

## CONSOLIDATION OF PUBLIC SERVICE ACT

S.Nu. 2013,c.26

In force September 17, 2013, except Pt. 6, and s.(o) of Sch. A, s.(r) of Sch. B  
Pt. 6, and s.(o) of Sch. A, s.(r) of Sch. B: NIF

*(Current to: January 1, 2014)*

The following provisions have been deleted for the purposes of this consolidation:  
s.86 to 93 (Consequential Amendments)

### **AS AMENDED BY:**

S.Nu. 2013,c.25,s.245(2)

s.245(2) in force January 1, 2014

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

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

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

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

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

### *Citation of Acts*

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

## TABLE OF CONTENTS

### PART 1 INTERPRETATION AND APPLICATION

Definitions	1	(1)
Reference to period of employment		(2)
References to deputy head		(3)
Public service	2	(1)
Non-application		(2)
Deputy heads		(3)
Ministerial staff		(4)
Benefits to Executive Council staff		(5)

### PART 2 MANAGEMENT AND DIRECTION

Powers of Minister	3	(1)
Promotion of ethical practices		(2)
Directives		(3)
Report to Legislature		(4)
Delegation of authority – Minister	4	(1)
Limit		(2)
Deputy heads	5	(1)
Responsibilities		(2)
Delegation by deputy head		(3)
Acting deputy head		(4)

### PART 3 RECRUITMENT AND APPOINTMENT

General principle of non-discrimination	6	(1)
Affirmative action		(2)
Inuit employment policies		(3)
Establishment of positions	7	(1)
Qualifications for positions		(2)
Power to appoint and dismiss	8	(1)
Appointment of Deputy Minister		(2)
Non-application of sections 10, 12 and 16		(3)
Excluded from definition of "employee"		(4)
Re-assignment of Deputy and Assistant Deputy Ministers		(5)
Saving		(6)
Inconsistency		(7)
More beneficial terms and conditions		(8)
Appointments on merit	9	(1)
Merit		(2)

Family relationship	9.1	(1)
Definitions		(2)
Appointments by competition	10	(1)
Ranking of applicants		(2)
Restricted competition criteria		(3)
Priority hiring criteria		(4)
Offer to most qualified applicant in priority class		(5)
Appeal of Minister's decision		(6)
Implementation of decision		(7)
Appeal precludes grievance		(8)
Grievance precludes appeal		(9)
Eligibility list	11	(1)
Future vacancy		(2)
Acceptance		(3)
Refusal		(4)
No appeal		(5)
Appointment without competition – indeterminate or term positions	12	(1)
Casual, relief, transfer and secondment positions		(2)
Internship positions	13	(1)
Internship appointments		(2)
Term		(3)
Completion		(4)
Unsuccessful internship		(5)

#### PART 4

#### TERMS AND CONDITIONS OF EMPLOYMENT

Pay and benefits	14	
Oath	15	
Probation	16	(1)
Period reduced or waived		(2)
Extension of probationary period		(3)
Rejection	17	(1)
Effect of rejection		(2)
Tenure of office	18	(1)
Expiration of term		(2)
Conversion of term to indeterminate		(3)
Resignation	19	(1)
Withdrawal		(2)
Abandonment	20	
Laying off employees	21	(1)
Cessation of employment		(2)

### Suspension, Investigation and Dismissal

Misconduct or incompetence	22	(1)
Right to grieve, collective agreements		(2)
Right to grieve, excluded employees		(3)
Demotion		(4)
Sections 9, 10, 16 and 17 do not apply		(5)
Suspension on allegation of misconduct or incompetence	23	(1)
Extension of suspension period		(2)
Approval for extensions over 90 days		(3)
Remuneration during suspension	24	(1)
Termination of suspension		(2)
Action after investigation – person not guilty	25	(1)
Action after investigation – person guilty		(2)
Dismissal procedures		(3)
Notice of action taken		(4)
Right to grieve, collective agreements		(5)
Right to grieve, excluded employees		(6)
Notice of dismissal	26	(1)
Dismissal procedures		(2)

### Holidays

Holidays	27	(1)
Compensation for work on holiday		(2)

### Leaves of Absence

Leave of absence	28	
Appointment during extended leave	29	(1)
Appointment to another position		(2)

## PART 5 POLITICAL ACTIVITY

Definitions	30	(1)
Restricted employees		(2)
Political participation	31	(1)
No requirement		(2)
Political activity		(3)
Activity requiring notice – unrestricted employees		(3.1)
Activity requiring leave – restricted employees		(4)
Activity requiring approval – restricted employees		(5)
Acceptable activities		(6)
Effect of this Part		(7)

Nomination of candidate – federal elections	32	
Leave of absence – territorial or federal election	33	(1)
Leave period		(2)
Notice		(3)
Candidates and officials – unrestricted employees	34	(1)
Candidates and officials – restricted employees		(2)
Factors for approval		(3)
Leave where approval denied		(4)
Effect of election	35	
Discipline	36	(1)
No reprisal		(2)
Election or plebiscite officer	37	

## PART 6 DISCLOSURE OF WRONGDOING

Wrongdoing	38	(1)
Deputy heads		(2)
Meaning of reprisal		(3)
Prevention and disclosure of wrongdoing	39	(1)
Dissemination of information		(2)
Consultation with Ethics Officer		(3)
Internal disclosure by employee	40	(1)
Further disclosure by employee		(2)
Notice by deputy head		(3)
Notice by Deputy Minister		(4)
Exception		(5)
Investigation	41	(1)
Preliminary review and inquiry		(2)
Notice of investigation		(3)
Co-operation of employees		(4)
Informal resolution		(5)
Referral to alternative dispute resolution		(6)
Approval of agreement		(7)
No or suspended investigation	42	(1)
Reference to appropriate authorities		(2)
Time limit		(3)
Reasons for not investigating		(4)
Conduct of investigation	43	(1)
Public or private review		(2)
Disclosure required		(3)
Process		(4)
Restriction		(5)
Protocol		(5.1)
Paramountcy		(6)
Right of entry	44	(1)

Notice of entry		(2)
Report of investigation	45	(1)
Preliminary report		(2)
Contents of report		(3)
Recommendations after investigation		(4)
Mandatory response		(5)
Where no sanctions recommended		(6)
Statement of reasons		(7)
Publication of report		(8)
Advance notice		(9)
Protection against reprisal	46	(1)
Offence		(2)
Complaint of reprisal	47	(1)
Investigation		(2)
Report		(3)
Implementation of recommendation		(4)
Exceptional circumstances		(5)
Application of certain rules	48	(1)
Same		(2)
Admissibility of evidence	49	
Defence for certain offences	50	
Evidence not compellable	51	(1)
Necessary disclosure		(2)
Paramountcy		(3)
Not subject to review	52	
Annual report	53	(1)
Tabling report with Legislative Assembly		(2)
Public availability		(3)
Offences and penalties – deputy heads	54	(1)
Offences and penalties – employees		(2)
Bad faith disclosure		(3)

## PART 7 COLLECTIVE AGREEMENTS

### General

Definitions	55	(1)
References		(2)
Employee status preserved		(3)
Membership in bargaining unit		(4)
Bargaining units		(5)
Employees' association		(6)
Employees' association – teachers		(7)
Excluded employees – general		(8)
Excluded employees – QEC		(9)

Principals and Vice-principals	(10)
Collective agreement	(11)
Binding effect of collective agreement	(12)
Bargaining in good faith	(13)
Inconsistency between agreement and regulations	(14)
Exclusion	(15)

#### Notice to Commence Bargaining

Notice to commence bargaining	56	(1)
Time to commence bargaining		(2)

#### Essential Services Agreement

Definitions	57	(1)
Essential services agreement		(2)
Resolution of differences		(3)
Appointment of arbitrator		(4)
Appointment by Court		(5)
Duties of arbitrator		(6)
Award		(7)
Costs		(8)
Application of <i>Arbitration Act</i>		(9)
Notice to employees	58	(1)
Essential services, emergency during strike		(2)
When employee may not strike – essential services		(3)
When employee may not strike – emergency situation		(4)

#### Change to Terms and Conditions of Employment

Terms and conditions continue in force	59	(1)
When Minister may change terms and conditions		(2)

#### Resolution of Differences

Resolution of differences	60	(1)
Response to notice		(2)
Appointment		(3)
Appointment by Court		(4)
Mediation	61	(1)
Participation in mediation		(2)
Mediator's report		(3)
Terms and conditions in notice		(4)
Acceptance or rejection	62	
Costs	63	



## Rights and Prohibitions Relating to Strikes

Participation in strike	64	(1)
Process		(2)
Declaration or authorization of strike	65	(1)
Threat to strike		(2)
Application for declaration of Nunavut Court of Justice	66	(1)
Declaration of Nunavut Court of Justice		(2)
Terms of order		(3)
Revocation, variance of order		(4)
Offence and punishment – employee	67	(1)
Offence and punishment – officer or representative		(2)
Offence and punishment – employees' association		(3)
Offence and punishment – employees' association		(4)
Prosecution of employees' association	68	
Mediator, arbitrator not required to give evidence	69	

## Miscellaneous

Arbitration	70	
Limitation	71	
Check off	72	
Religious objection to check off	73	
Prohibition on contributions and campaigns	74	(1)
Proof of compliance		(2)
Saving provision regarding health and safety	75	

PART 8  
ETHICS OFFICER

Appointment	76	(1)
Not part of public service		(2)
Duties of Ethics Officer		(3)
Additional assignments		(4)
Term of office		(5)
Continuation after expiry		(6)
Removal		(7)
Resignation		(8)
Acting Ethics Officer	77	(1)
Term of acting Ethics Officer		(2)
Special Ethics Officer	78	(1)
Term		(2)
Oath	79	
Commissioner for oaths	80	
Engaging of assistance	81	

Appropriations	82	
Exclusion of liability	83	(1)
Persons providing information		(2)

## PART 9 REGULATIONS

Regulations	84	(1)
Application to deputy heads		(2)
Variations		(3)
<i>Statutory Instruments Act</i> not applicable		(4)

### Saving and Transitional

Employee located in Nunavut	85	(1)
Application		(2)
Deleted	86	(1)
Deleted		(2)
Deleted		(3)
Deleted		(4)
Deleted		(5)
Deleted		(6)
Deleted	87	(1)
Deleted		(2)
Deleted	88	(1)
Deleted		(2)
Deleted	89	(1)
Deleted		(2)
Deleted	90	(1)
Deleted		(2)
Deleted	91	(1)
Deleted		(2)
Deleted	92	(1)
Deleted		(2)
Deleted		(3)
Deleted		(4)
Deleted		(5)
Deleted	93	

### Repeal and Commencement

Repeal	94	
Coming into force	95	(1)
Coming into force		(2)

**SCHEDULE A**

**SCHEDULE B**

## PUBLIC SERVICE ACT

### PART 1 INTERPRETATION AND APPLICATION

#### Definitions

**1.** (1) In this Act,

"Agreement" means the land claims agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada that was ratified by those Inuit and ratified, given effect and declared valid by the *Nunavut Land Claims Agreement Act* (Canada), which came into force on July 9, 1993, and includes any amendments to that Agreement; (*Accord*)

"casual" or "casual employee" means a person employed to perform work of a temporary or casual nature or in an emergency; (*fonctionnaire occasionnel*)

"Code of Values and Ethics" means the Code of Values and Ethics for the public service approved under subsection 3(2); (*Code de valeurs et d'éthique*)

"demote" means to appoint an employee to a position with a maximum rate of pay lower than that for the position he or she held immediately prior to the appointment; (*rétrograder*)

"department" means a division of the public service continued or established by statute or designated as a department by the Commissioner in Executive Council, on the recommendation of the Premier; (*ministère*)

"deputy head" means,

- (a) in relation to a department, the Deputy Minister of that department, and
- (b) in relation to a public body, the chief executive officer of that public body or, if there is no chief executive officer, such person as the Minister may designate as deputy head for the purposes of this Act; (*administrateur général*)

"Deputy Minister" means the non-elected head of a department and where the position is vacant or the Deputy Minister is absent or unable to act, includes the person designated by the Minister responsible for the department to act as Deputy Minister; (*sous-ministre*)

"directive" means a written statement of specific action to be followed in carrying out a policy of the Government, issued by the Minister under this Act; (*directive*)

"employee" means a person employed in the public service; (*fonctionnaire*)

"Ethics Officer" means the Ethics Officer for the public service appointed under section 76; (*responsable de l'éthique*)

"incompetence" means incompetence of an employee in the performance of his or her duties and includes negligence; (*incompétence*)

"Inuit", when referring to persons, means persons identified as Inuit under section 1 of the Agreement; (*Inuit*)

"Minister" means the member of the Executive Council who is responsible for the administration of this Act; (*ministre*)

"misconduct" means misconduct of an employee in the performance of his or her duties, and includes bringing the public service into disrepute; (*inconduite*)

"public body" means a public body identified in Schedule A, the employees of which are declared to be employed in the public service; (*organisme public*)

"public service" means the several positions in or under any department or public body listed in Schedule A, and does not include individuals referred to in Schedule B; (*fonction publique*)

"relief employee" means a person employed on an indeterminate or a term basis to provide services ordinarily provided by other employees, as and when needed, or to provide services on an emergency basis; (*fonctionnaire de relève*)

"senior manager" means an employee who occupies a position that involves management of significant financial resources, programs and personnel, and, where an employee reports directly to a deputy head, means the deputy head; (*cadre supérieur*)

"Staffing Appeals Committee" means a Staffing Appeals Committee established by regulation; (*comité d'appel des nominations*)

"term employee" means an employee appointed for a specified period exceeding four months but does not include a casual employee. (*fonctionnaire à durée déterminée*)

#### Reference to period of employment

(2) A reference in this Act or the regulations to a period of employment shall be construed as including employment before, on and after April 1, 1999.

#### References to deputy head

- (3) Unless the context otherwise requires, a reference in this Act to a deputy head,
- (a) in relation to an employee is a reference to the deputy head of the department or public body in which the employee is employed; and

- (b) in relation to a department or public body is a reference to the deputy head of that department or public body to which the context extends.

#### Public service

**2.** (1) Except as otherwise provided in this Act or in another Act, this Act applies to employees in

- (a) departments of the Government of Nunavut; and
- (b) public bodies included in Schedule A.

#### Non-application

(2) This Act does not apply to individuals listed in Schedule B.

#### Deputy heads

(3) This Act and the regulations apply to a deputy head except where the Act or regulations expressly provide otherwise.

#### Ministerial staff

(4) The personal staff of members of the Executive Council are not members of the public service and are not subject to the terms of this Act and the regulations.

#### Benefits to Executive Council staff

(5) Despite subsection (6), personal staff of members of the Executive Council are deemed to be members of the public service for the purpose of enrolment in a health, insurance or superannuation plan provided as a benefit to members of the public service.

## PART 2 MANAGEMENT AND DIRECTION

#### Powers of Minister

**3.** (1) The Minister shall manage and direct the public service.

#### Promotion of ethical practices

(2) The Minister shall promote ethical practices in the public service, and on approval of the Commissioner in Executive Council may issue a Code of Values and Ethics to guide the actions of employees.

#### Directives

(3) The Minister, on approval of the Commissioner in Executive Council, may issue directives respecting any matter related to the management and direction of the public service.

#### Report to Legislature

(4) The Minister shall report annually to the Legislative Assembly on the management and direction of the public service.

#### Delegation of authority – Minister

**4.** (1) Subject to subsection (2), the Minister may delegate to any employee or class of employees, by name or by designation of a position, subject to the terms and conditions that the Minister directs, any of the authority, powers, functions and duties of the Minister under this Act.

#### Limit

- (2) The Minister may not delegate the power
- (a) to issue directives under section 3; or
  - (b) to make an application under subsection 66(1).

#### Deputy heads

**5.** (1) A deputy head shall, subject to the general direction of the Minister, supervise and control the conduct of work of persons under the jurisdiction of the deputy head.

#### Responsibilities

- (2) A deputy head shall, in the department or public body under the jurisdiction of the deputy head, promote
- (a) ethical conduct;
  - (b) competent, effective and professional performance of duties;
  - (c) good management practices;
  - (d) the incorporation of Inuit societal values;
  - (e) the identification and removal of barriers to Inuit employment; and
  - (f) the use of the Inuit language in the public service.

#### Delegation by deputy head

(3) A deputy head may authorize any person under the jurisdiction of the deputy head to exercise any of the powers or perform any of the duties or functions of a deputy head under this Act, subject to any terms and conditions that he or she directs.

#### Acting deputy head

(4) In the absence of a deputy head, the person designated by the deputy head to act in his or her absence or, where no person has been designated or the position of deputy head is vacant, the person designated by the Minister responsible for the department or public body under the jurisdiction of the deputy head, has all the powers, functions and duties of the deputy head.

### PART 3 RECRUITMENT AND APPOINTMENT

#### General principle of non-discrimination

**6.** (1) Except as provided in this section, no person may be discriminated against on the grounds of race, colour, ancestry, national or ethnic origin, citizenship, religion, religious creed, sex, age, marital status, family status, pregnancy, sexual orientation, a conviction for a criminal or summary conviction offence which is unrelated to the nature of the employment or intended employment of the person, or physical or mental disability, unless it is a reasonable and bona fide requirement for the position.

#### Affirmative action

(2) Despite any other provision of this Act, the Minister may establish programs and issue directives that have as their object the improvement of employment conditions and knowledge, skills and experience of Inuit, having regard to the objectives of Article 23 of the Agreement, or the improvement of employment conditions and knowledge, skills and experience of individuals or groups identified on grounds referred to in subsection (1).

#### Inuit employment policies

(3) The Minister shall establish programs and issue directives, including a Priority Hiring Policy, with respect to the recruitment, hiring, training and promotion of employees that facilitate the achievement of the objectives of Article 23 of the Agreement through

- (a) the recruitment of Inuit; and
- (b) career development and promotion of Inuit employees.

#### Establishment of positions

**7.** (1) The Minister may issue directives concerning the establishment and approval, and addition or deletion, of positions in the public service.

#### Qualifications for positions

(2) The Minister shall, in relation to every position in the public service, establish the qualifications that, in the opinion of the Minister, are necessary or desirable having regard to the nature of the work to be performed.

#### Power to appoint and dismiss

**8.** (1) Subject to subsections (2), 10(6) and (7), a delegation of authority under subsection 4(1), and the provisions of any Act establishing a public body, the Minister may appoint persons to and dismiss persons from positions in the public service.

#### Appointment of Deputy Minister

(2) The Commissioner in Executive Council, on the recommendation of the Premier, may appoint a person to the position of Deputy Minister.



### Non-application of sections 10, 12 and 16

(3) Sections 10, 12 and 16 do not apply to a deputy head.

### Excluded from definition of "employee"

(4) In sections 17 and 22 to 26, "employee" does not include a deputy head.

### Re-assignment of Deputy and Assistant Deputy Ministers

(5) Unless otherwise specified in a contract of employment, the contract of employment of a Deputy Minister or an Assistant Deputy Minister is deemed to include a provision that the incumbent may be re-assigned at any time to a different department on the recommendation of the Executive Council.

### Saving

(6) Subsection (5) only applies to a contract of employment of an Assistant Deputy Minister entered into after the coming into force of this Act.

### Inconsistency

(7) Where terms and conditions of employment for any employee or category of employees set out in a contract of employment other than a collective agreement are inconsistent with terms and conditions set out in the regulations or directives established under this Act, the terms and conditions of the contract are not enforceable to the extent of the inconsistency.

### More beneficial terms and conditions

(8) Subject to the provisions of this or any other Act, the Minister may, by directive, establish terms and conditions of employment for a category of employees that are more beneficial to the employees than terms and conditions set out in the regulations.

### Appointments on merit

**9.** (1) Every appointment to a position in the public service must be made on the basis of merit.

### Merit

(2) An appointment is made on the basis of merit and a person is qualified for a position if the person to be appointed has the necessary qualifications for the work to be performed.

### Family relationship

**9.1.** (1) An employee will not participate in a decision concerning an appointment to a position if an applicant for the position is a member of the employee's immediate family, except in accordance with applicable directives.

## Definitions

(2) For the purposes of this section,

"child" includes a person to whom an employee has demonstrated a settled intention to treat as a child of his or her family; (*enfant*)

"immediate family" means

- (a) an employee's spouse,
- (b) a child, step-child, parent, step-parent, sibling, grandparent or grandchild of an employee or the employee's spouse,
- (c) a spouse of a person mentioned in paragraph (b), and
- (d) any relative of the employee or the employee's spouse who shares a residence with the employee; (*famille immédiate*)

"spouse" means a person who is

- (a) married to another person, or
- (b) living with another person in a conjugal relationship outside marriage. (*conjoint*)

## Appointments by competition

**10.** (1) Except as otherwise provided in this Act, every appointment to a position in the public service must be made pursuant to a competition held:

- (a) to establish if applicants have the qualifications that are necessary or desirable for the position; and
- (b) to rank qualified applicants in comparative order based on their level of qualifications.

## Ranking of applicants

(2) In determining the comparative order of applicants' qualifications for a position, the following factors may be taken into account:

- (a) skills and knowledge relevant to the position;
- (b) previous work experience;
- (c) previous work performance;
- (d) knowledge of the Inuit language;
- (e) knowledge of Inuit culture and society;
- (f) knowledge of the economy and environmental characteristics of Nunavut; and
- (g) any other factor determined by the Minister to be relevant to the position.

## Restricted competition criteria

(3) The Minister may direct, in respect of a vacancy or class of vacancies in the public service, that eligibility for a competition be restricted to one or more of the following classes of applicants:

- (a) laid off employees;

- (b) Inuit;
- (c) individuals identified on grounds referred to in subsection 6(1);
- (d) current employees; and
- (e) residents of a specified geographical area.

#### Priority hiring criteria

(4) The Minister may direct, in respect of a vacancy or class of vacancies in the public service, that hiring priority will be given to qualified applicants from one or more of the following classes of applicants:

- (a) laid off employees;
- (b) Inuit;
- (c) individuals identified on grounds referred to in subsection 6(1);
- (d) current employees; and
- (e) residents of a specified geographical area.

#### Offer to most qualified applicant in priority class

(5) In a competition subject to priority hiring criteria, where applicants in more than one class are qualified for the position, the position must first be offered to the most qualified applicant in the highest priority class, and to all qualified applicants in the highest priority class before being offered to a qualified applicant in the next highest and subsequent priority classes.

#### Appeal of Minister's decision

(6) Subject to the terms of the applicable regulations and directives issued by the Minister, a Staffing Appeals Committee may hear an appeal of an appointment following a competition under this section.

#### Implementation of decision

(7) Where a Staffing Appeals Committee grants an appeal, the Minister shall implement the decision of the Committee made in accordance with the regulations.

#### Appeal precludes grievance

(8) An employee who appeals an appointment under subsection (6) may not file a grievance in respect of the appointment under the regulations.

#### Grievance precludes appeal

(9) An employee who grieves an appointment under the regulations or the terms of a collective agreement may not appeal the appointment under subsection (6).

#### Eligibility list

**11.** (1) After a successful applicant in a competition has been identified and appointed, the Minister may place other qualified applicants on an eligibility list.

#### Future vacancy

(2) Despite subsection 10(1), the Minister may appoint a person whose name is on an eligibility list to a position in the public service for which the person is qualified.

### Acceptance

(3) After a person whose name is on an eligibility list is appointed to a position in the public service, his or her name shall be removed from the list, unless the appointment is on a casual, term or relief employee basis.

### Refusal

(4) If a person whose name is on an eligibility list refuses or fails to accept an offer of appointment for which he or she is qualified, his or her name may be removed from the eligibility list.

### No appeal

(5) An appointment of a person from an eligibility list cannot be appealed to a Staffing Appeals Committee.

### Appointment without competition – indeterminate or term positions

**12.** (1) Where the Minister is satisfied that it is necessary and that a person is qualified for a position, the Minister, on the recommendation of the Executive Council, may appoint a person to an indeterminate position or a term position of more than four months without competition.

### Casual, relief, transfer and secondment positions

(2) Where the Minister is satisfied that it is necessary and a person is qualified for a position, the Minister may, without competition

- (a) appoint a person to a casual or relief position in the public service;
- (b) transfer an employee to a different position at the same or a lower classification level;
- (c) transfer an employee who is laid off or an employee whose position is to be eliminated as a result of reorganisation to a different position at any classification level;
- (d) transfer or assign an employee to a different position on a temporary basis; or
- (e) appoint an employee of another government or agency to a position on a secondment basis.

### Internship positions

**13.** (1) The Minister may, on agreement with the incumbent, if any, direct that a position or class of positions be designated as an internship position, for one or more of the following purposes:

- (a) to develop the knowledge, skills and experience of the public service;
- (b) to develop the knowledge, skills and experience of Inuit members of the public service to achieve the objectives of Article 23 of the Agreement; or
- (c) to enable a member of the public service to acquire professional or trade qualifications.

### Internship appointments

(2) The Minister may appoint a person as an intern, in accordance with the policies and directives concerning internships, where the Minister is satisfied that the appointment will serve a purpose set out in subsection (1).

### Term

(3) The term of an internship shall be determined by the designation of the position, and may be reduced or extended by the Minister in accordance with the policies and directives concerning internships.

### Completion

(4) On successful completion of an internship, the Minister may do one of the following:

- (a) on the resignation or completion of the term of the supervising incumbent, re-designate the internship position as a non-internship position and appoint the intern to the position;
- (b) appoint the intern to the position of the supervising incumbent, if any, and appoint the incumbent, without competition, to another position for which the incumbent is qualified; or
- (c) appoint the intern, without competition, to another position for which the intern is qualified.

### Unsuccessful internship

(5) Where an employee does not successfully complete an internship, the Minister may appoint the employee to his or her former position, if vacant, or to another position for which he or she is qualified, without competition.

## PART 4 TERMS AND CONDITIONS OF EMPLOYMENT

### Pay and benefits

**14.** An employee is entitled to be paid the remuneration and receive the benefits applicable to the position held by the person, in accordance with the regulations, directives, and applicable collective agreement.

### Oath

**15.** An employee shall take the prescribed oath, in writing.

### Probation

**16.** (1) A person appointed to a position in the public service is on probation for a period of six months, or such longer period as may be determined in accordance with the regulations, in order to assess the ability of the person to perform the work and meet the requirements of the position.

#### Period reduced or waived

(2) The Minister may, if he or she considers it appropriate, reduce or waive the probationary period of an employee.

#### Extension of probationary period

(3) The Minister may, in accordance with the regulations, extend the probationary period of an employee.

#### Rejection

**17.** (1) The Minister may, at any time during the probationary period of an employee, on the recommendation of the deputy head made in good faith, reject the employee if the deputy head considers that the employee is unsuitable for the position to which he or she has been appointed.

#### Effect of rejection

(2) An employee who is rejected under subsection (1) ceases to be an employee.

#### Tenure of office

**18.** (1) An employee is appointed for an indeterminate period unless some other period of employment is specified in the contract of employment.

#### Expiration of term

(2) A term employee, casual employee or relief employee employed on a term basis ceases to be employed at the expiration of the specified period of employment unless the term is extended by agreement of the parties before the expiration of the period.

#### Conversion of term to indeterminate

(3) A term position may be converted to an indeterminate position in accordance with the directives.

#### Resignation

**19.** (1) An employee may resign his or her position by giving to the deputy head at least two weeks' notice in writing of his or her intention to resign the position and indicating the last day on which the employee will perform his or her duties.

#### Withdrawal

(2) A resignation may, with the approval of the deputy head, be withdrawn at any time before it becomes effective, unless another person has been appointed or selected for appointment to the position being vacated.

#### Abandonment

**20.** If an employee is absent from duty without leave and without reasonable excuse for a period of five consecutive working days, the Minister may, in writing, declare the employee to have abandoned his or her position, in which case the position becomes vacant and the employee ceases to be an employee.

### Laying off employees

**21.** (1) The Minister may, on the recommendation of a deputy head and in accordance with the regulations, lay off an employee if the duties of the position held by the employee are no longer required to be performed.

### Cessation of employment

(2) An employee ceases to be an employee when the employee is laid off under subsection (1).

## Suspension, Investigation and Dismissal

### Misconduct or incompetence

**22.** (1) A deputy head may, in accordance with directives concerning discipline, if the deputy head is satisfied that an employee is guilty of misconduct or incompetence, by notice in writing:

- (a) suspend the employee, without pay, for a period, not exceeding 30 days, that the deputy head considers appropriate;
- (b) reduce the employee's pay;
- (c) demote the employee; or
- (d) recommend to the Minister that the employee be dismissed.

### Right to grieve, collective agreements

(2) An employee who is a member of a bargaining unit identified in subsection 55(5) may grieve the suspension, reduction of pay, demotion or recommendation of dismissal in accordance with the grievance procedures established by the applicable collective agreement.

### Right to grieve, excluded employees

(3) An employee who is not a member of a bargaining unit identified in subsection 55(5) may grieve the suspension, reduction of pay, demotion or recommendation of dismissal in accordance with the regulations.

### Demotion

(4) A demotion under this section may be for a fixed period.

### Sections 9, 10, 16 and 17 do not apply

(5) Sections 9, 10, 16 and 17 do not apply to an employee demoted under paragraph (1)(c).

### Suspension on allegation of misconduct or incompetence

**23.** (1) A deputy head may, if it is alleged that an employee is guilty of misconduct or incompetence,

- (a) investigate the allegation; and
- (b) by notice in writing, suspend the employee pending the outcome of the investigation, for a period not exceeding 30 days.

#### Extension of suspension period

(2) The deputy head may, from time to time, extend the period of suspension of an employee under subsection (1) as required to complete the investigation.

#### Approval for extensions over 90 days

(3) A deputy head may not extend a period of suspension under subsection (2) to a total period exceeding 90 days without the approval of the Minister.

#### Remuneration during suspension

**24.** (1) An employee suspended pursuant to section 23 is entitled to his or her ordinary remuneration during the suspension period.

#### Termination of suspension

(2) The deputy head may terminate a suspension made under section 23 at any time.

#### Action after investigation – person not guilty

**25.** (1) The deputy head may, if satisfied on completion of an investigation pursuant to section 23 that an employee is not guilty of misconduct or incompetence, terminate the suspension and reinstate the employee.

#### Action after investigation – person guilty

(2) The deputy head may, if satisfied on completion of an investigation pursuant to section 23 that an employee is guilty of misconduct or incompetence,

- (a) demote the employee;
- (b) suspend the employee, without pay, for a period not exceeding 30 days;
- (c) take such other disciplinary action as the deputy head considers appropriate; or
- (d) recommend to the Minister that the employee be dismissed.

#### Dismissal procedures

(3) A recommendation of dismissal under paragraph (2)(d) must be made in accordance with directives concerning procedures for dismissal.

#### Notice of action taken

(4) The deputy head shall give the employee notice in writing of the action taken by the deputy head as a result of an investigation and the reasons for it.

#### Right to grieve, collective agreements

(5) An employee who is a member of a bargaining unit identified in subsection 55(5) may grieve the demotion, suspension, other disciplinary action, or recommendation of dismissal in accordance with the grievance procedures established by the applicable collective agreement.



### Right to grieve, excluded employees

(6) An employee who is not a member of a bargaining unit identified in subsection 55(5) may grieve the demotion, suspension, other disciplinary action, or recommendation of dismissal in accordance with the regulations.

### Notice of dismissal

**26.** (1) Where the Minister dismisses an employee, the Minister shall give the employee notice in writing of the dismissal and the reasons for it.

### Dismissal procedures

(2) A notice of dismissal under subsection (1) must be issued in accordance with directives concerning procedures for dismissal.

## Holidays

### Holidays

**27.** (1) The following days are holidays for the public service:

- (a) New Year's Day;
- (b) Good Friday;
- (c) Easter Monday;
- (d) Victoria Day;
- (e) Canada Day;
- (f) Nunavut Day;
- (g) the first Monday in August;
- (h) Labour Day;
- (i) Thanksgiving Day;
- (j) Remembrance Day;
- (k) Christmas Day;
- (l) Boxing Day; and
- (m) any other day or part of a day fixed by order of the Minister as a holiday for all or part of the public service.

### Compensation for work on holiday

(2) An employee required to perform the duties of his or her position on a holiday shall be compensated in accordance with the regulations, directives, and applicable collective agreement.

## Leaves of Absence

### Leave of absence

**28.** An employee is entitled, in accordance with the regulations, directives, and applicable collective agreement, to be granted leave of absence, with or without pay.

#### Appointment during extended leave

**29.** (1) Where an employee is granted leave of absence, except maternity, parental or reservist leave, for a period greater than three months, the Minister may appoint another person to the employee's position and the employee on leave ceases to be the incumbent of that position but remains an employee during the remaining period of leave.

#### Appointment to another position

(2) Where an employee is on leave of absence and another person is appointed to his or her position under subsection (1), the Minister shall, despite subsection 10(1), on or before the expiration of the leave, appoint the returning employee, without competition, to a position in the public service comparable to the employee's former position and for which he or she is qualified.

### PART 5 POLITICAL ACTIVITY

#### Definitions

**30.** (1) In this Part,

"birthright election" means an election for a full-time, paid executive position in a designated Inuit organization as defined in Article 39 of the Agreement; (*élection fondée sur le droit de naissance*)

"campaign manager" means a campaign manager as defined in the *Nunavut Elections Act* or a person designated as the campaign manager or who acts as principal spokesperson and organiser for a candidate in another election; (*directeur de campagne*)

"candidate" means a candidate as defined in the *Nunavut Elections Act* or the *Canada Elections Act*, or a candidate in a birthright election or a local election, as the context requires; (*candidat*)

"federal election" means an election of a member of the House of Commons of Canada; (*élection fédérale*)

"financial agent" means a financial agent as defined in the *Nunavut Elections Act* or a person designated as the financial agent or who carries out substantially the same duties and responsibilities for a candidate in a birthright election or a local election; (*agent financier*)

"local election" means an election for a full-time, paid member of a local authority as defined in the *Local Authorities Elections Act*; (*élection locale*)

"official agent" means an official agent as defined in the *Canada Elections Act* or a person designated as the official agent or who carries out substantially the same duties and responsibilities for a candidate in a birthright election or a local election; (*agent officiel*)

"political activity" means any work or activity for or against a candidate or political party, and includes

- (a) campaigning for or against a candidate or a political party or a policy or platform of a candidate or political party,
- (b) soliciting funds for a candidate or a political party,
- (c) contributing money to a candidate or a political party,
- (d) publicly endorsing a candidate or a political party, and
- (e) requesting any other person to support a candidate or a political party or to work for a candidate or political party;  
(*activité politique*)

"political party" means a political party registered under the *Canada Elections Act*; (*parti politique*)

"registered association" means an electoral district association registered under the *Canada Elections Act*; (*association enregistrée*)

"territorial election" means an election of a member of the Legislative Assembly of Nunavut. (*élection territoriale*)

#### Restricted employees

(2) For the purposes of this Part, the category of restricted employees includes

- (a) deputy heads;
- (b) heads of secretariats of the Executive Council;
- (c) assistant deputy ministers;
- (d) associate deputy ministers;
- (e) directors;
- (f) executive directors;
- (g) a position in a public body substantially equivalent to a position identified in paragraphs (a) to (f); and
- (h) Executive Council staff, other than secretarial staff or clerical staff.

#### Political participation

##### **31.** (1) An employee

- (a) may engage in political activity, except as otherwise provided in this Part;
- (b) may be a candidate in an election, subject to the provisions of this Part; and
- (c) has no obligation to engage in political activity or be a candidate in an election.

### No requirement

(2) No Minister or employee may at any time require an employee to engage in political activity or be a candidate or a campaign official in an election.

### Political activity

(3) An employee may not:

- (a) be a candidate in a territorial election unless on a leave of absence granted under subsection 33(1);
- (b) engage in political activity at work;
- (c) use the premises, air charters, supplies, equipment or services belonging to or in the possession of the Government of Nunavut or a public body for the purposes of any political activity, unless the premises are residential premises leased to an employee;
- (d) display or distribute campaign literature or other campaign material of a candidate or political party in an office or premises belonging to or in the possession of the Government of Nunavut or a public body, unless the premises are residential premises leased to an employee;
- (e) in his or her public service capacity, publicly endorse a candidate or political party;
- (f) intentionally use or attempt to use his or her public service position to affect the political activity of any other person; or
- (g) engage in any political activity that conflicts with the performance of his or her public service duties and responsibilities.

### Activity requiring notice – unrestricted employees

(3.1) In addition to the limitations in subsection (3), an employee who is not a restricted employee may not, without first notifying his or her deputy head in accordance with subsection 34(1):

- (a) be a candidate in a federal election, a birthright election, or a local election; or
- (b) serve as a campaign manager, financial agent or official agent for a candidate.

### Activity requiring leave – restricted employees

(4) In addition to the limitations in subsection (3), a restricted employee shall not, unless on a leave of absence granted under subsection 33(1):

- (a) be a candidate in a federal election;
- (b) solicit funds for a candidate or political party;
- (c) be a campaign manager or otherwise actively campaign in support of a candidate or political party in a territorial election or a federal election;
- (d) comment publicly, outside the scope of his or her duties, on matters that are directly related to those duties and that are addressed in the positions or policies of a candidate or political party; or

- (e) speak in public or express views in writing for distribution to the public on any matter that forms part of the platform of a candidate or political party, including any criticism of candidates, positions or policies.

#### Activity requiring approval – restricted employees

(5) In addition to the limitations in subsections (3) and (4), a restricted employee may not, without first obtaining approval under subsection 34(2) or taking a leave of absence under subsection 34(4):

- (a) serve as a financial agent or official agent for a candidate in a territorial election or a federal election;
- (b) be a candidate in a local election or a birthright election;
- (c) serve as a campaign manager, a financial agent or an official agent for a candidate in a birthright election or a local election; or
- (d) serve as an executive officer of a political party or registered association.

#### Acceptable activities

(6) An employee does not contravene subsections (3), (4) or (5) by engaging in the following activities:

- (a) attending a political meeting;
- (b) being a member of a political party;
- (c) contributing money to a candidate or a political party; or
- (d) criticizing a government policy unrelated to the duties or functions of the employee.

#### Effect of this Part

(7) Nothing in this Part limits or affects the application of the law or rules governing an election in respect of which an employee engages in political activity or participates as a candidate or an official of a candidate or political party.

#### Nomination of candidate – federal elections

**32.** An employee may seek the nomination and be the proposed candidate of a political party in a federal election, before an election period, only if the employee has notified his or her deputy head before the nomination meeting of the intent to do so.

#### Leave of absence – territorial or federal election

**33.** (1) On application by an employee required to obtain leave under subsection 31(3), (4) or (5), the employee's deputy head, or where the employee is a deputy head, the employee's Minister shall grant a request for a leave of absence to be a candidate or to work for a candidate or political party, unless the deputy head or Minister determines, in accordance with directives concerning political activity, that the absence of the employee will seriously interfere with the operation of the department or public body concerned.

### Leave period

(2) A leave under subsection (1) shall be for a period commencing on the later of the day the election writ is issued and the day the employee files a declaration of candidacy or nomination papers or commences working for a candidate or political party, and ending on the day on which the results of the election are officially declared, or on an earlier day requested by an employee who ceases to be a candidate or to work for or on behalf of a candidate or political party.

### Notice

(3) The Minister shall cause notice of a leave of absence granted under subsection (1) for the purpose of being a candidate in a territorial election to be published in the *Nunavut Gazette*.

### Candidates and officials – unrestricted employees

**34.** (1) An employee who is not a restricted employee shall notify his or her deputy head in writing before becoming:

- (a) a candidate in a federal election, birthright election or local election; or
- (b) a campaign manager, financial agent or official agent for a candidate or political party in a territorial election, federal election, birthright election or local election.

### Candidates and officials – restricted employees

(2) A restricted employee shall request the approval of the employee's deputy head, or where the employee is a deputy head, the approval of the employee's Minister, before becoming:

- (a) a financial agent or official agent for a candidate in a territorial election or a federal election;
- (b) a candidate in a birthright election or a local election;
- (c) a campaign manager, a financial agent or an official agent for a candidate in a birthright election or a local election; or
- (d) an executive officer of a political party or registered association.

### Factors for approval

(3) A deputy head or Minister shall approve a request pursuant to subsection (2) unless, on considering the nature of the employee's duties and responsibilities, the deputy head or Minister determines that being a candidate or holding the particular position would impair the employee's ability to perform his or her public service duties effectively and impartially.

#### Leave where approval denied

(4) Where a deputy head or Minister refuses the request of an employee under paragraph (2)(a), (b) or (c), the employee may take a leave of absence for the duration of the election period to become a candidate or accept the position in question, unless the deputy head or Minister determines, in accordance with directives concerning political activity, that the absence of the employee will seriously interfere with the operation of the department or public body concerned.

#### Effect of election

**35.** An employee ceases to be an employee on being sworn in to an elected position as

- (a) a member of the Legislative Assembly;
- (b) a member of the House of Commons of Canada;
- (c) a full-time executive officer with a birthright organization; or
- (d) a full-time member of a local authority.

#### Discipline

**36.** (1) The Minister may take any disciplinary measure that he or she considers appropriate with respect to a contravention of subsection 31(2), (3), (3.1), (4) or (5).

#### No reprisal

(2) No person shall discriminate or threaten to or take any form of reprisal or disciplinary action against an employee because the employee

- (a) engages in political activity in accordance with this Part; or
- (b) declines to engage in political activity.

#### Election or plebiscite officer

**37.** An employee may be appointed to serve as an election officer under the *Nunavut Elections Act* or as a plebiscite officer under the *Plebiscites Act* where no other suitable person is available for that position in the community. S.Nu. 2013,c.25,s.245(2).

## PART 6 DISCLOSURE OF WRONGDOING

#### Wrongdoing

**38.** (1) In this Part, wrongdoing means any of the following conduct by an employee acting in his or her public service capacity:

- (a) contravention of an Act of the Legislative Assembly, the Parliament of Canada or the legislature of a province or territory, or of a regulation made under any such Act;
- (b) failure to comply with applicable directives made by the Minister, the Minister responsible for the *Financial Administration Act*, or the Financial Management Board with respect to management of

- the public service or public assets for which the employee is responsible;
- (c) misuse of public funds or public property;
  - (d) gross mismanagement of public property or resources for which the employee is responsible, including an act or omission showing a reckless or willful disregard for the proper management of public property or resources;
  - (e) harassment or verbal or physical abuse of any person other than an employee or violation of the human or contractual rights of any person providing services to or receiving services or information about services of any kind from a department or public body;
  - (f) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, to public or private property, or to the natural environment, other than a danger that is inherent in the performance of the duties or functions of an employee;
  - (g) a serious breach of the Code of Values and Ethics;
  - (h) any act of reprisal against an employee or other person; or
  - (i) a request, direction or encouragement by a supervisor or senior manager to an employee or by an employee to any other person to commit a wrongdoing set out in paragraphs (a) to (h).

#### Deputy heads

(2) Where this Part or the directives require or allow an employee to notify or make a disclosure to the employee's deputy head, a deputy head may notify or make such a disclosure to any Deputy Minister that the deputy head considers appropriate in the circumstances.

#### Meaning of reprisal

(3) In this Part, an act of reprisal against a person includes any action, threat or attempt to suspend, demote, dismiss, discharge, expel, intimidate, coerce, evict, terminate a contract to which the person is a party without cause, commence legal action against, impose a pecuniary or other penalty on or otherwise discriminate against the person because of a disclosure of wrongdoing by that person or because the person assists in the investigation of a disclosure made by another person.

#### Prevention and disclosure of wrongdoing

**39.** (1) The Minister and every deputy head shall encourage the prevention and disclosure of wrongdoing in the public service by

- (a) providing directives to employees concerning the disclosure of wrongdoing to a senior manager or deputy head in order to prevent or correct wrongdoing;
- (b) informing all employees of the provisions of this Part; and
- (c) any other means that he or she considers appropriate.



### Dissemination of information

(2) A deputy head shall ensure that every employee is familiar with the procedures for disclosure of wrongdoing under this Part and the directives, and the protections from acts of reprisal for such disclosure.

### Consultation with Ethics Officer

(3) An employee may consult with the Ethics Officer to obtain advice prior to making a disclosure under this Act.

### Internal disclosure by employee

**40.** (1) Before making a disclosure under subsection (2), an employee who has reasonable grounds to believe that wrongdoing has occurred shall make reasonable efforts to disclose the wrongdoing to appropriate authorities within the public service in accordance with the directives, and may disclose the wrongdoing to any or all of:

- (a) the employee's senior manager;
- (b) the employee's deputy head;
- (c) the Deputy Minister responsible for the administration of this Act; and
- (d) any other Deputy Minister that the employee considers appropriate in the circumstances.

### Further disclosure by employee

(2) Where an employee has made a disclosure under subsection (1) and is not satisfied that authorities within the public service have taken reasonable steps to investigate and correct the wrongdoing within 30 days of the disclosure, the employee may disclose the wrongdoing to any or all of:

- (a) the employee's deputy head;
- (b) the Deputy Minister responsible for the administration of this Act;
- (c) any other Deputy Minister that the employee considers appropriate in the circumstances;
- (d) the Ethics Officer; and
- (e) a police or law enforcement agency with respect to an offence within its power to investigate.

### Notice by deputy head

(3) A deputy head who receives a disclosure of wrongdoing under subsection (1) or (2) shall immediately notify the Deputy Minister responsible for the administration of this Act of such disclosure.

### Notice by Deputy Minister

(4) A Deputy Minister who receives a disclosure of wrongdoing under subsection (2) or (3) shall immediately notify the Ethics Officer of the disclosure and the steps being taken with respect to the matter disclosed.

### Exception

(5) An employee may disclose wrongdoing or potential wrongdoing to any other person if the employee believes on reasonable grounds that the disclosure is necessary to prevent imminent danger to the life, health or safety of a person or imminent danger to property or the environment.

### Investigation

**41.** (1) Subject to subsection (2) and section 42, the Ethics Officer shall begin an investigation of wrongdoing described in a disclosure made under section 40 within 45 days of receiving the disclosure.

### Preliminary review and inquiry

(2) The Ethics Officer shall review the information provided and may request additional information or make preliminary inquiries concerning a disclosure to the extent that he or she considers warranted before commencing an investigation.

### Notice of investigation

(3) Before investigating wrongdoing in a department or public body, the Ethics Officer shall notify the responsible deputy head, or where the responsible deputy head is a subject of the investigation, the Deputy Minister responsible for the administration of this Act or any other Deputy Minister that the Ethics Officer considers appropriate in the circumstances.

### Co-operation of employees

(4) The deputy head of a department or public body in which an investigation is being conducted shall co-operate fully with the Ethics Officer or any person acting on behalf or under the direction of the Ethics Officer, and shall ensure that all employees of the department or public body co-operate fully with the Ethics Officer or any person acting on behalf or under the direction of the Ethics Officer.

### Informal resolution

- (5) The Ethics Officer may attempt to resolve a matter informally if
- (a) it appears after a preliminary review that an allegation of wrongdoing in a disclosure may be resolved satisfactorily; and
  - (b) the employee making the disclosure and each person who would be the subject of an investigation consent.

### Referral to alternative dispute resolution

(6) Despite any provision of this Act or the regulations, the Ethics Officer may, at any time after a disclosure has been made but before an investigation is complete, refer a matter to an alternative dispute resolution process if

- (a) the employee who made the disclosure and each person who is a subject of the investigation agree to the referral; and
- (b) the Ethics Officer is satisfied that the referral is appropriate in the circumstances.

### Approval of agreement

(7) An agreement reached in an alternative dispute resolution process is subject to the approval of the Ethics Officer.

### No or suspended investigation

**42.** (1) The Ethics Officer may decide not to investigate a matter after making preliminary inquiries or may suspend or terminate an investigation without preparing a report where the Ethics Officer is satisfied that one or more of the following circumstances apply:

- (a) the matter disclosed is being investigated by a police or law enforcement agency with respect to an offence within its power to investigate;
- (b) the matter disclosed is being adequately investigated by other officials in accordance with a procedure established under this or any other Act;
- (c) the matter disclosed is an employment or labour relations matter subject to an independent dispute resolution mechanism established under this or any other Act or under a collective agreement and the Ethics Officer is satisfied that the employee making the disclosure will receive prompt and fair treatment under such other dispute resolution mechanism;
- (d) the matter disclosed relates solely to a public policy decision made by the Executive Council or the Legislative Assembly;
- (e) the disclosure is frivolous, vexatious or made in bad faith;
- (f) there has been substantial delay between the time of the matter disclosed and the disclosure, and the persons and information necessary to complete the investigation are no longer available;
- (g) that either no wrongdoing occurred or that wrongdoing as defined in this Act did occur but,
  - (i) the responsible employee took all reasonable measures to prevent the wrongdoing;
  - (ii) the wrongdoing was trivial, committed through inadvertence or an error of judgment made in good faith; or
  - (iii) the responsible employee was acting in accordance with the advice of a professional legal, accounting, engineering or other advisor to government and had, before receiving that advice, disclosed all material facts known to the employee;or
- (h) there is a valid reason, in the opinion of the Ethics Officer, other than a circumstance described in paragraphs (a) to (g), for not investigating the matter disclosed.

### Reference to appropriate authorities

(2) If the Ethics Officer, when conducting an investigation, determines that there are reasonable grounds to believe there has been a contravention of any other Act, including the *Criminal Code* or any other federal Act, the Ethics Officer shall

immediately refer the matter to the appropriate authorities and may suspend the investigation until the resulting investigation and any charge have been finally disposed of, and may report the suspension to the Minister and the employee who made the disclosure.

#### Time limit

(3) The Ethics Officer shall not investigate a matter disclosed where the disclosure is made more than five years after the employee making the disclosure became aware of the circumstances unless the Ethics Officer is satisfied that:

- (a) the employee had reasonable grounds to delay making the disclosure;
- (b) there is a public interest in investigating the matter despite the delay; and
- (c) the persons and information necessary to complete the investigation are still available.

#### Reasons for not investigating

(4) Where the Ethics Officer decides not to investigate a matter disclosed or suspends or terminates an investigation, the Ethics Officer shall provide reasons for the decision, in writing, to the Minister and the employee making the disclosure.

#### Conduct of investigation

**43.** (1) In an investigation, the Ethics Officer

- (a) has the powers of a Board under the *Public Inquiries Act*, including the power to engage the services of counsel, experts and other persons referred to in section 10 of that Act; and
- (b) is not subject to technical rules of evidence.

#### Public or private review

(2) The Ethics Officer may conduct an investigation in private or in public at his or her discretion.

#### Disclosure required

(3) Subject to subsection (5), an employee who has custody or control of information to which the Ethics Officer is entitled under subsection (1) shall provide the information to the Ethics Officer on the Ethics Officer's request.

#### Process

(4) Despite subsections (1) and (2), in an investigation, the Ethics Officer shall, as far as practicable,

- (a) ensure that every person who has information relevant to the matter being investigated is given an opportunity to provide that information to the Ethics Officer;
- (b) obtain information as informally and expeditiously as possible; and
- (c) protect the identity of the employee who made the disclosure, any person who is the subject of the disclosure, and any witnesses.

### Restriction

(5) The Ethics Officer may not require the provision of information, the production of a document or thing or the giving of an answer by a person if the provision, production or answer would

- (a) interfere with or impede the investigation or prosecution of an offence;
- (b) reveal the substance of deliberations of the Executive Council; or
- (c) reveal information that is subject to solicitor-client privilege.

### Protocol

(5.1) The Ethics Officer and the Speaker of the Legislative Assembly shall establish and adhere to a protocol with respect to the Ethics Officer's exercise of powers and performance of duties under this section where an investigation concerns officers or employees of the Office of the Legislative Assembly.

### Paramountcy

(6) If there is an inconsistency or conflict between this section and the *Access to Information and Protection of Privacy Act* or the regulations made under that Act, this section prevails to the extent of the inconsistency or conflict.

### Right of entry

**44.** (1) The Ethics Officer and any person acting on behalf or under the direction of the Ethics Officer may, in connection with an investigation, enter any premises occupied by a department or public body.

### Notice of entry

(2) Upon entering premises under subsection (1), the Ethics Officer or person acting on behalf or under the direction of the Ethics Officer must identify himself or herself to the employee in charge of the premises and allow the employee to notify the responsible deputy head.

### Report of investigation

**45.** (1) Subject to subsection (2), as soon as practicable after conducting an investigation, the Ethics Officer shall report, in writing, on the results of the investigation to

- (a) the employee who made the disclosure that led to the investigation;
- (b) the Minister responsible for the concerned department or public body;
- (c) the Minister; and
- (d) any other Minister that the Ethics Officer considers appropriate in the circumstances.

### Preliminary report

(2) Where the Ethics Officer is unable to complete an investigation within 120 days of receiving a disclosure, the Ethics Officer shall provide a preliminary report to the persons specified in subsection (1) within the 120 day period indicating:

- (a) the work required to complete the investigation;
- (b) the estimated time required to complete the investigation and final report; and
- (c) any other matter related to the investigation, in the discretion of the Ethics Officer.

### Contents of report

(3) A final report on an investigation must include

- (a) the Ethics Officer's conclusions as to whether wrongdoing occurred;
- (b) reasons for the conclusions; and
- (c) any recommendations to address the wrongdoing or its consequences or to prevent its repetition that the Ethics Officer considers appropriate.

### Recommendations after investigation

(4) Where the Ethics Officer determines that wrongdoing has occurred, in the report on the investigation the Ethics Officer may recommend to the Minister and to the Minister responsible for the department or public body subject to the investigation one or more of the following:

- (a) that no sanctions be imposed on any employees;
- (b) that an employee responsible for the wrongdoing be reprimanded, suspended, or dismissed from the public service;
- (c) that an employee responsible for the wrongdoing publicly acknowledge his or her conduct;
- (d) that an employee responsible for the wrongdoing undertake such remedial action as may be directed, including paying to the government the amount of any gain realized by the employee or any other person or paying compensation to any person;
- (e) that the responsible department or public body undertake such remedial action as may be directed, including paying compensation to any person;
- (f) that policies, directives or procedures applicable to the responsible department or public body be made or revised to prevent repetition of the wrongdoing;
- (g) that employees receive training directed at preventing repetition of the wrongdoing; or
- (h) any other action the Ethics Officer considers appropriate.

#### Mandatory response

(5) If a report of the Ethics Officer includes recommendations, the Minister and the Minister responsible for the department or public body subject to the investigation shall respond to the report in writing within 21 days after receiving the report,

- (a) describing action taken or to be taken in response to the recommendations; and
- (b) explaining why a recommended action is not being taken.

#### Where no sanctions recommended

(6) The Ethics Officer shall recommend that no sanction or disciplinary action be imposed if the Ethics Officer finds that no wrongdoing occurred or that wrongdoing as defined in this Act did occur but the Ethics Officer is satisfied that

- (a) the responsible employee took all reasonable measures to prevent the wrongdoing;
- (b) the wrongdoing was trivial, committed through inadvertence or an error of judgment made in good faith; or
- (c) the responsible employee was acting in accordance with the advice of a professional legal, accounting, engineering or other advisor to government and had, before receiving that advice, disclosed all material facts known to the employee.

#### Statement of reasons

(7) If the Ethics Officer recommends that no sanction or disciplinary action be imposed in respect of wrongdoing, the Ethics Officer shall state in his or her report the reasons for the recommendation.

#### Publication of report

(8) The Ethics Officer shall publish the report of an investigation, or a summary of the report without identifying information about persons involved in the investigation, unless the Ethics Officer is satisfied that:

- (a) there are significant privacy interests of a person or persons involved in the investigation but not responsible for any wrongdoing that would be negatively affected by publication of the report; and
- (b) there is no over-riding public interest served by publication of the report.

#### Advance notice

(9) The Ethics Officer may provide to the employee who made the disclosure, the Minister and the Minister responsible for the department or public body subject to an investigation a copy of any report under subsection (1) before it is released to any other person.

### Protection against reprisal

**46.** (1) No person shall commit an act of reprisal against a person because that person makes a disclosure of wrongdoing in accordance with section 40 or gives evidence or assists in an investigation by the Ethics Officer or other public official.

### Offence

(2) A person who contravenes subsection (1) is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$10,000.

### Complaint of reprisal

**47.** (1) A person who believes that he or she is the subject of an act of reprisal prohibited under subsection 46(1) may file a complaint with the Ethics Officer.

### Investigation

(2) The Ethics Officer shall investigate a complaint made under subsection (1), and in the investigation may exercise any of the powers set out in section 43.

### Report

(3) On concluding an investigation of a complaint of reprisal, the Ethics Officer shall provide a report to

- (a) the person who complained;
- (b) the person who is the subject of the complaint;
- (c) the deputy head of an employee who is the subject of the complaint, or the responsible Minister if a deputy head is the subject of the complaint;
- (d) the Minister; and
- (e) any other Minister the Ethics Officer considers appropriate in the circumstances.

### Implementation of recommendation

(4) If the Ethics Officer finds that a complaint of reprisal is valid, the deputy head or Minister responsible for the employee who committed the act of reprisal and the Minister shall take appropriate disciplinary action against the employee responsible for the act of reprisal, and may take any other action recommended by the Ethics Officer to redress the complainant for any loss or damage caused by the act of reprisal.

### Exceptional circumstances

(5) Where the deputy head or Minister responsible for the employee who committed the act of reprisal and the Minister choose not to take any action recommended by the Ethics Officer under this section, they shall together respond to the Ethics Officer in writing within five days,

- (a) explaining why a recommended action will not be taken; and
- (b) describing what action, if any, will be taken in response to the recommendations.



#### Application of certain rules

**48.** (1) Subject to subsection 43(5), a rule of law that authorizes or requires the withholding of a document, paper or thing, or the refusal to answer a question, on the ground that the disclosure or answering would be injurious to the public interest, does not apply in respect of an investigation by the Ethics Officer.

#### Same

(2) A provision of an Act requiring a person to maintain secrecy in relation to, or not to disclose information relating to, a matter does not apply in respect of an investigation by the Ethics Officer, and a person required by the Ethics Officer to furnish information or to produce a document, paper or thing or summoned by the Ethics Officer to give evidence, may not refuse to furnish the information, produce the document, paper or thing or refuse to answer questions on the ground of that provision.

#### Admissibility of evidence

**49.** Except on the trial of a person for perjury, a statement made or answer or evidence given by that or another person in the course of an investigation by the Ethics Officer is not admissible in evidence against the person in a court or at an inquiry or in another proceeding.

#### Defence for certain offences

**50.** A person is not guilty of an offence under another Act by reason of complying with a request or requirement of the Ethics Officer to furnish information or produce a document, paper or thing or by reason of answering a question in an investigation by the Ethics Officer.

#### Evidence not compellable

**51.** (1) The Ethics Officer and any person acting on behalf or under the direction of the Ethics Officer is not a compellable witness in respect of any information or evidence received in an investigation under this Act.

#### Necessary disclosure

(2) The Ethics Officer may disclose, or authorize a person acting on behalf or under the direction of the Ethics Officer to disclose, information that the Ethics Officer considers necessary

- (a) to further an investigation by the Ethics Officer or by appropriate law enforcement officials; or
- (b) to establish grounds for conclusions and recommendations made in a report issued at the conclusion of an investigation by the Ethics Officer.

#### Paramountcy

(3) If there is an inconsistency or conflict between this section and the *Access to Information and Protection of Privacy Act* or the regulations made under that Act, this section prevails to the extent of the inconsistency or conflict.

Not subject to review

**52.** Decisions made by the Ethics Officer are not subject to appeal to, or review by, any court.

Annual report

**53.** (1) The Ethics Officer shall prepare and deliver to the Minister, within six months after the end of the fiscal year, an annual report including the following information:

- (a) the number of disclosures of wrongdoing received under section 40;
- (b) the number of complaints of reprisal made under section 47;
- (c) a summary of each report of an investigation completed in the year, including recommendations made under subsection 45(3) or subsection 47(4);
- (d) a summary of the responses of Ministers to recommendations made under subsection 45(3) or subsection 47(4); and
- (e) any other matter the Ethics Officer considers relevant in respect of his or her activities under this Act.

Tabling report with Legislative Assembly

(2) The Minister shall, at the first opportunity, table a copy of the Ethics Officer's annual report in the Legislative Assembly.

Public availability

(3) The Ethics Officer shall make copies of the annual report available to the public, and may publish the annual report any time after the report has been delivered to the Minister.

Offences and penalties – deputy heads

**54.** (1) A deputy head who fails to cooperate in an investigation by the Ethics Officer under section 41 or 47, or fails to ensure that employees of the department or public body for which the deputy head is responsible cooperate in an investigation by the Ethics Officer under section 41 or 47 is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$10,000.

Offences and penalties – employees

(2) An employee who fails to provide information to the Ethics Officer when requested under subsection 43(3) is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$5,000.

Bad faith disclosure

(3) Where the Ethics Officer determines that a disclosure by an employee is vexatious or was made in bad faith, the Minister may take appropriate disciplinary action against the employee.

## PART 7 COLLECTIVE AGREEMENTS

### General

#### Definitions

**55.** (1) In this Part,

"bargaining unit" means a unit of employees established by subsection 55(5) for the purpose of collective bargaining; (*unité de négociation*)

"collective agreement" means an agreement in writing entered into under this section between the Minister and an employees' association respecting terms and conditions of employment and related matters and shall be deemed to include any award made by an arbitrator; (*convention collective*)

"employees' association" means an association of public service employees incorporated by an Act empowering it to bargain collectively; (*organisation syndicale*)

"essential services agreement" means an agreement referred to in subsection 57(2) and shall be deemed to include any award made under subsection 57(7) in respect of that agreement; (*entente sur les services essentiels*)

"Financial Management Board" means the committee of the Executive Council known as the Financial Management Board, established by subsection 3(1) of the *Financial Administration Act*; (*Conseil de gestion financière*)

"strike" includes a cessation of work or a refusal to work or to continue to work by employees, in combination, in concert or in accordance with a common understanding; (*grève*)

"teacher" means a teacher as defined in the *Education Act* who is an employee, and includes a principal, a vice-principal and a substitute teacher. (*enseignant*)

#### References

(2) A reference in this Part to an employees' association in relation to a bargaining unit shall be construed as a reference to the employees' association for the bargaining unit.

#### Employee status preserved

(3) A person does not cease to be employed in the public service by reason only that the person ceases to work as a result of a lawful strike.

#### Membership in bargaining unit

(4) Every employee, other than an employee listed in subsection (8), (9) or (10) or referred to in subsection 52(1) of the *Legislative Assembly and Executive Council Act* or subsection 194(3) of the *Nunavut Elections Act*, may be a member of a bargaining unit.

#### Bargaining units

(5) Each of the following is established as a separate unit of employees for the purpose of collective bargaining under this Act:

- (a) employees other than employees of the Qulliq Energy Corporation and teachers;
- (b) employees of the Qulliq Energy Corporation; and
- (c) teachers.

#### Employees' association

(6) The Nunavut Employees Union is the employees' association for the bargaining units established by paragraphs (5)(a) and (b).

#### Employees' association – teachers

(7) The Nunavut Teachers' Association is the employees' association for the bargaining unit established by paragraph (5)(c).

#### Excluded employees – general

(8) An employee, other than an employee of the Qulliq Energy Corporation, is not eligible for membership in a bargaining unit where, in the opinion of the Minister, the employee is employed

- (a) as a deputy head, a head of a secretariat of the Executive Council, an assistant deputy minister, a director, a regional director, an assistant director, an area director, a regional superintendent or an auditor;
- (b) in a position in a division or section of the Financial Management Board Secretariat with duties and responsibilities that include developing and administering policies, procedures and guidelines respecting human resource management, program evaluation, financial planning and resource allocation;
- (c) in a position that provides support or advice directly to the Executive Council, a committee of the Executive Council or a member of the Executive Council;
- (d) as a legal officer or in a position that provides translation services to a legal officer on a regular basis;
- (e) in a position with duties and responsibilities that include providing advice and assistance, on a regular basis, respecting the terms and conditions of employment, including collective bargaining;
- (f) in a position with duties and responsibilities that include carrying out the following on a regular basis:
  - (i) staffing,
  - (ii) interpreting employment contracts,
  - (iii) resolving workplace disputes,

- (iv) responding to grievances, or
- (v) providing advice in respect of the matters referred to in subparagraphs (i) to (iv);
- (g) in a position with management responsibility that includes directly assigning work to, assessing the performance of and imposing discipline on other employees;
- (h) as a dentist or a medical practitioner; or
- (i) in a position that provides administrative or secretarial support directly
  - (i) to a person referred to in paragraphs (a), (c) or (d), or
  - (ii) to a person referred to in paragraphs (b), (e), (f) or (g) in respect of the duties and responsibilities referred to in those paragraphs.

#### Excluded employees – QEC

(9) An employee of the Qulliq Energy Corporation is not eligible for membership in a bargaining unit where, in the opinion of the Minister, the employee is employed

- (a) as the president or a vice-president of the Qulliq Energy Corporation;
- (b) in a position that provides support or advice directly to the Board of Directors of the Qulliq Energy Corporation;
- (c) as a legal officer or in a position that provides translation services to a legal officer on a regular basis;
- (d) in a position with duties and responsibilities that include providing advice and assistance, on a regular basis, respecting the terms and conditions of employment, including collective bargaining;
- (e) in a position with duties and responsibilities that include carrying out the following on a regular basis:
  - (i) staffing,
  - (ii) interpreting employment contracts,
  - (iii) resolving workplace disputes,
  - (iv) responding to grievances, or
  - (v) providing advice in respect of the matters referred to in subparagraphs (i) to (iv);
- (f) in a position with management responsibility that includes directly assigning work to, assessing the performance of and imposing discipline on other employees; or
- (g) in a position that provides administrative or secretarial support directly
  - (i) to a person referred to in paragraphs (a), (b) or (c), or
  - (ii) to a person referred to in paragraphs (d), (e), or (f) in respect of the duties and responsibilities referred to in those paragraphs.

#### Principals and Vice-principals

(10) Despite subsection (8), principals and vice-principals employed under the *Education Act* are eligible to be members of the bargaining unit for teachers.

#### Collective agreement

(11) The Minister, on the recommendation of the Financial Management Board and on behalf of the Government of Nunavut, may enter into a collective agreement with an employees' association.

#### Binding effect of collective agreement

(12) A collective agreement made between the Minister and an employees' association is binding on the Government of Nunavut, the employees' association and the members of the bargaining unit to which the collective agreement applies.

#### Bargaining in good faith

(13) Without limiting the meaning of "to bargain collectively in good faith", for the purposes of this Act "to bargain collectively in good faith" includes an obligation to engage in active and constructive deliberations with a view to concluding, renewing or revising a collective agreement through negotiations.

#### Inconsistency between agreement and regulations

(14) Where terms and conditions of employment are set out in a collective agreement, and an inconsistency exists between those terms and conditions and terms and conditions set out in regulations or directives made under this Act, the terms and conditions of the collective agreement prevail to the extent of the inconsistency.

#### Exclusion

(15) No collective agreement shall deal directly or indirectly with

- (a) the rents payable by employees or any other conditions of tenure of premises let or leased to them by, or held by them under licence from the Government of Nunavut; or
- (b) payments to or in respect of employees relating to owner-occupied premises or premises rented or leased from persons or bodies other than the Government of Nunavut.

### Notice to Commence Bargaining

#### Notice to commence bargaining

**56.** (1) The Minister or an employees' association on behalf of the members of a bargaining unit may, by written notice, require the other party to commence bargaining collectively with a view to the conclusion, renewal or revision of a collective agreement.

#### Time to commence bargaining

(2) Where notice to bargain collectively has been given, the employees' association and the Minister's representatives shall, within 60 days after the notice has been given or within such further time as the parties may agree, meet and commence to

bargain collectively in good faith and make every reasonable effort to conclude, renew or revise a collective agreement.

### Essential Services Agreement

#### Definitions

**57.** (1) In this section,

"emergency situation" means an emergency as reasonably determined by the Minister;  
(*situation d'urgence*)

"essential services" means services that are necessary to ensure a continuation of minimal service

- (a) to protect the health and safety of the public,
- (b) to prevent destruction or serious deterioration of machinery, equipment or premises,
- (c) to prevent disruption of the administration of the courts, or
- (d) to ensure the on-going operation of each power plant.  
(*services essentiels*)

#### Essential services agreement

(2) Within 20 days after notice to bargain collectively has been given or within such further time as the parties may agree, the employees' association and the Minister's representatives shall bargain collectively in good faith and make every reasonable effort to enter into a written agreement

- (a) identifying the essential services that must be provided during a strike;
- (b) setting out how many employees in the bargaining unit are necessary to enable the Minister to provide the essential services;
- (c) identifying the positions the incumbents of which are required to work during a strike to enable the Minister to provide the essential services;
- (d) setting out how many employees in the bargaining unit, in addition to those who provide the essential services, are necessary to enable the Minister to respond to an emergency situation;
- (e) identifying the positions the incumbents of which are required to work during a strike to enable the Minister to respond to an emergency situation; and
- (f) setting out a protocol to deal with unanticipated emergency situations.

#### Resolution of differences

(3) Where the parties have been unable to reach agreement under subsection (2) within 20 days after notice to bargain collectively has been given or within such further time as the parties may agree, a party may give notice to the other party, in writing,

- (a) setting out the issues referred to in subsection (2) that have not been agreed on;
- (b) stating that it wishes that the differences be submitted to an arbitrator; and
- (c) submitting a list of names of persons who are acceptable to it to arbitrate the differences.

#### Appointment of arbitrator

(4) Where the parties agree on a person to act as arbitrator, the parties shall forthwith appoint that person as arbitrator.

#### Appointment by Court

(5) Where the parties are unable to agree on a person to act as arbitrator within the time period referred to in subsection (3), the Nunavut Court of Justice shall, forthwith on the application of either party, appoint an arbitrator.

#### Duties of arbitrator

(6) The arbitrator shall,

- (a) in a manner he or she considers fit, inquire into the differences of the parties submitted to the arbitrator and attempt to resolve them; and
- (b) during the inquiry, hear the representations of the parties and arbitrate between the parties.

#### Award

(7) Within 14 days of the day an arbitrator is appointed, or such longer period as the parties may agree to, the arbitrator shall provide to the parties a report setting out his or her award in respect of each issue submitted to the arbitrator.

#### Costs

(8) Where an arbitrator is appointed, each party shall, subject to section 36 of the *Arbitration Act*, pay its own costs and one-half of the fees payable to and the costs incurred by the arbitrator.

#### Application of *Arbitration Act*

(9) Sections 10, 20 to 23, 31 and 32 of the *Arbitration Act* do not apply to the appointment of an arbitrator or to an arbitration under this section.

#### Notice to employees

**58.** (1) Once an essential services agreement is made, the Minister shall notify each employee in the bargaining unit who, under the agreement, is required to work during a strike and shall indicate in the notice whether the employee is required to work to provide essential services or to respond to an emergency situation.



### Essential services, emergency during strike

(2) During a strike, the Minister is entitled to require the following employees in the bargaining unit to work:

- (a) incumbents of positions identified in the essential services agreement who are necessary to enable the Minister to provide essential services;
- (b) incumbents of positions identified in the essential services agreement who are necessary to enable the Minister to respond to an emergency situation.

### When employee may not strike – essential services

(3) An employee who has been notified that the Minister is entitled to require him or her to work during a strike to provide essential services may not strike.

### When employee may not strike – emergency situation

(4) Where the Minister has determined that there is an emergency situation, an employee who has been notified that the Minister is entitled to require him or her to work during a strike to respond to an emergency situation, and who has been notified that the Minister requires him or her to work, may not strike during the emergency situation.

## Change to Terms and Conditions of Employment

### Terms and conditions continue in force

**59.** (1) Where notice to bargain collectively has been given, any term or condition of employment applicable to the employees in the bargaining unit in respect of which the notice was given that may be embodied in a collective agreement and that was in force on the day the notice was given shall remain in force, whether or not the collective agreement is still in effect, and shall be observed by the Minister, the employees' association and the members of the bargaining unit, except as otherwise provided by any agreement that may be entered into by the Minister and the employees' association, until

- (a) a new collective agreement that applies to the bargaining unit has been concluded by the parties; or
- (b) the following conditions have been met:
  - (i) 21 days have elapsed since a mediator was appointed under section 60,
  - (ii) an essential services agreement is in effect, and
  - (iii) there is no longer a collective agreement applying to the bargaining unit in effect.

### When Minister may change terms and conditions

(2) The Minister may change any term and condition of employment applicable to the employees in a bargaining unit

- (a) by concluding a new collective agreement that applies to the bargaining unit; or
- (b) where notice to bargain collectively has been given,

- (i) 21 days have elapsed since a mediator was appointed under section 60,
- (ii) an essential services agreement is in effect, and
- (iii) there is no longer a collective agreement in effect that applies to the bargaining unit.

### Resolution of Differences

#### Resolution of differences

**60.** (1) Where the parties to collective bargaining have bargained collectively in good faith with a view to concluding a collective agreement but have been unable to reach agreement on any term or condition of employment, a party may give notice to the other party, in writing,

- (a) setting out the terms and conditions of employment on which the parties have been unable to agree;
- (b) stating that it wishes that the differences be submitted to a mediator; and
- (c) submitting a list of names of persons who are acceptable to it to mediate the differences.

#### Response to notice

(2) On receipt of a notice given under subsection (1), the other party shall, within seven days, either agree to appoint a person whose name was submitted as mediator or give notice to the initiating party, in writing, submitting a list of names of persons who are acceptable to it to mediate the differences.

#### Appointment

(3) Where the parties agree on a person to act as mediator, the parties shall forthwith appoint that person as mediator.

#### Appointment by Court

(4) Where the parties are unable to agree on a person to act as mediator or a party has not responded as required under subsection (2), the Nunavut Court of Justice shall, forthwith on the application of either party, appoint a mediator.

#### Mediation

**61.** (1) The mediator shall, in a manner he or she considers fit, inquire into the differences of the parties and attempt to resolve them and shall, during the inquiry,

- (a) hear the representations of the parties;
- (b) mediate between the parties; and
- (c) encourage the parties to resolve their differences.

#### Participation in mediation

(2) Each party shall participate in a mediation under subsection (1) in good faith and shall provide the mediator, on a confidential basis, any information the mediator may request with respect to the position of the party on an issue submitted to the mediator.

### Mediator's report

(3) Within 14 days of the day a mediator is appointed or within such further time as the parties may agree to, the mediator shall provide to the parties a report

- (a) recommending a resolution of some or all of the issues submitted to mediation; or
- (b) stating that he or she will not make a recommendation on one or more issues submitted and the reasons why he or she will not do so.

### Terms and conditions in notice

(4) A recommendation made under subsection 61(3) must deal only with the terms and conditions of employment that are set out in the notice given under subsection 60(1).

### Acceptance or rejection

**62.** Where a recommendation is made under subsection 61(3), the parties shall

- (a) accept the recommendation; or
- (b) reject the recommendation.

### Costs

**63.** Where a mediator is appointed, each party shall pay its own costs and one-half of the fees payable to and the costs incurred by the mediator.

## Rights and Prohibitions Relating to Strikes

### Participation in strike

**64.** (1) No employee who is not a member of a bargaining unit shall participate in a strike.

### Process

(2) No employee who is a member of a bargaining unit shall participate in a strike where

- (a) there is no essential services agreement in effect;
- (b) under subsection 58(3) or (4), the employee is not entitled to strike;
- (c) a collective agreement applying to the bargaining unit of which the employee is a member is in effect; or
- (d) no collective agreement applying to the bargaining unit of which the employee is a member is in effect, unless
  - (i) 21 days have elapsed since a mediator was appointed under section 60, and
  - (ii) the employees' association has delivered to the Minister, not less than 48 hours before a strike, a notice of intention to strike setting out the date, time and initial location at which the strike will commence.

#### Declaration or authorization of strike

**65.** (1) No employees' association shall declare or authorize a strike of employees, and no officer or representative of an employees' association shall counsel or procure the declaration or authorization of a strike of employees or the participation of employees in a strike, the effect of which is or would be to involve the participation of an employee in a strike in contravention of section 64.

#### Threat to strike

(2) No employees' association shall threaten a strike of employees, and no officer or representative of an employees' association shall counsel or procure the threat of strike of employees, that would involve the participation of an employee in a strike in contravention of section 64.

#### Application for declaration of Nunavut Court of Justice

**66.** (1) The Minister may apply to the Nunavut Court of Justice for an order listed in subsection (2) where the Minister alleges that

- (a) an employees' association has declared or authorized a strike, or that employees are participating or are likely to participate in a strike, the effect of which is or would be to involve the participation of an employee in a strike in contravention of section 64; or
- (b) an employees' association has threatened a strike of employees that would involve the participation of an employee in a strike in contravention of section 64.

#### Declaration of Nunavut Court of Justice

(2) On an application under subsection (1), the Nunavut Court of Justice may make an order

- (a) declaring that the strike is or would be unlawful;
- (b) requiring the employees' association to revoke the declaration or authorization to strike and to give notice of the revocation forthwith to the employees to whom it was directed;
- (c) enjoining any employee from participation in the strike;
- (d) requiring any employee who is participating in the strike to perform the duties of his or her employment;
- (e) requiring the employees' association, and any officer or representative of the employees' association, forthwith to give notice of any order made under paragraph (a) or (b) to its members; and
- (f) requiring the employees' association of which an employee referred to in paragraph (c) or (d) is a member, and any officer or representative of the employees' association, forthwith to give notice of any order made under paragraph (c) or (d) to the employee to whom it applies.

### Terms of order

(3) An order made under subsection (2)

- (a) shall be on such terms as the Nunavut Court of Justice considers necessary and sufficient in the circumstances; and
- (b) subject to subsection (4), shall have effect for such time as is specified in the order.

### Revocation, variance of order

(4) Where the Nunavut Court of Justice makes an order under subsection (2), it may, on application by the Minister or the employees' association subject to the order,

- (a) vary the order and specify the time for which the order is to continue to have effect; or
- (b) revoke the order.

### Offence and punishment – employee

**67.** (1) Every employee who contravenes section 64 is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000.

### Offence and punishment – officer or representative

(2) Every officer or representative of an employees' association who contravenes section 65 is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000.

### Offence and punishment – employees' association

(3) Every employees' association that contravenes subsection 65(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 for each day that the strike declared or authorized by it in contravention of that subsection is in effect.

### Offence and punishment – employees' association

(4) Every employees' association that contravenes subsection 65(2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000.

### Prosecution of employees' association

**68.** A prosecution for an offence under section 65 may be brought against an employees' association and in the name of that employees' association, and for the purposes of any such prosecution an employees' association shall be deemed to be a person, and any act or thing done or omitted by an officer or representative of an employees' association within the scope of the authority of the officer or representative to act on behalf of the employees' association shall be deemed to be an act or thing done or omitted by the employees' association.

### Mediator, arbitrator not required to give evidence

**69.** A mediator appointed under section 60, or an arbitrator appointed under section 57, may not be required to give evidence in any civil action or other civil proceeding respecting information obtained in the discharge of duties under this Act.

## Miscellaneous

## Arbitration

**70.** Where a collective agreement fails to provide for the determination of disputes arising out of the collective agreement during the term of the agreement without stoppage of work, those disputes shall be determined by means of arbitration pursuant to the *Arbitration Act*.

## Limitation

**71.** No collective agreement shall provide, directly or indirectly, for the alteration or elimination of any existing term or condition of employment, the alteration or elimination of which or the establishment of which, as the case may be, would require or have the effect of requiring the enactment or amendment of any legislation by the Legislature except for the purpose of appropriations.

## Check off

**72.** A collective agreement may provide for the deduction from the salaries of employees for payment to the employees' association of

- (a) membership fees of an employees' association that is a party to the agreement in respect of employees to whom the agreement applies who are members of the employees' association; and
- (b) amounts equal to those membership fees, in respect of employees to whom the agreement applies who are not members of the employees' association.

## Religious objection to check off

**73.** Where the Minister is satisfied that an employee, because of his or her religious convictions or beliefs, objects to the payment of membership fees or amounts equal to those membership fees to an employees' association under the terms of a collective agreement, the Minister may, notwithstanding the collective agreement, direct that

- (a) the membership fees or amounts equal to membership fees that are deducted from the salary of the employee under section 72 are not to be paid to the employees' association; and
- (b) those membership fees or amounts deducted from the salary of the employee must be paid to a charitable organization selected by the Minister in consultation with the employee and the employees' association.

## Prohibition on contributions and campaigns

**74.** (1) No money deducted from an employee's salary for payment to an employees' association or paid to an employees' association by an employee as membership fees or amounts in lieu of membership fees shall be used directly or indirectly

- (a) on behalf of any political party or on behalf of any candidate for political office; or
- (b) to campaign in a plebiscite within the meaning of the *Plebiscites Act*.

S.Nu. 2013,c.25,s.245(2).

#### Proof of compliance

(2) The Minister shall not allow any deduction to be made from the salaries of employees for payment to an employees' association unless the employees' association delivers to the Minister a statutory declaration made by an officer, duly authorized by the employee's association to make the statutory declaration, that the employees' association is complying and will continue to comply with subsection (1).

#### Saving provision regarding health and safety

**75.** Nothing in section 55, 57, 58, 60, 61 or 64 shall be construed to require the Minister to do or refrain from doing anything contrary to any instruction, direction, regulation or directive in the interest of the health, safety or security of the people.

### PART 8 ETHICS OFFICER

#### Appointment

**76.** (1) The Commissioner in Executive Council, on the recommendation of the Minister, shall appoint an Ethics Officer for the public service.

#### Not part of public service

(2) The Ethics Officer is not a member of the public service.

#### Duties of Ethics Officer

(3) The Ethics Officer shall perform the duties set out in this Act and the duties assigned to the Ethics Officer by any other Act.

#### Additional assignments

(4) The Ethics Officer may undertake any assignment the Ethics Officer considers appropriate that is requested by the Minister.

#### Term of office

(5) The Ethics Officer shall hold office during good behaviour for a term of five years and may be reappointed for a further term or terms.

#### Continuation after expiry

(6) The Ethics Officer continues to hold office after the expiry of the term until reappointed, or until a successor is appointed.

#### Removal

(7) The Ethics Officer may be removed for cause or incapacity, before the expiry of the term of office, by the Commissioner in Executive Council, on the recommendation of the Minister.

#### Resignation

(8) The Ethics Officer may resign at any time by notifying the Minister in writing.

#### Acting Ethics Officer

**77.** (1) The Commissioner in Executive Council, on the recommendation of the Minister, may appoint an acting Ethics Officer if the Ethics Officer is temporarily unable to act because of illness or for another reason.

#### Term of acting Ethics Officer

(2) An acting Ethics Officer holds office until either a person is appointed under subsection 76(1) or the Ethics Officer returns to office after being temporarily unable to act.

#### Special Ethics Officer

**78.** (1) Where, for any reason, the Ethics Officer determines that he or she should not act in respect of any particular matter under this Act, the Commissioner in Executive Council, on the recommendation of the Minister, may appoint a special Ethics Officer to act in the place of the Ethics Officer in respect of that matter.

#### Term

(2) A special Ethics Officer holds office until the conclusion of the matter in respect of which he or she has been appointed.

#### Oath

**79.** Before undertaking the duties of office, the Ethics Officer or an acting or special Ethics Officer shall take an oath to perform faithfully and impartially the duties of the office and not to disclose any confidential information or advice except in accordance with this Act.

#### Commissioner for oaths

**80.** The Ethics Officer is, by virtue of his or her office, a commissioner for taking oaths within and outside Nunavut.

#### Engaging of assistance

**81.** The Ethics Officer may engage counsel, experts and other persons to assist in carrying out the functions of the office.

#### Appropriations

**82.** All expenditures required for the purposes of the Ethics Officer shall be paid out of moneys appropriated for that purpose.

#### Exclusion of liability

**83.** (1) The Ethics Officer and any person assisting the Ethics Officer under this Act or any other Act are not liable for loss or damage caused by anything done or not done in good faith in the performance of the duties or in the exercise of the powers of the Ethics Officer.



### Persons providing information

(2) No person who, in good faith, provides information to or testifies before the Ethics Officer under this Act or any other Act is liable for loss or damage caused by the provision of the information or the testimony.

## PART 9 REGULATIONS

### Regulations

- 84.** (1) The Commissioner in Executive Council, on the recommendation of the Minister, may make regulations for carrying the purposes and provisions of this Act into effect and, without restricting the generality of the foregoing, may make regulations
- (a) respecting competitions to assess the qualifications of applicants for positions or classes of positions in the public service;
  - (b) establishing Staffing Appeals Committees and respecting procedures of the Committees;
  - (b.1) assigning additional duties related to staffing matters to the Staffing Appeals Committees;
  - (c) respecting the designation and terms and conditions of internship positions;
  - (d) respecting a procedure to determine, or considerations to be followed in determining, rates of pay and other benefits in addition to pay for positions in the public service;
  - (e) respecting the payment of acting pay where an employee is required to perform for a temporary period the duties of a person occupying a higher position, the amount of or method of determining the amount of acting pay and the circumstances and conditions under which it may be paid;
  - (f) prescribing the oath referred to in section 15;
  - (g) prescribing a method for determining the effective date of an appointment to the public service;
  - (h) respecting probationary periods of employees;
  - (i) respecting the resignation or retirement of employees;
  - (j) respecting the laying off of employees and the appointment of a person laid off to a position in the public service;
  - (k) respecting when employees, by reason of special circumstances or the nature of their duties, must perform the duties of their position on a holiday;
  - (l) respecting leaves of absence;
  - (m) respecting hours of work, attendance and other matters relating to the performance of duties;
  - (n) respecting the selection, appointment and terms and conditions of employment of employees and the pay and other remuneration in addition to pay payable to employees;
  - (o) respecting the holding of offices or positions outside the public service by persons employed in the public service;

- (p) providing for the resolution of disputes arising out of any matter governed by this Act or the regulations, whether by way of grievance, appeal or otherwise; and
- (q) for any purpose for which regulations are authorized to be made.

#### Application to deputy heads

(2) Regulations made under subsection (1) do not apply to deputy heads unless the regulations expressly so provide.

#### Variations

(3) Regulations made under subsection (1) and directives issued by the Minister under section 3 may include variations and exclusions applicable to different categories of employees.

#### *Statutory Instruments Act* not applicable

(4) The *Statutory Instruments Act* does not apply to the Code of Values and Ethics or to directives issued by the Minister under this Act, but no directive shall be given effect until all employees affected by the directive are given notice of the directive and its effect.

### Saving and Transitional

#### Employee located in Nunavut

**85.** (1) An employee whose employment in the public service of the Northwest Territories ceased on March 31, 1999 in accordance with section 50 of the *Public Service Act* (Northwest Territories), and who became an employee in the public service of Nunavut on April 1, 1999, is deemed to have been employed under this Act for the period of employment under the *Public Service Act* (Northwest Territories) prior to April 1, 1999.

#### Application

(2) This section applies notwithstanding anything to the contrary in this Act or in any collective agreement or memorandum of understanding or agreement between an employees' association and the Government of Nunavut, as substituted for the Government of the Northwest Territories pursuant to section 76.08 of the *Nunavut Act* (Canada).

### Note

**The following provisions have been deleted for the purposes of this consolidation:  
s.86 to 93 (Consequential Amendments)**

## **Repeal and Commencement**

### **Repeal**

**94.** The *Public Service Act*, R.S.N.W.T. 1988, c.P-16, as amended for Nunavut under section 76.05 of the *Nunavut Act* (Canada), is repealed.

### **Coming into force**

**95.** (1) Part 6 of this Act comes into force on the earlier of April 1, 2015 or a day to be fixed by order of the Commissioner.

### **Coming into force**

(2) Paragraph (o) of Schedule A and paragraph (r) of Schedule B come into force on the later of the day this Act comes into force and the day the *Representative for Children and Youth Act*, introduced as Bill 40 in the Third Session of the Third Legislative Assembly of Nunavut, comes into force.

## SCHEDULE A

(Subsection 1(1))

Employees of the following public bodies are declared to be employed in the public service except as otherwise noted:

- (a) the *Commission scolaire francophone*, continued under the *Education Act*, with respect only to the Director General;
- (b) the Human Rights Tribunal established under the *Human Rights Act*;
- (c) the Inuit Uqausinginnik Taiguusiliuqtiit established under the *Inuit Language Protection Act*;
- (d) the Legal Services Board established under the *Legal Services Act*;
- (e) the Office of the Legislative Assembly established under the *Legislative Assembly and Executive Council Act*;
- (f) the Executive Council and committees of the Executive Council, but not personal staff of individual Ministers;
- (g) the Liquor Commission established under the *Liquor Act*;
- (h) the Liquor Licensing Board established under the *Liquor Act*;
- (i) Nunavut Arctic College, except with respect to individuals employed under subsection 23(1) of the *Nunavut Arctic College Act*;
- (j) the Nunavut Business Credit Corporation established under the *Nunavut Business Credit Corporation Act*;
- (k) the Office of the Chief Electoral Officer established under the *Nunavut Elections Act*, but not election officers;
- (l) the Nunavut Housing Corporation, continued by the *Nunavut Housing Corporation Act*;
- (m) the Office of the Languages Commissioner established under the *Official Languages Act*;
- (n) Qulliq Energy Corporation, established by the *Qulliq Energy Corporation Act*, and its subsidiaries;
- (o) the office of the Representative for Children and Youth, established under the *Representative for Children and Youth Act*;
- (p) the Appeals Tribunal of the Workers' Safety and Compensation Commission of the Northwest Territories and Nunavut, continued under the *Workers' Compensation Act*.

## SCHEDULE B

(Subsection 1(1))

For greater certainty, the following persons are declared not to be employed in the public service:

- (a) the Information and Privacy Commissioner appointed under the *Access to Information and Protection of Privacy Act*;
- (b) individuals employed by a District Education Authority established under the *Education Act*, including teacher trainees, but not including the Director General of the *Commission scolaire francophone*;
- (c) members of the Human Rights Tribunal appointed under the *Human Rights Act*;
- (d) the Integrity Commissioner appointed under the *Integrity Act*;
- (e) members of the Inuit Uqausinginnik Taiguusiliuqtiit appointed under the *Inuit Language Protection Act*;
- (f) members of the Labour Standards Board appointed under the *Labour Standards Act*;
- (g) the Executive Director and members of the Legal Services Board appointed under the *Legal Services Act*;
- (h) members of the Liquor Licensing Board appointed under the *Liquor Act*;
- (i) a medical practitioner registered and licensed to practice under the *Medical Profession Act* who is engaged under a contract for services in the operation of a health facility;
- (j) officers and employees of Nunavut Arctic College employed under subsection 23(1) of the *Nunavut Arctic College Act*;
- (k) members of the Board of Directors of the Nunavut Business Credit Corporation appointed under the *Nunavut Business Credit Corporation Act*;
- (l) the President and employees of Nunavut Development Corporation, continued under the *Nunavut Development Corporation Act*;
- (m) the Chief Electoral Officer appointed under the *Nunavut Elections Act*;
- (n) members of a Boundaries Commission appointed under the *Nunavut Elections Act*;
- (o) members or staff of a housing association or a housing authority as defined in the *Nunavut Housing Corporation Act*;
- (p) the Languages Commissioner appointed under the *Official Languages Act*;
- (q) members and employees of the Qulliit Nunavut Status of Women Council continued under the *Qulliit Nunavut Status of Women Council Act*;
- (r) the Representative for Children and Youth appointed under the *Representative for Children and Youth Act*;
- (s) members of the Utility Rates Review Council appointed under the *Utility Rates Review Council Act*;

- (t) the President, Corporate Secretary and other staff of the Workers' Safety and Compensation Commission of the Northwest Territories and Nunavut, continued under the *Workers' Compensation Act*, except staff of the Appeals Tribunal.