



Today in the House
House Business
Members
Reference Materials

Young People & Educators
Statutes and Regulations
Contact Info
Links

House of Assembly
Newfoundland &
Labrador

[Back to Main](#)

[Government Site](#)

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[Table of Public Statutes](#)

[Main Site](#)

[How current is this statute?](#)

[Responsible Department](#)



SNL2006 CHAPTER P-38.1

PUBLIC INQUIRIES ACT, 2006

Amended:

CHAPTER P-38.1

AN ACT TO REVISE THE LAW RESPECTING THE CONDUCT OF PUBLIC INQUIRIES

(Assented to December 12, 2006)

Analysis

[1. Short title](#)

[2. Definitions](#)

PART I COMMISSIONS OF INQUIRY

[3. Commissions of inquiry](#)

[4. Reporting](#)

[5. Participation at inquiry](#)

[6. Public hearings](#)

[7. Media coverage](#)

[8. Witnesses](#)

[9. Power to compel evidence](#)

[10. Power to inspect](#)

[11. Power to search with warrant](#)

[12. Evidentiary privileges](#)

[13. Application to court for exclusion](#)

[14. Contempt of commission](#)

[15. Request for direction](#)

PART II OTHER INQUIRIES

[16. Order directing inquiry](#)

[17. Reporting](#)

[18. Designation of powers](#)

[19. Oral hearings](#)

[20. Evidentiary privileges](#)

PART III
OTHER MATTERS

[21. Appointment](#)

[22. Commission funding](#)

[23. Staff](#)

[24. Immunity](#)

[25. Protection of employees](#)

[26. Review of actions](#)

[27. Joint inquiries](#)

[28. Preservation of records](#)

[29. Policies respecting remuneration and expenses](#)

[30. Other Acts giving powers of commissioner](#)

[31. RSNL1990 cP-38 Rep.](#)

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Public Inquiries Act, 2006* .

[2006 cP-38.1 s1](#)

[Back to Top](#)

Definitions

2. In this Act

- (a) "commission" means a commission of inquiry established under Part I;
- (b) "court" means the Trial Division;
- (c) "inquiry" means an inquiry conducted under Part II; and
- (d) "minister" means the minister appointed under the *Executive Council Act* to administer this Act.

[2006 cP-38.1 s2](#)

PART I

COMMISSIONS OF INQUIRY

[Back to Top](#)

Commissions of inquiry

- 3.** (1) The Lieutenant-Governor in Council may by order establish a commission of inquiry to inquire and report on a matter that the Lieutenant-Governor in Council considers to be of public concern.
- (2) Where a commission is established under subsection (1), the Lieutenant-Governor in Council shall, in the order,
- (a) appoint the members of the commission in accordance with section 21 ;
 - (b) establish the jurisdiction of the commission by setting terms of reference for the inquiry;
 - (c) designate the minister responsible for the inquiry; and
 - (d) fix a date for the termination of the inquiry and for the delivery of the commission's report.
- (3) Where it is in the public interest, the Lieutenant-Governor in Council may by order revise the terms of reference for the inquiry and revise the dates set for the termination of the inquiry and delivery of the commission's report.

[2006 cP-38.1 s3](#)

[Back to Top](#)

Reporting

- 4.** (1) A commission shall deliver its report in writing to the minister designated by the Lieutenant-Governor in Council by the date fixed for delivery of the report under section 3 .
- (2) The minister referred to in subsection (1) shall release the report to the public.

[2006 cP-38.1 s4](#)

[Back to Top](#)

Participation at inquiry

- 5.** (1) A commission shall give those persons who believe they have an interest in the subject of the inquiry an opportunity to apply to participate.
- (2) A commission shall determine whether a person may participate in an inquiry, and how he or she may participate, after considering
- (a) whether the person's interests may be adversely affected by the findings of the commission;
 - (b) whether the person's participation would further the conduct of the inquiry; and
 - (c) whether the person's participation would contribute to the openness and fairness of the inquiry.

(3) A person who is permitted to participate in an inquiry may participate on his or her own behalf or be represented by counsel of his or her choice and, where an opportunity to appear before the commission is provided, may accompany and appear with his or her counsel.

(4) A commission shall not make a report against a person until the commission has given reasonable notice to the person of the charge of misconduct alleged against him or her and the person has been allowed full opportunity to be heard in person or by counsel.

(5) A commission may recommend that the government of the province provide funding for counsel and other expenses of a person who is permitted to participate in an inquiry.

(6) Where a commission makes a recommendation under subsection (5), the minister shall consider the recommendation and advise the person concerned of the decision of the government and the level of funding to be provided, if any.

[2006 cP-38.1 s5](#)

[Back to Top](#)

Public hearings

6. (1) A commission may decide whether evidence presented to the inquiry or a representation to the inquiry is to be oral or in writing.

(2) Where a commission holds an oral hearing it shall be conducted in public, but a commission may exclude the public from a hearing, or from part of it, where it decides that the public interest in holding the hearing, or a part of it, in public is outweighed by another consideration, including the consequences of possible disclosure of personal matters, public security or the right of a person to a fair trial.

[2006 cP-38.1 s6](#)

[Back to Top](#)

Media coverage

7. (1) A commission may arrange for the publishing or broadcast of its proceedings.

(2) A commission may by order restrict or prohibit the public reporting of its proceedings and the publishing of evidence at the inquiry where the commission decides that the public interest in reporting or publication is outweighed by another consideration, including the consequences of possible disclosure of personal matters, public security or the right of a person to a fair trial.

[2006 cP-38.1 s7](#)

[Back to Top](#)

Witnesses

8. (1) A person who appears before a commission to give testimony has the same immunities as a witness who appears before the court.

(2) A person who is summoned to appear before a commission shall be paid for his or her appearance and any

travel and other expenses reasonably incurred in relation to that appearance out of the Consolidated Revenue Fund in accordance with policies established by the Lieutenant-Governor in Council under section 29 .

[2006 cP-38.1 s8](#)

[Back to Top](#)

Power to compel evidence

9. A commission may, by summons,

(a) require a person to attend as a witness and give evidence, orally or in writing, on oath or by affirmation; and

(b) require a person to produce to the commission or a person designated by the commission all documents, records, including documents or records maintained in electronic form, and things in his or her custody or control that may relate in any way to the subject of the inquiry.

[2006 cP-38.1 s9](#)

[Back to Top](#)

Power to inspect

10. (1) Where a commission believes it is reasonably necessary to the conduct of an inquiry, the commission, or a person whom the commission may authorize for the purpose, may

(a) at reasonable times enter a premises to view or inspect the premises;

(b) require the production of records, documents, including documents or records maintained in electronic form, or other things relating to the subject of the inquiry and may examine those records, documents or other things or remove them for the purpose of making copies of them; and

(c) make inquiries of a person on the premises into all matters relating to the subject of the inquiry.

(2) Where a commission or a person authorized by the commission removes records, documents or other things under paragraph (1)(b), the commission or person shall give to the person from whom they were taken a receipt for them and shall immediately make copies of them where possible and return the originals to the person who was given the receipt.

[2006 cP-38.1 s10](#)

[Back to Top](#)

Power to search with warrant

11. (1) Where a commission, or another person whom the commission may authorize for the purpose, is refused or denied entry onto a premises or the commission is of the opinion that entry without notice is necessary, and the commission has reasonable grounds to believe that entering and searching the premises will assist in the conduct of its inquiry, the commission may apply to the court, without giving notice to another person, for a warrant permitting the commission or a person named in the warrant to do those things referred to in section 10.

(2) A judge of the court, who is satisfied on oath or affirmation that there are reasonable grounds for believing that

entering and searching the premises will assist in the conduct of an inquiry, may issue a warrant authorizing a commission or a person named in the warrant to enter the premises and search for and inspect anything that will assist in the conduct of an inquiry and to do all those things referred to in section 10.

[2006 cP-38.1 s11](#)

[Back to Top](#)

Evidentiary privileges

12. (1) A person has the same privileges in relation to the disclosure of information and the production of records, documents or other things under this Act as the person would have in relation to the same disclosure and production in a court of law.

(2) Notwithstanding subsection (1), a rule of law that authorizes or requires the withholding of records, documents or other things or a refusal to disclose information, on the grounds that the disclosure would be injurious to the public interest or would violate Crown privilege, does not apply in respect of an inquiry under this Act.

(3) Notwithstanding subsection (1), a person shall not refuse to disclose information to a commission or a person authorized by a commission on the grounds that the disclosure is prohibited or restricted by another Act or regulation.

[2006 cP-38.1 s12](#)

[Back to Top](#)

Application to court for exclusion

13. (1) A person may apply to the court for an order excluding a person or a record, document or thing from the operation of subsections 12 (2) and (3), and the court may, after considering the application and the submission of the commission and other interested parties, order that

(a) the person may refuse to disclose information;

(b) a record, document or thing may be withheld from the commission; or

(c) the information shall be disclosed or the record, document or thing produced on conditions that the court may provide.

(2) There is no right of appeal from a decision of a judge made under this section.

[2006 cP-38.1 s13](#)

[Back to Top](#)

Contempt of commission

14. Where a person without lawful excuse,

(a) does not attend on being summoned under section 9 as a witness at an inquiry;

(b) while in attendance as a witness at an inquiry, refuses to take an oath or to make an affirmation lawfully required by the commission to be taken or made, or to produce a document, record or thing in his or her

custody or control lawfully required by the commission to be produced to it, or to answer a question to which the commission may lawfully require an answer;

(c) contravenes an order of the commission under section 7 with respect to public reporting of its proceedings or the publishing of evidence; or

(d) does any other thing that would, if the commission had been a court of law having power to commit for contempt, have been contempt of that court,

the commission may state a case to the court setting out the facts and the court may, on the application of the commission, inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing a statement that may be offered in defense, punish or take steps for the punishment of that person in the same manner as if he or she had been guilty of contempt of the court.

[2006 cP-38.1 s14](#)

[Back to Top](#)

Request for direction

15. (1) A commission may apply to the court for direction on a question of law or on the jurisdiction of the commission.

(2) There is no right of appeal from a decision of a judge made under this section.

[2006 cP-38.1 s15](#)

PART II OTHER INQUIRIES

[Back to Top](#)

Order directing inquiry

16. (1) The Lieutenant-Governor in Council may order that there be an inquiry under this Part into a matter that the Lieutenant-Governor in Council considers to be of public concern.

(2) In an order made under subsection (1), the Lieutenant-Governor in Council shall direct how the inquiry is to be conducted, including

(a) appointing one or more persons in accordance with section 21 to carry out the inquiry and submit a report;

(b) specifying the mechanisms by which the inquiry is to be conducted, which may include

(i) interviews and surveys,

(ii) research studies,

(iii) inspections and investigations,

(iv) calling for written submissions, and

(v) informal or formal hearings;

(c) designating the minister responsible for the inquiry; and

(d) specifying the nature and scope of the report to be submitted by the person or persons appointed to conduct the inquiry.

[2006 cP-38.1 s16](#)

[Back to Top](#)

Reporting

17. (1) The person or persons appointed to conduct an inquiry under this Part shall deliver a report in writing to the minister designated by the Lieutenant-Governor in Council under paragraph 16(2)(c).

(2) The minister shall release the report to the public.

[2006 cP-38.1 s17](#)

[Back to Top](#)

Designation of powers

18. (1) Where an inquiry is directed under section 16 , the Lieutenant-Governor in Council may, by order,

(a) direct that persons who believe they have an interest in the subject of the inquiry have a right to participate in the inquiry, and where it is so directed the person or persons appointed to conduct the inquiry have the powers of a commission under section 5 and that section applies to the inquiry, with the necessary changes;

(b) direct whether the person or persons appointed under section 16 are to receive evidence and representations in writing or orally, and where oral hearings are held, whether subsection 6 (2) applies;

(c) direct that the person or persons appointed under section 16 may arrange for the publishing or broadcast of proceedings held by him or her or them and, where so directed, subsection 7 (2) applies to the inquiry as if it was a commission of inquiry;

(d) direct that the person or persons appointed under section 16 have the powers of a commission under section 9 to compel the production of testimony and evidence;

(e) direct that the person or persons appointed under section 16 have the powers of a commission under section 10 to conduct inspections and, where so directed, subsection 10 (2) applies as if the person or persons were commissioners;

(f) direct that the person or persons appointed under section 16 have the power of a commission to apply for a warrant to search under section 11 and where so directed, subsection 11 (2) applies as if the person or persons were commissioners; and

(g) direct that the person or persons appointed under section 16 may apply to the court for direction under section 15 as if he or she or they were commissioners.

(2) An order made under this section shall be published in the *Gazette* and in a newspaper of general circulation in the province.

[Back to Top](#)

Oral hearings

19. Where a person or persons appointed under section 16 hold oral hearings, sections 8 and 14 apply to the inquiry as if the person or persons were commissioners.

[2006 cP-38.1 s19](#)

[Back to Top](#)

Evidentiary privileges

20. Sections 12 and 13 apply to an inquiry held under this Part as if it was a commission of inquiry.

[2006 cP-38.1 s20](#)

PART III OTHER MATTERS

[Back to Top](#)

Appointment

21. (1) Members of a commission appointed under Part I or a person or persons appointed to conduct an inquiry under Part II shall be appointed on the terms and with the remuneration set by the Lieutenant-Governor in Council in the order of appointment.

(2) The Lieutenant-Governor in Council may terminate the appointment of a person under this Act if the person becomes mentally or physically incapable of performing his or her role.

(3) A person appointed under this Act may resign by giving written notice to the Lieutenant-Governor in Council.

(4) The Lieutenant-Governor in Council may by order replace a person appointed under this Act who has resigned or whose appointment has been terminated because of incapacity.

(5) Where more than one person is appointed as a commissioner or to conduct an inquiry, the Lieutenant-Governor in Council may by order appoint one of them as chairperson.

[2006 cP-38.1 s21](#)

[Back to Top](#)

Commission funding

22. (1) Where a commission is established, the minister shall prepare an estimate of the expenditures required for the conduct of the inquiry in consultation with the commission.

(2) Once the estimates are approved, the expenditures incurred by the commission in the conduct of the inquiry shall be paid out of the Consolidated Revenue Fund without further approval, except that the commission shall comply with the provisions of the *Financial Administration Act* relating to expenditures by departments and agencies of the government of the province and policies established by the Lieutenant-Governor in Council in respect of the inquiry under section 29 .

(3) Where the terms of reference for the inquiry or the dates set for termination of the inquiry or delivery of the commission's report have been revised, the minister may prepare a revised estimate of expenditures and submit it for approval in the manner described in subsection (1), and subsection (2) applies to the further expenditures where the estimate is approved.

[2006 cP-38.1 s22](#)

[Back to Top](#)

Staff

23. (1) A commission or inquiry may engage the services of

- (a) counsel, clerks, reporters and assistants; and
- (b) other persons having special, technical or other expertise or knowledge.

(2) A commission or inquiry may authorize a person referred to in subsection (1) to inquire into a matter that is within the scope of the inquiry being conducted by the commission.

(3) A person authorized under subsection (2) has the same powers and immunities as the commission under section 24 .

[2006 cP-38.1 s23](#)

[Back to Top](#)

Immunity

24. (1) A commission, commissioners, persons appointed to conduct an inquiry and legal counsel to a commission or inquiry engaged under section 23 have the same privileges and immunities as a judge of the court for a decision or action, or failure to act, in carrying out an inquiry under this Act.

(2) A person authorized by a commission or an inquiry to conduct an inspection or search under section 10 or 11 has the same privileges and immunity in relation to that inspection or search as the commission or inquiry.

[2006 cP-38.1 s24](#)

[Back to Top](#)

Protection of employees

25. An employer shall not take a discriminatory action against an employee by dismissing the employee, by deducting wages, salary or other benefits or by taking other disciplinary action against him or her because the employee has in good faith made representations as a party or has disclosed information, in oral testimony or otherwise, to a commission, to a person or persons appointed under section 16 or to staff or agents of either of them.

[Back to Top](#)

Review of actions

26. A decision or action taken by a commission or by persons appointed under section 16 is final and conclusive for all purposes and

- (a) shall not be challenged, reviewed, prohibited, restrained or quashed in a court; and
- (b) is not subject to proceedings or process of a court, including prohibition, mandamus, injunction, declaration or certiorari.

[2006 cP-38.1 s26](#)

[Back to Top](#)

Joint inquiries

27. Where the scope of an inquiry conducted under this Act includes matters within the jurisdiction of the government of another province, or a territory or of Canada, the minister may enter into an agreement or arrangement with that government about the joint establishment of a commission or inquiry and the manner in which the inquiry is to be conducted by the joint commission or inquiry.

[2006 cP-38.1 s27](#)

[Back to Top](#)

Preservation of records

28. The Lieutenant-Governor in Council shall adopt policies and procedures for the preservation of the records of a commission or inquiry and shall ensure that confidentiality is preserved for information that is confidential or privileged.

[2006 cP-38.1 s28](#)

[Back to Top](#)

Policies respecting remuneration and expenses

29. The Lieutenant Governor in Council may, either generally for all commissions established and inquiries held under this Act, or for a particular commission or inquiry, establish policies respecting

- (a) remuneration of commissioners;
- (b) remuneration of witnesses;
- (c) allowances to witnesses for travel and out of pocket expenses;
- (d) other expenditures for services and facilities; and

(e) other administrative matters.

[2006 cP-38.1 s29](#)

[Back to Top](#)

Other Acts giving powers of commissioner

30. Where another Act confers upon a person or body the powers of a commission under this Act, the powers conferred on the person or body are those powers given under sections 9 and 10 unless otherwise ordered by the Lieutenant-Governor in Council.

[2006 cP-38.1 s30](#)

[Back to Top](#)

RSNL1990 cP-38 Rep.

31. The *Public Inquiries Act* is repealed.

[2006 cP-38.1 s31](#)

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