New Brunswick's New *Trustees Act.*

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Introduction.

New Brunswick's new *Trustees Act* (c.21, 2015) was enacted in June 2015 and came into force on June 1, 2016. It was accompanied by *An Act Respecting the Trustees Act* (c.22, 2015), which makes consequential amendments to twelve other Acts, mostly to update various agencies' powers of investment, which were previously linked to the former *Trustees Act* and are now linked to the new one.

The new Act is the biggest change to statutory trusts law in New Brunswick in more than a century. It is not, though a codification of trusts law. Section 6 makes clear that "The rules of common law and equity relating to trusts continue to apply except in so far as they are inconsistent with the provisions of this Act." Furthermore, many of the provisions of the Act are said to be drawn from trusts practice, putting into the legislation some of the things trusts lawyers were regularly writing into trust instruments anyway. So many of the things that are new from the legislative point of view may already be familiar to some people a matter of practice.

The new Act is substantially based on the Uniform Law Conference of Canada's *Uniform Trustee Act*, which the Conference adopted in 2012. A useful resource in understanding the new Act is the section-by-section commentary to the *Uniform Act*, which is available on the Conference's website at http://www.ulcc.ca/images/stories/2012_pdfs_eng/2012ulcc0029.pdf. The commentary must be used cautiously, because the New Brunswick Act makes some changes of substance to the *Uniform Act* and many changes of wording, but most sections are similar enough that the commentary will be helpful. At the end of this paper there is a table of concordance matching the new *Trustees Act* with the *Uniform Act*.

This paper will go through the New Brunswick Act Part by Part, highlighting particular sections for attention.

Part 1, Definitions and Application.

Part 1, headed "Definitions and Application", establishes the focus and scope of the legislation. Some provisions worth noting are these:

- The definition of "trust instrument" in s.1 :

> "trust instrument" means a deed, will, document or oral declaration that creates or varies a trust, but does not include a judgment or order of a court of competent jurisdiction. *(instrument de fiducie)*

So the Act is about deliberately created trusts, whether written or oral.

- The Act applies to existing trusts as well as to new ones:

> 2 Unless otherwise provided in this Act, this Act applies in respect of trusts created before or after this Act comes into force.

- Its provisions on the powers of trustees are default rules that a settlor can depart from.

> 3(1) A trust instrument may confer on the trustees or on a trustee powers that differ from, vary or exclude the ones provided by this Act.

Beneficiaries, too, may be able to vary trust powers in some circumstances, as is explained on p.13. And settlors can adapt the duties of trustees as well as the powers, notably through their ability under s.78 to include in a trust instrument provisions that "negate a duty that, in the absence of the provision, would otherwise be imposed on the trustee" (see p.17).

- Unlike the previous *Trustees Act*, the new one does not, in general, apply to personal representatives unless they are the trustees of a testamentary trust. See s.5. There is an exception, though, in Part 6, which deals with trustee compensation and does apply to personal representatives as such.

- As mentioned on p.1, the existing non-statutory law of trusts is preserved, unless it is inconsistent with the Act (s.6).

Part 2, Appointment and Removal of a Trustee.

Part 2 provides for the appointment and removal of trustees, notably (but not exclusively) by the trustees themselves.

Division A, which relates to appointments – and in reality to filling vacancies when a person ceases to be a trustee (see s.9) – starts with a definition of "designated person":

> 8(1) In this Division, "designated person" means, in relation to a trust, the first of the following, proceeding in descending order, who is able and willing to act:
>
> (a) the person nominated by the trust instrument for the purpose of appointing a replacement trustee;
>
> (b) except in relation to paragraph 11(1)(a), the continuing trustees;
>
> (c) if there are no continuing trustees, the personal representatives of the last trustee to die.

So there is an order of priority involved.

1. The settlor can determine who can fill vacancies.
2. The trustees can fill them, subject to (1).
3. When there are no trustees left alive, the personal representatives of the last survivor can do so.

In addition to this:

- S. 10 allows the last surviving trustee to appoint a replacement to take effect when he or she dies.
- S.11 provides for the temporary replacement of a trustee who is temporarily unable to act.
- S.12 empowers a trustee to appoint, by power of attorney, someone else to take on his or her role as trustee for a period of not more than 12 months. This section enables the appointing trustee to make either a general appointment of an attorney or one that is limited to specific powers or duties.

The court, of course, also has the power to appoint trustees:

> 13 The court may appoint a replacement or additional trustee if
>
> (a) the court removes a trustee under section 21, or
>
> (b) the court is of the opinion that
>
> (i) the appointment of a trustee would otherwise be inexpedient, difficult or impracticable, and
>
> (ii) the appointment of a replacement or additional trustee is in the best interests of the beneficiaries or purposes of the trust or its good administration

(The "beneficiaries or purposes of the trust" is a defined in s.1 as meaning "(a) if the trust is not a charitable trust, its beneficiaries, or (b) if the trust is a charitable trust, its purposes.")

Note that the court's power under s.13 extends to appointing an "additional" trustee, not just a "replacement" one. Under s.14, the court can make its appointee a "judicial trustee", who is an officer of the court and can be given special powers in relation to the administration of the trust.

Division B of Part 2 is headed "Termination of Trusteeship". There are three elements to this:

17 A person ceases to hold office as a trustee if

(a) the person resigns,

(b) the person becomes disqualified under section 19, or

(c) the person is removed as a trustee under this Act or under a power conferred by a trust instrument.

- Resignation is obviously the voluntary act of the trustee, and there is a very brief resignation procedure set out in s.18.
- Disqualification happens by operation of law. It occurs if a trustee becomes incompetent, is convicted of an offence involving dishonesty, or is, in the case of a corporate trustee, in liquidation (s.20).
- Removal is, essentially, removal for cause. The trustees have the ability to do this, by a majority, for the reasons set out in s.20. The court has a broader power to do it under s.21. Under s.22 the court can order the reinstatement of a trustee whom the other trustees have removed. So in essence the power of removal under s.20 is there to provide a way forward when the internal operations of a trust have become dysfunctional.

Part 3, Vesting of Property.

Part 3 is a short part dealing with the vesting of trust property. It sets out the general rule that "If a trust has more than one trustee, the trust property vests in the trustees as joint tenants" (s.25), and follows this up with several provisions designed to ensure that vesting and divesting occur by operation of law when there are changes in the composition of the trustees.

The court, of course, is also given the power to make vesting orders (s.28). Unlike the specific powers under the previous Act to make vesting orders in specific circumstances, s.28 is broadly expressed, and applies whenever the court "considers it to be in the best interests of the beneficiaries or purposes of the trust or its good administration".

Part 4, Duties and Powers of Trustees.

Part 4 is long. It has seven Divisions, and takes up roughly one third of the Act.

Division A, Duties.

Division A sets out the duties of trustees. It starts with a statutory formulation of a trustee's fiduciary duty:

> 29(1) In the administration of a trust, a trustee shall act in good faith and in accordance with
>
> (a) the terms of the trust, and
>
> (b) this Act.
>
> 29(2) A trustee shall exercise the powers and perform the duties of the office of trustee solely in the best interests of the beneficiaries or purposes of the trust.

(Note that the Act tries to be careful about its use of "trustee" in the singular and "trustees" in the plural. S.1 says:

> "trustee" means *(fiduciaire)*
>
> (a) when used in the singular, a person who is a trustee;
>
> (b) when used in the plural, the trustees acting together or, if there is only one trustee, that trustee.)

There are three additional duties in Part 4:

- A duty of care ("trustee") in the performance of a duty or the exercise of a power, with a professional trustee being required to show the added care appropriate to his or her expertise (s.30).

- A duty to avoid conflict of interest (“trustee”), but with the trust instrument, the beneficiaries and the court all having the ability to allow a trustee to act despite a conflict of interest (s.31).
- A duty to provide periodic financial reports (“trustees”) to the “qualified beneficiaries” (s.32). These are beneficiaries who (a) have a vested beneficial interest in the trust property, or (b) do not, but have given notice to the trustees that they are to be treated as qualified beneficiaries (see s.1 and s.93). S.33 adds that this duty of financial reporting “does not limit the duty of trustees under general trust law to provide to a beneficiary, on request, accounts or trust information within a reasonable period of time”.

Division B, General Administrative Powers.

Division B is headed “General Administrative Powers”. The Act uses the expression “administrative powers” to refer to trustees’ powers to manage and deal with the trust property. This is to be differentiated from their “distributive powers”, which are concerned with giving effect to the beneficial interests of beneficiaries under the trust.

Central to the administrative powers is a broad statement of the ability of trustees to do, in relation to the trust property, whatever an absolute owner of the property could.

> 34(1) Subject to this Act and to their fiduciary obligations, the trustees have the powers and capacity of an individual of full capacity in relation to trust property as if the property were vested in the trustees absolutely and for their own use.

In case that’s not broad enough, s.35(1) adds that:

> 35(1) If, in the administration of a trust, a transaction relating to trust property that is expedient and in the best interests of the beneficiaries or purposes of the trust cannot be carried out because the trustees lack the power, the court may confer the necessary power

on the trustees, either generally or in any particular instance and on terms and conditions the court considers appropriate.

A plausible scenario for the use of s.35 might be where the trust instrument, by accident or by design, had somehow limited the administrative powers of the trustees so that s. 34(1) did not fully apply.

Division C, Investment Powers.

Division C contains a revised version of the "prudent investor" rule that has been part of New Brunswick's law since 1971. The previous version, s.2 of the former *Trustees Act*, was based on an earlier Uniform Law Conference of Canada model that had been said by some commentators (arguably over-cautiously) to have been inadequate to achieve its purpose of enabling trustees to invest prudently. The revised version in the new Act, which draws more from the Alberta Law Reform Institute's review of the *Uniform Act* in 2015 than from the *Uniform Act* itself, has three main elements:

- First, a broad statement that trustees can invest in any kind of property or investment:

  > 36(1) Subject to the terms of the trust instrument, the trustees may invest trust property in any kind of property or investment.

- Second, shaping that broad power, a statement of their duty when they invest. This blends, in a compact phrase that demands slow and deliberate reading, elements of prudence, fiduciary duty, duty of care and the specific circumstances of the trust.

  > 37(1) When investing trust property, the trustees shall act prudently and in accordance with sections 29 and 30, and having regard to the circumstances of the trust, including
  >
  > (*a*) its assets,

(*b*) its beneficiaries or purposes and its different classes of beneficiaries or purposes,
(*c*) its probable duration, and
(*d*) a reasonable balance between risk and return.

- Third, there is a possibly strange-sounding section that says "An investment that would be imprudent if viewed in isolation is not imprudent if, viewed in the context of the trustees' other investments, section 37 has been complied with" (s.38). This is purely New Brunswick wording, but is designed, like s.33 of the *Uniform Act*, to displace the so-called "anti-netting rules", which that section describes as (a) "the rule of law that requires the assessment of a trustee's decisions on an investment-by-investment basis" and (b) "the rule of law for the assessment of damages for breach of trust that prohibits losses from being offset by gains".

Division D, Allocation of Income and Capital.

Division D, headed "Allocation of Income and Capital", starts with one of those sections that is supposed to alert the reader to proceed with caution, and not to lose sight of some basic principles when they read on.

39 Nothing in this Division alters the duty of trustees
(a) to act impartially as between different classes of beneficiaries in the administration of a trust, and
(b) to comply with section 37 in relation to investments.

Division D is designed to give trustees some flexibility when they deal with the boundaries between "income" and "capital". The cautionary note in s.39 is to remind readers that, even when trustees have more flexibility, they must still act even-handedly between different classes of beneficiaries, and must still act prudently, bearing in mind the possibly competing needs and interests involved.

Against that background, Division D gives trustees three kinds of added flexibility in relation to the demarcations between income and capital.

- S.40 gives them some flexibility about charging "outgoings" (defined in s.1) to either income or capital, and about allowing for the depreciation of trust property. Unless the trust instrument specifies otherwise, the section does not apply to four specific kinds of trust where this flexibility could affect the status of the trust under the federal *Income Tax Act*. These are an "alter ego trust", a "joint spousal or common-law partner trust", a "post-1971 spousal or common-law partner trust" and a "pre-1972 spousal trust". These are all defined in s.1.
- S. 41 enables settlors to create, expressly, "discretionary allocation trusts," under which "the trustees may allocate receipts and charge outgoings to the income and capital of the trust as the trustees consider just and equitable in the circumstances". Here, too, there are potential tax implications to be borne in mind.
- S.42 provides for the establishment of a "total return investment policy". S.42(1) describes this as "a policy of investing property so as to obtain the optimal return without regard to whether the return is characterized as income or capital". S.42(8) says that

  > 42(8) If a total return investment policy is adopted, the trustees shall, in each fiscal period, pay to the persons who would otherwise be the income beneficiaries, or apply to the purposes of the trust, an amount equal to the specified percentage of the net value of the assets at the beginning of the valuation period.

  Again there are possible tax implications. For this reason the settlor must normally expressly authorize the adoption of a total return investment policy (s.42(3)). In the case of charities, however, the tax rules are different, and the trustees of a charitable trust can adopt a total return investment policy unless actually prohibited by the settlor (s.42(4) and (5)).

Division E, Distributive Powers.

This Division in its entirety does not apply to the four kinds of tax-sensitive trusts referred to above unless the trust instrument expressly provides otherwise. The Division has three sections.

- S.45 gives trustees the power to use the income from property that is held in trust for an individual (a minor or in some circumstances an adult) for the benefit of the individual. It is an expanded version of s.14 of the previous Act, which was headed “Maintenance of Minors”.
- SS.46 and 47 provide a similar but narrower power in relation to the capital of trust property.
- S.48 gives trustees the ability to pay to the parents of a child, as the child’s property, or to the committee of an incompetent person’s estate, trust money or trust securities to which a child or incompetent person is entitled.

Division F, Delegation.

S.49 contains a broad power for trustees to appoint agents (or delegates) to discharge the administrative powers of the trustees.

> 49(1) Subject to subsection (3), if it is reasonable and prudent, trustees may appoint an agent, within or outside the province, as their delegate to exercise any power or perform any duty in the administration of the trust property.

Note that this does not extend to the distributive powers of trustees. See s.49(3).

If trustees do delegate administrative powers, they have a duty to select personally someone they are satisfied is suitable, and they must exercise “reasonable and prudent supervision over the agent they appoint”. As long as they do that they are not automatically liable for the acts or omissions of the agent. Sub-delegation is possible if the trustees approve it (s.50).

If the trustees delegate investment authority, they have the additional responsibility of determining the investment objectives and making sure the parameters are made clear to the agent (s.51).

Division G, Miscellaneous.

Division G, “Miscellaneous”, is naturally a mixed bag. Its five sections relate to the following subjects:

- trustees’ individual liability for breaches of trust (s.52);
- the joint exercise of powers and duties by the trustees (s.53);
- majority decision-making (s.54);
- allocation of insurance proceeds (s.55);
- a statement that a person who is a trustee of more than one trust does not have notice of something for the purposes of one trust simply because he or she has notice of it as the trustee of another trust (s.56).

S.54, on majority decision-making, deserves a special comment. It is one of the sections that do not apply to trusts created by a trust instrument executed before the Act came in to force. Under s.53 and 54, majority decision-making becomes the default rule for trusts in the future, though the trust instrument may say otherwise. The section says:

> 54(3) If there are more than two trustees, the trustees may perform their duties and exercise their powers by a majority of the trustees holding office.

Existing trust instruments are not affected by this, but there is an opt-in rule in s.54(2) which permits the trustees under an existing trust instrument to elect, presumably in accordance with the existing voting régime of the trust, to follow the new rule on majority decision-making.

Note that s.54(3) refers to the majority of the trustees "holding office". There are also provisions protecting dissenters from liability for decisions they disagreed with and dealing with how a majority is counted when trustees abstain because of a conflict of interest or other good reason.

Part 5, Variation and Termination of Trusts.

Part 5 deals with the variation and termination of trusts by "arrangements" made by the beneficiaries or by the courts. It expands on what existed previously under s.26 of the former Act.

An "arrangement" is defined as follows:

> 57 In this Part, "arrangement" means
> (a) a variation, resettlement or termination of a trust, or
> (b) a variation or deletion of, or an addition to, the powers of trustees in relation to the management or administration of a trust.

The powers of the beneficiaries are in s.59:

> 59 The beneficiaries of the trust may make an arrangement if
> (a) they are all of full capacity, and
> (b) they all agree to the arrangement.

To be noted here is that the beneficiaries can now unanimously agree to vary a trust, not just to terminate it.

As for the courts, the significant new feature of s.60, as compared to s.26 of the former Act, is that the court can now approve an arrangement in cases where "a beneficiary who has full capacity does not consent to an arrangement" (s.60(1)(b)). The criteria for doing so are in s.60(3)(b).

(*b*) the court may approve the arrangement if the court is satisfied that

(i) the arrangement will not be detrimental to the pecuniary interest of the person who has not consented,

(ii) a substantial majority of the beneficiaries, representing a substantial majority of the beneficial interests in the trust property as determined by the monetary value of those interests, have consented to the arrangement or have had the court approve the arrangement on their behalf under subsection (2), and

(iii) not approving the arrangement will be detrimental to the administration of the trust and to the interests of the beneficiaries referred to in subparagraph (ii).

Part 6, Trustee Compensation and Accounts.

As mentioned previously, this Part applies to personal representatives as well as to trustees.

The basic principle is this:

> 63(1) A trustee is entitled to fair and reasonable compensation to be paid out of the trust property for services rendered as trustee of the trust.

Trustees who have professional skills and use them to perform necessary services that go beyond those that are "generally associated with the office of trustee" are also authorized to "charge fees at reasonable rates" (s.63(2)).

The factors for a court to consider when determining a trustee's compensation, which can be done on application or on the passing of accounts, are listed in s.63(5).

There is also a provision for "interim compensation of trustees":

> 64(1) Subject to subsection (2), if there is at least one beneficiary who is of full capacity and has a vested beneficial interest in the trust property, a trustee may take payment out of the trust property during the administration of the trust in an amount that is fair and

reasonable compensation for services rendered as trustee during the period to which the payment relates.

There is a procedure for doing this, which involves giving 30 days' notice to the "qualifying beneficiaries" and to the other trustees and waiting to see if there are objections. If there are not, the trustee can take the compensation. If there are, s.64(3) applies:

> 64(3) If there is an objection, the trustee may
>
> (*a*) take payment of a different amount agreed to by the trustees and the qualified beneficiaries,
>
> (*b*) apply to the court to approve the amount, or
>
> (*c*) both of the above.

Part 7, Charitable Trusts and Charitable Gifts.

Part 7 starts with s.67, headed "Power of court to vary charitable trusts and charitable gifts". This is the counterpart for charitable trusts of Part 5 (Variation and Termination of Trusts) in relation to other trusts. Part 5 and s.67 are not intended to apply cumulatively in relation to charities.

Part 7 begins with a statutory formulation of the *cy-près* doctrine that includes some wordings that broaden its scope.

> 69(2) On an application by the trustees of a charitable trust or by the donor or the personal representatives of the donor of a charitable gift, the court may vary the terms of the trust or gift in accordance with subsection (3) if the court is of the opinion that
>
> (a) an impracticability, impossibility or other difficulty hinders or prevents giving effect to the terms of the trust or gift, or
>
> (b) a variation of the trust or gift would facilitate the carrying out of the intention of the settlor or donor.

There are also two sections in Part 7 designed to address “near miss” situations: intended trusts that have purposes instead of beneficiaries but that do not qualify as charitable trusts because those purposes do not come within the established meaning of “charitable”.

- S.72 applies when the intended trust has some purposes that are charitable and others that are not. It allows the court to sever the two sets of purposes, and to order that the charitable purposes continue as a charitable trust, while the non-charitable ones continue under s.73.

- S.73 applies when none of the purposes qualify as charitable. Its central premise is that the intended trust is to be treated as a 21-year power of appointment instead of as a trust.

> 73(2) If the terms of a disposition of property purport to create a trust that does not create an equitable interest in any person and is for a specific non-charitable purpose, the terms of the disposition shall be construed, subject to this section, as constituting a power to appoint the income or the capital, as the case may be, for that purpose for a period not exceeding 21 years.

Part 8, Additional Powers of the Court.

Part 8 is headed “Additional Powers of the Court”. Some of these powers, though, are latched onto provisions that are substantial in themselves.

Sections 75, 76 and 77 are pure powers of the Court. S.75 authorises the court to order trustees to discharge their responsibilities. S.76 enables the trustees to apply to the court for directions. And s.77 enables the court to authorize a distribution of trust property when the trustees have made proper efforts to identify and to locate all outstanding interested persons but may have been unable to do so.

In s.78, however, a power of the court is built onto a substantive provision. The section deals with “exemption clauses”. The Act describes an exemption clause as follows:

> 78(1) In this section, "exemption clause" means a provision of a trust instrument that excludes or restricts the liability of a trustee, including, without limitation, a provision that purports to
>
> (a) make the enforcement of the liability of the trustee subject to restrictive or onerous conditions,
>
> (b) permit a trustee to act despite a conflict between the trustee's personal interest and the powers and duties of the office of trustee,
>
> (c) exclude or restrict any right or remedy in respect of the liability of a trustee, or prejudice any person who pursues the right or remedy,
>
> (d) exclude or restrict rules of evidence, or
>
> (e) negate a duty that, in the absence of the provision, would otherwise be imposed on the trustee.

The substantive provision is in s.78(2):

> 78(2) Subject to subsection (3), an exemption clause in a trust instrument is effective, according to its terms, to relieve a trustee of liability for a breach of trust.

It was mentioned at the beginning of this paper that one effect of this section is to give settlors an ability to adapt the duties of trustees under the Act somewhat like their explicit ability under s.3 to confer different powers.

The power of the court in relation to exemption clauses is in s.78(3), which enables the court to declare an exemption clause ineffective.

> 78(3) The court may declare that any exemption clause contained in a trust instrument is ineffective in relation to a breach of trust, and that the liability of the trustee for breach of trust is as if the trust instrument did not contain the clause, if the court is of the opinion that the conduct of a trustee
>
> (a) constitutes a breach of trust, and

> (b) has been so unreasonable, irresponsible or incompetent that the trustee ought not to be relieved by the exemption clause from liability for the breach of trust.

S.80 is another section that combines a significant substantive provision with a power of the court. It deals with contribution and indemnity among co-trustees when one or more of them is liable for a breach of trust. The section is prospective only (s.80(2)). Its central provisions are in subsections (3) and (4):

> 80(3) Except as provided in this section, a trustee is not obliged to contribute to or indemnify a co-trustee in relation to a breach of trust by the co-trustee.
>
> 80(4) If a trustee commits a breach of trust, the court, having regard to the responsibility of each other trustee for the loss to the trust, may determine the amount the court considers appropriate
>
> (*a*) for which each trustee is liable in order to make good the loss to the trust, or
>
> (*b*) that a trustee shall contribute to another trustee.

S.81 also allows the court to order beneficiaries to make contribution if a trustee commits a breach of trust "at the instigation or request of or with the consent of some but not all of the beneficiaries".

Part 9, General.

Part 9, General, is another mixed bag. The section headings are "Determination of family relationships" (s.85), "Entitlement to income arising from a contingent interest in trust property" (s.86), "Effect of notice on purchaser" (s.87), "Protection of purchaser" (s.88), "Person not liable if compliant with Act or order" (s.89), "Receipt relieves person from further obligation" (s.90) "Representation of beneficiary" (s.91), "Agent of beneficiary" (s.92) and "Notice – qualified beneficiary" (s.93).

They all deserve attention, because they all respond in one way or another to practical issues that can arise in the administration of trusts. One that should be singled out for comment, though, is s.93, on qualified beneficiaries.

Under s.1 a qualified beneficiary is defined as follows:

> "qualified beneficiary" means a beneficiary who *(bénéficiaire admissible)*
>
> (a) has a vested beneficial interest in the trust property, or
>
> (b) has delivered notice under subsection 93(1) and has not withdrawn the notice under subsection 93(2).

S.93(1) and (2) say:

> 93(1) A beneficiary of a trust may deliver written notice to the trustees advising that the beneficiary wants to be a qualified beneficiary.
>
> 93(2) A beneficiary may withdraw a notice under subsection (1) by delivering written notice of the withdrawal to the trustees.

S.93 is therefore the means by which a beneficiary who does not have a vested beneficial interest can ensure that he or she is at least aware of several things that are or may be occurring and may affect them. Examples that have been mentioned in this paper relate to financial reporting (s.32) and to trustee compensation (s.64). Other references are in s.12 (trustee's power of attorney), s.31 (conflict of interest), s.33 (duty to provide information) and s.66 (passing of accounts).

Part 10, Repeal and Commencement.

As mentioned at the beginning of this paper, the new Act came into force on June 1, 2016, as did the related amendments in *An Act Respecting the Trustees Act*. The repeal of the former Act took effect at that same time.

Concordance of NB Act to ULCC Act

This table links each section of the New Brunswick Act to its ULCC source. If the connection is not obvious or the wording or structure of the ULCC section is substantially different the ULCC section is marked with an asterisk. Other changes will be apparent if the texts of the sections are compared.

NB	ULCC	NB	ULCC	NB	ULCC
1	1 (with changes)	23	18	45	43
2	2(1)	24	19	46	44
3	2(4)*	25	20	47	45
4	2(3)	26	21	48	46
5	2(8)*	27	22	49	47
6	3	28	23	50	49
7	4	29	26(1), 27(1)	51	48*
8	5(1)-(4)	30	26(2)-(3)	52	51
9	6, 5(6)	31	27(2)-(7)	53	52
10	7	32	28	54	53, 54
11	8	33	29	55	55
12	50	34	24	56	56
13	9(1)	35	25	57	57
14	9(2)-(5)	36	30*	58	58
15	10*	37	N/A	59	59*
16	11	38	33*	60	60*
17	12	39	36	61	61*
18	13	40	38	62	62, 63
19	14	41	39	63	64
20	15	42	40	64	65
21	16	43	41(2)	65	66
22	17	44	42	66	67

NB	ULCC	NB	ULCC
67	68	82	84
68	69	83	85
69	70	84	86
70	72	85	93*
71	73	86	94
72	75*	87	96
73	76	88	95
74	77	89	97
75	78	90	98
76	79	91	99
77	80	92	100
78	81	93	101
79	81(2)	94	104 and c.22, 2015
80	82	95	105
81	83		