

MISSING WOMEN COMMISSION OF INQUIRY

PUBLIC INQUIRY ACT [SBC 2007] CHAPTER 9

Assented to March 29, 2007

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MISSING WOMEN COMMISSION OF INQUIRY

Part 1 — Interpretation

Definitions

1 In this Act:

"chief commissioner" means

(a) if only one commissioner is appointed, that commissioner, or

(b) if more than one commissioner is appointed, the commissioner designated as chief commissioner under section 5 (2);

"commission" means a commission of inquiry established under section 2;

"commissioner" means a person appointed as a commissioner under section 5;

"court" means the Supreme Court;

"hearing commission" means a commission designated as a hearing commission under section 2;

"information" includes evidence and records;

"participant" means a person who is provided with notice or is accepted as a participant under section 11;

"study commission" means a commission designated as a study commission under section 2.

Part 2 — Establishing a Commission of Public Inquiry

Division 1 — Establishing a Commission

Establishing a commission

2 (1) The Lieutenant Governor in Council may, by order, establish a commission to inquire into and report on a matter that the Lieutenant Governor in Council considers to be of public interest.

(2) In an order made under subsection (1), the Lieutenant Governor in Council must do the following:

(a) define the purposes of the commission;

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- (b) set the terms of reference of the inquiry;
 - (c) designate the commission as a study commission, hearing commission or both;
 - (d) appoint one or more commissioners in accordance with Division 2 [Appointment of Commissioners and Staff];
 - (e) subject to any directives of Treasury Board, set the remuneration of the commissioners and compensation for expenses, if any.
- Agreements

3 (1) The Lieutenant Governor in Council may enter into an agreement to establish a joint commission with either or both of the following:

- (a) the government of another jurisdiction;
- (b) an aboriginal organization exercising government functions in British Columbia.

(2) If a joint commission is established with a government of another jurisdiction, the Lieutenant Governor in Council may, in the order establishing the commission, exempt the commission from all or part of a provision of this Act or the regulations made under it if necessary to avoid a conflict of law.

Appropriation

4 The costs and expenses incurred in connection with an inquiry under this Act must be paid out of the consolidated revenue fund, in the absence of an appropriation of the Legislature available for that purpose.

Division 2 — Appointment of Commissioners and Staff
Appointment of commissioners

5 (1) On establishing a commission, the Lieutenant Governor in Council

- (a) must appoint a commissioner to conduct the inquiry, and
- (b) may appoint other commissioners.

(2) If more than one commissioner is appointed, the Lieutenant Governor in Council must designate the commissioner who is to act as chief commissioner.

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(3) Unless the Lieutenant Governor in Council states otherwise in the appointment order, a commissioner may rely on all decisions made and information received by any former or current commissioner of the inquiry to which the commissioner is appointed.

Responsibilities of chief commissioner

6 The chief commissioner is responsible for

(a) the effective management and operation of the commission,

(b) the organization and allocation of work among commissioners, including assigning commissioners to panels consisting of one or more commissioners, and

(c) ensuring that the commission is financially responsible and accountable.

Commission staff

7 (1) The chief commissioner may appoint employees, in accordance with the Public Service Act, necessary to exercise the powers and perform the duties of a commission.

(2) The chief commissioner may engage or retain consultants, investigators, lawyers, expert witnesses or other persons the chief commissioner considers necessary to exercise the powers and perform the duties of a commission.

(3) The Public Service Act does not apply to a person engaged or retained under subsection (2) of this section.

Part 3 — Duties and Powers of Commissions

Division 1 — General Duties and Powers

Commissioner duties

8 Commissioners must faithfully, honestly and impartially perform their duties and, except in the proper performance of those duties, must not disclose to any person any information obtained as a commissioner.

Power to make directives

9 (1) Subject to this Act and the commission's terms of reference, a commission has the power to control its own processes and may make directives respecting practice and procedure to facilitate the just and timely fulfillment of its duties.

(2) Without limiting subsection (1), a commission may make directives as follows:

(a) respecting timetables for the conduct of the inquiry, including dividing the inquiry into phases;

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- (b) respecting adjournments;
- (c) respecting the extension or abridgement of time limits provided for in the directives;
- (d) respecting applications to be a participant;
- (e) respecting the transcription or recording of meetings and hearings and the process and fees for reproduction of a transcription or recording if a person requests one;
- (f) respecting access to, and restriction of access to, commission records by any person;
- (g) establishing the forms it considers advisable.

(3) For any matter under this Act for which a commission may make directives, the commission may, for different persons or classes of persons,

- (a) make different directives, and
- (b) waive or modify one or more of its directives as necessary.

(4) A commission must make accessible to the public any directives made under this Act.

(5) A commission may make an order in respect of any matter for which a directive has been made, or may be made, under this Act.

Power to inspect

10 Subject to this Act and the commission's terms of reference, a commission may

- (a) conduct an inspection of a public place, including copying any records found in that place, and
- (b) with the permission of the owner or occupier, conduct an inspection of a private place, including copying any records found in that place.

Who may participate

11 (1) A person may act as a participant if the person

- (a) is provided with notice under subsection (2), or
- (b) is accepted as a participant under subsection (4).

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(2) If a hearing commission intends to make a finding of misconduct against a person, or intends to make a report that alleges misconduct by a person, the hearing commission must first provide the person with

- (a) reasonable notice of the allegations against that person, and
- (b) notice of how that person may respond to the allegations.

(3) A person other than one described in subsection (2) may apply to be a participant by applying to a commission in the manner and form it requires.

(4) On receiving an application under subsection (3), a commission may accept the applicant as a participant after considering all of the following:

- (a) whether, and to what extent, the person's interests may be affected by the findings of the commission;
 - (b) whether the person's participation would further the conduct of the inquiry;
 - (c) whether the person's participation would contribute to the fairness of the inquiry.
- Powers respecting participants

12 (1) Subject to section 13 [rights of participants], a commission may make orders respecting

- (a) the manner and extent of a participant's participation,
- (b) the rights and responsibilities of a participant, if any, and
- (c) any limits or conditions on a participant's participation.

(2) In making an order under subsection (1), a commission may

- (a) make different orders for different participants or classes of participants, and
- (b) waive or modify one or more of its orders as necessary.

(3) In making an order under subsection (1), a hearing commission must ensure that a participant who responds to a notice under section 11 (2) has a reasonable opportunity to be heard by the commission before the commission makes a finding of misconduct against the participant, or makes a report that alleges misconduct by that participant.

Rights of participants

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13 (1) A participant may

- (a) participate on his or her own behalf, or
- (b) be represented by counsel or, with the approval of the commission, by an agent.

(2) A participant

- (a) has the same immunities as a witness who appears before the court, and
 - (b) is considered to have objected to answering any question that may
 - (i) incriminate the participant in a criminal proceeding, or
 - (ii) establish the participant's liability in a civil proceeding.
- (3) Any answer provided by a participant before a commission must not be used or admitted in evidence against the participant in any trial or other proceedings, other than a prosecution for perjury in respect of the answer provided.

Power to accept information

14 (1) A commission may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in any court.

(2) Without limiting section 12 [powers respecting participants], a commission may exclude anything unduly repetitious.

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to which or purposes for which any oral testimony, records or things may be admitted or used in evidence.

Power to prohibit or limit attendance or access

15 (1) A commission may, by order, prohibit or restrict a person or a class of persons, or the public, from attending all or part of a meeting or hearing, or from accessing all or part of any information provided to or held by the commission,

(a) if the government asserts privilege or immunity over the information under section 29 [disclosure by Crown],

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(b) for any reason for which information could or must be withheld by a public body under sections 15 to 19 and 21 to 22.1 [privacy rights, business interests and public interest] of the Freedom of Information and Protection of Privacy Act, or

(c) if the commission has reason to believe that the order is necessary for the effective and efficient fulfillment of the commission's terms of reference.

(2) In making an order under subsection (1), a hearing commission must not unduly prejudice the rights and interests of a participant against whom a finding of misconduct, or a report alleging misconduct, may be made.

Power to maintain order

16 (1) At a meeting or hearing, a commission may make orders or give directions that it considers necessary for the maintenance of order at the meeting or hearing, and, if any person disobeys or fails to comply with any order or direction, the commission may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

Participant's failure to comply with orders

17 Without limiting any other power of enforcement, if a participant fails to comply with an order or a directive of a commission, including any time limits specified for taking any actions, the commission, after giving notice to the participant, may do any of the following:

(a) schedule a meeting or hearing;

(b) continue with the inquiry and make a finding or recommendation based on the information before it, with or without providing an opportunity for submissions from that participant;

(c) make any order necessary for the purpose of enforcing its orders or directives.

Power to record meetings or hearings

18 (1) A commission may transcribe or record its meetings or hearings.

(2) If a commission transcribes or records a meeting or hearing, the transcription or recording must be considered to be correct and to constitute part of the record of the meeting or hearing.

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(3) If, by a mechanical or human failure or other accident, the transcription or recording of a meeting or hearing is destroyed, interrupted or incomplete, the validity of the meeting or hearing is not affected.

Privative clause

19 (1) A commission has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined under this Act and to make any order it is permitted to make.

(2) An order of a commission under this Act or its terms of reference on a matter in respect of which the commission has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

Division 2 — Study Commissions

Powers of study commissions

20 (1) Subject to this Act and the commission's terms of reference, a study commission may engage in any activity necessary to effectively and efficiently fulfill the duties of the commission, including doing any of the following:

- (a) conducting research, including interviews and surveys;
- (b) consulting with participants, privately or in a manner that is open to the public, either in person or through broadcast proceedings;
- (c) consulting with the public generally and, for that purpose, issuing directives respecting any of the matters set out in subsection (2).

(2) Without limiting the powers of a commission set out in Division 1, a study commission may make directives respecting any of the following:

- (a) the notification of participants and the public regarding a consultation under this section;
- (b) the holding of public meetings, including the places and times at which public meetings will be held and the frequency of public meetings;
- (c) the conduct of, and the maintenance of order at, public meetings;
- (d) the receipt of oral and written submissions.

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(3) A study commission must not exercise the powers of a hearing commission as set out in sections 21 (1), 22 and 23, unless the study commission is also designated as a hearing commission.

Division 3 — Hearing Commissions General powers of hearing commissions

21 (1) Subject to this Act and the commission's terms of reference, a hearing commission may engage in any activity necessary to effectively and efficiently fulfill the duties of the commission, including doing any of the following:

- (a) issuing directives respecting any of the matters set out in subsection (2);
- (b) holding written, oral and electronic hearings;
- (c) receiving submissions and evidence under oath or affirmation;
- (d) making a finding of misconduct against a person, or making a report that alleges misconduct by a person.

(2) Without limiting the powers of a commission set out in Division 1, a hearing commission may make directives respecting any of the following:

- (a) the holding of pre-hearing conferences, including confidential pre-hearing conferences, and the requiring of one or more participants to attend a pre-hearing conference;
- (b) procedures for preliminary or interim matters;
- (c) the receipt and disclosure of information, including but not limited to pre-hearing receipt and disclosure and pre-hearing examination of a participant or witness on oath, on affirmation or by affidavit;
- (d) the exchange of records by participants;
- (e) the filing of admissions and written submissions by participants;
- (f) the service and filing of notices, records and orders, including substituted service and the requiring of participants to provide an address for service;
- (g) without limiting any other power of the commission, the effect of a participant's non-compliance with the commission's directives.

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(3) A hearing commission must not exercise the powers of a study commission as set out in section 20 (1), unless the hearing commission is also designated as a study commission.

Power to compel witnesses and order disclosure

22 (1) At any time before making its final report, a hearing commission may serve a summons requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, a meeting or hearing to give evidence on oath or affirmation, or in any other manner;

(b) produce for the commission or a participant information or a thing in the person's possession or control.

(2) A person cannot be compelled to disclose to a hearing commission anything that, in any court, would be privileged under the law of evidence.

(3) A hearing commission may,

(a) if a person was summoned to appear before the commission at the request of a participant, order the participant to pay appearance fees and expenses reasonably and necessarily incurred by the person summoned, other than fees and expenses incurred by the person in respect of legal representation or advice, and

(b) in any case, pay appearance fees and expenses reasonably and necessarily incurred by a person summoned to appear before the commission, other than fees and expenses incurred by the person in respect of legal representation or advice.

(4) A hearing commission may apportion fees and expenses under subsection (3) between 2 or more participants, and between one or more participants and the commission.

(5) Subject to this Act and the hearing commission's terms of reference, a hearing commission may make directives respecting appearance fees and expenses reasonably and necessarily incurred by a person summoned to appear before the commission.

Power to apply to court

23 A hearing commission may apply to the court for any of the following:

(a) an order directing a person to comply with a summons served by the commission under section 22;

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(b) an order directing any directors and officers of a person to cause the person to comply with a summons served by the commission under section 22;

(c) a warrant authorizing the commission to conduct an inspection of a private place, including copying any records found in that place;

(d) an order finding a person to be in contempt, as if in breach of an order or a judgment of the court, for failing or refusing to comply with a summons to

(i) attend a meeting or hearing before the commission,

(ii) take an oath or make an affirmation,

(iii) answer questions, or

(iv) produce information or things in the person's possession or control;

(e) an order finding a person to be in contempt, as if in breach of an order or a judgment of the court, for failing or refusing to comply with an order or a directive of the commission;

(f) an order finding a person to be in contempt, as if in breach of an order or a judgment of the court, for a reason other than as set out in paragraph (d) or (e) of this section.

Service of notice or records

24 (1) A hearing commission may provide a notice or record to a person by personal service of a copy of the notice or record or by sending the copy to the person by any of the following means:

(a) ordinary mail;

(b) electronic transmission, including telephone transmission of a facsimile;

(c) if specified in the hearing commission's directives, another method that allows proof of receipt.

(2) If a hearing commission is of the opinion that, because there are many participants or for any other reason, it is impracticable to give notice of a hearing to a participant directly or by a method referred to in subsection (1), the commission may give notice of a hearing by public advertisement or otherwise as the commission directs.

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(3) If a notice or record is not served on a person in accordance with this Act or the regulations made under it, an inquiry is not invalidated if

(a) the contents of the notice or record were known by the person within the time allowed for service,

(b) the person waives the requirements of service, or

(c) the failure to serve does not result in prejudice to the person, or any resulting prejudice can be satisfactorily addressed by an adjournment or other means.

Hearings open to public

25 Subject to section 15 [power to prohibit or limit attendance or access], a hearing commission must

(a) ensure that hearings are open to the public, either in person or through broadcast proceedings, and

(b) give the public access to information submitted in a hearing.

Application of Freedom of Information and Protection of Privacy Act

26 (1) The Freedom of Information and Protection of Privacy Act, other than section 44 (1) (b), (2), (2.1) and (3) [powers of commissioner in conducting investigations, audits or inquiries], does not apply to any of the following in respect of a hearing commission:

(a) a personal note, communication or draft report of a commissioner or of a person acting on behalf of or under the direction of a commissioner;

(b) any information received by the commission to which section 15 [power to prohibit or limit attendance or access] or 29 [disclosure by Crown] of this Act applies;

(c) a transcription or recording of a hearing;

(d) information to which public access is provided by the commission.

(2) Subsection (1) does not apply to personal information, as defined in the Freedom of Information and Protection of Privacy Act, that has been in existence for 100 or more years or to other information that has been in existence for 50 or more years.

Division 4 — Reporting

Interim report

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27 (1) If required by the commission's terms of reference, a commission must make an interim report to the minister at the times and on the matters stated in the terms of reference.

(2) A commission may make an interim report to the minister on any matter relevant to the commission's terms of reference at any time before the commission makes its final report.

(3) Section 28 (2) to (8) applies to an interim report as if it were a final report.

Final report

28 (1) A commission must make its final report to the minister in writing, setting out

(a) any findings of fact made by the commission that are relevant to the commission's terms of reference, and the reasons for those findings, and

(b) if required by the commission's terms of reference, any recommendations of the commission.

(2) The minister must submit the report to the Executive Council at its next meeting.

(3) On receiving the report, the Executive Council may direct the minister to withhold portions of the report for any reason for which information could or must be withheld by a public body under sections 15 to 19 and 21 to 22.1 [privacy rights, business interests and public interest] of the Freedom of Information and Protection of Privacy Act.

(4) Following review of the report, the Executive Council must direct the minister to lay the report, except any portion directed to be withheld under subsection (3), before the Legislative Assembly.

(5) On receiving a direction under subsection (4), the minister must

(a) remove any portions to be withheld,

(b) in the report, identify any withheld portions and, to the extent possible, summarize them, and

(c) either

(i) if the Legislative Assembly is in session, or will be within 10 days of receiving the direction, promptly lay the report before the Legislative Assembly, or

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(ii) in any other case, promptly file the report with the Clerk of the Legislative Assembly.

(6) If a report includes a finding of misconduct against a participant, or alleges misconduct by a participant, the minister must make available to the participant a copy of the report.

(7) Despite the Freedom of Information and Protection of Privacy Act, if, after a report is laid before the Legislative Assembly, a person makes a request under section 5 of that Act for information in relation to the report, the head of a public body must not refuse to disclose information on any basis on which disclosure must or may be refused under section 12 of that Act.

(8) A person must not release a report of a commission except in accordance with this section.

Part 4 — General

Disclosure by Crown

29 (1) If the government discloses to a commission, either voluntarily or in response to a request or summons, any information over which the government asserts privilege or immunity, the privilege or immunity is not waived or defeated for any other purpose by the disclosure.

(2) If a commission determines that it is necessary to disclose information over which the government asserts privilege or immunity, the privilege or immunity is not waived or defeated for any other purpose by the disclosure.

Responsibility for records

30 Following the completion or termination of an inquiry, the minister has primary responsibility for the final report and all records of the commission.

Compulsion protection

31 A commissioner, or a person acting on behalf of or under the direction of a commissioner, must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about information obtained in the discharge of duties under this Act.

Immunity protection

32 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against a commission, a commissioner, a person acting on

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behalf of or under the direction of a commissioner, or the government, because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act, or

(b) in the exercise or intended exercise of any power under this Act.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Power to make regulations

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

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

(a) service of notice or records by a commission or a participant;

(b) appearance fees and expenses reasonably and necessarily incurred by participants.

(3) The Lieutenant Governor in Council may make different regulations under subsections (1) and (2) for

(a) study commissions and hearing commissions, and

(b) specified commissions.

Part 5 — Repeal and Transition

Repeal

34 The Inquiry Act, R.S.B.C. 1996, c. 224, is repealed.

Repealed

35 [Repealed 2007-9-35 (2).]

Part 6 — General Consequential Amendments

General Consequential Amendments

[Note: See Table of Legislative Changes for the status of sections 36 to 41.]

Section(s)	Affected Act
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36	Agricultural Land Commission Act
37	Local Government Act
38-39	Police Act
40	School Act
41	Vancouver Charter

Part 7 — Consequential Amendments of Statutes Not Requiring Commissioner Powers, Duties or Protections

Consequential Amendments of Statutes Not Requiring Commissioner Powers, Duties or Protections

[Note: See Table of Legislative Changes for the status of sections 42 to 44.]

Section(s)	Affected Act
42	Gaming Control Act
43	Legislative Procedure Review Act
44	Marriage Act

Part 8 — Consequential Amendments Concerning Administrative Hearings

Consequential Amendments Concerning Administrative Hearings

[Note: See Table of Legislative Changes for the status of sections 45 to 66.]

Section(s)	Affected Act
45-46	Agrologists Act
47-48	College of Applied Biology Act
49	Environmental Management Act
50	Farm Practices Protection (Right to Farm) Act
51-52	Foresters Act
53	Health Emergency Act
54-55	Legal Profession Act
56	Medicare Protection Act
57	Motor Dealer Act
58	Notaries Act
59	Public Sector Pension Plans Act
60	Real Estate Development Marketing Act
61-62	Real Estate Services Act
63	Secure Care Act
64-66	Teaching Profession Act

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Part 9 — Consequential Amendments Concerning Statutory and Other Decision Makers

Consequential Amendments Concerning Statutory and Other Decision Makers

[Note: See Table of Legislative Changes for the status of sections 67 to 109.]

Section(s)	Affected Act
67	Corporation Capital Tax Act
68-69	Correction Act
70	Debtor Assistance Act
71-72	Electoral Boundaries Commission Act
73	Employment Standards Act
74-75	Financial Administration Act
76-78	Freedom of Information and Protection of Privacy Act
79-80	Health Act
81-82	Indian Advisory Act
83-86	Labour Relations Code
87-88	Logging Tax Act
89-90	Mineral Tenure Act
91	Mines Act
92-94	Ministry of Energy and Mines Act
95-98	Personal Information Protection Act
99-101	Private Investigators and Security Agencies Act
102	Public Service Act
103-104	Railway and Ferries Bargaining Assistance Act
105	Representative for Children and Youth Act
106	Vancouver Charter
107	Water Act
108-109	Youth Justice Act

Part 10 — Consequential Amendments to Provide Direct Contempt Powers

Consequential Amendments to Provide Direct Contempt Powers

[Note: See Table of Legislative Changes for the status of sections 110 to 115.]

Section(s)	Affected Act
110-111	Members' Conflict of Interest Act
112-113	Police Act
114-115	Provincial Court Act

Part 11 — Consequential Amendments of Statutes That Provide for Public Inquiries

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Consequential Amendments of Statutes That Provide for Public Inquiries

[Note: See Table of Legislative Changes for the status of sections 116 to 126.]

Section(s)	Affected Act
116	Crown Counsel Agreement Continuation Act
117	Education Services Collective Agreement Act
118	Environmental Assessment Act
119	Environmental Management Act
120	Health Professions Act
121	Labour Relations Code
122	Local Government Act
123	Ministry of Labour Act
124	Public Education Support Staff Collective Bargaining Assistance Act
125	Railway and Ferries Bargaining Assistance Act
126	Real Estate Services Act

Part 12 — Related Consequential Amendments

Related Consequential Amendments

[Note: See Table of Legislative Changes for the status of sections 127 to 133.]

Section(s)	Affected Act
127	Administrative Tribunals Act
128	Adoption Act
129	Child, Family and Community Service Act
130	Evidence Act
131	Family Relations Act
132	Securities Act
133	Statistics Act

Commencement

134 This Act comes into force by regulation of the Lieutenant Governor in Council.