of or for a sinking fund in relation to the money, or

(c) the government body places the money with that minister with the request that it be invested in a pooled investment portfolio.

(6) If money to be invested in a pooled investment portfolio is subject to a restriction or condition on investments or loans, or both, that is established by or under an enactment, the

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money must only be invested in a pooled investment portfolio that is confined to the permitted investments or loans, or both.

(7) Subsections (1) to (6) apply despite any other enactment or any other section of this Act.

(8) Money in a pooled investment portfolio may be invested in another pooled investment portfolio if the other pooled investment portfolio is confined to permitted investments or loans, or both, for the money invested in the pooled investment portfolio making the investment in the other pooled investment portfolio.

(9) Despite any attribution rules established by regulation under subsection (2) (b), if money invested in a pooled investment portfolio is subject to a restriction, limit or condition on permitted investments or loans, or both, and that restriction, limit or condition requires calculation of the value of a specific class of investments or loans, or both, that amount in respect of the money invested in the pooled investment portfolio must be calculated as the product of

(a) the percentage of the total investment units of participation in the pooled investment portfolio at the time of the calculation that are units held by the source of the money subject to the restriction, limit or condition, and

(b) the book value of the assets of the pooled investment portfolio that are within the specific class of investments or loans, or both.

(10) If the money of a pooled investment portfolio is invested in another pooled investment portfolio, the product of

(a) the percentage of the total investment units of participation in the other pooled investment portfolio at the time of the calculation that are units held by the investing pooled investment portfolio, and

(b) the book value of the assets in the other pooled investment portfolio that are within the specific class of investments or loans, or both,

must be included, for the purposes of subsection (9) (b), in the book value of the assets of the investing pooled investment portfolio making the investment in the other pooled investment portfolio.

**Section 044 — Administration of investments**

**44** (1) The Lieutenant Governor in Council may make regulations considered necessary or advisable to

(a) facilitate the investment and lending of money from, and the lending of securities of, trust funds, special funds or other funds, other public money and money of government bodies and designated institutions, and

(b) regulate the investing and lending of money and the lending of securities under sections 40 and 43 and this section.

(2) The Lieutenant Governor in Council may, on the recommendation of the Minister of Finance and Corporate Relations, appoint a committee to advise that minister on policies

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respecting the exercise of the powers under sections 40 and 43 and this section and on other matters related to investments and loans.

(3) The Minister of Finance and Corporate Relations must prepare a report of the investment portfolio of the government, including loans made under sections 40 and 43 and this section, for each fiscal year to be laid before the Legislative Assembly at the same time as the public accounts.

(4) If the Minister of Finance and Corporate Relations holds an investment or loan under sections 40 or 43 or this section, that minister may

- (a) dispose of the investment or loan, and
- (b) exchange the investment or loan for another investment or loan permitted for the source of the money.

(5) If the Minister of Finance and Corporate Relations is authorized to make an investment or loan, or both, that minister may

- (a) do all things necessary or advisable for the purpose of making, continuing, exchanging or disposing of the investment or loan, including buying and selling currency on a current or future delivery basis,
- (b) authorize
  - (i) a person to exercise that minister's powers to make, continue, exchange or dispose of the investment or loan,
  - (ii) a person to administer the investment or loan, and
  - (iii) a person, or that person's nominee, to hold the investment or loan, in the case of money in a trust fund, in trust for that minister and the trustees and, in other cases, in trust for that minister,

subject to any restrictions, limits or conditions that that minister may impose, and

- (c) enter into an agreement with a person under which the person provides one or more of the services referred to in paragraph (b).

(6) If money, other than money of a trust fund, is placed with the Minister of Finance and Corporate Relations under the authority of section 40 (5), the money does not, solely by reason of the placement, become money of a trust fund.

(7) If

- (a) money from a trust fund, special fund or pooled investment portfolio is invested or loaned, and
- (b) interest earnings or proceeds from an exchange or disposition in respect of the trust fund, special fund or pooled investment portfolio are paid into the general fund,

the interest earnings or proceeds may, subject to any other Act, be transferred to the appropriate trust fund, special fund or pooled investment portfolio.

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(8) If an investment or loan is made in a pooled investment portfolio, subsection (7) must not be construed as attributing any specific share of interest earnings or proceeds from the investment or loan, as the case may be, to the general fund, to a government body or designated institution or to a specific trust fund, special fund or other fund.

(9) The Minister of Finance and Corporate Relations must not, under section 40 or 43 or this section,

(a) invest or loan money, loan securities or delegate that minister's authority respecting investments or loans contrary to

(i) any express requirement or restriction of a trust to which that money is subject, and

(ii) any requirement or restriction existing with respect to that money by reason of any provision of a bond or other security issued by the government, or by reason of any other term or condition of a loan to the government, and

(b) make a loan that is not a loan for the purpose of providing a financial benefit to the source of the money for the loan.

(10) A person who has the authority to invest or loan the money of a trust fund must invest or loan the money in the best interests of the trust fund.

(11) If an investment or loan is made by the Minister of Finance and Corporate Relations or by a person authorized under subsection (5) (b), the interest of that minister in the investment or loan, as the case may be,

(a) does not, of itself, invalidate any decision, order or other action of a public officer or other person acting on behalf of the government that relates directly or indirectly to the investment or loan, and

(b) must not be taken into consideration by a public officer or other person acting on behalf of the government except in relation to investments or loans made under the authority of section 40 or 43 or this section.

(12) Except with respect to powers, duties and functions designated under section 41 (1) (a), any delegation or direction issued by the Minister of Finance and Corporate Relations with respect to an investment or loan must be in writing and, in the case of a delegation or direction relating to an investment or loan of a trust fund, a copy of the delegation or direction must be provided to the trustees of that trust fund.

**Section 045 — Loans, advances and equity investments**

**45** (1) A power under an enactment to make loans, advances or direct equity investments from the consolidated revenue fund, despite any other enactment, must not be exercised by the government except by order of or in accordance with directives of the Lieutenant Governor in Council on the recommendation of the Minister of Finance and Corporate Relations.

(2) Subsection (1) does not apply to the powers given by section 36 or 40.

***Financial Administration Act, RSBC 1996, c 138 – Part 5 As at April 1, 1999***

**Section 046 — Public property**

**46** (1) A disposition or loan of public property must not be made to any person without authorization under this or another Act.

(2) The Treasury Board may issue directives authorizing and governing

- (a) the acquisition of property by the government, and
- (b) the disposition or loan of public property.

(3) A minister must maintain adequate records, in accordance with directives of the Treasury Board, in relation to public property for which his or her ministry is responsible and must comply with directives of the Treasury Board governing the custody and control of public property.

**Section 047 — Charging for services or use of property**

**47** (1) If a service or the use of property is provided by the government to any person, the Minister of Finance and Corporate Relations may by directive set a fee or charge to be paid by the person to whom the service or the use of the property is provided.

(2) This section does not apply if another enactment provides for a fee or charge for the service or use of the property.

(3) Subsection (1) applies whether or not there is an obligation on the government to provide the service or use of the property.

(4) The Minister of Finance and Corporate Relations may deduct from

- (a) the general fund,
- (b) special funds,
- (c) trust funds, and
- (d) any other funds in respect of which management services are provided by the Ministry of Finance and Corporate Relations,

a management fee, as prescribed by the Lieutenant Governor in Council, based substantially on the reasonable costs of managing the funds.

(5) The Minister of Finance and Corporate Relations may deduct from

- (a) trust funds, and
- (b) any other funds, except the general fund or special funds, in respect of which financial services, other than management services, are provided by the Ministry of Finance and Corporate Relations,

a financial services fee, as prescribed by the Lieutenant Governor in Council, based substantially on the reasonable costs of providing the financial services.

(6) The Minister of Finance and Corporate Relations may deduct from

<i>Financial Administration Act, RSBC 1996, c 138 – Part 5 As at April 1, 1999</i>
<p>(a) the general fund, or</p> <p>(b) special funds,</p> <p>a financial services fee, as the Minister of Finance and Corporate Relations may approve, based substantially on the reasonable costs of providing the financial services.</p>

<i>Interpretation Act, RSC 1985, c I-21, s. 17</i>	
<p><b>Her Majesty not bound or affected unless stated</b></p> <p><u>17.</u> No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner, except as mentioned or referred to in the enactment.</p>	<p><b>Non-obligation, sauf indication contraire</b></p> <p><u>17.</u> Sauf indication contraire y figurant, nul texte ne lie Sa Majesté ni n'a d'effet sur ses droits et prérogatives.</p>

<i>Law and Equity Act, RSBC 1996, c 253</i>
<p><b>Application of Act</b></p> <p>1. The rules of law enacted and declared by this Act are part of the law of British Columbia and must be applied in all courts in British Columbia.</p> <p><b>Application of English Law in British Columbia</b></p> <p>2. Subject to section 3, the Civil and Criminal Laws of England, as they existed on November 19, 1858, so far as they are not from local circumstances inapplicable, are in force in British Columbia, but those laws must be held to be modified and altered by all legislation that has the force of law in British Columbia or in any former Colony comprised within its geographical limits.</p> <p><b>Equitable relief for defendant</b></p> <p>4. If a plaintiff or petitioner claims to be entitled to an equitable estate or right or to relief on an equitable ground against a deed, instrument or contract, or against any right, title or claim asserted by a defendant or respondent in a cause or matter, or to relief founded on a legal right that, before April 29, 1879, could only have been given by the court as a court of equity, the court, either as a court of law or equity, and every judge of it, must give the plaintiff or petitioner the relief that ought to have been given by the court in a suit or proceeding in equity for the same or similar purpose properly commenced before April 29, 1879.</p> <p><b>Judicial notice of equitable estates</b></p> <p>7. The court, and every judge of it, must recognize and take notice of all equitable estates, titles and rights and all equitable duties and liabilities appearing incidentally in the course of a cause or matter in the same manner in which the court sitting in equity would have</p>

***Law and Equity Act, [RSBC 1996, c 253](#)***

recognized and taken notice of those estates, titles, rights, duties and liabilities in any suit or proceeding properly commenced in that court before April 29, 1879.

**No restraint by prohibition or injunction**

8. (1) A cause or proceeding pending in the court must not be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of that cause or proceeding might have been obtained before April 29, 1879, either conditionally or unconditionally, may be relied on by way of defence.
- (2) Nothing in this Act disables the court from directing a stay of proceedings in a cause or matter pending before it, if it thinks fit.
- (3) Any person, whether or not a party to a cause or matter pending before the court, who would have been entitled, but for this Act, to apply to the court to restrain the prosecution of it, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, contrary to which all or any part of the proceedings in the cause or matter may have been taken, may apply to the court, by motion in a summary way, for a stay of proceedings in the cause or matter, either generally or so far as may be necessary for the purposes of justice and the court must make any order that is just.

**Judicial notice of legal and statutory rights, claims and liabilities**

9. Subject to this Act, the court and every judge of it must recognize and give effect to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom or created by any statute, in the same manner as they would have been recognized and given effect to in the court if this Act had not been enacted.

**Pension Benefits Standards Act, SBC 1991, c. 15, s. 45**

**45** (1) Subject to section 41 and 43(1), every pension plan containing a defined benefit provision must provide, on the prescribed basis or on another basis that the superintendent considers reasonable and equitable in the circumstances and consents to, in writing, for

- (a) the reduction of benefits, and
- (b) the methods of allocation and distribution of the assets of the plan and the priorities for determining the benefits of persons entitled to them,

when the assets of the plan are not sufficient to pay all benefits on the winding up of the plan.

- (2) A pension plan must provide for the allocation of any surplus assets on the winding up of the plan
- (a) to the members and former members and their spouses, designated beneficiaries and estates,
  - (b) to the employer, or



**Pension Benefits Standards Act, SBC 1991, c. 15, s. 45**

(c) to any combination of the persons referred to in paragraph (a) or paragraphs (a) and (b).

**Pension Benefits Standards Act, SBC 2012, c. 30, s. 107**

**Surplus on winding-up**

**107** Without limiting section 8 (1) (h), the plan text document of a pension plan must provide for the allocation of any surplus, on the winding-up of the plan,

- (a) to the members and to their spouses, designated beneficiaries and estates,
- (b) to the participating employers, or
- (c) to any combination of the persons referred to in either or both of paragraphs (a) and (b).

**Pension Benefits Standards Regulation, BC Reg 433/93**

**Exemptions**

**3 (10)** A pension plan to which an enactment in Column 1 of Schedule 1 applies is exempt from a provision of the Act or this regulation as set out opposite in Column 2.

**Schedule 1**

**Exempt Provisions**

*(section 3 (10) )*

<b>Item</b>	<b>Column 1 Enactment</b>	<b>Column 2 Exempt Provisions of the <i>Pension (Benefits Standards) Act</i> or the Pension Benefits Standards Regulation</b>
1	College Pension Plan Regulation made under the <i>Public Sector Pension Plans Act</i>	<ul style="list-style-type: none"> <li>1 The definition of "<b>termination of membership</b>" in section 1 (1) of the Act.</li> <li>2 The definition of "<b>years of continuous employment</b>" in section 1 (1) of the Act.</li> <li>3 Section 24 (1) (g) of the Act.</li> <li>4 Section 30 (6) of the Act.</li> <li>5 Section 34 (2) of the Act.</li> </ul>

Item	Column 1 Enactment	Column 2 Exempt Provisions of the <i>Pension (Benefits Standards) Act</i> or the Pension Benefits Standards Regulation
		<p>6 Section 41 of the Act.</p> <p>7 Section 45 of the Act.</p> <p>8 Section 46 of the Act.</p> <p>9 Section 60 (3) of the Act.</p> <p>10 Section 10 (1) (b) and (c) of this regulation.</p> <p>11 Section 25 (1) to (9) of this regulation on condition that the entire transfer amount is transferred promptly after the application for transfer.</p> <p>12 Section 35 of this regulation.</p>
2	Municipal Pension Plan Rules, made under the Municipal Pension Plan Joint Trust Agreement, made under the <i>Public Sector Pension Plans Act</i>	<p>1 Repealed. [B.C. Reg. 111/2001.]</p> <p>2 The definition of "<b>termination of membership</b>" in section 1 (1) of the Act.</p> <p>3 The definition of "<b>years of continuous employment</b>" in section 1 (1) of the Act.</p> <p>4 Section 24 (1) (g) of the Act.</p> <p>5 Section 30 (6) of the Act.</p> <p>5.1 Section 33 (1) of the Act as it would otherwise apply in relation to a member who terminates membership in the plan and is eligible for an immediate pension.</p> <p>6 Section 34 (2) of the Act.</p> <p>7 Section 41 of the Act.</p> <p>8 Section 45 of the Act.</p> <p>9 Section 46 of the Act.</p> <p>10 Section 60 (3) of the Act.</p> <p>11 Section 10 (1) (b) and (c) of this regulation.</p> <p>12 Section 25 (1) to (9) of this regulation on condition that the entire transfer amount is transferred promptly after the application for</p>

Item	Column 1 Enactment	Column 2 Exempt Provisions of the <i>Pension (Benefits Standards) Act</i> or the Pension Benefits Standards Regulation
		transfer. 13 Section 35 of this regulation.
3	Public Service Pension Plan Rules, made under the Public Service Pension Plan Joint Trust Agreement, made under the <i>Public Sector Pension Plans Act</i>	<ul style="list-style-type: none"> <li>1 Repealed. [B.C. Reg. 110/2001.]</li> <li>2 The definition of "termination of membership" in section 1 (1) of the Act.</li> <li>3 The definition of "years of continuous employment" in section 1 (1) of the Act.</li> <li>4 Section 24 (1) (g) of the Act.</li> <li>5 Section 30 (6) of the Act.</li> <li>5.1 Section 33 (1) of the Act as it would otherwise apply in relation to a member who terminates membership in the plan and is eligible for an immediate pension.</li> <li>6 Section 34 (2) of the Act.</li> <li>7 Section 41 of the Act.</li> <li>8 Section 45 of the Act.</li> <li>9 Section 46 of the Act.</li> <li>10 Section 60 (3) of the Act.</li> <li>11 Section 10 (1) (b) and (c) of this regulation.</li> <li>12 Section 25 (1) to (9) of this regulation on condition that the entire transfer amount is transferred promptly after the application for transfer.</li> <li>13 Section 35 of this regulation.</li> </ul>
4	Teachers' Pension Plan Rules, made under the Teachers' Pension Plan Joint Trust Agreement, made under the <i>Public Sector Pension Plans Act</i>	<ul style="list-style-type: none"> <li>1 Repealed. [B.C. Reg. 112/2001.]</li> <li>2 The definition of "<b>termination of membership</b>" in section 1 (1) of the Act.</li> <li>3 The definition of "<b>years of continuous employment</b>" in section 1 (1) of the Act.</li> <li>4 Section 24 (1) (g) of the Act.</li> </ul>

<b>Item</b>	<b>Column 1 Enactment</b>	<b>Column 2 Exempt Provisions of the <i>Pension (Benefits Standards) Act</i> or the Pension Benefits Standards Regulation</b>
		5 Section 30 (6) of the Act. 6 Section 34 (2) of the Act. 7 Section 41 of the Act. 8 Section 45 of the Act. 9 Section 46 of the Act. 10 Section 60 (3) of the Act. 11 Section 10 (1) (b) and (c) of this regulation. 12 Section 25 (1) to (9) of this regulation on condition that the entire transfer amount is transferred promptly after the application for transfer. 13 Section 35 of this regulation.
5	<i>Hydro and Power Authority Act</i>	Section 42 of the Act for the period ending on December 31, 2001.

*NOTE: Sections 32 and 42 of the Pension Benefits Standards Act do not apply to any public sector pension plan.*

### Pension Benefits Standards Regulation, BC Reg 71/2015, s. 11

#### Application of Act to public sector pension plans

**11** (1) A public sector pension plan is exempt from the Act in respect of a program of post retirement group benefits sponsored under Part 1.2 of Schedule A or Part 2.1 of Schedule B, C or D of the *Public Sector Pension Plans Act*.

(2) A public sector pension plan is exempt from the following:

- (a) sections 8 (1) (h), 36, 39 (c), 48, 52 (2) (a), 56 (3) and (5), 63, 72 (3), 94 (a), 106, and 107 of the Act;
- (b) sections 102, 103, 104, 105 (b), 106 and 107 of the Act as prescribed for the purposes of section 94 (a) of the Act;
- (c) the definition of "divisional multi-employer plan" in section 1 (1) and sections 28, 30 (4) (c), 31 (3) (c), 33 (4) (c) and (g) (vi), 37 (5) (d) (vi), (e) and (g), 43 (1) (j) and (4) (h), 46 (4) (d), (f), (k), (m) and (q), 53, 55 (6), 57, 65, 66, 71 and 135 of this regulation;
- (d) section 29 (3) (e) (i) of this regulation, on the condition that the plan summary referred to in that section contains or is accompanied by an explanation of when and how the administrator may increase contributions to meet the plan's funding requirements;
- (e) section 80 of this regulation on the condition that the entire transfer amount is transferred promptly after the application for transfer.

### Pooled Investment Portfolios Regulation, BC Reg 447/99

#### Interpretation

**1** In this regulation:

- "**Act**" means the *Public Sector Pension Plans Act*;
- "**chief investment officer**" means the person appointed under section 20 (1) (a) of the Act as the chief investment officer of the investment management corporation;
- "**investment management corporation**" means the British Columbia Investment Management Corporation established under section 16 of the Act;
- "**opening date**" means a date when funds may purchase or realize units in a portfolio;
- "**participating fund**" means a fund from which money or securities are used to purchase units in a portfolio;
- "**portfolio**" means a pooled investment portfolio established under section 2 or continued under section 3;
- "**unit**" means a unit of participation referred to in section 5, and includes a part of a unit.

**Pooled Investment Portfolios Regulation, BC Reg 447/99**

**Establishment of pooled investment portfolios**

2 The investment management corporation may establish one or more portfolios.

**Continuation of pooled investment portfolios**

3 Each portfolio established under B.C. Reg. 84/86 is continued under this regulation.

**Management of pooled investment portfolios**

4 (1) All the assets of a portfolio are held in trust by the investment management corporation.

(2) Subject to the Act, the chief investment officer is responsible for investing money of a portfolio in categories of investment the chief investment officer considers desirable and for managing and controlling the portfolio.

(3) The investments of a portfolio must be identified separately from other property of the investment management corporation, with each investment recorded to show clearly the portfolio to which the investment belongs.

(4) Ownership in any asset in a portfolio must not be attributed to a participating fund.

**Units of participation**

5 (1) A portfolio must be divided into units of participation, that on any given day are of equal value, and the proportionate interest to be attributed to each participating fund must be expressed by the number of units allocated to it.

(2) The value of each full unit in a portfolio is

(a) on establishment of the portfolio, \$1 million, and

(b) on any subsequent date, the value determined by the chief investment officer.

(3) On establishment of a portfolio, the appropriate number of units must be allocated to each participating fund proportionate to its investment in the portfolio.

(4) Subject to section 10 (4.1), the cost of a unit in a portfolio is the value of the units on the date of purchase.

(5) A participating fund may hold a fraction of a unit calculated to 9 decimal places.

**Purchase and realization of units**

6 (1) A unit must be purchased or realized only on an opening date.

(2) The chief investment officer is authorized to set opening dates for each portfolio.

(3) The holder of units in a portfolio may realize units only on an opening date for the portfolio on the basis of the value of the units on that date.

**Participation records**

7 The chief investment officer must cause records to be maintained for each participating fund showing

### Pooled Investment Portfolios Regulation, BC Reg 447/99

- (a) the date of admission of money to the portfolio, the number of units allotted and the value at which each unit is allotted,
- (b) the date of each withdrawal, the number of units realized and the amount paid on redemption,
- (c) the number of units currently held, and
- (d) the unit entitlement of the participating fund on termination of the portfolio.

#### **Evidence of participation**

**8** Unit holdings in a portfolio must be evidenced by monthly statements of account issued to each participant in the portfolio.

#### **Opening dates**

**9** (1) The chief investment officer must determine the value, on the appropriate opening date, of

- (a) each portfolio, and
- (b) the units of a portfolio.

(2) In making a determination under subsection (1), the chief investment officer must have regard to external sources, and apply fair, equitable and consistent principles of valuation to each security or investment by the use of valuation methods accepted and applied in accordance with good accounting practices for that type of security or investment.

(3) The chief investment officer may arrange for a special opening of a portfolio without making the determination referred to in subsection (1) if all participating funds in the portfolio are treated fairly and equitably.

#### **Annual calculation and attribution of income and net taxable capital gain**

**10** (1) On the last opening date of the calendar year, the aggregate of the income and net realized taxable capital gains of each portfolio for that year as determined under the *Income Tax Act* (Canada) less any income and net realized taxable capital gains already paid to the participating funds for that year are payable to each participating fund in proportion to its participation in the portfolio.

(2) A participating fund, on demand by December 15 in the same calendar year, will receive the payment to which it is entitled under subsection (1).

(3) A payment to which a participating fund is entitled under subsection (1) that has not otherwise been paid pursuant to a demand for payment under subsection (2) must be paid by the issuance of additional units having value equal to the amount of the payment.

(4) Unless the investment management corporation determines otherwise, immediately after the issuance of additional units under subsection (3), the additional units must be consolidated with the other units held by the participating fund so that the participating fund will hold, after the consolidation, the same number of units as the participating fund held before the issuance of the additional units.

### **Pooled Investment Portfolios Regulation, BC Reg 447/99**

(4.1) If a consolidation occurs under subsection (4), the carrying costs of the units held by a participating fund must be increased by the value, before consolidation, of the additional units issued to the participating fund.

(5) If a participating fund has made a demand for payment under subsection (2), the number of its units of participation, valued as of the last opening date of the calendar year, must be reduced proportionally to reflect the value of the payment.

#### **Investment of income and other proceeds**

**11** Subject to section 10, the chief investment officer may

- (a) distribute any net income, net capital gains or other proceeds received by a portfolio to each participating fund in proportion to its participation in the portfolio, or
- (b) invest any net income, net capital gains or other proceeds received by a portfolio in that portfolio.

#### **Accounting records and audit**

**12** (1) A complete set of accounting records must be maintained for each portfolio and the records must clearly distinguish items of principal from items of income.

(2) For the purposes of audit, participation reports and all accounts and records pertaining to each portfolio are accounts and records of the investment management corporation.

(3) Annual financial statements must be issued for each portfolio, other than a portfolio of which all the units are held beneficially by the same person.

(4) The financial statements must be audited by an auditor appointed by the investment management corporation.

(5) The investment management corporation must make available without charge a copy of the annual financial statements together with the auditor's report on them to the unit holders of record as of the fiscal year end.

(6) Participation reports and all accounts and records of a portfolio for the period subsequent to the last audit are open for inspection by a holder of a unit.

#### **Realization of units**

**13** The investment management corporation is authorized to make rules governing the realization of units for a portfolio.

#### **Termination of a pooled investment portfolio**

**14** The chief investment officer may terminate a portfolio and distribute to the unit holders the net proceeds realized



**Public Sector Pension Plans Act, SBC 1999, c 44**

**Definitions and interpretation**

**1** (1) In this Act:

**"college board"** means the board of trustees of the college plan appointed under the terms of the college joint management agreement;

**"college joint management agreement"** means the College Pension Plan Joint Trust Agreement made under this Act on April 4, 2011 between the plan employer partners and the plan member partners, as those terms are defined in section 1 of Schedule A, for the joint management of the college plan, and includes any amendments to the agreement;

**"college plan"** means the College Pension Plan continued under the college joint management agreement;

**"investment management board"** means the board of directors of the investment management corporation;

**"investment management corporation"** means the British Columbia Investment Management Corporation established under section 16;

**"municipal board"** means the board of trustees of the municipal plan appointed under the terms of the municipal joint management agreement;

**"municipal joint management agreement"** means the Municipal Pension Plan Joint Trust Agreement made under this Act on April 2, 2001 between the plan employer partner and HEABC, and the plan member partner, as those terms are defined in section 1 of Schedule B, for the joint management of the municipal plan, and includes any amendments to the agreement;

**"municipal plan"** means the Municipal Pension Plan continued under the municipal joint management agreement;

**"pension board"** means the college board, municipal board, public service board or teachers' board, or all of them as the context requires;

**"pension corporation"** means the British Columbia Pension Corporation established under section 5;

**"pension fund"** means the money and securities of the college plan, municipal plan, public service plan or teachers' plan, or all of them as the context requires;

**"pension management board"** means the board of directors of the pension corporation;

**"pension plan"** means the college plan, municipal plan, public service plan or teachers' plan, or all of them as the context requires;

**"plan member"** means a person who

- (a) is making contributions to the pension fund,
- (b) has previously made contributions to the pension fund, which contributions were left on deposit, and is not receiving benefits from the pension fund, or

**Public Sector Pension Plans Act, SBC 1999, c 44**

(c) has previously made contributions to the pension fund and is receiving benefits from the pension fund;

**"public service board"** means the board of trustees of the public service plan appointed under the terms of the public service joint management agreement;

**"public service joint management agreement"** means the Public Service Pension Plan Joint Trust Agreement made under this Act on December 8, 2000 between the plan employer partner and the plan member partner, as those terms are defined in section 1 of Schedule C, for the joint management of the public service plan, and includes any amendments to the agreement;

**"public service plan"** means the Public Service Pension Plan continued under the public service joint management agreement;

**"teachers' board"** means the board of trustees of the teachers' plan appointed under the terms of the teachers' joint management agreement;

**"teachers' joint management agreement"** means the Teachers' Pension Plan Joint Trust Agreement made under this Act on April 2, 2001 between the plan employer partner and the plan member partner, as those terms are defined in section 1 of Schedule D, for the joint management of the teachers' plan, and includes any amendments to the agreement;

**"teachers' plan"** means the Teachers' Pension Plan continued under the teachers' joint management agreement.

(2) Despite subsection (1), a definition in this section does not apply to a Schedule to this Act unless specifically provided for in the Schedule.

**Purposes of Act**

**2** The purposes of this Act are as follows:

- (a) to establish an agency which must provide pension plan administration services to the pension boards;
- (b) to establish an agency which may provide investment management services to the pension boards;
- (c) to provide pension plan governance and risk and reward sharing alternatives for the management of the pension plans and pension funds;
- (d) to provide benefits to eligible plan members under the pension plans.

**Application of other Acts**

**3** The pension **plans**, and any supplemental benefit arrangements under those pension plans, are subject to the applicable requirements of

- (a) the *Income Tax Act* (Canada),

**Public Sector Pension Plans Act, SBC 1999, c 44**

- (b) the *Pension Benefits Standards Act*,
- (c) the *Family Law Act*, and
- (d) any other enactment applicable to the pension plans, the pension funds and the benefits payable under the pension plans.

***Public Sector Pension Plans Act, SBC 1999, c 44 - Part 2 — British Columbia Pension Corporation***

**Part 2 — British Columbia Pension Corporation**

**Definitions**

**4** In this Part:

"**chief executive officer**" means the person appointed under section 9 (1) (a) as chief executive officer of the pension corporation;

"**other clients**" means British Columbia public sector pension plan clients of the pension corporation other than the pension boards.

**British Columbia Pension Corporation established**

- 5** (1) A corporation to be known as the British Columbia Pension Corporation is established consisting of the pension management board appointed under section 8.
- (2) The pension corporation has the power and capacity of a natural person of full capacity.
- (3) The fiscal year end of the pension corporation is March 31.
- (4) The pension corporation is an agent of the government.
- (5) The pension corporation, as an agent of the government, is not liable for taxation except as the government is liable for taxation.
- (6) The pension corporation may, with the approval of the pension management board, borrow or raise money for its purposes in the amounts and for the periods determined by the pension corporation.
- (7) The *Business Corporations Act* does not apply to the pension corporation, but the Lieutenant Governor in Council may, on the recommendation of the pension management board, direct that certain provisions of the *Business Corporations Act* apply to the pension corporation.

**Capital of the pension corporation**

- 6** (1) The capital of the pension corporation is one share with a par value of \$10.
- (2) The share in the pension corporation must be issued to and registered in the name of the Minister of Finance and must be held by that minister on behalf of the government.

**Powers, functions and duties of the pension corporation**

***Public Sector Pension Plans Act, SBC 1999, c 44 - Part 2 — British Columbia Pension Corporation***

- 7** (1) The purpose of the pension corporation is to provide plan administration services
- (a) to the pension boards responsible for the pension plans, and
  - (b) to any other clients that retain the services of the pension corporation.
- (2) Plan administration services are those administrative services, excluding funds management services, required to deliver pension benefits to plan members, and includes all of the following:
- (a) enrolling employers and plan members;
  - (b) collecting and recording contributions and other information received from employers and plan members necessary to properly administer the pension plans;
  - (c) auditing the information collected under paragraph (b);
  - (d) communicating information about the pension plan provisions to employers and plan members;
  - (e) establishing and maintaining plan member records and accounts;
  - (f) calculating and processing pension benefits and other related benefits;
  - (g) managing, in coordination with the investment management corporation, the cash flow of the pension funds in order to maximize investment returns;
  - (h) paying, and recording the payment of, pension benefits and other related benefits;
  - (i) filing documentation with the appropriate authorities and performing other regulatory duties as may be required under other enactments;
  - (j) providing secretariat and other services required by the pension boards;
  - (k) providing additional services to a pension plan if the pension management board and the pension board agree on the budget required for the additional services.
- (3) The pension corporation must discharge the responsibilities of the pension boards under the *Income Tax Act* (Canada) for administration of the pension plans.
- (4) The pension corporation may enter into agreements
- (a) with a person or body to provide benefits to plan members or to provide other services in respect of the pension plans, or
  - (b) to administer plans for other clients.

**Pension management board**

- 8** (1) The pension management board must have at least 8 directors as follows:
- (a) 2 directors appointed by the college board from among its members, one to be nominated by the plan employer partners and one to be nominated by the plan member partners, as those terms are defined in section 1 of Schedule A;
  - (b) 2 directors appointed by the municipal board from among its members, one to be

***Public Sector Pension Plans Act, SBC 1999, c 44 - Part 2 — British Columbia Pension Corporation***

nominated by the plan employer partner and one to be nominated by the plan member partner, as those terms are defined in section 1 of Schedule B;

(c) 2 directors appointed by the public service board from among its members, one to be nominated by the plan employer partner and one to be nominated by the plan member partner, as those terms are defined in section 1 of Schedule C;

(d) 2 directors appointed by the teachers' board from among its members, one to be nominated by the plan employer partner and one to be nominated by the plan member partner, as those terms are defined in section 1 of Schedule D.

(2) Each director appointed under subsection (1) has one vote.

(3) The directors must

(a) designate one of the directors appointed under subsection (1) as chair of the board, or

(b) appoint a person, not referred to in subsection (1), as a director and designate that person as chair of the board.

(4) The pension management board must determine whether

(a) the chair designated under subsection (3) (a) is entitled to a second or casting vote, or

(b) the chair designated under subsection (3) (b) has a vote and, if so, whether the chair is entitled to a second or casting vote.

(5) An appointment to the board under subsection (1) or (3) (b) must be made

(a) for a term not exceeding 3 years, and

(b) so that no more than 4 appointments expire in any calendar year.

(6) An appointment under subsection (1) or (3) (b) may be renewed.

(7) Despite subsection (1) or (3) (b), an appointment to the board may be rescinded by the party that made the appointment.

(8) If a director ceases for any reason to be a director of the pension management board before the end of the term for which he or she was appointed,

(a) the board must provide notice of the vacancy to the party that appointed that director, and

(b) that party must promptly appoint, in accordance with subsection (1) or (3) (b), a replacement director for the remainder of the term of that director.

(9) Subject to subsection (10), a quorum of the pension management board consists of all of the directors of the board, and all decisions of the board must be unanimous.

(10) The pension management board may, by the unanimous agreement of the board, change a requirement of subsection (9).

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(11) No act or proceeding of the pension management board is invalid merely because there are in office fewer than the number of directors required under this section.

(12) The pension management board may pay

(a) to a director or a person appointed to a committee of the board an allowance for reasonable travel and other expenses necessarily incurred in carrying out the business of the board,

(b) to a director or a person appointed to a committee of the board, if the director or person is not receiving remuneration from any other source for acting as a director or on a committee, remuneration that has been set by the board and is consistent with Treasury Board guidelines, and

(c) to an organization, if the organization is the source of remuneration paid to a director or person appointed to a committee of the board, remuneration for the services of the director or person at the rate set by the board under paragraph (b).

**Powers, functions and duties of the pension management board**

**9** (1) The pension management board must do all of the following:

(a) select and appoint a chief executive officer to hold office during pleasure, and determine the salary to be paid to the chief executive officer;

(b) review and monitor the performance of the chief executive officer;

(c) select and appoint for the pension corporation an auditor who is authorized to be an auditor of a company under sections 205 and 206 of the *Business Corporations Act*;

(d) approve, in whole or in part and with or without modifications,

(i) policies respecting the proper discharge of the pension corporation's mandate,

(ii) a business plan for the pension corporation,

(iii) the pension corporation's budget, including the budget for capital expenditures and staffing, and

(iv) conflict of interest guidelines;

(e) oversee the operations of the pension corporation;

(f) act in the best interests of the pension corporation.

(2) The pension management board must, through the pension corporation and to the extent possible under the budget approved for the pension corporation, do all of the following:

(a) provide proper reporting and accountability, in a timely manner, to the pension boards and the trustees of the pension funds administered by the pension corporation;

(b) provide administrative services in an efficient, effective and timely manner;

(c) have in place an equitable fee system based on the user pay principle;

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(d) provide for its own financial administration by

(i) establishing an accounting system which ensures that there is proper reporting and accountability to the pension boards in a timely manner,

(ii) permitting the Minister of Finance to direct the Comptroller General to examine the financial and accounting operations of the pension corporation and report back to the pension management board, Treasury Board, the pension boards or other clients that retain the services of the pension corporation,

(iii) having annual financial statements of the pension corporation prepared in accordance with generally accepted accounting principles,

(iv) having an audit performed annually on the financial statements referred to in subparagraph (iii), and

(v) providing to the minister an annual business plan and an annual report on the pension corporation, including the audited financial statements.

(3) The pension management board may do any of the following:

(a) delegate to the chief executive officer the exercise or performance of any power or duty conferred or imposed on the board under subsection (2);

(b) pass resolutions it considers necessary or advisable to manage and conduct the affairs of the pension corporation and to exercise the board's powers and perform its duties;

(c) establish committees of the board, and may determine the composition, duties, responsibilities, limitations and operating procedures of those committees;

(d) appoint persons other than directors of the board to a committee referred to in paragraph (c), and may set the term of appointment that applies to those committee members.

**Responsibilities of chief executive officer**

**10** (1) The chief executive officer is responsible for carrying out the day to day duties of the pension corporation respecting the administration of the pension plans.

(2) The chief executive officer must report

(a) to the pension management board with respect to the operations of the pension corporation, and

(b) to the pension boards and the trustees of the pension funds with respect to the administration of the pension plans.

(3) The chief executive officer must do all of the following:

(a) hire and dismiss the officers and employees necessary to carry on the business and operations of the pension corporation;

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- (b) supervise the day to day operations of the pension corporation;
- (c) prepare a business plan and budget for approval by the pension management board;
- (d) attend at meetings of the pension management board and receive a copy of all information provided to the board;
- (e) establish policies and procedures to meet the operational objectives of the pension corporation;
- (f) develop a business continuation plan;
- (g) keep all the records, books and accounts of the pension corporation;
- (h) file documentation with the appropriate authorities and perform other regulatory duties as may be required under the *Income Tax Act* (Canada), the *Pension Benefits Standards Act* and any other applicable enactments;
- (i) address any other matter arising out of the management of the pension corporation that is necessary to properly carry out the provisions of this Part;
- (j) exercise or perform any power or duty delegated to the chief executive officer by the pension management board under section 9 (3) (a).

(4) Subsection (3) (d) does not apply to the chief executive officer respecting matters referred to in section 9 (1) (a) and (b) or respecting matters in which there would be a conflict of interest.

(5) A benefit under a pension plan must not be granted to a person until the chief executive officer, after inquiry, determines all of the following:

- (a) that the person is within the scope of the pension plan;
- (b) that the person is entitled to receive the benefit and the basis for receiving that benefit;
- (c) the amount of the benefit;
- (d) if, in the opinion of the chief executive officer, the person is unfit to manage his or her own affairs, the allocation of all or part of the benefit payable to that person;
- (e) the contributions made and the maximum benefit paid under the registered pension plan provisions of the *Income Tax Act* (Canada);
- (f) any other matter related to the administration of the pension plan.

(6) For the purposes of subsection (5), the chief executive officer must prepare and keep on file, in the office of the pension corporation, a record of the grounds on which the findings in each case are based, and the record must be open to inspection by the person who is affected by those findings.

(7) The chief executive officer, in carrying out his or her duties under subsection (5), may rely on information or recommendations provided by the officers and employees of the



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pension corporation.

**Officers and employees of the pension corporation**

**11** (1) Subject to subsection (2), the *Public Service Act* and the *Public Service Labour Relations Act* apply to the pension corporation and to the officers and employees of the pension corporation.

(2) The *Public Service Labour Relations Act* and Parts 3 and 4 of the *Public Service Act* do not apply to the chief executive officer.

(3) The Public Service Pension Plan, continued under this Act, and the *Public Service Benefit Plan Act* apply to the pension corporation and to the officers and employees of the pension corporation.

(4) For the purpose of the application of the *Public Service Act* to subsection (1), the chief executive officer is deemed to be a deputy minister.

**Chief executive officer's power to delegate**

**12** The chief executive officer may, on terms and conditions the chief executive officer considers advisable, delegate to any person or class of persons any of the chief executive officer's powers, functions or duties.

**Operating costs and capital expenditures of the pension corporation**

**13** (1) The pension corporation must recover its operating costs and capital expenditures from one or more of the following:

- (a) amounts charged to the pension plans for operating costs and capital expenditures necessarily incurred by the pension corporation on behalf of the pension plans it administers;
- (b) amounts authorized under other enactments for services provided by the pension corporation;
- (c) amounts charged to persons, organizations and other clients for services provided by the pension corporation;
- (d) income accruing from investments made by the pension corporation on its own behalf.

(2) The pension corporation may, in advance, submit a requisition quarterly to the pension boards respecting the pension plans it administers for the amounts required to cover the anticipated operating costs and capital expenditures necessarily incurred by the pension corporation on behalf of those pension plans.

(3) The pension plans must pay to the pension corporation, in quarterly instalments from the pension funds, the amounts requisitioned under subsection (2), subject to the limits within the pension corporation's budget as approved by the respective pension boards.

(4) The operating costs and capital expenditures of the pension corporation attributable to the pension plans it administers, as determined and certified by the chief executive officer,

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must

- (a) be paid out of the money requisitioned under subsection (2), and
  - (b) to the extent to which the operating costs and capital expenditures paid out
    - (i) are less than the amount requisitioned, be reimbursed to the pension funds, or
    - (ii) are greater than the amount requisitioned, be paid from the pension funds.
- (5) Capital expenditures of the pension corporation may be paid from amounts borrowed by the pension corporation.

**Indemnification**

**14** (1) Despite section 75 of the *Financial Administration Act*, the pension corporation may indemnify a person who is a director of the pension management board, an officer or employee of the pension corporation or a person appointed to a committee of the board under section 9 (3) (d), or a former director, officer, employee or committee member, against all costs, charges and expenses actually and reasonably incurred by the person, including an amount paid to settle an action or satisfy a judgment in a civil, criminal or administrative action or proceeding to which the person is made a party because of being or having been a director, officer, employee or committee member, and including an action brought by the pension corporation, if

- (a) the director, officer, employee or committee member acted in good faith, and
- (b) in the case of a criminal action or proceeding, the director, officer, employee or committee member had reasonable grounds for believing that his or her conduct was lawful.

(2) The pension management board may purchase and maintain, for the benefit of the pension corporation or a director, officer, employee or committee member referred to in subsection (1), or any of them, insurance against liability incurred by the pension corporation or by the director, officer, employee or committee member.

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**Part 3 — British Columbia Investment Management Corporation**

**Definitions**

**15** In this Part:

**"chief investment officer"** means the person appointed under section 20 (1) (a) as chief investment officer of the investment management corporation;

**"designated institution"** means an institution designated by regulation of the Lieutenant Governor in Council for the purposes of this Part;

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"**funds**" means money and securities placed with the investment management corporation under the authority of section 18 (3);

"**other clients**" means persons, other than the pension boards, with authority under section 18 (3) to make investments.

**British Columbia Investment Management Corporation established**

**16** (1) A corporation, to be known as the British Columbia Investment Management Corporation, is established and incorporated as a trust company authorized to carry on trust business and investment management services as provided in this Part.

(2) The corporation referred to in subsection (1) consists of the investment management board appointed under section 19 (1) or (3).

(3) The investment management corporation has the power and capacity of a natural person of full capacity.

(4) The fiscal year end of the investment management corporation is March 31.

(5) The investment management corporation is an agent of the government.

(6) The investment management corporation, as an agent of the government, is not liable for taxation except as the government is liable for taxation.

(7) The *Business Corporations Act* and, despite section 11 of the *Financial Institutions Act*, the *Financial Institutions Act* do not apply to the investment management corporation, but the Lieutenant Governor in Council may direct that certain provisions of the *Business Corporations Act* and the *Financial Institutions Act* apply to the investment management corporation.

(8) For the purposes of the *Securities Act* and its regulations, the investment management corporation must be treated in the same manner as the government is treated under that Act.

**Capital of the investment management corporation**

**17** (1) The capital of the investment management corporation is one share with a par value of \$10.

(2) The share in the investment management corporation must be issued to and registered in the name of the Minister of Finance and must be held by that minister on behalf of the government.

**Powers, functions and duties of the investment management corporation**

**18** (1) In this section, "**government body**", "**public money**", "**special fund**" and "**trust fund**" have the same meaning as in the *Financial Administration Act*.

(2) The purpose of the investment management corporation is to provide funds management services, including the making of investments and loans, for funds placed with the investment management corporation.

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(3) Despite any other enactment, including the *Financial Administration Act*, a person who has the authority to invest

- (a) money or securities of a trust fund, special fund or other fund,
- (b) money or securities of a government body or designated institution, or
- (c) other public money or securities

may, with the agreement of the investment management board, place the money or securities with the investment management corporation as agent of the person, for investment.

(4) In addition to the powers, functions and duties of the investment management corporation as provided in this Part, the investment management corporation has the same powers, functions and duties in the provision of funds management services for funds placed with it under subsection (3) as the Minister of Finance would have if the funds had been placed with that minister under Part 5 of the *Financial Administration Act* as it read on April 1, 1999.

(5) The investment management corporation may provide additional services to a pension plan if the investment management board and the pension board agree on the budget required for the additional services.

**Continuation of investment portfolios**

**18.1** (1) Each portfolio established under B.C. Reg. 84/86, the Pooled Investment Portfolios Regulation, is continued under this Act.

(2) Each participating fund allocated units of a portfolio immediately before January 1, 2000 must continue to be allocated those units of the portfolio with the investment management corporation holding those units as agent for the participating fund.

(3) All assets held under or in a portfolio by the Minister of Finance or the chief investment officer under the *Financial Administration Act* immediately before January 1, 2000 must continue to be held under or in the portfolio, in trust, by the investment management corporation.

**Investment management board**

**19** (1)-(2) [Repealed 1999-44-19 (2).]

(2.1) In this section, "**minister**" means the minister charged with administration of the *Financial Administration Act*.

(3) The investment management board is continued and has 7 directors as follows:

- (a) one director appointed by the college board from among its members;
- (b) one director appointed by the municipal board from among its members;
- (c) one director appointed by the public service board from among its members;

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- (d) one director appointed by the teachers' board from among its members;
  - (e) 2 directors, representative of clients of the investment management corporation, other than those referred to in paragraphs (a) to (d), appointed by the minister;
  - (f) one other director appointed by the minister.
- (4) The director appointed under subsection (3) (f) is designated as chair of the investment management board.
- (5) Each director appointed under subsection (3) has one vote on the board.
- (6) An appointment to the investment management board under subsection (3) (a) to (f) must be made
- (a) for a term not exceeding 3 years, and
  - (b) so that no more than 3 appointments expire in any calendar year.
- (7) An appointment under subsection (3) (a) to (f) may be renewed.
- (8) Despite subsection (3) (a) to (f), an appointment to the investment management board may be rescinded by the party that made the appointment.
- (9) If a director ceases for any reason to be a director of the investment management board before the end of the term for which he or she was appointed,
- (a) the board must provide notice of the vacancy to the party that appointed that director, and
  - (b) that party must promptly appoint, in accordance with subsection (3), a replacement director for the remainder of the term of that director.
- (10) Subject to subsection (11), a quorum of the investment management board consists of all of the directors of the board, and all decisions of the board must be unanimous.
- (11) The investment management board may, by the unanimous agreement of the board, change a requirement of subsection (10).
- (11.1) The chair may appoint one of the other directors to act, in the chair's absence, as chair of the investment management board, but the appointment may be made only if
- (a) a quorum has been established under subsection (11) consisting of fewer than the number of directors required under subsection (10), and
  - (b) the chair's presence is not necessary for constituting the quorum.
- (11.2) A director appointed under subsection (11.1) to act as chair is not entitled to vote on behalf of the director appointed under subsection (3) (f) on any matter before the investment management board.
- (12) No act or proceeding of the investment management board is invalid merely because there are in office fewer than the number of directors required under this section.

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(13) The investment management board may pay

- (a) to a director or a person appointed to a committee of the board an allowance for reasonable travel and other expenses necessarily incurred in carrying out the business of the board,
- (b) to a director or a person appointed to a committee of the board, if the director or person is not receiving remuneration from any other source for acting as a director or on a committee, remuneration that has been set by the board and is consistent with Treasury Board guidelines, and
- (c) to an organization, if the organization is the source of remuneration paid to a director or person appointed to a committee of the board, remuneration for the services of the director or person at the rate set by the board under paragraph (b).

**Powers, functions and duties of the investment management board**

**20** (1) The investment management board must do all of the following:

- (a) select and appoint a chief investment officer to hold office during pleasure, and determine the salary to be paid to the chief investment officer;
- (b) review and monitor the performance of the chief investment officer;
- (c) select and appoint for the investment management corporation an auditor who is authorized to be an auditor of a company under sections 205 and 206 of the *Business Corporations Act*;
- (d) approve, in whole or in part and with or without modifications,
  - (i) policies respecting the proper discharge of the investment management corporation's mandate,
  - (ii) a business plan for the investment management corporation,
  - (iii) the investment management corporation's budget, including the budget for capital expenditures and staffing,
  - (iv) policies respecting pooled funds, and
  - (v) conflict of interest guidelines;
- (e) establish an employee classification system and compensation scale, including performance bonuses;
- (f) oversee the operations of the investment management corporation;
- (g) act in the best interests of the investment management corporation.

(2) The investment management board must, through the investment management corporation and to the extent possible under the budget approved for the investment management corporation, do all of the following:

- (a) provide proper reporting and accountability, in a timely manner, to the pension

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boards and the trustees and other persons responsible for the funds managed by the investment management corporation;

(b) comply with recognized industry standards;

(c) provide investment management services in an efficient, effective and timely manner;

(d) have in place an equitable fee system based on the user pay principle;

(e) provide for its own financial administration by

(i) establishing an accounting system which ensures that there is proper reporting and accountability, in a timely manner, to the clients of the investment management corporation,

(ii) permitting the Minister of Finance to direct the Comptroller General to examine the financial and accounting operations of the investment management corporation and report back to the investment management board, Treasury Board, the pension boards and other persons responsible for the funds managed by the investment management corporation,

(iii) having annual financial statements of the investment management corporation prepared in accordance with generally accepted accounting principles,

(iv) having an audit performed annually on the financial statements referred to in subparagraph (iii), and

(v) providing to the Minister of Finance an annual business plan and an annual report on the investment management corporation, including the audited financial statements.

(3) The investment management board may do any of the following:

(a) delegate to the chief investment officer the exercise or performance of any power or duty conferred or imposed on the board under subsection (2);

(b) pass resolutions it considers necessary or advisable to manage and conduct the affairs of the investment management corporation and to exercise the board's powers and perform its duties;

(c) establish committees of the board, and may determine the composition, duties, responsibilities, limitations and operating procedures of those committees;

(d) appoint persons other than directors of the board to a committee referred to in paragraph (c), and may set the term of appointment that applies to those committee members.

(4) The chief investment officer appointed under the authority of subsection (1) (a) is the chief executive officer of the investment management corporation.

(5) The investment management board must not be involved in the investment decisions of

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the investment management corporation.

**Responsibilities of the chief investment officer**

**21** (1) The chief investment officer is responsible for carrying out the day to day duties related to the management of the funds.

(2) The chief investment officer must report

(a) to the investment management board with respect to the operations of the investment management corporation, and

(b) to the trustees or other persons responsible for the funds, and to the other clients of the investment management corporation, with respect to the management and investment performance of the funds that they have placed with the investment management corporation.

(3) The chief investment officer must do all of the following:

(a) hire and dismiss the officers and employees necessary to carry on the business and operations of the investment management corporation;

(b) supervise the day to day operations of the investment management corporation, including a determination of which assets to buy and sell;

(c) prepare a business plan and budget for approval by the investment management board;

(d) attend at meetings of the investment management board and receive a copy of all information provided to the board;

(e) establish policies and procedures to meet the operational objectives of the investment management corporation and the funds;

(f) develop a business continuation plan;

(g) keep all the records, books and accounts of the investment management corporation, and provide other accounting services as required by the trustees or other persons responsible for the funds and by the other clients of the investment management corporation;

(h) ensure that risk and returns are managed in a prudent and appropriate fashion, given the nature of the funds, and in accordance with any instructions provided by the trustees or other persons responsible for the funds;

(i) hire and dismiss the investment management corporation's external suppliers, including custodians and external fund managers;

(j) recommend changes in investment strategies and policies to clients of the investment management corporation;

(k) file documentation with the appropriate authorities and perform other regulatory duties as may be required under the *Securities Act* and other enactments;



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(l) address any other matter arising out of the management of the investment management corporation that is necessary to properly carry out the provisions of this Part;

(m) exercise or perform any power or duty delegated to the chief investment officer by the investment management board under section 20 (3) (a).

(4) Subsection (3) (d) does not apply to the chief investment officer respecting matters referred to in section 20 (1) (a) and (b) or respecting matters in which there would be a conflict of interest.

(5) In exercising the powers or performing his or her duties, the chief investment officer may enter into agreements in the name of the investment management corporation.

(6) Agreements entered into by the chief investment officer are binding on the investment management corporation and those funds on behalf of which the chief investment officer is acting.

**Officers and employees of the investment management corporation**

**22** (1) The *Public Service Act* and the *Public Service Labour Relations Act* do not apply to the investment management corporation or the officers and employees of the investment management corporation.

(2) The Public Service Pension Plan, continued under this Act, and the *Public Service Benefit Plan Act* apply to the investment management corporation and to the officers and employees of the investment management corporation.

(3) If, immediately before appointment to or employment with the investment management corporation, an officer or employee has been confirmed in his or her employment under the *Public Service Act*, the officer or employee must not suffer a reduction in salary by reason only of his or her appointment or employment, and any monetary benefits that he or she would have enjoyed as a public service officer or employee continue to apply to him or her, subject to the terms of employment determined by the investment management corporation.

(4) An officer or employee referred to in subsection (3) who is appointed to or employed by the investment management corporation retains his or her length of service seniority acquired in the public service for determining his or her length of service seniority in the investment management corporation.

**Chief investment officer's power to delegate**

**23** The chief investment officer may, on terms and conditions the chief investment officer considers advisable, delegate to any person or class of persons any of the chief investment officer's powers, functions or duties.

**Operating costs and capital expenditures of the investment management corporation**

**24** (1) The investment management corporation must recover its operating costs and capital expenditures from one or more of the following:

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(a) amounts charged to the funds for operating costs and capital expenditures necessarily incurred by the investment management corporation on behalf of the funds it manages;

(b) amounts charged to persons, organizations and other clients for services provided by the investment management corporation;

(c) income accruing from investments made by the investment management corporation on its own behalf.

(2) to (4) [Not in force.]

(5) Capital expenditures of the investment management corporation may be paid from amounts borrowed by the investment management corporation.

**Indemnification**

**25** (1) Despite section 75 of the *Financial Administration Act*, the investment management corporation may indemnify a person who is a director of the investment management board, an officer or employee of the investment management corporation or a person appointed to a committee of the board under section 20 (3) (d), or a former director, officer, employee or committee member, against all costs, charges and expenses actually and reasonably incurred by the person, including an amount paid to settle an action or satisfy a judgment in a civil, criminal or administrative action or proceeding to which the person is made a party because of being or having been a director, officer, employee or committee member, and including an action brought by the investment management corporation, if

(a) the director, officer, employee or committee member acted in good faith, and

(b) in the case of a criminal action or proceeding, the director, officer, employee or committee member had reasonable grounds for believing that his or her conduct was lawful.

(2) The investment management board may purchase and maintain, for the benefit of the investment management corporation or a director, officer, employee or committee member referred to in subsection (1), or any of them, insurance against liability incurred by the investment management corporation or by the director, officer, employee or committee member.

***Public Sector Pension Plans Act, SBC 1999, c 44 - Part 4 – General Provisions***

**Part 4 – General Provisions**

**Appropriation for unfunded pension plan liability**

**25.1** (1) If an actuarial valuation discloses that a pension plan has an unfunded liability, the Minister of Finance may, in accordance with generally accepted accounting principles, allocate an expense to the consolidated revenue fund to amortize the portion of the unfunded liability that is attributable to the government.

(2) Subsection (1) applies despite section 21 (3) of the *Financial Administration Act*.

(3) Expenses may be allocated under subsection (1) without an appropriation other than that subsection.

**Regulations**

**26** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make the following regulations:

(a) regulations designating institutions as designated institutions for the purposes of Part 3;

(b) regulations referred to in Part 5 of the *Financial Administration Act* with the necessary changes so that they apply to the investment management corporation under this Act.

(3) A regulation made under Part 5 of the *Financial Administration Act* applies, with the necessary changes and so far as it is applicable, to the investment management corporation as if made under this Act.

**Repealed**

**27-29** [Repealed 2012-18-49.]

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule A**

**Schedule A**

**College Pension Plan**

**Definitions**

**1** In this Schedule:

"**college board**" has the same meaning as in section 1 (1) of the Act;

"**partners**" means the plan employer partners and the plan member partners;

"**pension corporation**" has the same meaning as in section 1 (1) of the Act;

"**pension fund**" means the cash, investments and other assets of the pension plan held by the college board;

"**pension plan**" has the same meaning as "college plan" in section 1 (1) of the Act;

"**plan administrative agent**" means the pension corporation;

"**plan employer partners**" means the government and The Post-Secondary Employers' Association;

"**plan member**" has the same meaning as in section 1 (1) of the Act;

"**plan member partners**" means the Federation of Post-Secondary Educators of BC and the B.C. Government and Service Employees' Union.

**Part 1**

**Repealed**

**2-16** [Repealed 2012-18-52.]

**Part 1.1 — Joint Trusteeship**

**Joint management agreement**

**16.1** (1) In this section, "**agreement**" means the joint management agreement referred to in subsection (2).

(2) The partners may enter into a unanimous joint management agreement that provides for, but is not limited to, all of the following:

(a) the continuation of the pension plan and pension fund, that were continued under this Schedule, for the benefit of plan members;

(b) the joint management of the pension plan and the pension fund;

(c) the establishment of who will manage the agreement;

(d) the establishment of an arrangement to hold and invest the pension fund;

(e) the composition of the board of trustees of the pension plan, including the appointment of trustees and the delineation of their powers, functions and duties;

(f) the sharing by employers and plan members of gains or surplus and of liability for

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule A**

deficiencies in the pension fund;

(g) the method for amending the pension plan by the agreement of the partners;

(h) the resolution of disputes;

(i) any other matter on which agreement is reached.

(3) The partners must establish appropriate mechanisms whereby the views and interests of the plan members who are

(a) non-unionized employees,

(b) unionized employees not represented by a plan member partner, and

(c) retirees

are fairly represented in the negotiation of the agreement.

(4) The pension plan continued under the agreement must provide for all of the following:

(a) employer and employee eligibility to participate in the pension plan;

(b) employer and plan member contributions to the pension fund;

(c) pensionable service, including the calculation of pensions, purchase of service, reinstatement and portability;

(d) eligibility to receive a benefit and the determination of the amount of that benefit;

(e) benefits on termination, early retirement, normal retirement, late retirement, disability retirement and pre-retirement death;

(f) pension indexing;

(g) general administrative requirements;

(h) supplemental benefits;

(i) continued recognition of any rights vested in a plan member or beneficiary, in the same manner and to the same extent as provided under the pension plan;

(j) any matter necessary or advisable to establish the pension plan rules.

(5) The partners must ensure that

(a) the money of the pension fund is invested or loaned in the best financial interests of the plan members and, in doing that, must

(i) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person, and

(ii) ensure that the investments and loans are made in accordance with the provisions of the *Pension Benefits Standards Act* and other regulatory requirements,

(b) the plan administrative agent keeps an account of all money received and paid out of the pension fund and keeps an accounting of the assets and liabilities of the pension fund, and

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule A**

(c) the plan administrative agent keeps an individual record of contributions made by each plan member.

(6) Any of the partners may initiate discussions respecting the agreement.

(7) Despite subsection (2), the non-unionized employees, unionized employees not represented by a plan member partner and retirees not represented by the partners may benefit from and be subject to the agreement and the partners have the power to enter into the agreement on behalf of those persons and, if entered into, the agreement is binding on those persons.

**Part 1.2 — Post Retirement Group Benefits**

**Definitions**

**16.2** In this Part, "**retired plan member**" means a person who is receiving a monthly pension benefit from the pension plan, including a person who receives a pension following the death of a plan member, but does not include a limited member as defined in Part 6 of the *Family Law Act*.

**Continuation of existing post retirement group benefit contracts**

**16.3** Any portions of an insurance contract made under the *Public Service Benefit Plan Act* that relate to retired plan members are continued under this Part for the benefit of retired plan members, as if made by the college board under the authority of this Part.

**Post retirement group benefits**

**16.4** (1) Subject to any limits set by the partners in or pursuant to the joint management agreement referred to in section 16.1 (2), the college board may sponsor a program of post retirement group benefits for retired plan members and their dependents.

(2) Insurance under this section may be provided directly or by entering into contracts of insurance.

(3) A contract under this section may be a contract under which the insurer assumes the risk or under which the college board assumes the risk and under which the insurer disburses benefits and generally manages a scheme of insurance on the college board's behalf.

(4) The college board may determine the following:

- (a) the type and level of post retirement group benefits;
- (b) the eligibility to receive post retirement group benefits;
- (c) the terms and conditions of how post retirement group benefits are provided;
- (d) the rate of contribution toward payment of any premium required to be made by retired plan members and the methods by which those contributions can be made;
- (e) the rate of contribution toward payment of the cost of post retirement group benefits required to be deducted from employer contributions to the pension plan and the methods by which those contributions can be made;

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(f) any other matter necessary or advisable to provide post retirement group benefits.

(5) For the purpose of subsection (4) (d), the college board may determine different rates of contribution for different groups of persons.

(6) Despite the *Pension Benefits Standards Act*, with the retired plan member's consent, the college board may deduct the required premiums for any post retirement group benefits provided under this section from the person's monthly pension benefit.

**Application of *Pension Benefits Standards Act***

**16.5** Despite section 3 (b) of this Act, the *Pension Benefits Standards Act* does not apply to post retirement group benefits provided pursuant to this Schedule.

**Part 2 — Plan Continuation**

**Plan continuation — validation of existing calculations**

**17** All benefit calculations based on the rules that were in effect at the time of the calculation under the *Pension (College) Act* and the regulations to that Act are deemed to have been validly made for the purposes of this Schedule.

**Plan continuation — agreements**

**18** This Schedule continues to apply to all agreements made under the *Pension (College) Act* that were in effect on the date of the repeal of that Act, as if those agreements had been made by the college board under the authority of this Schedule.

**Repealed**

**19** [Repealed 2003-62-11.]

**Plan continuation — regulations**

**20** The Lieutenant Governor in Council may, on the recommendation of the college board, make regulations that are necessary or advisable to aid the effective governance and administration of the pension plan and pension fund by the college board, and the regulations may be made to apply generally or to a particular case.

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule B**

[Schedule B](#)

**Municipal Pension Plan**

**Definitions**

**1** In this Schedule:

"**HEABC**" means the health sector employers as represented by the Health Employers Association of British Columbia;

"**municipal board**" has the same meaning as in section 1 (1) of the Act;

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule B**

- "partners"** means the plan employer partner and the plan member partner;
- "pension corporation"** has the same meaning as in section 1 (1) of the Act;
- "pension fund"** means the cash, investments and other assets of the pension plan held by the municipal board;
- "pension plan"** has the same meaning as "municipal plan" in section 1 (1) of the Act;
- "plan administrative agent"** means the pension corporation;
- "plan employer partner"** means the government of British Columbia and the municipal governments, including regional districts, as represented by the Union of British Columbia Municipalities;
- "plan member"** has the same meaning as in section 1 (1) of the Act;
- "plan member partner"** means the Municipal Employees' Pension Committee which represents
- (a) the British Columbia Nurses' Union,
  - (b) the Canadian Union of Public Employees,
  - (c) the Health Sciences Association of British Columbia,
  - (d) the Hospital Employees' Union,
  - (e) the British Columbia Police Association,
  - (f) the British Columbia Professional Fire Fighters' Association, and
  - (g) the other unionized plan members.

**Part 1**

**Repealed**

**2-17** [Repealed 1999-44-120.]

**Part 2 — Joint Trusteeship**

**Joint management agreement**

- 18** (1) In this section **"agreement"** means the joint management agreement referred to in subsection (2).
- (2) The partners may enter into a unanimous joint management agreement that provides for, but is not limited to, all of the following:
- (a) the continuation of the pension plan and pension fund, that were continued under this Schedule, for the benefit of plan members;
  - (b) the joint management of the pension plan and the pension fund;
  - (c) establishing who will manage the agreement;
  - (d) the establishment of an arrangement to hold and invest the pension fund;



**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule B**

- (e) the composition of the board of trustees of the pension plan, including the appointment of trustees and the delineation of their powers, functions and duties;
  - (f) the sharing by employers and plan members of gains or surplus and of liability for deficiencies in the pension fund;
  - (g) the method for amending the pension plan by the agreement of the partners;
  - (h) the resolution of disputes;
  - (i) any other matter on which agreement is reached.
- (3) The partners must establish appropriate mechanisms whereby the views and interests of the plan members who are
- (a) non-unionized employees, and
  - (b) retirees,
- are fairly represented in the negotiation of the agreement.
- (4) The pension plan continued under the agreement must provide for all of the following:
- (a) employer and employee eligibility to participate in the pension plan;
  - (b) employer and plan member contributions to the pension fund;
  - (c) pensionable service, including the calculation of pensions, purchase of service, reinstatement and portability;
  - (d) eligibility to receive a benefit and the determination of the amount of that benefit;
  - (e) benefits on termination, early retirement, normal retirement, late retirement, disability retirement and pre-retirement death;
  - (f) [Repealed 2003-62-15.]
  - (g) pension indexing;
  - (h) general administrative requirements;
  - (i) supplemental benefits;
  - (j) continued recognition of any rights vested in a plan member or beneficiary, in the same manner and to the same extent as provided under the pension plan;
  - (k) any matter necessary or advisable to establish the pension plan rules.
- (5) The partners must ensure that
- (a) the money of the pension fund is invested or loaned in the best financial interests of the plan members and, in doing that, must
    - (i) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person, and
    - (ii) ensure that the investments and loans are made in accordance with the provisions of the *Pension Benefits Standards Act* and other regulatory requirements,

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(b) the plan administrative agent keeps an account of all money received and paid out of the pension fund and keeps an accounting of the assets and liabilities of the pension fund, and

(c) the plan administrative agent keeps an individual record of contributions made by each plan member.

(6) Either of the partners may initiate discussions respecting the agreement.

(7) Despite subsection (2), the non-unionized employees and the retirees not represented by the partners may benefit from and be subject to the agreement and the partners have the power to enter into the agreement on behalf of those persons and, if entered into, the agreement is binding on those persons.

**Part 2.1 — Post Retirement Group Benefits**

**Definitions**

**18.1** In this Part, "**retired plan member**" means a person who is receiving a monthly pension benefit from the pension plan, including a person who receives a pension following the death of a plan member, but does not include a limited member as defined in Part 6 of the *Family Law Act*.

**Continuation of existing post retirement group benefit contracts**

**18.2** Any portions of an insurance contract made under the *Public Service Benefit Plan Act* that relate to retired plan members are continued under this Part for the benefit of retired plan members, as if made by the municipal board under the authority of this Part.

**Post retirement group benefits**

**18.3** (1) Subject to any limits set by the partners in or pursuant to the joint management agreement referred to in section 18 (2), the municipal board may sponsor a program of post retirement group benefits for retired plan members and their dependents.

(2) Insurance under this section may be provided directly or by entering into contracts of insurance.

(3) A contract under this section may be a contract under which the insurer assumes the risk or under which the municipal board assumes the risk and under which the insurer disburses benefits and generally manages a scheme of insurance on the municipal board's behalf.

(4) The municipal board may determine the following:

(a) the type and level of post retirement group benefits;

(b) the eligibility to receive post retirement group benefits;

(c) the terms and conditions of how post retirement group benefits are provided;

(d) the rate of contribution toward payment of any premium required to be made by retired plan members and the methods by which those contributions can be made;

(e) the rate of contribution toward payment of the cost of post retirement group benefits required to be deducted from employer contributions to the pension plan and

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule B**

the methods by which those contributions can be made;

(f) any other matter necessary or advisable to provide post retirement group benefits.

(5) For the purpose of subsection (4) (d), the municipal board may determine different rates of contribution for different groups of persons.

(6) Despite the *Pension Benefits Standards Act*, with the retired plan member's consent, the municipal board may deduct the required premiums for any post retirement group benefits provided under this section from the person's monthly pension benefit.

**Application of *Pension Benefits Standards Act***

**18.4** Despite section 3 (b) of this Act, the *Pension Benefits Standards Act* does not apply to post retirement group benefits provided pursuant to this Schedule.

**Part 3 — Plan Continuation**

**Plan continuation — validation of existing calculations**

**19** All benefit calculations based on the rules that were in effect at the time of the calculation under the *Pension (Municipal) Act* and the regulations to that Act are deemed to have been validly made for the purposes of this Schedule.

**Plan continuation — agreements**

**20** This Schedule continues to apply to all agreements made under the *Pension (Municipal) Act* that were in effect on the date of the repeal of that Act, as if those agreements had been made by the municipal board under the authority of this Schedule.

**Plan continuation — regulations**

**21** The Lieutenant Governor in Council may, on the recommendation of the municipal board, make regulations that are necessary or advisable to aid the effective governance and administration of the pension plan and pension fund by the municipal board, and the regulations may be made to apply generally or to a particular case.

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule C**

[Schedule C](#)

**Public Service Pension Plan**

**Definitions**

**1** In this Schedule:

"**partners**" means the plan employer partner and the plan member partner;

"**pension corporation**" has the same meaning as in section 1 (1) of the Act;

"**pension fund**" means the cash, investments and other assets of the pension plan held by the public service board;

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule C**

**"pension plan"** has the same meaning as "public service plan" in section 1 (1) of the Act;

**"plan administrative agent"** means the pension corporation;

**"plan employer partner"** means the government;

**"plan member"** has the same meaning as in section 1 (1) of the Act;

**"plan member partner"** means

(a) the B.C. Government and Service Employees' Union,

(b) the Professional Employees Association, and

(c) the Union of Psychiatric Nurses;

**"public service board"** has the same meaning as in section 1 (1) of the Act.

**Part 1**

**Repealed**

**2-17** [Repealed 1999-44-121.]

**Part 2 — Joint Trusteeship**

**Joint management agreement**

**18** (1) In this section **"agreement"** means the joint management agreement referred to in subsection (2).

(2) The partners may enter into a unanimous joint management agreement that provides for, but is not limited to, all of the following:

(a) the continuation of the pension plan and the pension fund, that were continued under this Schedule, for the benefit of plan members;

(b) the joint management of the pension plan and the pension fund;

(c) establishing who will manage the agreement;

(d) the establishment of an arrangement to hold and invest the pension fund;

(e) the composition of the board of trustees of the pension plan, including the appointment of trustees and the delineation of their powers, functions and duties;

(f) the sharing by the employers and plan members of gains or surplus and of liability for deficiencies in the pension fund;

(g) the method for amending the pension plan by the agreement of the partners;

(h) the resolution of disputes;

(i) any other matter on which agreement is reached.

(3) The partners must establish appropriate mechanisms whereby the views and interests of

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule C**

the plan members who are

- (a) unionized employees not represented by the plan member partner,
- (b) non-unionized employees, and
- (c) retirees,

are fairly represented in the negotiation of the agreement.

(4) The pension plan continued under the agreement must provide for all of the following:

- (a) employer and employee eligibility to participate in the pension plan;
- (b) employer and plan member contributions to the pension fund;
- (c) pensionable service, including the calculation of pensions, purchase of service, reinstatement and portability;
- (d) eligibility to receive a benefit and the determination of the amount of that benefit;
- (e) benefits on termination, early retirement, normal retirement, late retirement, disability retirement and pre-retirement death;
- (f) [Repealed 2003-62-20.]
- (g) pension indexing;
- (h) general administrative requirements;
- (i) supplemental benefits;
- (j) continued recognition of any rights vested in a plan member or beneficiary, in the same manner and to the same extent as provided under the pension plan;
- (k) any matter necessary or advisable to establish the pension plan rules.

(5) The partners must ensure that

- (a) the money of the pension fund is invested or loaned in the best financial interests of the plan members and, in doing that, must
  - (i) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person, and
  - (ii) ensure that the investments and loans are made in accordance with the requirements of the provisions of the *Pension Benefits Standards Act* and other regulatory requirements,
- (b) the plan administrative agent keeps an account of all money received and paid out of the pension fund and keeps an accounting of the assets and liabilities of the pension fund, and
- (c) the plan administrative agent keeps an individual record of contributions made by each plan member.

(6) Either of the partners may initiate discussions respecting the agreement.

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule C**

(7) Despite subsection (2), the unionized employees, the non-unionized employees and the retirees not represented by the partners may benefit from and be made subject to the agreement and the partners have the power to enter into the agreement on behalf of those persons and, if entered into, the agreement is binding on those persons.

**Part 2.1 — Post Retirement Group Benefits**

**Definitions**

**18.1** In this Part, "**retired plan member**" means a person who is receiving a monthly pension benefit from the pension plan, including a person who receives a pension following the death of a plan member, but does not include a limited member as defined in Part 6 of the *Family Law Act*.

**Continuation of existing post retirement group benefit contracts**

**18.2** Any portions of an insurance contract made under the *Public Service Benefit Plan Act* that relate to retired plan members are continued under this Part for the benefit of retired plan members, as if made by the public service board under the authority of this Part.

**Post retirement group benefits**

**18.3** (1) Subject to any limits set by the partners in or pursuant to the joint management agreement referred to in section 18 (2), the public service board may sponsor a program of post retirement group benefits for retired plan members and their dependents.

(2) Insurance under this section may be provided directly or by entering into contracts of insurance.

(3) A contract under this section may be a contract under which the insurer assumes the risk or under which the public service board assumes the risk and under which the insurer disburses benefits and generally manages a scheme of insurance on the public service board's behalf.

(4) The public service board may determine the following:

- (a) the type and level of post retirement group benefits;
- (b) the eligibility to receive post retirement group benefits;
- (c) the terms and conditions of how post retirement group benefits are provided;
- (d) the rate of contribution toward payment of any premium required to be made by retired plan members and the methods by which those contributions can be made;
- (e) the rate of contribution toward payment of the cost of post retirement group benefits required to be deducted from employer contributions to the pension plan and the methods by which those contributions can be made;
- (f) any other matter necessary or advisable to provide post retirement group benefits.

(5) For the purpose of subsection (4) (d), the public service board may determine different rates of contribution for different groups of persons.

(6) Despite the *Pension Benefits Standards Act*, with the retired plan member's consent, the

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule C**

public service board may deduct the required premiums for any post retirement group benefits provided under this section from the person's monthly pension benefit.

**Application of *Pension Benefits Standards Act***

**18.4** Despite section 3 (b) of this Act, the *Pension Benefits Standards Act* does not apply to post retirement group benefits provided pursuant to this Schedule.

**Part 3 — Plan Continuation**

**Plan continuation — validation of existing calculations**

**19** All benefit calculations based on the rules that were in effect at the time of the calculation under the *Pension (Public Service) Act* and the regulations to that Act are deemed to have been validly made for the purposes of this Schedule.

**Plan continuation — agreements**

**20** This Schedule continues to apply to all agreements made under the *Pension (Public Service) Act* that were in effect on the date of the repeal of that Act, as if those agreements had been made by the public service board under the authority of this Schedule.

**Plan continuation — supplementary allowance**

**21** A supplementary allowance that was, under section 35 of the *Pension (Public Service) Act* as it read on the date of its repeal by this Act, payable to a retired member, or to the spouse of a retired member who dies after retirement, must continue to be paid in the manner and for the period as provided for by the *Pension (Public Service) Act*, and the present value of those supplementary allowances, as determined by the plan administrative agent, must be paid by the government to the pension fund.

**Plan continuation — regulations**

**22** The Lieutenant Governor in Council may, on the recommendation of the public service board, make regulations that are necessary or advisable to aid the effective governance and administration of the pension plan and pension fund by the public service board, and the regulations may be made to apply generally or to a particular case.

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule D**

**Schedule D**

**Teachers' Pension Plan**

**Definitions**

**1** In this Schedule:

"partners" means the plan employer partner and the plan member partner;

"pension corporation" has the same meaning as in section 1 (1) of the Act;

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule D**

**"pension fund"** means the cash, investments and other assets of the pension plan held by the teachers' board;

**"pension plan"** has the same meaning as "teachers' plan" in section 1 (1) of the Act;

**"plan administrative agent"** means the pension corporation;

**"plan employer partner"** means the government;

**"plan member"** has the same meaning as in section 1 (1) of the Act;

**"plan member partner"** means the British Columbia Teachers' Federation;

**"teachers' board"** has the same meaning as in section 1 (1) of the Act.

**Part 1****Repealed**

**2-17** [Repealed 1999-44-122.]

**Part 2 — Joint Trusteeship****Joint management agreement**

**18** (1) In this section **"agreement"** means the joint management agreement referred to in subsection (2).

(2) The partners may enter into a unanimous joint management agreement that provides for, but is not limited to, all of the following:

- (a) the continuation of the pension plan and the pension fund, that were continued under this Schedule, for the benefit of the plan members;
- (b) the joint management of the pension plan and the pension fund;
- (c) establishing who will manage the agreement;
- (d) the establishment of an arrangement to hold and invest the pension fund;
- (e) the composition of the board of trustees of the pension plan, including the appointment of trustees and the delineation of their powers, functions and duties;
- (f) the sharing by employers and plan members of gains or surplus and of liability for deficiencies in the pension fund;
- (g) the method for amending the pension plan by the agreement of the partners;
- (h) the resolution of disputes;
- (i) any other matter on which agreement is reached.

(3) The partners must establish appropriate mechanisms whereby the views and interests of the plan members who are

- (a) non-unionized employees, and
- (b) retirees,



**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule D**

are fairly represented in the negotiation of the agreement.

- (4) The pension plan continued under the agreement must provide for all of the following:
- (a) employer and employee eligibility to participate in the pension plan;
  - (b) employer and plan member contributions to the pension fund;
  - (c) pensionable service, including the calculation of pensions, purchase of service, reinstatement and portability;
  - (d) eligibility to receive a benefit and the determination of the amount of that benefit;
  - (e) benefits on termination, early retirement, normal retirement, late retirement, disability retirement and pre-retirement death;
  - (f) [Repealed 2003-62-24.]
  - (g) pension indexing;
  - (h) general administrative requirements;
  - (i) supplemental benefits;
  - (j) continued recognition of any rights vested in a plan member or beneficiary, in the same manner and to the same extent as provided under the pension plan;
  - (k) any matter necessary or advisable to establish the pension plan rules.
- (5) The partners must ensure that
- (a) the money of the pension fund is invested or loaned in the best financial interests of the plan members and, in doing that, must
    - (i) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person, and
    - (ii) ensure that the investments and loans are made in accordance with the requirements of the provisions of the *Pension Benefits Standards Act* and other regulatory requirements,
  - (b) the plan administrative agent keeps an account of all money received and paid out of the pension fund and keeps an accounting of the assets and liabilities of the pension fund, and
  - (c) the plan administrative agent keeps an individual record of contributions made by each plan member.
- (6) Either of the partners may initiate discussions respecting the agreement.
- (7) Despite subsection (2), the non-unionized employees and the retirees not represented by the partners may benefit from and be subject to the agreement and the partners have the power to enter into the agreement on behalf of those persons and, if entered into, the agreement is binding on those persons.

***Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule D***

**Part 2.1 — Post Retirement Group Benefits**

**Definitions**

**18.1** In this Part, "**retired plan member**" means a person who is receiving a monthly pension benefit from the pension plan, including a person who receives a pension following the death of a plan member, but does not include a limited member as defined in Part 6 of the *Family Law Act*.

**Continuation of existing post retirement group benefit contracts**

**18.2** Any portions of an insurance contract made under the *Public Service Benefit Plan Act* that relate to retired plan members are continued under this Part for the benefit of retired plan members, as if made by the teachers' board under the authority of this Part.

**Post retirement group benefits**

**18.3** (1) Subject to any limits set by the partners in or pursuant to the joint management agreement referred to in section 18 (2), the teachers' board may sponsor a program of post retirement group benefits for retired plan members and their dependents.

(2) Insurance under this section may be provided directly or by entering into contracts of insurance.

(3) A contract under this section may be a contract under which the insurer assumes the risk or under which the teachers' board assumes the risk and under which the insurer disburses benefits and generally manages a scheme of insurance on the teachers' board's behalf.

(4) The teachers' board may determine the following:

- (a) the type and level of post retirement group benefits;
- (b) the eligibility to receive post retirement group benefits;
- (c) the terms and conditions of how post retirement group benefits are provided;
- (d) the rate of contribution toward payment of any premium required to be made by retired plan members and the methods by which those contributions can be made;
- (e) the rate of contribution toward payment of the cost of post retirement group benefits required to be deducted from employer contributions to the pension plan and the methods by which those contributions can be made;
- (f) any other matter necessary or advisable to provide post retirement group benefits.

(5) For the purpose of subsection (4) (d), the teachers' board may determine different rates of contribution for different groups of persons.

(6) Despite the *Pension Benefits Standards Act*, with the retired plan member's consent, the teachers' board may deduct the required premiums for any post retirement group benefits provided under this section from the person's monthly pension benefit.

**Application of *Pension Benefits Standards Act***

**18.4** Despite section 3 (b) of this Act, the *Pension Benefits Standards Act* does not apply to

**Public Sector Pension Plans Act, SBC 1999, c 44 – Schedule D**

post retirement group benefits provided pursuant to this Schedule.

**Part 3 — Plan Continuation**

**Plan continuation — validation of existing calculations**

**19** All benefit calculations based on the rules that were in effect at the time of the calculation under the *Pension (Teachers) Act* and the regulations to that Act are deemed to have been validly made for the purposes of this Schedule.

**Plan continuation — agreements**

**20** This Schedule continues to apply to all agreements made under the *Pension (Teachers) Act* that were in effect on the date of the repeal of that Act, as if those agreements had been made by the teachers' board under the authority of this Schedule.

**Plan continuation — regulations**

**21** The Lieutenant Governor in Council may, on the recommendation of the teachers' board, make regulations that are necessary or advisable to aid the effective governance and administration of the pension plan and pension fund by the teachers' board, and the regulations may be made to apply generally or to a particular case.

**Supreme Court Act, RSBC 1996, c 443**

**Jurisdiction and sittings**

**9** (1) The court continues to be a court of original jurisdiction and has jurisdiction in all cases, civil and criminal, arising in British Columbia.

(2) The court may sit and act, at any time and at any place, for the transaction of any part of its business, civil or criminal, or for the discharge of any duty.

(2.1) Without limiting subsection (2), and despite any rule of law or enactment to the contrary, any criminal or civil matter that under any rule of law or enactment is to be or must be heard, or that an accused or a party is entitled to have heard, by the court in one of the County of Vancouver or the County of Westminster may be heard at any place within the Vancouver Westminster Judicial District that the court appoints.

(3) Subject to the direction of the Chief Justice, the court must sit in each place where there is a registry of the court as often as is necessary for the reasonable dispatch of civil trials and other business.

(4) The registrar must prepare a calendar of the dates when the court proposes to sit in any place to be published in the registry located there.

<i>Tax Court of Canada Act</i> , RSC 1985, c T-2, s. 3, 12(1)	
<p><b>Tax Court of Canada continued</b></p> <p><b>3</b> The Tax Court of Canada is continued under the name of the Tax Court of Canada as a superior court of record.</p> <p><b>Jurisdiction</b></p> <p><b>12(1)</b> The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the <i>Air Travellers Security Charge Act</i>, the <i>Canada Pension Plan</i>, the <i>Cultural Property Export and Import Act</i>, Part V.1 of the <i>Customs Act</i>, the <i>Employment Insurance Act</i>, the <i>Excise Act, 2001</i>, Part IX of the <i>Excise Tax Act</i>, Part 1 of the <i>Greenhouse Gas Pollution Pricing Act</i>, the <i>Income Tax Act</i>, the <i>Old Age Security Act</i>, the <i>Petroleum and Gas Revenue Tax Act</i> and the <i>Softwood Lumber Products Export Charge Act, 2006</i> when references or appeals to the Court are provided for in those Acts.</p>	<p><b>Continuité de la Cour canadienne de l'impôt</b></p> <p><b>3</b> La Cour canadienne de l'impôt est maintenue en cour supérieure d'archives.</p> <p><b>Compétence</b></p> <p><b>12(1)</b> La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de l'application de la <i>Loi sur le droit pour la sécurité des passagers du transport aérien</i>, du <i>Régime de pensions du Canada</i>, de la <i>Loi sur l'exportation et l'importation de biens culturels</i>, de la partie V.1 de la <i>Loi sur les douanes</i>, de la <i>Loi sur l'assurance-emploi</i>, de la <i>Loi de 2001 sur l'accise</i>, de la partie IX de la <i>Loi sur la taxe d'accise</i>, de la partie 1 de la <i>Loi sur la tarification de la pollution causée par les gaz à effet de serre</i>, de la <i>Loi de l'impôt sur le revenu</i>, de la <i>Loi sur la sécurité de la vieillesse</i>, de la <i>Loi de l'impôt sur les revenus pétroliers</i> et de la <i>Loi de 2006 sur les droits d'exportation de produits de bois d'oeuvre</i>, dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle.</p>