



THE NEWFOUNDLAND AND LABRADOR GAZETTE

PART I

PUBLISHED BY AUTHORITY

Vol. 90

ST. JOHN'S, FRIDAY, MAY 22, 2015

No. 21

JUDICATURE ACT

NOTICE OF APPOINTMENT MASTERS OF THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

UNDER THE AUTHORITY of section 77 of the *Judicature Act*, the Chief Justice of Newfoundland and Labrador, The Honourable J. Derek Green, has made the following additional appointments to the Office of Master of the Supreme Court, effective May 12, 2015:

Katrina A. Brannan, Q.C.
Augustine F. Bruce, Q.C.
Anne M. Fagan, Q.C.
James E. Merrigan, Q.C.
Linda M. Rose, Q.C.
Stacy C. Ryan
Marina C. Whitten, Q.C.

OFFICE OF THE CHIEF JUSTICE
SUPREME COURT OF
NEWFOUNDLAND AND LABRADOR
Court of Appeal

May 22

URBAN AND RURAL PLANNING ACT, 2000

NOTICE OF REGISTRATION TOWN OF CONCEPTION BAY SOUTH MUNICIPAL PLAN AMENDMENT NO. 6, 2014 DEVELOPMENT REGULATIONS AMENDMENT NO. 10, 2014

TAKE NOTICE that the TOWN OF CONCEPTION BAY SOUTH Municipal Plan Amendment No. 6, 2014 and Development Regulations Amendment No. 10, 2014 adopted by the Town Council of Conception Bay South on December 16, 2014 and approved on March 17, 2015 has now been registered by the Minister of Municipal and Intergovernmental Affairs.

In general terms, the purpose of Municipal Plan Amendment No. 6, 2014 is to redesignate property within the Cedar Creek Estates Subdivision, Foxtrap from Open Space Conservation (OSC) to Residential Medium (R-2) Density. In addition, the environmental overlay map was revised.

In general terms, the purpose of Development Regulations Amendment No. 10, 2014 is to rezone land west of Emerald Creek Drive from Open Space Conservation (OSC) to Residential Medium Density (R-2) to accommodate residential lots as part of an approved residential subdivision.

The CONCEPTION BAY SOUTH Municipal Plan Amendment No. 6, 2014 and Development Regulations Amendments No. 10, 2014 will come into effect on May 22, 2015, the date of publication of this notice in *The Newfoundland and Labrador Gazette*. Anyone who wishes to inspect a copy of these amendments may do so at the Town Office, during normal working hours.

TOWN OF CONCEPTION BAY SOUTH
Elaine Mitchell, MCIP
Director of Planning and Development

May 22

**NOTICE OF REGISTRATION
TOWN OF GLOVERTOWN
MUNICIPAL PLAN
AND
DEVELOPMENT REGULATIONS, 2015**

TAKE NOTICE that the TOWN OF GLOVERTOWN Municipal Plan Amendment No. 3 and Development Regulations Amendment No. 4, adopted on the 25th day of February, 2015, have been registered by the Minister of Municipal and Intergovernmental Affairs.

The purpose of these amendments is to redesignate approximately 0.6 hectares at the corner of Main Street South and Riverside Road East from General Commercial to Residential to accommodate residential development.

These amendments come into effect on the day that this notice is published in *The Newfoundland and Labrador Gazette*. Anyone who wishes to inspect a copy of the documents may do so at the Glovertown Town Office during normal business hours.

TOWN OF GLOVERTOWN
Joanne Perry, Town Clerk

May 22

**NOTICE OF REGISTRATION
TOWN OF GLOVERTOWN
MUNICIPAL PLAN
AND
DEVELOPMENT REGULATIONS, 2015**

TAKE NOTICE that the TOWN OF GLOVERTOWN Municipal Plan Amendment No. 4 and Development Regulations Amendment No. 5, adopted on the 25th day of February, 2015, have been registered by the Minister of Municipal and Intergovernmental Affairs.

The purpose of these amendments is to redesignate approximately 1.2 hectares at 12 Willowridge Road from Public Use to Residential to allow for new residential development.

These amendments come into effect on the day that this notice is published in *The Newfoundland and Labrador Gazette*. Anyone who wishes to inspect a copy of the

documents may do so at the Glovertown Town Office during normal business hours.

TOWN OF GLOVERTOWN
Joanne Perry, Town Clerk

May 22

**NOTICE OF REGISTRATION
TOWN OF MARYSTOWN
DEVELOPMENT REGULATIONS
AMENDMENT NO. 37, 2015**

TAKE NOTICE that the TOWN OF MARYSTOWN Development Regulations Amendment No. 37, 2015 as adopted on the 17th day of March, 2015 has been registered by the Minister of Municipal and Intergovernmental Affairs.

In general terms the purpose of the Development Regulations Amendment No. 37, 2015 is to facilitate the adaptive reuse of a commercial or other non-residential building as an apartment building as a discretionary use within the Commercial and Community Services Zone.

The Development Regulations Amendment No. 37, 2015 comes into effect on the day that this notice is published in *The Newfoundland and Labrador Gazette*.

Anyone who wishes to inspect a copy of the MARYSTOWN Development Regulations Amendment No. 37, 2015 may do so at the Marystown Town Office during normal working hours.

TOWN OF MARYSTOWN
Alje Mitchell, Development Officer and Planner

May 22

LANDS ACT

**NOTICE OF INTENT
Lands Act, SNL 1991 c36 as amended**

NOTICE IS HEREBY given that DARREN BRAKE of Massey Drive, NL intends to apply to the Department of Municipal and Intergovernmental Affairs, two months from the publication of this notice, to acquire title, pursuant to Section 7(2)(e) of the said Act, to that piece of Crown land situated within fifteen (15) metres of the waters of Stratton's Pond in the Electoral District of Humber East for the purpose of a wharf construction and being more particularly described as follows:

*Bounded on the North by a brook reserve
for a distance of 10 metres;*

*Bounded on the East by Stratton's Pond
for a distance of 10 metres;*

*Bounded on the South by 10 Keith Street, Massey Drive
for a distance of 10 metres;*

Bounded on the West by 10 Keith Street, Massey Drive

*for a distance of 10 metres;
and containing an area of
approximately 50 square metres.*

Any person wishing to object to the application must file the objection, in writing, within one month from the publication of this Notice, with reasons for it, to the Minister of Municipal and Intergovernmental Affairs, and mail to the nearest Regional Lands Office:

c/o Eastern Regional Lands Office, P.O. Box 8700, Howley Building, Higgins Line, St. John's, NL, A1B 4J6.

c/o Central Regional Lands Office, P.O. Box 2222, Gander, NL, A1V 1L7.

c/o Western Regional Lands Office, P.O. Box 2006, Sir Richard Squires Building, Corner Brook, NL, A2H 6J8.

c/o Labrador Regional Lands Office, P.O. Box 3014, Station "B", Happy Valley-Goose Bay, NL, A0P 1E0.

For further information on the proposed application, please contact: DARREN BRAKE, Telephone Number: (709) 639-4663.

(DISCLAIMER: *The Newfoundland and Labrador Gazette* publishes a NOTICE OF INTENT as received from the Applicant and takes no responsibility for errors or omissions in the property being more particularly described.)

May 22

NOTICE OF INTENT
Lands Act, SNL 1991 c36 as amended

NOTICE IS HEREBY given that PETER POOLE of Belleoram, NL intends to apply to the Department of Municipal and Intergovernmental Affairs, two months from the publication of this notice, to acquire title, pursuant to Section 7(2)(e) of the said Act, to that piece of Crown land situated within fifteen (15) metres of the waters of Belleoram, Harbour Bay in the Electoral District of Fortune Cape La Hume North for the purpose of a fishing shed storage and being more particularly described as follows:

*Bounded on the North by Belleoram Harbour
for a distance of 0 metres;
Bounded on the East by property of Amos Poole, Sr.
for a distance of 0 metres;
Bounded on the South by Belloeram Road
for a distance of 0 metres;
Bounded on the West by property of Pias Poole Jr.
for a distance of 6 feet;
and containing an area of
approximately 20 feet by 20 feet.*

Any person wishing to object to the application must file the objection, in writing, within one month from the publication of this Notice, with reasons for it, to the Minister of Municipal and Intergovernmental Affairs, and mail to the nearest Regional Lands Office:

c/o Eastern Regional Lands Office, P.O. Box 8700, Howley Building, Higgins Line, St. John's, NL, A1B 4J6.

c/o Central Regional Lands Office, P.O. Box 2222, Gander, NL, A1V 1L7.

c/o Western Regional Lands Office, P.O. Box 2006, Sir Richard Squires Building, Corner Brook, NL, A2H 6J8.

c/o Labrador Regional Lands Office, P.O. Box 3014, Station "B", Happy Valley-Goose Bay, NL, A0P 1E0.

For further information on the proposed application, please contact: PETER POOLE, Telephone Number: (709) 881-7590.

(DISCLAIMER: *The Newfoundland and Labrador Gazette* publishes a NOTICE OF INTENT as received from the Applicant and takes no responsibility for errors or omissions in the property being more particularly described.)

May 22

NOTICE OF INTENT
Lands Act, SNL 1991 c36 as amended

NOTICE IS HEREBY given that AUSTIN ROGERS of Trinity, Bonavista Bay, NL intends to apply to the Department of Municipal and Intergovernmental Affairs, two months from the publication of this notice, to acquire title, pursuant to Section 7(2) of the said Act, to that piece of Crown land situated within fifteen (15) metres of the waters of Trinity, Bonavista Bay in the Electoral District of Bonavista North for the purpose of a docking facility and being more particularly described as follows:

*Bounded on the North by main road
for a distance of 22.916 metres;
Bounded on the East by Peter Pond
for a distance of 17.29 metres;
Bounded on the South by waters of Trinity
for a distance of 23.329 metres;
Bounded on the West by property of Ernest Rogers
for a distance of 23.90 metres;
and containing an area of
approximately 1050 square metres.*

Any person wishing to object to the application must file the objection, in writing, within one month from the publication of this Notice, with reasons for it, to the Minister of Municipal and Intergovernmental Affairs, and mail to the nearest Regional Lands Office:

c/o Eastern Regional Lands Office, P.O. Box 8700, Howley Building, Higgins Line, St. John's, NL, A1B 4J6.

c/o Central Regional Lands Office, P.O. Box 2222, Gander, NL, A1V 1L7.

c/o Western Regional Lands Office, P.O. Box 2006, Sir Richard Squires Building, Corner Brook, NL, A2H 6J8.

c/o Labrador Regional Lands Office, P.O. Box 3014,
Station "B", Happy Valley-Goose Bay, NL, A0P 1E0.

For further information on the proposed application, please
contact: AUSTIN ROGERS, Telephone Number: (780)
713-6353.

(DISCLAIMER: *The Newfoundland and Labrador Gazette*
publishes a NOTICE OF INTENT as received from the Applicant
and takes no responsibility for errors or omissions in the property
being more particularly described.)

May 22

QUIETING OF TITLES ACT

2015 01 G 0126 IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR TRIAL DIVISION (GENERAL)

IN THE MATTER OF an Application of 74219
Newfoundland and Labrador Inc., of St. John's, Province of
Newfoundland and Labrador, to have title to those pieces or
parcels of land situate and being on Three Island Pond,
Paradise, Province of Newfoundland and Labrador
containing an area of 50.389 ha investigated and declared
under the *Quieting of Titles Act*, RSNL1990 cQ-3.

NOTICE

NOTICE IS HEREBY given to all parties that 74219
Newfoundland and Labrador Inc. of St. John's in the
Province of Newfoundland and Labrador (hereinafter called
the "Owner") has applied to the Supreme Court of
Newfoundland and Labrador, Trial Division (General) to
have investigated:

ALL THAT piece or parcel of land situate and being south
of Pitts Memorial Drive, in the City of St. John's, in the
Province of Newfoundland and Labrador, bounded and
abutted as follows: that is to say beginning at a point, said
point having M.T.M. Grid Co-ordinates (C.M. 53°) [NAD
831 of N 5 262 777.238 and E 311 570.820;

THENCE RUNNING South sixty eight degrees fifty
seven minutes twelve seconds East (S68°57'12"E), a
distance of 632.423 metres by the southern limit of Pitts
Memorial Drive (90m wide) to a point;

THENCE turning and running along a curve to the left
having a radius of 948.256 metres, an arc of 380.644
metres and a chord of South eighty degrees twenty seven
minutes eleven seconds East (S80°27'11"E) a distance of
378.094 metres by the southern limit of Pitts Memorial
Drive (90m wide) to a point.

THENCE turning and running South eleven degrees forty
one minutes fifty six seconds East (S11°41'56"E), a
distance of 35.150 metres by a winter path to a point;

THENCE turning and running conterminous with a 15m
reservation for the waters of Three Arm Pond and having
a chord of South thirty two degrees forty six minutes fifty

four seconds West (S32°46'54"W), a distance of 313.213
metres to a point;

THENCE turning and running North seventy three degrees
forty nine minutes zero seconds West (N73°49'00"W), a
distance of 827.751 metres by land of Teen Challenge Inc.
(reg. no. 497892) and by Crown land to a point;

THENCE turning and running North zero degrees fifty
four minutes forty three seconds West (N00°54'43"W), a
distance of 356.924 metres by land of Patten Holdings
(R76 F1378) to the PLACE OF BEGINNING and
containing in all an area of 27.0290 hectares as more
particularly described and delineated on plan 15028A,
February 17, 2015 hereto annexed.

SUBJECT TO a power line easement 7.4m wide as shown
on the plan hereto annexed;

AND ALL THAT piece or parcel of land situate and being
North East of Pitts Memorial Drive, in the Town of
Paradise, in the Province of Newfoundland, bounded and
abutted as follows: that is to say beginning at a point, said
point having M.T.M. Grid Co-ordinates (C.M. 53°) [NAD
83] of N 5 262 874.265 and E 311 569.276;

THENCE RUNNING North zero degrees fifty four minutes
forty three seconds West (N00°54'43"W), a distance of
142.324 metres by land of Patten Holdings (R76 F1378) to
a point;

THENCE turning and running South eighty seven degrees
forty six minutes thirty two seconds East (S87°46'32"E), a
distance of 173.655 metres by land of Carl Healey (reg. no.
499845) to a point;

THENCE turning and running conterminous with a 15m
reservation for the waters of a gully and having a chord of
South eighty seven degrees forty six minutes thirty two
seconds East (S87°46'32"E), a distance of 90.738 metres to
a point;

THENCE turning and running South eighty seven degrees
forty six minutes thirty two seconds East (S87°46'32"E), a
distance of 185.826 metres by land of Carl Healey (reg. no.
499845) to a point;

THENCE turning and running conterminous with a 15m
reservation for the waters of Three Island Pond and having
a chord of South fifty four degrees ten minutes nineteen
seconds East (S54°10'19"E), a distance of 442.463 metres
to a point;

THENCE turning and running conterminous with a winter
path and having a chord of South thirty four degrees twenty
minutes eighteen seconds East (S34°20'18"E), a distance of
197.548 metres to a point;

THENCE turning and running along a curve to the right
having a radius of 858.256 metres, an arc of 300.729
metres and a chord of North seventy eight degrees fifty
nine minutes twenty nine seconds West (N78°59'29"W) a
distance of 299.193 metres by the north eastern limit of
Pitts Memorial Drive (90m wide) to a point.

THENCE turning and running North sixty eight degrees
fifty seven minutes twelve seconds West (N68°57'12"W), a

distance of 668.710 metres by the north eastern limit of Pitts Memorial Drive (90m wide) to the PLACE OF BEGINNING and containing in all an area of 18.2369 hectares as more particularly described and delineated on plan 15028B, February 17, 2015 hereto annexed.

SUBJECT TO a power line easement (lease 71551) and a water main easement (V2305 F78) as shown on the plan hereto annexed.

AND ALL THAT piece or parcel of land situate and being south west of Mercers Pond, in the Town of Paradise, in the Province of Newfoundland and Labrador, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53⁰) [NAD 83] of N 5 263 107.494 and E 311 318.870;

THENCE RUNNING North two degrees twelve minutes twenty eight seconds East (N02°12'28"E), a distance of 321.869 metres by Crown land to a point;

THENCE turning and running conterminous with a 15m reservation for the waters of Mercers Pond and having a chord of South forty seven degrees seventeen minutes forty six seconds East (S47°17'46"E), a distance of 330.672 metres to a point;

THENCE turning and running South two degrees twelve minutes twenty eight seconds West (S02°12'28"W), a distance of 107.131 metres by land of Carl Healey (reg. no. 499845) to a point;

THENCE turning and running North eighty seven degrees forty seven minutes thirty two seconds West (N87°47'32"W), a distance of 251.460 metres by land of Patten Holdings (R76 F1378) to the PLACE OF BEGINNING and containing in all an area of 5.1228 hectares as more particularly described and delineated on plan 15028C, February 17, 2015 hereto annexed.

ALL bearings are referred to Grid North.

The above described pieces or parcels of land contain an area of 50.389 hectares, more or less, the same being more particularly described on the drawing hereto attached.

All persons having title adverse to the said title claims by the Owner shall file in the Registry of the Supreme Court of Newfoundland and Labrador, Trial Division (General) particulars of such adverse claim and serve same, together with an Affidavit verifying same, to the 26th day of June, 2015, after which date no party having a claim shall be permitted to file same or be heard except by leave of the Court and subject to such conditions as the Court may deem just. All adverse claims shall then be registered in such manner as the Supreme Court may direct.

O'DEA, EARLE
Solicitors for the Petitioner/Applicant
PER: Gregory F. Kirby

ADDRESS FOR SERVICE:

323 Duckworth Street
P.O. Box 5955
St. John's, NL A1C 5X4

Tel: (709) 726-3524
Fax: (709) 726-9600

SCHEDULE "A"

Parcel "A"

74219 Newfoundland and Labrador Inc St. John's, NL

ALL THAT piece or parcel of land situate and being south of Pitts Memorial Drive, in the City of St. John's, in the Province of Newfoundland and Labrador, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53⁰) [NAD 83] of N 5 262 777.238 and E 311 570.820;

THENCE RUNNING South sixty eight degrees fifty seven minutes twelve seconds East (S68°57'12"E), a distance of 632.423 metres by the southern limit of Pitts Memorial Drive (90m wide) to a point;

THENCE turning and running along a curve to the left having a radius of 948.256 metres, an arc of 380.644 metres and a chord of South eighty degrees twenty seven minutes eleven seconds East (S80°27'11"E) a distance of 378.094 metres by the southern limit of Pitts Memorial Drive (90m wide) to a point.

THENCE turning and running South eleven degrees forty one minutes fifty six seconds East (S11°41'56"E), a distance of 35.150 metres by a winter path to a point;

THENCE turning and running conterminous with a 15m reservation for the waters of Three Arm Pond and having a chord of South thirty two degrees forty six minutes fifty four seconds West (S32°46'54"W), a distance of 313.213 metres to a point;

THENCE turning and running North seventy three degrees forty nine minutes zero seconds West (N73°49'00"W), a distance of 827.751 metres by land of Teen Challenge Inc. (reg. no. 497892) and by Crown Land to a point;

THENCE turning and running North zero degrees fifty four minutes forty three seconds West (N00°54'43"W), a distance of 356.924 metres by land of Patten Holdings (R76 F1378) to the PLACE OF BEGINNING and containing in all an area of 27.0290 hectares as more particularly described and delineated on plan 15028A, February 17, 2015 hereto annexed.

SUBJECT TO a power line easement 7.4m wide as shown on the plan hereto annexed.

ALL bearings are referred to Grid North.

Parcel "B"

Paradise, NL

ALL THAT piece or parcel of land situate and being North East of Pitts Memorial Drive, in the Town of Paradise, in the Province of Newfoundland, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°) [NAD 83] of N 5 262 874.265 and E 311 569.276;

THENCE RUNNING North zero degrees fifty four minutes forty three seconds West (N00°54'43"W), a distance of 142.324 metres by land of Patten Holdings (R76 F1378) to a point;

THENCE turning and running South eighty seven degrees forty six minutes thirty two seconds East (S87°46'32"E), a distance of 173.655 metres by land of Carl Healey (reg. no.499845) to a point;

THENCE turning and running conterminous with a 15m reservation for the waters of a gully and having a chord of South eighty seven degrees forty six minutes thirty two seconds East (S87°46'32"E), a distance of 90.738 metres;

THENCE turning and running South eighty seven degrees forty six minutes thirty two seconds East (S87°46'32"E), a distance of 185.826 metres by land of Carl Healey (reg. no. 499845) to a point;

THENCE turning and running conterminous with a 15m reservation for the waters of Three Island Pond and having a chord of South fifty four degrees ten minutes nineteen seconds East (S54°10'19"E), a distance of 442.463 metres to a point;

THENCE turning and running conterminous with a winter path and having a chord of South thirty four degrees twenty minutes eighteen seconds East (S34°20'18"E), a distance of 197.548 metres to a point;

THENCE turning and running along a curve to the right having a radius of 858.256 metres, an arc of 300.729 metres and a chord of North seventy eight degrees fifty nine minutes twenty nine seconds West (N78°59'29"W) a distance of 299.193 metres by the north eastern limit of Pitts Memorial Drive (90m wide) to a point.

THENCE turning and running North sixty eight degrees fifty seven minutes twelve seconds West (N68°57'12"W) , a distance of 668.710 metres by the north eastern limit of Pitts Memorial Drive (90m wide) to the PLACE OF BEGINNING and containing in all an area of 18.2369 hectares as more particularly described and delineated on plan 15028B, February 17, 2015 hereto annexed.

SUBJECT TO a power line easement (lease 71551) and a water main easement (V2305 F78) as shown on the plan hereto annexed.

ALL bearings are referred to Grid North

Parcel "C"

Paradise, NL

ALL THAT piece or parcel of land situate and being south west of Mercers Pond, in the Town of Paradise, in the Province of Newfoundland and Labrador, bounded and abutted as follows: that is to say beginning at a point, said point having M.T.M. Grid Co-ordinates (C.M. 53°) [NAD 83] of N 5 263 107.494 and E 311 318.870;

THENCE RUNNING North two degrees twelve minutes twenty eight seconds East (N02°12'28"E), a distance of 321.869 metres by Crown land to a point;

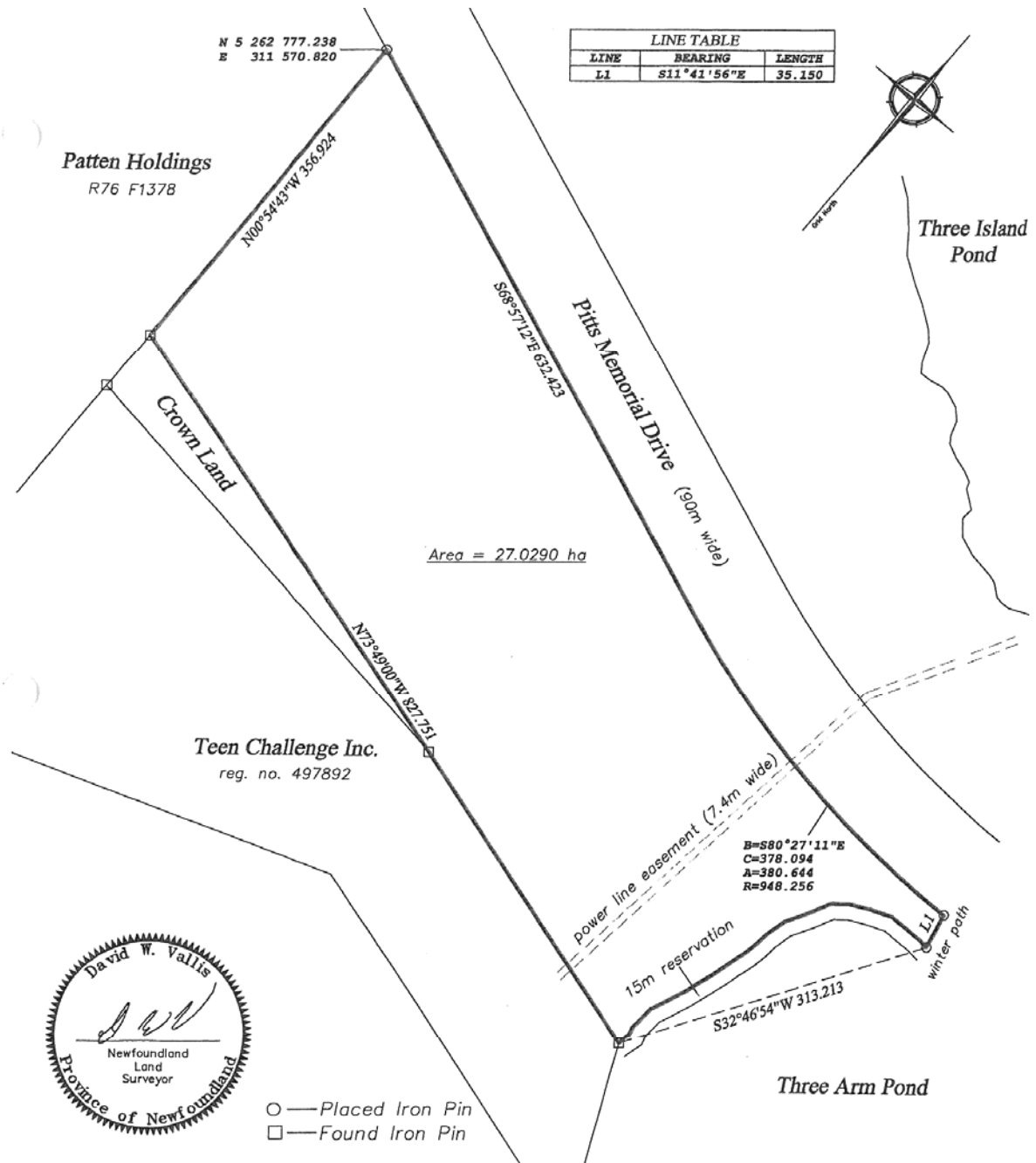
THENCE turning and running conterminous with a 15m reservation for the waters of Mercers Pond and having a chord of South forty seven degrees seventeen minutes forty six seconds East (S47°17'46"E), a distance of 330.672 metres to a point;

THENCE turning and running South two degrees twelve minutes twenty eight seconds West (S02°12'28"W), a distance of 107.131 metres by land of Carl Healey (reg. no. 499845) to a point;

THENCE turning and running North eighty seven degrees forty seven minutes thirty two seconds West (N87°47'32"W), a distance of 251.460 metres by land of Patten Holdings (R76 F1378) to the PLACE OF BEGINNING and containing in all an area of 5.1228 hectares as more particularly described and delineated on plan 15028C, February 17, 2015 hereto annexed.

ALL bearings are referred to Grid North.

Parcel "A"



Notes:— This plan certifies the information as of the date shown and only as of this date. All distances are Metric.
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For further information contact the author at [709] 747-5923, Fax 747-0177, E-Mail dvallis@nf.aibn.com

[C.M.53°][NAD 83][GPS][RTK]

Boundary Survey

74219 Newfoundland and Labrador Inc. Parcel "A"

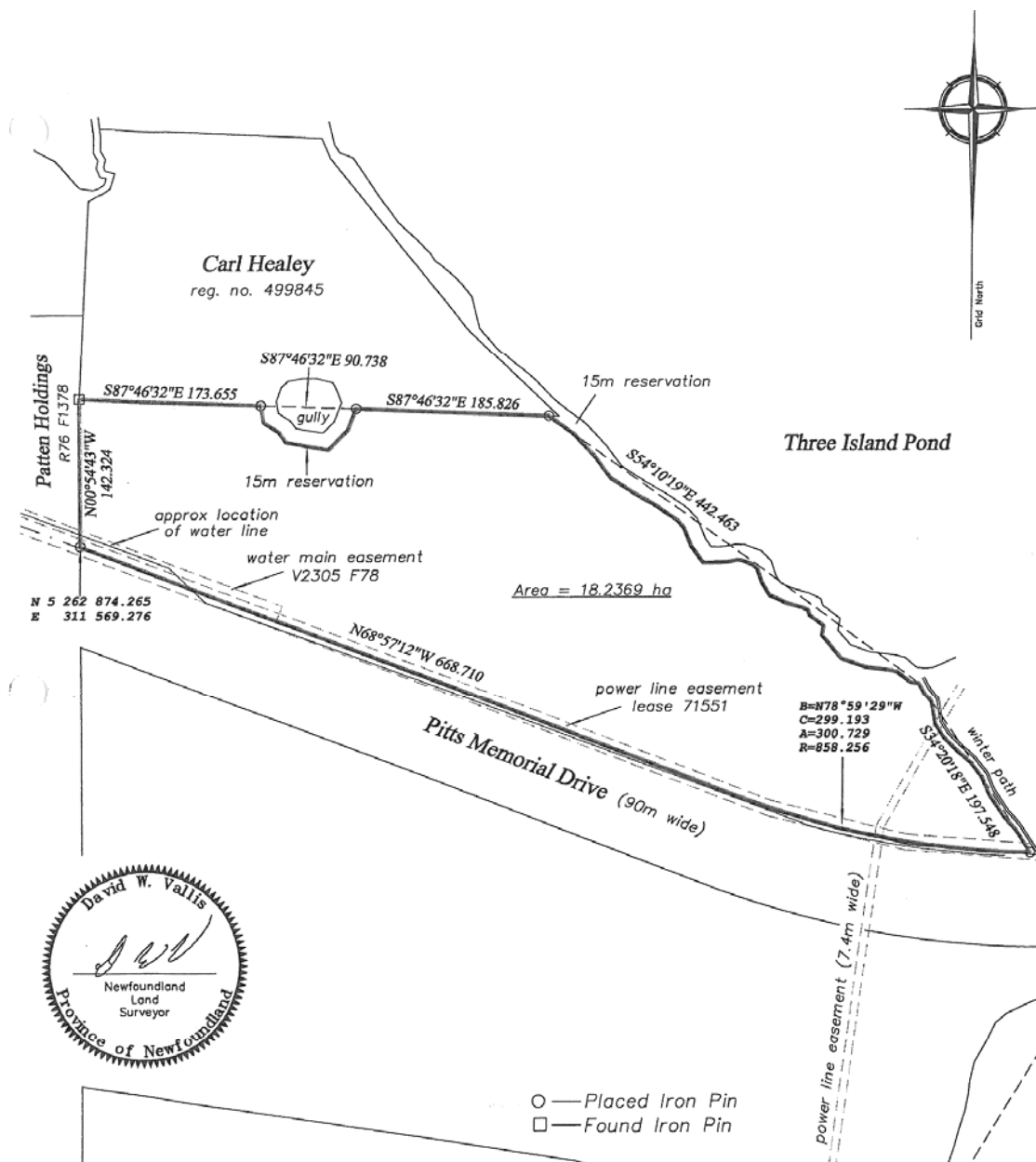
St. John's, NL

date: Feb 17, 15

scale: 1:5000

job no.: 15028A

Parcel "B"



Notes:— This plan certifies the information as of the date shown and only as of this date. All distances are Metric.

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For further information contact the author at [709] 747-5923, Fax 747-0177, E-Mail dvallis@nf.albn.com

[C.M.53][NAD 83][GPS][RTK]

<p>Boundary Survey 74219 Newfoundland and Labrador Inc. Parcel "B" Paradise, NL</p>	<p>date: Feb 17, 15 scale: 1:5000 job no.: 15028B</p>
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Notes:— This plan certifies the information as of the date shown and only as of this date. All distances are Metric.

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For further information contact the author at [709] 747-5923, Fax 747-0177, E-Mail dvallis@nf.oibn.com

[C.M.S3][NAD 83][GPS][RTK]

Boundary Survey
74219 Newfoundland and Labrador Inc. Parcel "C"
 Paradise, NL

date:	Feb 17, 15
scale:	1:2500
job no.:	15028C

TRUSTEE ACT

ESTATE NOTICE

IN THE MATTER OF the Estate and Effects of Late
GEORGE WHEY, of the Town of Gander, in the Province
of Newfoundland and Labrador, Businessman, Deceased.

All persons claiming to be creditors of or who have any
claims or demands upon or affecting the Estate of
GEORGE WHEY, the aforesaid deceased, who died at
Town of Gander, in the Province of Newfoundland and
Labrador on or about the 6th day of August, 2014, are
hereby requested to send particulars thereof in writing, duly
attested, to the undersigned Solicitor for the Executrix of
the Estate on or before the 5th day of June, 2015 after which
date the Executrix will proceed to distribute the said Estate
having regard only to the claims of which she shall then
have had notice.

DATED at the Town of Gander, Newfoundland and
Labrador, this 15th day of May, 2015.

BONNELL LAW
Solicitor for the Executrix
PER: R. Archibald Bonnell

ADDRESS FOR SERVICE:

P.O. Box 563
218 Airport Boulevard
Gander, NL A1V 2E1

Tel: (709) 651-4949
Fax: (709) 651-4951

May 22 & 29



THE NEWFOUNDLAND AND LABRADOR GAZETTE

PART II

SUBORDINATE LEGISLATION FILED UNDER THE STATUTES AND SUBORDINATE LEGISLATION ACT

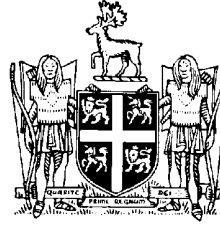
Vol. 90

ST. JOHN'S, FRIDAY, MAY 22, 2015

No. 21

NEWFOUNDLAND AND LABRADOR REGULATION

NLR 37/15



NEWFOUNDLAND AND LABRADOR REGULATION 37/15

Venture Capital Tax Credit Regulations
under the
Income Tax Act, 2000
(O.C. 2015-106)

(Filed May 19, 2015)

Under the authority of section 46.2 of the *Income Tax Act, 2000* the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, May 14, 2015.

Julia Mullaley
Clerk of the Executive Council

REGULATIONS

Analysis

- | | |
|--|--|
| 1. Short title | 12. Investment for certain purposes prohibited |
| 2. Interpretation | 13. Control of qualifying small business prohibitions |
| 3. Application for registration | 14. Non-arm's length investment prohibited |
| 4. Registration | 15. Aggregate qualifying venture capital fund investment |
| 5. Register | 16. Action to be taken if investment becomes prohibited |
| 6. Permanent establishment | 17. Changes in eligibility |
| 7. Restrictions on business and authorized capital | 18. Prohibited investment recapture |
| 8. Restrictions on purchase of share certificates | 19. Permitted investments and authorized expenses |
| 9. Equity capital issues | |
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Short title **1.** These regulations may be cited as the *Venture Capital Tax Credit Regulations*.

Interpretation **2.** (1) In these regulations

(a) "Act" means the *Income Tax Act, 2000*;

(b) "affiliate", if used to indicate a relationship between corporations, means any corporation where one is the subsidiary of the other, or both are subsidiaries of the same corporation, or

(i) each of them is controlled by the same person or the same group of persons, or

(ii) one of them is controlled by one person and the other is controlled by an associate, as defined in subparagraphs (c)(v) or (vi), of that person;

(c) "associate", if used to indicate a relationship with a person, means

(i) a corporation of which the person owns, directly or indirectly, shares carrying 10% or more of the outstanding voting rights for the election of the directors of the corporation,

(ii) a partner of the person,

(iii) a participant in a joint venture with the person,

(iv) a trust or estate

(A) in which the person has, in the opinion of the minister, a substantial beneficial interest, or

- (B) for which the person serves as trustee or in a similar capacity,
- (v) a spouse, common law partner, parent, grandparent, child, grandchild, brother or sister of the person, or
- (vi) a parent, grandparent, child, grandchild, brother or sister of the spouse or common law partner of the person, residing in the same residence;
- (d) "calculation period" means
 - (i) where a qualifying small business or affiliate of a qualifying small business has been in business for a period of less than one year as at the date of the calculation, that entire period, or
 - (ii) where a qualifying small business or affiliate of a qualifying small business has been in business for one year or longer, the 52 weeks immediately before the date of the calculation;
- (e) "closed end fund" means a fund that
 - (i) exists for a period not exceeding 12 years,
 - (ii) raises capital for a period not exceeding one year, and
 - (iii) upon termination, all qualifying investments are sold;
- (f) "common interest group", in relation to a corporation, means 2 or more persons, whether or not associated or affiliated, who, pursuant to an agreement, commitment or understanding, exercise, or intend to exercise, in concert, any rights attached to or associated with their shares;
- (g) "corporation" includes a limited partnership except in paragraphs (p), (q) and (t), subsection 2(2), paragraphs 3(3)(a), 3(4)(a) and 4(1)(c), subsections 4(2), 11(2) and (3), clause 19(5)(b)(i)(A) and paragraphs 23(4)(a) and 24(a);

- (h) "debt obligation" includes a mortgage, bond, non-convertible debenture, note, loan or similar obligation, whether secured or unsecured;
- (i) "employee" includes a person engaged by a qualifying small business for the calculation period;
- (j) "equity capital" means the consideration in money received by a corporation before or after its registration under these regulations as a qualifying venture capital fund for its issued shares or by a qualifying small business for its issued equity shares;
- (k) "equity share" means
 - (i) a share or a class of shares whether or not the share carries voting rights, but does not include a share having rights and restrictions attached to the share or rights and restrictions contained in or forming part of an agreement, commitment or understanding in respect of the share that
 - (A) create a debt between the holder or beneficial owner of the share and any other person,
 - (B) impair or will impair the ability of a corporation, in which a qualifying venture capital fund has made a qualifying investment, to carry on an ongoing business with a reasonable expectation of profit, or
 - (C) will entitle the holder or beneficial owner of the share to reduce the impact of any loss he or she will sustain in holding or disposing of the share,
 - (ii) any warrants, options or rights entitling their holders to purchase or acquire the shares referred to in subparagraph (i); or
 - (iii) a royalty interest;
- (l) "major shareholder", in relation to a corporation, means a person whose shares in the corporation, together with the

shares, if any, owned by the person's associates and affiliates,

- (i) carry in the aggregate 10% or more of the voting rights, under any circumstances, attached to shares in the corporation, or
 - (ii) carry in the aggregate less than 10% of the voting rights, under any circumstances, attached to shares in the corporation if the person is a member of a common interest group whose members own or hold shares which allow the group to control the corporation;
- (m) "ownership" includes beneficial ownership;
- (n) "persons engaged by a qualifying small business" includes
- (i) officers of the qualifying small business,
 - (ii) persons who perform work or provide services under a contract with the qualifying small business other than a contract
 - (A) that relates to the provision of accounting, legal or other professional services on a temporary working or ad hoc consulting basis, or
 - (B) where the qualifying small business purchases or hires equipment as the main purpose of the contract and the work and services are only incidental to that main purpose, and
 - (iii) persons who perform work or provide services for a qualifying small business at its place of business and who were engaged or employed through a temporary help service;
- (o) "qualifying investment", except in sections 20 and 21, means an investment permitted by section 11 or a debt obligation that meets all of the following criteria:
- (i) if the debt obligation is secured by property, the property has a value that does not exceed 50% of the amount

of the indebtedness under the debt obligation at the time of the investment,

(ii) the debt obligation does not

(A) restrict the borrower from incurring other indebtedness, or

(B) penalize the borrower for incurring other indebtedness, and

(iii) the outstanding balance from time to time under the debt obligation bears interest

(A) at a rate not exceeding 12% a year, calculated semi-annually not in advance, or

(B) at another rate set by the Lieutenant-Governor in Council;

(p) "qualifying investor" means an individual, other than a trust, or a corporation who invests in a qualifying venture capital fund;

(q) "qualifying small business" means a corporation that has no more than 100 employees calculated in accordance with section 11;

(r) "qualifying venture capital fund" means a corporation registered under section 4;

(s) "share", includes a limited partnership unit except in paragraph 2(1)(k) and subsections 2(10) and 8(3);

(t) "special resolution" has the same meaning as in the Act under which a corporation was incorporated; and

(u) "subsidiary" means a corporation which, in respect of another corporation, is controlled, either directly or indirectly, by that other corporation.

(2) For the purpose of the definition of "special resolution" in subsection (1), a shareholder who is receiving, or is proposed to re-

ceive, any fees or remuneration from the corporation or whose associate or affiliate is receiving, or is proposed to receive, any fees or remuneration from the corporation is not entitled to vote in person or by proxy at a general meeting in respect of a special resolution to approve or ratify the payment of any fees or remuneration by the corporation.

(3) A limited partnership unit for which the following criteria are met is a limited partnership unit for the purposes of subparagraph 11(1)(d)(iv):

(a) the limited partnership unit is issued by a limited partnership that

(i) is formed under section 4 of the *Limited Partnership Act*,

(ii) is managed by a general partner who, if an individual, resides in the province or, if a corporation, has a permanent establishment, as determined under the *Income Tax Act* (Canada), that is located in the province,

(iii) will make qualifying investments in qualifying small businesses in amounts that, in total, are at least twice the amounts, in total, that the limited partnership has received from a qualifying venture capital fund as investments made by it under section 11, and

(iv) will keep the qualifying investments described in subparagraph (iii) for at least 5 years;

(b) the qualifying venture capital fund investing in a limited partnership by acquiring the limited partnership unit as a limited partner has satisfied the minister through agreements to which the qualifying venture capital fund is a party, or by other documentary evidence, that

(i) the qualifying venture capital fund, or

(ii) any of its shareholders or their associates

will not claim, take advantage of or otherwise avail itself, himself or herself of any benefits, rights or entitlements, including, but not limited to, any benefits, rights or entitlements.

ments that are or may be available under the *Income Tax Act* (Canada), for the purpose of reducing the impact of any loss the qualifying venture capital fund or a shareholder may sustain in holding or disposing of the limited partnership unit.

(4) In a determination under these regulations of whether a corporation is controlled by one or more persons, account must be taken of the relevant facts, including the existence of any option, warrant or right described in subsection (9)(b).

(5) Without limiting subsection (4), a corporation is controlled by a person or a common interest group if

- (a) shares of the corporation carrying more than 50% of the outstanding voting rights for the election of the directors are held by or for the benefit of that person or common interest group; and
- (b) the votes carried by the shares referred to in paragraph (a) are sufficient, if exercised, to elect a majority of the directors of the corporation.

(6) A corporation is the holding company of another corporation if that other corporation is its subsidiary.

(7) Shares are considered to be held for the benefit of an individual if they are beneficially owned by a corporation controlled by the individual or by an affiliate of that corporation.

(8) A corporation is considered to own shares that are owned by its affiliates.

(9) Except for the definition of "affiliate" in subsection (1), in calculating the total number of shares of a corporation that are owned or controlled,

- (a) if a share carries the right to more than one vote, each vote carried by the share is considered to be a share; and
- (b) there must be included in the total number of shares any share that would be issued or transferred following the exercise of

(i) an option, warrant or right, and

(ii) a conversion right that is attached to a debt obligation or to a share of the corporation.

(10) Two or more persons holding the same shares or holding shares jointly are required to be counted as one shareholder.

(11) For the purposes of the holding of an investment referred to in sections 12 to 14, a qualifying small business does not cease to be a qualifying small business if, after the initial investment, the number of employees of the qualifying small business and its affiliates, is more than 100.

(12) A reference in these regulations to a series of transactions or events includes any related transactions or events completed in contemplation of the series.

(13) Any calculation or determination under these regulations may be based on projections that the minister considers to be reasonable.

Application for
registration

3. (1) A corporation may apply for registration under these regulations by submitting an application for registration to the minister.

(2) The application shall be in the form approved by the minister.

(3) The application shall be signed by

(a) one director and one officer where the applicant is a corporation; or

(b) one director and one officer of the general partner where the applicant is a limited partnership.

(4) The application shall be accompanied by a certified copy of

(a) the corporation's articles of incorporation where the applicant is a corporation; or

(b) the partnership agreement where the applicant is a limited partnership.

(5) The minister may request an applicant to provide information or documents in addition to that required on the application.

Registration

4. (1) The minister may register an applicant under these regulations where the applicant

- (a) has or will have equity capital of at least \$25,000;
- (b) is a closed end fund; and
- (c) where the applicant is a corporation, it
 - (i) is incorporated under the laws of Canada or a province, and
 - (ii) has an authorized share structure consisting of only either or both of the following:
 - (A) common shares without par value having no special rights or restrictions, or
 - (B) common shares without par value having special rights relating only to the redemption of the shares by the corporation;

(2) Notwithstanding the *Corporations Act*, a corporation, subject to its articles of incorporation

- (a) may allot or issue fractional shares for any purpose; and
- (b) may purchase or redeem any of its fractional shares and need not consolidate them into whole shares.

(3) If the minister approves an application for registration under these regulations, the minister shall issue a certificate and the applicant is considered to be registered on the date of registration contained in the certificate.

Register

5. (1) The minister shall maintain a register of qualifying venture capital funds in which the minister shall list corporations registered under these regulations.

(2) The register shall be open for public inspection during normal business hours of the department.

(3) The register shall contain the following information:

- (a) the name of the qualifying venture capital fund;
- (b) the date the qualifying venture capital fund was registered;
- (c) the location of the registered office of the qualifying venture capital fund;
- (d) the principal place of business of the qualifying venture capital fund;
- (e) the total amount of equity capital approved under section 9;
- (f) the amount of equity capital, to the knowledge of the minister, that the qualifying venture capital fund has raised; and
- (g) the amount that the qualifying venture capital fund has, to the knowledge of the minister, invested in qualifying investments.

Permanent establishment

6. (1) In this section, "permanent establishment" has the same meaning as in the Act.

(2) A qualifying venture capital fund shall establish a permanent establishment in Canada within 30 days after being registered and shall maintain a permanent establishment in Canada.

(3) A qualifying venture capital fund shall not establish or maintain a permanent establishment outside of Canada.

Restrictions on business and authorized capital

7. (1) A qualifying venture capital fund shall not carry on any type of activity other than

- (a) making investments permitted under section 19; and
- (b) providing business and managerial expertise to qualifying small businesses in which it has made or proposes to make a qualifying investment.

(2) An act of a qualifying venture capital fund, including the transfer of property by or to it, is not invalid merely because the act contravenes subsection (1).

Restrictions on
purchase of share
certificates

8. (1) All issued shares of a qualifying venture capital fund shall be fully paid for in cash.

(2) A qualifying venture capital fund shall issue a share certificate or limited partnership unit certificate to each qualifying investor.

(3) All share certificates of a qualifying venture capital fund shall conspicuously state the following on its face:

The value of the shares represented by this certificate may be significantly affected by the recapture provisions under the *Venture Capital Tax Credit Regulations*.

The Province of Newfoundland and Labrador in no way guarantees or recommends the investment in any qualifying venture capital investment, nor does it in any way express an opinion as to the financial condition of the qualifying venture capital fund or the qualifying small business.

(4) All limited partnership unit certificates of a qualifying venture capital fund shall conspicuously state the following on its face:

The value of the limited partnership units represented by this certificate may be significantly affected by the recapture provisions under the *Venture Capital Tax Credit Regulations*.

The Province of Newfoundland and Labrador in no way guarantees or recommends the investment in any qualifying venture capital investment, nor does it in any way express an opinion as to the financial condition of the qualifying venture capital fund or the qualifying small business.

(5) A qualifying venture capital fund shall only alter the following documents with the written approval of the minister:

- (a) its articles of incorporation;
- (b) its limited partnership agreement;

(c) its authorized share structure; and

(d) a provision of its articles respecting a matter referred to in subparagraph 4(1)(c)(ii).

Equity capital issues

9. A qualifying venture capital fund shall apply to the minister to raise equity capital and the minister may approve the raising of equity capital subject to any condition that the minister may determine, including

(a) a condition that the shares may only be issued, as the minister specifies, to qualifying investors;

(b) setting the maximum consideration for which a share may be issued to those qualifying investors; and

(c) a condition that the equity capital be issued only for the purposes of investment in a qualifying small business referred to in paragraph 11(1)(c) that is engaged in a qualifying business activity that is specified by the minister in the condition.

Qualifying business activities

10. (1) A qualifying business activity includes activities relating to

(a) intellectual property;

(b) information technology;

(c) clean, ocean and marine technologies;

(d) life sciences;

(e) new media; and

(f) manufacturing and processing of value-added goods for export.

(2) A qualifying business activity shall not include

(a) wholesale and retail trade;

- (b) food establishments or establishments that hold a licence issued under the *Liquor Licensing Regulations* made under the *Liquor Control Act*;
- (c) personal services, business services, professional practices and trades, unless all or substantially all of those services relate to export related activities that the minister may determine;
- (d) real estate marketing and development;
- (e) oil and gas development and production;
- (f) mineral resource exploration;
- (g) financial services;
- (h) fish harvesting and primary fish processing; or
- (i) an activity that, in the opinion of the minister is not in keeping with the purpose of the program governed by these regulations.

(3) In subsection (2), "food establishment" means a restaurant, snack bar or other place where food is served, prepared, sold or offered for sale.

Investment in
qualifying small
business

11. (1) A qualifying venture capital fund may make an investment in a qualifying small business if the following criteria are met:

- (a) the qualifying small business, together with its affiliates, has no more than 100 employees calculated in accordance with subsection (2);
- (b) at least 75% of the wages and salaries, determined in accordance with subsection (3), of the qualifying small business at the time of initial investment are paid to employees who regularly report to work at operations located in the province and following the initial investment that the percentage of wages and salaries of the qualifying small business paid to the employees who regularly report to work at operations located in the province will be the greater of

- (i) 25% of total wages and salaries, or
- (ii) the greater of
 - (A) 75% of total wages and salaries paid in the province at the time of the initial investment, and
 - (B) the actual wages and salaries paid in the province at the time of the initial investment;
- (c) the qualifying small business, if required by a condition of the minister, is or will be substantially engaged, as determined in accordance with subsection (8), in the province in a qualifying business activity that is specified by the minister in the condition;
- (d) the investment consists or will consist of
 - (i) the direct acquisition from the qualifying small business of equity shares issued for the purpose of raising new equity capital,
 - (ii) the acquisition by the qualifying venture capital fund of equity shares issued by the qualifying small business under a prospectus, offering memorandum or other disclosure document,
 - (iii) the acquisition of equity shares of an affiliate of the qualifying small business directly from the affiliate, or
 - (iv) the acquisition of limited partnership units;
- (e) the funds paid by the qualifying venture capital fund for
 - (i) any equity shares referred to in paragraph (d)(iii) are in turn invested in equity shares of the qualifying small business by the affiliate within 6 years, or where the qualifying venture capital fund is a limited partnership the time period prescribed in the partnership agreement, or
 - (ii) any limited partnership units referred to in paragraph (d)(iv) are in turn invested in equity shares in one or

more qualifying small businesses by the limited partnership within 6 years or where the qualifying venture capital fund is a limited partnership the time period prescribed in the partnership agreement;

(f) the investment is not and will not be prohibited under sections 12 to 15.

(2) The number of employees of a corporation for the purposes of paragraph (1)(a) shall be calculated, at the option of the qualifying venture capital fund, in accordance with either of the following formulas:

$$(a) \quad \text{Number of Employees} = \frac{\text{Total Hours}}{40 \times w}$$

where

Total Hours = the total hours worked by all employees each of whom worked for at least 20 hours (counting all time worked by each employee whether for the qualifying small business, any of its affiliates or both) during any week of the calculation period, and

w = the number of weeks in the calculation period;

$$(b) \quad \text{Number of Employees} = \frac{\text{Employee Costs} \times 52}{W} \div 45\,000$$

where

Employee Costs = all amounts paid or payable by the qualifying small business to or on behalf of employees for work performed or services provided by them during the calculation period, and

w = the number of weeks in the calculation period;

(3) The percentage of wages and salaries that are paid to employees of a corporation or its affiliates for the purposes of paragraph (1)(b) shall be determined in accordance with the following formula:

$$\text{Percentage of wages and salaries} = \frac{\text{Wages (NL)}}{\text{Total Wages}} \times 100$$

where

Wages (NL) = the total remuneration that was paid to employees, of the corporation or its affiliates, who regularly reported to work at operations located in the province during the calculation period, and

Total Wages = the total remuneration that was paid to all employees, of the corporation or its affiliates, during the calculation period.

(4) Subsection (1)(a) does not apply in respect of a qualifying small business in which a qualifying venture capital fund previously invested at a time when the qualifying small business had fewer than 100 employees.

(5) Notwithstanding subsection (1)(a), in calculating the number of employees under subsection (1)(a), the minister shall not count the employees of the affiliate of the qualifying small business if

- (a) a qualifying small business and another company are affiliates only because one of them is controlled by one person and the other by one or more persons described in paragraph 2(1)(c); and
- (b) the minister is satisfied that the qualifying small business and the other company do not have any agreement, commitment or understanding to conduct, in concert, any business.

(6) For the purposes of applying the formulas in subsections (2) and (3) the calculation period ends immediately before the qualifying venture capital fund proposes to make the investment.

(7) Paragraph (1)(b) and (c) do not apply to an investment made or held by a qualifying venture capital fund in a qualifying small business if the minister is satisfied that the funds invested by the qualifying venture capital fund were from equity capital provided by an entity created by or controlled by the federal government.

(8) For the purposes of subsection (1)(c), a qualifying small business is substantially engaged in a qualifying business activity if

(a) the result obtained from the following formula is greater than 0.5:

$$\frac{\text{Activity Assets} + \text{Activity Expenses}}{\text{Total Assets} + \text{Total Expenses}}$$

where

Activity Assets = the value of assets of the qualifying small business used in the province in the qualifying business activity

Total Assets = the total value of all assets of the qualifying small business,

Activity Expenses = all expenses incurred during the calculation period with respect to the portion of the qualifying business activity carried on in the province, and

Total Expenses = the total of all expenses incurred during the calculation period with respect to all operations of the qualifying small business,

(b) if the qualifying small business' permanent establishment as determined under the *Income Tax Act* (Canada) is located in the province; and

(c) not more than 20% of the net book value of the qualifying small business' assets are located outside of the province.

(9) For the purpose of the calculation in subsection (8), the value of assets and expenses shall be determined in accordance with Inter-

national Financial Reporting Standards or Canadian Accounting Standards for Private Enterprises.

Investment for
certain purposes
prohibited

12. (1) A qualifying venture capital fund shall not make or hold an investment in a qualifying small business if all or part of the proceeds of that investment are directly or indirectly used or intended to be used by the qualifying small business for any of the following purposes:

- (a) lending;
- (b) investment outside the province unless the investment is incidental or ancillary to the qualifying business activities of the qualifying small business;
- (c) investment in land, unless the investment is incidental or ancillary to the qualifying business activities of the qualifying small business;
- (d) acquiring securities other than equity shares from an affiliate of a qualifying small business, or units of a limited partnership, that complies with the criteria set out in subparagraphs 11(1)(d)(iii) and (iv);
- (e) purchasing goods or services from
 - (i) the qualifying venture capital fund,
 - (ii) a director, officer, shareholder or partner of the qualifying venture capital fund, or
 - (iii) an associate of a director, officer, shareholder or partner of the qualifying venture capital fund;
- (f) payment of all or part of a debt obligation, unless the payment is incidental or ancillary to the qualifying business activities of the qualifying small business; or
- (g) as part of a transaction or series of transactions directly or indirectly involving any of the following:
 - (i) the payment of dividends, and

- (ii) the funding of all or part of the purchase by the qualifying small business of any of the assets of a proprietorship, partnership, joint venture, trust or corporation at a price that is greater than the fair market value of the asset purchased.

(2) Paragraph (1)(b) does not apply to an investment made or held by a qualifying venture capital fund in a qualifying small business if the minister is satisfied that the funds invested by the qualifying venture capital fund were from equity capital provided by an entity created by or controlled by the federal government.

(3) Paragraph (1)(e) does not apply to goods or services that are sold at fair market value to the qualifying small business in the ordinary course of the seller's business as a seller of such goods or services on the open market.

(4) The onus of demonstrating that goods and services are sold at fair market value to a qualifying small business in accordance with subsection (3) is on the qualifying venture capital fund and the qualifying small business.

(5) Subsection (1) does not prohibit a qualifying venture capital fund from making or holding an investment in a qualifying small business if the minister is satisfied that the funds invested by the qualifying venture capital fund were raised other than through the issue of approved equity capital.

Control of qualifying small business prohibitions

13. (1) A qualifying venture capital fund shall not make or hold an investment in a qualifying small business if it and any other qualifying venture capital fund or funds, either alone or in conjunction with one or more of their

- (a) associates or affiliates;
- (b) shareholders or their associates or affiliates;
- (c) directors or their associates;
- (d) officers or their associates; or
- (e) partners,

will own, directly or indirectly, shares carrying 50% or more of the votes for the election of directors of the qualifying small business or will, in any manner, have any direct or indirect influence, that if exercised, would result in control in fact of the qualifying small business.

(2) Notwithstanding subsection (1), if the minister is of the opinion that a qualifying small business in which a qualifying venture capital fund has made a qualifying investment is in financial difficulty, the minister may permit that fund to temporarily control the qualifying small business under circumstances and on terms and conditions that the minister may determine.

Non-arm's length
investment prohib-
ited

14. (1) A qualifying venture capital fund shall not make or hold an investment in a qualifying small business if any of the shares of the qualifying venture capital fund are held by a major shareholder who is, or was at any time during the 2 years immediately preceding the investment any of the following:

- (a) a major shareholder of the qualifying small business;
- (b) an associate of a major shareholder of the qualifying small business;
- (c) a voting trust for which the trustee votes shares of the qualifying small business; or
- (d) the qualifying small business or an associate or affiliate of the qualifying small business.

(2) A qualifying venture capital fund shall not make or hold an investment in a qualifying small business if the qualifying small business or an associate, affiliate, director, officer or shareholder of the qualifying small business provides or has provided, directly or indirectly, as part of any transaction or series of transactions, a loan, guarantee or any other financial assistance to any of the following:

- (a) the qualifying venture capital fund;
- (b) an associate or affiliate of the qualifying venture capital fund;
- (c) a director, officer, shareholder or partner of the qualifying venture capital fund;

- (d) a member of any common interest group respecting the qualifying venture capital fund; or
- (e) another person, for the purpose of that person making an investment in the qualifying venture capital fund.

Aggregate qualifying venture capital fund investment

15. (1) A qualifying venture capital fund shall not make an investment in a qualifying small business if, as a result of that investment, the aggregate of all amounts received by that qualifying small business and any affiliates of that qualifying small business

- (a) from the qualifying venture capital fund, directly or indirectly, would be greater than \$10 million; or
- (b) from the qualifying venture capital fund and any other qualifying venture capital fund or funds, directly or indirectly, would be greater than \$10 million in the previous 2 years.

(2) Amounts received indirectly by a qualifying small business from qualifying venture capital funds include amounts received by an affiliate of the qualifying small business from qualifying venture capital funds.

(3) For the purposes of subsection (1), if in the opinion of the minister one of the reasons for the separate existence of 2 or more qualifying small businesses is to increase the amount received from one or more qualifying venture capital funds, the qualifying small businesses are considered to be one qualifying small business.

Action to be taken if investment becomes prohibited

16. (1) If an investment of a qualifying venture capital fund becomes prohibited under sections 12 to 15, the qualifying venture capital fund shall, within 12 months after the investment became prohibited,

- (a) dispose of that investment; or
- (b) pay to the Crown an amount of money calculated in accordance with section 18.

(2) Subsection (1) does not apply if, within the 12 months referred to in subsection (1), the circumstances that caused the investment to be prohibited are changed to the extent that it is no longer prohibited.

(3) If the minister is satisfied that non-compliance with a provision of section 12 to 15 by the qualifying venture capital fund occurred even though its officers and directors exercised the degree of care, diligence and skill to ensure compliance with sections 12 to 15 that a reasonably prudent person would have exercised in comparable circumstances, the minister may, with or without conditions the minister may require in any particular case, relieve the qualifying venture capital fund for a period the minister considers appropriate from the consequences of non-compliance.

Changes in eligibility

17. (1) If a qualifying small business in which a qualifying venture capital fund has made a qualifying investment ceases to conform to paragraph 11(1)(b) or (c), the qualifying venture capital fund shall, within 12 months after the qualifying small business ceases to conform to paragraph 11(1)(b) or (c),

(a) dispose of that investment; or

(b) pay to the Crown an amount of money calculated in accordance with section 18.

(2) Subsection (1) does not apply if, within the 12 months referred to in subsection (1), the circumstances that caused the non-conformance with paragraph 11(1)(b) or (c) are changed so that the qualifying small business again conforms with paragraph 11(1)(b) or (c).

(3) The minister by written order may relieve a qualifying venture capital fund from the consequences of non-conformance with paragraph 11(1)(b) or (c) or extend the period referred to in subsection (1) for an additional period not exceeding 6 months, if the minister is satisfied that

(a) the qualifying small business' non-conformance with paragraph 11(1)(b) or (c) was not imminent at the time the qualifying venture capital fund made the investment; and

(b) the qualifying small business did not use any of the investment proceeds it received for any purposes set out in section 12 before ceasing to conform to paragraph 11(1)(b) or (c).

Prohibited investment recapture

18. The amount of money that a qualifying venture capital fund is required to pay to the Crown under paragraph 16(1)(b) or 17(1)(b) shall be determined in accordance with the following formula:

$$\text{Amount of money payable} = \frac{A}{B} \times 30\% \times C$$

where

A = the amount of equity capital that was eligible for the tax credit;

B = the total amount of equity capital; and

C = amount of investments prohibited under sections 12 to 15

Permitted investments and authorized expenses

19. (1) A qualifying venture capital fund may only invest in the following:

- (a) subject to a condition of the minister under paragraph 9(c), qualifying investments;
- (b) liquid reserves on deposit in the province at a savings institution; and
- (c) a security, as defined in the *Securities Act*, of a qualifying small business, the equity shares of which would qualify as a qualifying investment.

(2) A qualifying venture capital fund's portfolio shall not consist of more than 20% of debt obligation.

(3) For the purposes of determining the value of the qualifying venture capital fund's portfolio in subsection (2), the valuation is based on either

- (a) the value of the shares at the time of purchase; or

- (b) where an independent third party has undertaken a re-evaluation of the qualifying venture capital fund's portfolio, that valuation.

(4) Notwithstanding paragraph (1)(c), a qualifying venture capital fund shall not make an investment in a security under paragraph (1)(c) unless the security is issued directly to the qualifying venture capital fund by the qualifying small business.

(5) A qualifying venture capital fund may incur annual expenses of no more than 20% of its equity capital raised under section 9, other than expenses paid out of retained earnings, if

- (a) the expenses are reasonable and are incurred for
 - (i) share issuance,
 - (ii) office occupancy,
 - (iii) legal fees,
 - (iv) preparation of financial accounts by an external accountant,
 - (v) preparation of the annual return under section 27, or
 - (vi) a management fee of no more than 3% per annum of the equity capital raised; and
- (b) any expenses paid to a person who controls directly or indirectly the qualifying venture capital fund or who belongs to a group that controls directly or indirectly the qualifying venture capital fund
 - (i) were specifically approved by
 - (A) special resolution in advance of payment where the qualifying venture capital fund is a corporation, or
 - (B) two-thirds of the limited partnership unit holders in advance of payment where the qualifying venture capital fund is a limited partnership, and

- (ii) are made to a person whose business it is to provide the services or things in respect of which the expenses were incurred.

(6) For the purposes of subsection (5), retained earnings and expenses shall be determined in accordance with International Financial Reporting Standards or Canadian Accounting Standards for Private Enterprises.

Tax credit

20. (1) A qualifying venture capital fund, on behalf of its qualifying investors, may apply to the minister, in a form approved by the minister, for a tax credit certificate entitling each of the qualifying investors to a tax credit under section 46.2 of the Act, equal to 30% of the amount received in respect of a qualifying investment in a qualifying venture capital fund, in the then current calendar year, or in the case of a qualifying investor who is an individual, 60 days immediately following that calendar year.

(2) If a qualifying venture capital fund makes an application under subsection (1), the minister, in accordance with the provisions of section 46.2 of the Act may issue a tax credit certificate in the amount referred to in subsection (1), unless

- (a) the qualifying venture capital fund is contravening or has contravened these regulations; or
- (b) the minister is of the opinion that the qualifying venture capital fund or its directors, officers, shareholders or partners are conducting the business or affairs of the qualifying venture capital fund in a manner that is contrary to these regulations.

(3) The total tax credits that may be issued under this section to a qualifying investor for one or more qualifying investments shall not exceed a lifetime limit of \$75,000.

(4) The minister shall not issue a tax credit certificate under subsection (2) unless he or she is satisfied that all of the following requirements are met:

- (a) a tax credit certificate under this section has not previously been allowed or paid for those shares;

- (b) the equity capital, in respect of which the tax credit certificate applied for, consists of equity capital of the qualifying venture capital fund that has been approved in accordance with section 9;
- (c) an amount could not be deducted, in computing the qualifying investor's tax payable under the *Income Tax Act* (Canada) for a taxation year, in respect of the qualifying investment;
- (d) the qualifying investor has acquired the share directly from the qualifying venture capital fund or its agent acting in that behalf; and
- (e) the qualifying investor, if an individual, was a resident in the province at the date the qualifying investor subscribed for the shares.

(5) A tax credit certificate issued under subsection (2) may be revoked by the minister if the minister determines that, at the time the tax credit certificate was issued or at a subsequent time, the qualifying venture capital fund was in contravention of these regulations.

(6) A tax credit certificate that is revoked by the minister is considered never to have been issued.

(7) The minister shall promptly give a qualifying venture capital fund notice of a refusal to issue a tax credit certificate under subsection (2) to the qualifying venture capital fund and the reasons for the refusal.

(8) The minister shall promptly give a qualifying venture capital fund notice of revocation of a tax credit certificate issued under subsection (2) to the qualifying venture capital fund and the reasons for the revocation.

(9) For the purposes of this section, "qualifying investment" means an investment by a qualifying investor in a qualifying venture capital fund.

Claiming the non
refundable tax
credit

21. (1) Where, for a taxation year, a qualifying investor has been issued a tax credit certificate, there shall be deducted from the tax otherwise payable by the qualifying investor under the Act for that taxation year, the lesser of

- (a) the tax otherwise payable; or
- (b) the amount specified in a tax credit certificate issued during the year plus amounts carried forward or back from another year in accordance with section 22.

(2) A qualifying investor who is entitled to a deduction under this section shall file, with the qualifying investor's annual return for a taxation year in which a deduction is claimed under this section, a copy of the tax credit certificate to which the deduction relates.

(3) A deduction made under this section may be made with respect to qualifying investments made and paid for by a qualifying investor in the taxation year for which the deduction is claimed.

(4) For the purposes of this section, "qualifying investment" means an investment by a qualifying investor in a qualifying venture capital fund.

Carry forward or
back on tax credit

22. Where a qualifying investor has been issued a tax credit certificate under these regulations and the amount specified in the tax credit certificate issued during the year exceeds the tax otherwise payable, the qualifying investor may carry forward an unused balance to one or more of 7 subsequent tax years, or carry back the amount to one or more of 3 preceding tax years, where

- (a) in the case of a qualifying investor that is an individual, it is not carried back to a taxation year that precedes the year 2014; and
- (b) in the case of a qualifying investor that is not an individual, it is not carried back to a taxation year that ended before January 1, 2014.

Recapture

23. (1) Where a qualifying venture capital fund

- (a) purchases or otherwise acquires any of its own shares;
- (b) proposes to wind up or dissolve; or
- (c) has its registration revoked,

the qualifying venture capital fund shall immediately pay to the Crown an amount of money calculated according to the rules set out in this section.

(2) Paragraph (1)(b) does not apply when a closed end fund is wound up and its assets liquidated on or after the fund termination date specified in the qualifying venture capital fund's application for registration.

(3) Where a qualifying venture capital fund purchases or otherwise acquires any of its own shares for a total consideration that

(a) is equal to or greater than that for which the share was issued, the qualifying venture capital fund shall pay to the Crown an amount of money equal to 30% of the consideration paid to the qualifying venture capital fund by the qualifying investor for the share at the time the share was issued; or

(b) is less than that for which the share was issued, the qualifying venture capital fund shall pay to the Crown an amount equal to 30% of the gross consideration paid by the qualifying venture capital fund for the purchase or acquisition of the share.

(4) Where the registration of a qualifying venture capital fund is revoked or where the qualifying venture capital fund proposes to wind up or dissolve, the qualifying venture capital fund shall pay to the Crown an amount equal to 30% of

(a) in the case of a corporation, the value of its shareholders' equity; or

(b) in the case of limited partnership, the value of its issued and outstanding shares

to an amount not exceeding the total tax credit allowed by the minister in respect of shares then issued and outstanding at the time of the revocation, winding up or dissolution.

(5) Where the minister is satisfied that the qualifying venture capital fund has conducted its business in accordance with these regulations, the minister may, on application by the qualifying venture capital

fund, order that subsection (1) does not apply to the qualifying venture capital fund.

(6) A qualifying venture capital fund shall not make an application and the minister shall not make an order under subsection (5) until a period of at least 5 years has expired from the date of the purchase of the shares from the qualifying venture capital fund with respect to which the application is made.

(7) A qualifying venture capital fund that reduces its stated capital under the *Corporations Act* is, for the purposes of this section, considered to have acquired shares for a total consideration equal to the amount by which its equity capital exceeds the greater of

- (a) the stated capital of the qualifying venture capital fund after the reduction; and
- (b) the value of the shareholders' equity.

(8) If the minister is of the opinion that a qualifying venture capital fund has conducted its business and affairs in a manner consistent with these regulations and held a qualifying investment for at least 3 years, the minister may reduce the amount that would otherwise be payable under subsection (3) by an amount calculated as follows:

- (a) firstly, multiply that amount otherwise payable by the number of days the qualifying venture capital fund held the qualifying investment; and
- (b) secondly, divide the product obtained under paragraph (a) by 1825 to determine the amount of the reduction.

Liability of officers
and directors

24. Where

- (a) an officer or director of a qualifying venture capital fund, where the qualifying venture capital fund is a corporation; or
- (b) an officer or director of a general partner of a qualifying venture capital fund, where the qualifying venture capital fund is a limited partnership,

permits or acquiesces in a transaction, event or a series of transactions or events that he or she knows or ought to know would cause a qualify-

ing venture capital fund to be liable to the Crown to make the payment required under section 23, the officer or director is jointly and individually liable for the amount of the payment.

Revocation and
suspension of
registration

25. (1) The minister may suspend or revoke a registration of a qualifying venture capital fund in any of the following circumstances:

- (a) it obtained its registration fraudulently or by furnishing false or misleading information or documents;
- (b) it fails to supply information or records when they are required under these regulations;
- (c) it supplied information or records referred to in paragraph (b) that contain false or misleading information; or
- (d) it fails to comply with these regulations or a condition or condition of approval that the minister may impose, make or give under these regulations.

(2) If the minister suspends a registration under subsection (1), the minister may

- (a) attach conditions to be complied with by the suspended qualifying venture capital fund during the period of suspension; and
- (b) reinstate the registration with or without conditions.

(3) Notwithstanding subsections (1) and (2), if the minister considers that a qualifying venture capital fund is conducting its business and affairs in a manner consistent with these regulations, the minister may do any of the following:

- (a) for any time that the minister considers appropriate, refrain from revoking the registration of the qualifying venture capital fund;
- (b) permit registration of the qualifying venture capital fund and, for any time that the minister considers appropriate, refrain from revoking the registration of the qualifying venture capital fund; or

(c) issue a tax credit certificate.

Notice to minister

26. A qualifying venture capital fund shall within 30 days notify the minister if

- (a) it ceases to maintain a place of business, or a permanent establishment, as determined under the *Income Tax Act* (Canada), in Canada;
- (b) it changes its registered office;
- (c) it acquires a different or additional place of business or permanent establishment, as defined in the Act, in the province or elsewhere;
- (d) it changes its fiscal year end;
- (e) it fails to comply with subsections 12(1) and 13(1), sections 14 and 15, and subsections 16(1), 17(1) and 19(1), (2) or (4);
- (f) an investment held by a qualifying venture capital fund ceases to meet the criteria set out in section 11(1)(b) or (c);
- (g) it directly or indirectly acquires, redeems or cancels any of its own shares; or
- (h) it proposes to wind up or dissolve.

Reporting requirements

27. Within 6 months after its fiscal year end, a qualifying venture capital fund shall prepare and file with the minister a return setting out the following information:

- (a) the amount of equity capital raised by the qualifying venture capital fund;
- (b) the aggregate value at cost of investments made by the qualifying venture capital fund, the name of each qualifying small business the shares of which the qualifying venture capital fund sold and the value at cost of those shares;
- (c) the aggregate amount of expenses incurred by the qualifying venture capital fund and the amount paid as management fees;

- (d) whether any fees or remuneration were paid to the shareholders, partners, officers or directors of the qualifying venture capital fund or to any associate or affiliate of any of them by a qualifying small business in which the qualifying venture capital fund made a qualifying investment;
- (e) whether the articles of the qualifying venture capital fund were amended in a manner that changed the authorized share structure of the qualifying venture capital fund or altered any rights or restrictions attached to any share of the qualifying venture capital fund;
- (f) the amount of all dividends received by the qualifying venture capital fund in respect of a qualifying investment made by it in a qualifying small business;
- (g) whether the qualifying venture capital fund redeemed any of its shares;
- (h) whether a share redemption referred to in paragraph (g) was reported to the minister;
- (i) in relation to a share redemption referred to in paragraph (g) that was not reported to the minister, the name of each investor whose shares were redeemed, the date of each redemption, the number of shares redeemed in each redemption, the investor's cost of each share redeemed in each redemption and the consideration paid by the qualifying venture capital fund in respect of the redemption;
- (j) whether the qualifying venture capital fund paid any expenses to any person or group of persons who, at the time the payment was made, directly or indirectly controlled the qualifying venture capital fund;
- (k) whether the qualifying venture capital fund notified the minister of the occurrence of any events referred to in section 26; and
- (l) any other information that the minister may require.

Commencement

28. These regulations are considered to have come into force on January 1, 2014.

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Venture Capital Tax Credit Regulations	NLR 37/15	New	May 22/15 p. 235

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