

# HERITAGE CONSERVATION ACT

## [RSBC 1996] CHAPTER 187

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## Part 1 — Introduction

### Definitions

1 In this Act:

"**alter**" means to change in any manner and, without limiting this, includes  
(a) the making of an improvement, as defined in the *Builders Lien Act*, and  
(b) any action that detracts from the heritage value of a heritage site or a heritage object;

"**board**" means the board of directors of the Heritage Trust;

"**conservation**" includes any activity undertaken to protect, preserve or enhance the heritage value of heritage property;

"**designate**" means to designate under section 9;

"**first nation**" means, as the context requires, an aboriginal people sharing a common traditional territory and having a common traditional language, culture and laws, or the duly mandated governing body of one or more such people;

"**heritage inspection**" means a physical examination and other research necessary  
(a) to identify the heritage value of property or a portion of it, and  
(b) to establish, if the property is a heritage site or heritage object,  
(i) the need for protection and conservation, or  
(ii) conformance with heritage protection requirements;

"**heritage investigation**" means an archaeological or other systematic study of heritage property to reveal its history, and may include the recording, removal and analysis of artifacts, features and other material necessary for the purpose of the heritage investigation;

"**heritage object**" means, whether designated or not, personal property that has heritage value to British Columbia, a community or an aboriginal people;

"**heritage site**" means, whether designated or not, land, including land covered by water, that has heritage value to British Columbia, a community or an aboriginal people;

"**Heritage Trust**" means the British Columbia Heritage Trust continued under section 24 (1);

"**heritage value**" means the historical, cultural, aesthetic, scientific or educational worth or usefulness of a site or object;

"**heritage wreck**" means the remains of a wrecked vessel or aircraft if

(a) 2 or more years have passed from the date that the vessel or aircraft sank, was washed ashore or crashed, or

(b) the vessel or aircraft has been abandoned by its owner and the government has agreed to accept the abandonment for the purposes of this Act;

"**local government**" includes the council of a municipality, the board of a regional district, and the Trust Council and a local trust committee established under the *Islands Trust Act*;

"**Provincial heritage object**" means a heritage object designated under section 9;

"**Provincial heritage site**" means a heritage site designated under section 9 or a Provincial heritage property established under section 23.

### Purpose of Act

2 The purpose of this Act is to encourage and facilitate the protection and conservation of heritage property in British Columbia.

### **Provincial heritage register**

**3** (1) The minister must establish and maintain one or more registers, to be known collectively as the Provincial heritage register, for the recording of the following:

- (a) Provincial heritage sites;
- (b) Provincial heritage objects;
- (c) heritage sites and heritage objects that are included in a schedule under section 4 (4) (a);
- (d) other known heritage sites and heritage objects that are, in the opinion of the minister, protected under section 13;
- (e) buildings, structures and sites for which the minister has received notice from a local government under section 977 (1) of the *Local Government Act* or section 602 (1) of the *Vancouver Charter*;
- (f) other prescribed heritage property.

(2) Subject to subsections (3) and (4), information in the Provincial heritage register must be available for inspection by any person during regular business hours.

(3) Despite the *Freedom of Information and Protection of Privacy Act*, the minister may refuse to disclose information in the Provincial heritage register and other information obtained in the administration of this Act or the *Museum Act* if any of the following apply:

- (a) disclosure of the information could, in the opinion of the minister, result in damage to or interfere with the conservation of a heritage site or heritage object;
- (b) disclosure of the information would violate an agreement made under section 4;
- (c) anthropological information that is of traditional social, spiritual or other cultural importance to a living community
  - (i) was obtained under conditions of confidentiality, or
  - (ii) is confidential at the request of representatives of the community whose heritage is represented by the information.

(4) The inspection of information in the Provincial heritage register is subject to reasonable conditions the minister may impose.

(5) Without limiting subsection (4), the minister may require payment of a prescribed fee to inspect the information in the Provincial heritage register.

(6) Protection of a heritage site or heritage object is not affected by an error or omission in the Provincial heritage register or, except for a Provincial heritage site or Provincial heritage object, by a failure to register property in the Provincial heritage register.

### **Agreements with first nations**

**4** (1) The Province may enter into a formal agreement with a first nation with respect to the conservation and protection of heritage sites and heritage objects that represent the cultural heritage of the aboriginal people who are represented by that first nation.

(2) An agreement under subsection (1) must be in writing and must be approved by the Lieutenant Governor in Council.

(3) Subsection (2) does not apply to an agreement that is entered into under section 20 (1) (b) or 28 (1) (b).

(4) Without limiting subsection (1), an agreement made under this section may include one or more of the following:

- (a) a schedule of heritage sites and heritage objects that are of particular spiritual, ceremonial or other cultural value to the aboriginal people for the purpose of protection under section 13 (2) (h);
  - (b) a schedule of heritage sites and heritage objects of cultural value to the aboriginal people that are not included in a schedule under paragraph (a);
  - (c) circumstances under which the requirements of sections 13 (1) and (2) and 14 (1) do not apply with respect to heritage sites and heritage objects, or to types of heritage sites and heritage objects, for which the first nation administers its own heritage protection;
  - (d) policies or procedures that will apply to the issuance of or refusal to issue a permit under section 12 or 14 with respect to
    - (i) sites and objects identified in a schedule under paragraph (a) or (b), or
    - (ii) other sites and objects or types of sites and objects identified in the agreement;
  - (e) provisions with regard to the delegation of ministerial authority under sections 12 and 14 (4);
  - (f) any other provisions the parties agree on.
- (5) For the purpose of section 13 (2), if an agreement includes a schedule under subsection (4) (a), the agreement must identify actions which would constitute a desecration or which would detract from the heritage value of scheduled sites and objects, and different actions may be identified for different sites or objects or for different classes of sites or objects.

#### **Act is binding on the government**

**5** Despite section 14 (2) of the *Interpretation Act*, this Act and the regulations and orders made under it are binding on the government.

#### **Act prevails over conflicting legislation**

**6** If, with respect to any matter affecting the conservation of a heritage site or heritage object referred to in section 13 (2), there is a conflict between this Act and any other Act, this Act prevails.

#### **Provincial heritage policies**

**7** The minister may, with the approval of the Lieutenant Governor in Council, establish policies and standards for the identification, conservation, management and disposition of any heritage site or heritage object owned or managed by the government.

#### **No derogation of aboriginal and treaty rights**

**8** For greater certainty, no provision of this Act and no provision in an agreement entered into under section 4 abrogates or derogates from the aboriginal and treaty rights of a first nation or of any aboriginal peoples.

## Part 2 — Provincial Heritage Conservation

### Heritage designation

- 9** (1) The Lieutenant Governor in Council may
- (a) designate land as a Provincial heritage site, or
  - (b) designate an object as a Provincial heritage object.
- (2) A designation under subsection (1) (a) may apply to land that does not have heritage value if, in the opinion of the Lieutenant Governor in Council, designation is necessary or desirable for the conservation of heritage property that is
- (a) designated under this section,
  - (b) protected under section 13 (2),
  - (c) protected heritage property under the *Local Government Act* or the *Vancouver Charter*, or
  - (d) established under section 23.
- (3) A designation made under this section may do one or more of the following:
- (a) apply to a single property or to part of a property;
  - (b) apply to more than one property including properties owned by different persons;
  - (c) establish policies or procedures regarding the provision of financial or other support for the conservation of a heritage site or heritage object;
  - (d) specify types of alterations to the property which may be made without a permit under section 12;
  - (e) specify policies or procedures concerning the issuing of permits under section 12 with respect to a property.

### Designation procedure

- 10** (1) Before a designation is made under section 9, the minister must serve notice of the proposed designation on the following persons:
- (a) in the case of land,
    - (i) all persons who, according to the records of the land title office, have a registered interest in the land to be designated,
    - (ii) the local government or local governments having jurisdiction over the land to be designated, and
    - (iii) the first nation or first nations within whose traditional territory the land to be designated lies;
  - (b) in the case of objects,
    - (i) the person who has possession of the object,
    - (ii) all parties who, according to the records of the personal property registry established under the *Personal Property Security Act*, have a registered interest in the object, and
    - (iii) any other person or party who, in the opinion of the minister, is or may be the owner of the object or has or may have a proprietary interest in the object;
  - (c) any other prescribed person.
- (2) A person or party served with notice under subsection (1) may serve the minister with a notice of objection to the proposed designation within 30 days after receiving the notice of the proposed designation.
- (3) On receiving a notice of objection, the minister must review the objection and may then amend or cancel the proposed designation as the minister considers appropriate.

(4) Before a designation is made, the minister must advise the Lieutenant Governor in Council if any notice of objection to the proposed designation has been received and, if so received, provide the Lieutenant Governor in Council with a copy of each notice of objection received, the results of the review of the notice or notices of objection and the terms and conditions of any amendment to the proposed designation.

(5) Within 30 days after

(a) the minister cancels a proposed designation,

(b) the Lieutenant Governor in Council makes a designation, or

(c) the Lieutenant Governor in Council decides not to make a designation,

the minister must serve notice on the persons entitled to notice under subsection (1) that a designation has or has not been made.

(6) Within 30 days after a designation is made, the minister must register a description of the designated property in the Provincial heritage register established under section 3 (1) and,

(a) in the case of land, file a notice of the designation in the land title office in the manner provided under section 32, or

(b) in the case of personal property, file a notice of the designation in the personal property registry under the *Miscellaneous Registrations Act, 1992*.

(7) No designation is invalid because of inadvertent and minor non-compliance with this section.

### **Compensation for heritage designation**

**11** (1) If a designation under section 9 causes, or will cause at the time of designation, a reduction in the market value of the designated property, the government must compensate an owner of the designated property who makes an application under subsection (2), and the compensation must be in an amount or in a form the minister and the owner agree on or, failing an agreement, in an amount or in a form determined by binding arbitration under subsection (4).

(2) The owner of a designated property may apply to the minister for compensation for the reduction in the market value of the designated property.

(3) An application under subsection (2)

(a) must be made, in order for the owner to be entitled to compensation under this section, no later than one year after the designation under section 9, and

(b) may be made before the designation under section 9.

(4) If the minister and the owner are unable to agree

(a) that the owner is entitled to compensation under subsection (1), or

(b) on the amount or form of compensation,

then either the minister or the owner may refer the matter to binding arbitration under the *Commercial Arbitration Act*.

(5) An arbitration under this section must be by a single arbitrator unless the minister and the owner agree to the appointment of an arbitration panel.

(6) The arbitrator or arbitration panel, in determining whether the owner is entitled to compensation and the amount or form of compensation, must consider

(a) eligibility for financial and other support for conservation of the heritage site or heritage object, and

(b) any other benefits that are available because of the designation of the property.

(7) Compensation must not be paid, and an arbitration must not continue, if

- (a) the minister cancels the proposed designation, or
- (b) the Lieutenant Governor in Council does not make the designation.
- (8) Nothing in this section authorizes the government to give any financial or other benefit to an owner except that which is commensurate with the reduction in market value of the designated property as caused by that designation.
- (9) This section does not apply to property that, immediately before its designation under section 9, is
  - (a) designated as a Provincial heritage site,
  - (b) designated as a heritage object,
  - (c) protected under section 13 (2), or
  - (d) designated under section 967 of the *Local Government Act* or section 593 of the *Vancouver Charter*.

### Permits

- 12** (1) In this section, except subsection (6), and in sections 3 (4), 13 (4), 14 (2) and (4) and 32, "**minister**" includes a person authorized in writing by the minister for the purposes of the section.
- (2) The minister may
- (a) issue a permit authorizing an action referred to in section 13, or
  - (b) refuse to issue a permit for an action that, in the opinion of the minister, would be inconsistent with the purpose of the heritage protection of the property.
- (3) A permit issued under subsection (2) (a) may include requirements, specifications and conditions that the minister considers appropriate and, without limiting the generality of this, the permit may
- (a) be limited to a specified period of time or to a specified location,
  - (b) require the holder of the permit to consult with or obtain the consent of one or more parties whose heritage the property represents or may represent,
  - (c) require the holder of the permit to provide the minister with reports satisfactory to the minister, and
  - (d) specify a repository for heritage objects that are removed from the heritage property.
- (4) Despite any other enactment, a permit issued under subsection (2) (a) may specify the siting, dimensions, form, exterior design and finish of new construction or renovations to a building or structure.
- (5) The minister may, with the concurrence of the holder of the permit, amend, suspend or cancel a permit issued under subsection (2) (a).
- (6) The minister may, by order, without the concurrence of the holder of the permit,
- (a) amend or suspend a permit issued under subsection (2) (a) if the minister has information that was not considered when the permit was issued respecting the heritage value of heritage property that would be materially affected by an action authorized by the permit, or
  - (b) cancel a permit issued under subsection (2) (a) if the minister has reasonable and probable grounds to believe that
    - (i) the application for the permit included information that was false or misleading with respect to a material fact, or that omitted to state a material fact the omission of which makes information in the application false or misleading,
    - (ii) the holder has contravened or is in default of a requirement or condition of the permit, whether or not the holder is charged with an offence under this Act, or

(iii) the holder has contravened a provision of this Act, whether or not the holder is charged with an offence under this Act.

(7) A permit does not authorize the holder of the permit to enter property, or to make any alteration to property, without the permission of the owner or occupier.

### **Heritage protection**

**13** (1) Except as authorized by a permit issued under section 12 or 14, a person must not remove, or attempt to remove, from British Columbia a heritage object that is protected under subsection (2) or which has been removed from a site protected under subsection (2).

(2) Except as authorized by a permit issued under section 12 or 14, or an order issued under section 14, a person must not do any of the following:

(a) damage, desecrate or alter a Provincial heritage site or a Provincial heritage object or remove from a Provincial heritage site or Provincial heritage object any heritage object or material that constitutes part of the site or object;

(b) damage, desecrate or alter a burial place that has historical or archaeological value or remove human remains or any heritage object from a burial place that has historical or archaeological value;

(c) damage, alter, cover or move an aboriginal rock painting or aboriginal rock carving that has historical or archaeological value;

(d) damage, excavate, dig in or alter, or remove any heritage object from, a site that contains artifacts, features, materials or other physical evidence of human habitation or use before 1846;

(e) damage or alter a heritage wreck or remove any heritage object from a heritage wreck;

(f) damage, excavate, dig in or alter, or remove any heritage object from, an archaeological site not otherwise protected under this section for which identification standards have been established by regulation;

(g) damage, excavate, dig in or alter, or remove any heritage object from, a site that contains artifacts, features, materials or other physical evidence of unknown origin if the site may be protected under paragraphs (b) to (f);

(h) damage, desecrate or alter a site or object that is identified in a schedule under section 4 (4) (a);

(i) damage, excavate or alter, or remove any heritage object from, a property that is subject to an order under section 14 (4) or 16.

(3) The Lieutenant Governor in Council may make regulations respecting the following:

(a) defining the extent of types of sites protected under subsection (2), except heritage sites or objects protected under subsection (2) (h);

(b) identifying types of features, material or evidence for which the requirements of subsection (2) (d) and (g) do not apply, and these may be different for different types of sites;

(c) establishing identification standards for archaeological sites to be protected under subsection (2) (f);

(d) identifying actions that shall be deemed to derogate from the heritage value of a site or object, or class of sites or objects, protected under subsection (2), except with respect to sites protected under subsection (2) (h).

- (4) The minister may, after providing an opportunity for consultation with the first nation whose heritage site or object would be affected,
- (a) define the extent of a site protected under subsection (2), or
  - (b) exempt a site or object from subsection (2) on any terms and conditions the minister considers appropriate if the minister considers that the site or object lacks sufficient heritage value to justify its conservation.
- (5) Subsection (4) does not apply to a site or object protected under subsection (2) (h).
- (6) Except as authorized by a permit issued under section 12, a person must not damage, alter or remove
- (a) a notice erected under section 17, or
  - (b) a plaque or marker installed under section 18.

### **Heritage inspection and heritage investigation**

- 14** (1) A person must not excavate or otherwise alter land for the purpose of archaeological research or searching for artifacts of aboriginal origin except under a permit or order issued under this section.
- (2) The minister may, by permit, authorize a heritage inspection or heritage investigation of any property.
- (3) A permit issued under subsection (2) does not authorize entry onto land or into a building without the permission of the owner or occupier.
- (4) The minister may order that a heritage inspection or heritage investigation be conducted if the minister considers that any one or more of the following apply:
- (a) land may contain a heritage site or heritage object protected under section 13;
  - (b) land that may have heritage value, or that may include a heritage site or heritage object, may be subject to subdivision;
  - (c) the property may be subject to alienation from government ownership;
  - (d) property that may have heritage value, or land that may include heritage property, may be subject to alteration by natural or human causes;
  - (e) an object that may have heritage value may be subject to removal from British Columbia.
- (5) The provisions of section 12 (2), (2.1), (2.2), (3), (5) and (6) apply to permits and orders under this section.
- (6) A heritage inspection or heritage investigation ordered under subsection (4)
- (a) must state the purpose of the heritage inspection or heritage investigation,
  - (b) must specify how long the order is to remain in effect,
  - (c) must require that the heritage inspection or heritage investigation be carried out in an expeditious manner,
  - (d) may provide that property covered by the order is subject to protection under section 13 while the order remains in effect,
  - (e) may require the owner to undertake actions to preserve the integrity and condition of property covered by the order while the order remains in effect, and
  - (f) may include any terms, conditions or specifications that the minister considers appropriate for the purpose of the heritage investigation.
- (7) If an order for a heritage inspection or heritage investigation made under subsection (4) relates to
- (a) alienation of government owned property,
  - (b) a public work authorized to be undertaken by or under an Act,

(c) the extraction or harvesting of resources from land,  
(d) the subdivision of land, or  
(e) changes in use or development of land,  
the minister may require the person purchasing, subdividing, developing or using the property to undertake or pay for the heritage inspection or heritage investigation.

(8) A person must not interfere with a heritage inspection or heritage investigation ordered under subsection (4).

(9) A person whose property is damaged during the course of a heritage inspection or heritage investigation ordered under subsection (4) is entitled to have the damage repaired at the expense of the government or, if the damage cannot be repaired, to compensation from the government.

### **Entry authority for heritage inspection and heritage investigation orders**

**15** (1) An order made under section 14 (4) authorizes the person or persons conducting the heritage inspection or heritage investigation to enter land identified in the order at any reasonable time for the purposes of the heritage inspection or heritage investigation.

(2) Before entering or when entering land under subsection (1), the person conducting the heritage inspection or heritage investigation must make a reasonable attempt to notify the owner or occupier of the land and, if requested, present proof of his or her authorization.

(3) Except as provided in subsection (4), nothing in this section or in an order made under section 14 (4) authorizes entry into a building without the permission of the owner or occupier.

(4) A justice may issue a warrant authorizing a person to enter land or a building to conduct a heritage inspection or heritage investigation ordered under section 14 (4) if the justice is satisfied that

(a) there are reasonable grounds to believe that entry is required to achieve the purposes of the order, and

(b) there are reasonable grounds to believe that

(i) an emergency exists,

(ii) the person conducting the heritage inspection or heritage investigation has been unable to notify the owner or occupier after making a reasonable attempt to do so,

(iii) the admission has been refused or refusal is anticipated, or

(iv) the notification may defeat the object of the entry.

(5) A warrant issued under subsection (4) continues in force until the purpose for which the entry is required has been satisfied.

(6) If a heritage inspection or heritage investigation conducted under the authority of a warrant under subsection (4) requires entry into a building, the person conducting the heritage inspection or heritage investigation must be accompanied by a peace officer.

(7) On completion of a heritage inspection or heritage investigation ordered under section 14 (4), if the owner of land was not notified under subsection (2), the person undertaking the heritage inspection or heritage investigation must mail a notice informing the owner that a heritage inspection or heritage investigation has been conducted.

### **Temporary protection orders**

**16** If the minister considers that property has or may have heritage value and is likely to be altered for any reason, the minister may issue, to a person or class of persons, a stop work order that prohibits any alteration of the property for a period of up to 120 days, subject to any requirements and conditions the minister considers appropriate.

### **Notices and immunity**

**17** The minister may erect and maintain a notice referring to this Act, or an order made under this Part, on or near a Provincial heritage site, and an action for loss, damage or trespass must not be brought for anything done or omitted in good faith under this section.

### **Promotion of heritage value**

**18** The minister may acknowledge the heritage value of any heritage site or heritage object by issuing a certificate or, with the permission of the owner, by installing a commemorative plaque or marker.

### **Unclaimed objects in heritage collections**

**19** (1) A public museum, archive or other heritage conservation organization that has possession of an object that it does not own, or is uncertain as to whether it owns, may apply to the Supreme Court for an order vesting ownership of the object in the museum, archive or organization if one of the following applies:

- (a) a reasonable attempt has been made to locate the owner of the object and
  - (i) at least 25 years have passed since the making of a written agreement with the owner of the object for custody of the object, or
  - (ii) at least 10 years have passed since the making of an oral agreement with the owner of the object for custody of the object and there is no known written custody agreement;
- (b) at least 2 years have passed since the museum, archive or organization gave to the owner of the object a notice of the termination of a custody agreement with respect to the object;
- (c) the owner of the object cannot be identified or the circumstances of the acquisition of the object are not known;
- (d) the object was acquired from a person who may not have been the true owner.

(2) On application under subsection (1), the court may, with respect to the object that is the subject of the application, make an order vesting ownership of the object in

- (a) the museum, archive or organization that made the application, or
- (b) any other party the court considers is the most appropriate to own the object having regard to any heritage value the object may possess.

(3) Before making an order under subsection (2), the court must be satisfied that

- (a) a requirement of subsection (1) has been met,
- (b) the limitation in subsection (6) does not apply,
- (c) a reasonable attempt has been made to notify any other parties who may have an interest in the application, and
- (d) all parties the court considers to have an interest in the application have been given a reasonable opportunity to be heard.

(4) An order under subsection (2) may include any terms or conditions that the court considers appropriate.

(5) If an order vesting ownership is made under this section, the previous owner has no further claim to ownership of the object or to compensation for the object.

(6) This section does not apply to an object that has cultural heritage value to an aboriginal people.

### **Powers of the minister**

**20** (1) To further the objects of this Act, the minister may do one or more of the following:

- (a) acquire, manage and conserve property or acquire an interest in property;
- (b) enter into agreements with a person, organization, local government, first nation or the government of Canada or of a province;
- (c) conduct and arrange exhibits or activities to inform and stimulate the interest of the public in any matter related to the purposes of this Act;
- (d) subject to a trust or agreement under which a property was obtained, dispose of the property and execute instruments required to effect the disposal;
- (e) receive, by donation, public subscription, devise, bequest or otherwise, money or property;
- (f) assist in or undertake research, study or publication respecting heritage conservation;
- (g) provide grants, advice and services to other parties having aims and objectives consistent with the purposes of this Act;
- (h) establish and maintain one or more inventories of heritage sites and heritage objects, including a list of heritage buildings for which the Alternate Compliance Methods of the British Columbia Building Code may apply.

(2) Property acquired by the minister under this Act is the property of the government and title to the property may vest in the name of the government.

(3) Despite the *Land Act*, property acquired by the minister under this Act may be dealt with by the minister under this Act.

### **Preservation intervention**

**21** (1) If the minister considers that property protected under section 13 (2) is subject to damage or deterioration, the minister may order the owner, on terms and conditions that the minister considers appropriate, to preserve the property at the expenses of the government.

(2) If the minister considers that property protected under section 13 (2) is subject to damage or deterioration and is being unreasonable neglected by the owner, the minister may order the owner, on terms and conditions and to specifications that the minister considers appropriate, to preserve the property at the expense of the owner or at the expense of the owner and the government on a cost sharing basis.

### **Advisory committees**

**22** (1) The minister may establish or authorize one or more committees to act in an advisory capacity on matters relating to this Act or to the conservation of heritage sites, heritage objects and other heritage resources.

(2) The minister may appoint, or provide for the manner of appointment of, the members of any committee established under this section and may set the terms of reference for the committee.

(3) The members of any committee established or authorized under this section must be paid reasonable and necessary travelling and incidental expenses incurred in the discharge of their duties under this Act, and may be paid remuneration for services in an amount determined by the Lieutenant Governor in Council.

### **Provincial heritage properties**

**23** (1) The Lieutenant Governor in Council may, by order, designate a heritage site on Crown land as a Provincial heritage property and the Provincial heritage property includes the collection of accessioned artifacts associated with that heritage site.

(2) The Lieutenant Governor in Council may, by regulation, provide that any provision of the *Park Act* applies to a Provincial heritage property designated under subsection (1), and all authorities, rights, duties and other matters under these provisions will apply in relation to

(a) the minister as though he or she were the minister under the *Park Act*,

(b) any branch or agency assigned by the minister to administer a Provincial heritage property as though it were the Parks Branch under the *Park Act*,

(c) the director and staff of a branch or agency referred to in paragraph (b) as though they were the directors and officers respectively of the Parks Branch, and

(d) the Provincial heritage property as though it were a Class A park under the *Park Act*.

(3) If a park use permit applies in respect of land when that land is established as a Provincial heritage property under subsection (1), that permit is deemed to have been issued under this section by the minister, and subsection (2) applies for the purpose of interpretation of that permit.

## **Part 3 — British Columbia Heritage Trust**

### **Heritage Trust continued**

**24** (1) The British Columbia Heritage Trust is continued as a corporation.

(2) The Heritage Trust is for all purposes an agent of the government and the powers of the Heritage Trust may be exercised only as an agent of the government.

(3) Subject to the other provisions of this Part, the Heritage Trust has the power and capacity of a natural person of full capacity.

(4) The *Company Act* does not apply to the Heritage Trust but the Lieutenant Governor in Council may, by order, direct that one or more provisions of the *Company Act* apply to the Heritage Trust.

### **Objects of Heritage Trust**

**25** The objects of the Heritage Trust are as follows:

(a) to conserve and support the conservation of heritage sites and heritage objects;

(b) to gain further knowledge about British Columbia's heritage;

(c) to increase public awareness, understanding and appreciation of British Columbia's heritage;

(d) to undertake such other activities related to British Columbia's heritage as the minister may authorize.

### **Directors**

**26** (1) The Lieutenant Governor in Council must appoint a board of directors of the Heritage Trust.

(2) The Lieutenant Governor in Council must designate one of the directors as chair and one or more of the directors as vice chair of the board.

(3) The directors must be paid reasonable and necessary travelling and incidental expenses incurred in the discharge of their duties under this Act, and may be paid remuneration for services in an amount determined, on the recommendation of the board, by the Lieutenant Governor in Council.

(4) The board may

(a) determine its own procedure and provide for the regulation and conduct of its meetings,

(b) delegate any of the powers, functions and duties of the Heritage Trust to a committee of directors, to an officer or employee of the Heritage Trust or of the ministry or to any other person, and

(c) establish rules or policies governing the powers, functions or duties delegated under paragraph (b).

### **Officers and employees**

**27** (1) The board may appoint officers and employees of the Heritage Trust as it considers necessary.

(2) The power of appointment under subsection (1) is subject to the *Public Service Act*, and employees of the Heritage Trust are deemed to be employees and the Heritage Trust is deemed to be an employer in respect to those employees for the purposes of the *Public Service Act*, the *Public Service Labour Relations Act* and the *Public Service Pension Plan* continued under the *Public Sector Pension Plans Act*.

(3) The minister may authorize an employee of the ministry to provide services to the Heritage Trust, with or without compensation from the Heritage Trust.

(4) The Lieutenant Governor in Council may make an order to transfer one or more employees of the ministry to the Heritage Trust, and such an order must

(a) identify by name each employee of the ministry who is to be transferred to the Heritage Trust,

(b) specify a transfer date for each employee who is to be transferred, and

(c) establish conditions for the transfer that the Lieutenant Governor in Council considers advisable to preserve the rights and benefits of the employees to be transferred.

(5) On the transfer date specified by an order under subsection (4), an employee of the ministry named in the order ceases to be an employee of the ministry and becomes an employee of the Heritage Trust as if he or she were appointed under subsection (1), subject to any conditions established under subsection (4) (c).

### **Powers of Heritage Trust**

**28** (1) To further the objects of this Part, the Heritage Trust may do one or more of the following:

(a) acquire, manage and conserve property or acquire an interest in property;

(b) enter into agreements with a person, organization, local government, first nation or the government of Canada or of a province;

(c) conduct and arrange exhibits or activities to inform and stimulate the interest of the public in any matter related to the purposes of this Part;

- (d) subject to a trust or agreement under which a property was obtained, dispose of the property and executive instruments required to effect the disposal;
  - (e) receive money or property by donation, public subscription, devise, bequest or otherwise;
  - (f) charge fees for any service that it provides including fees for the use of or admission to any of the facilities that it operates;
  - (g) assist in or undertake research, study or publication respecting heritage conservation;
  - (h) provide grants, advice and services to other parties having aims and objectives consistent with the purposes of this Part;
  - (i) subject to terms and conditions it may choose to apply, lend money from the trust fund continued under section 29 or guarantee loans made by a financial institution for the acquisition, management, conservation or development of heritage property by a party referred to in paragraph (b);
  - (j) do such other things as the Lieutenant Governor in Council may authorize.
- (2) Subject to the approval of the Lieutenant Governor in Council, the Heritage Trust may, for the purpose of engaging in a commercial, industrial or business undertaking,
- (a) incorporate a corporation,
  - (b) acquire shares in a corporation, or
  - (c) enter into a partnership or joint venture.
- (3) Subject to the approval of the Lieutenant Governor in Council, the Heritage Trust may borrow money in accordance with regulations made under section 75 of the *Financial Administration Act*.

### **Heritage Trust Fund**

**29** (1) The fund maintained under section 22 (1) of the *Heritage Conservation Act* as it read immediately before October 14, 1994, is continued as the British Columbia Heritage Trust Fund.

- (2) The Heritage Trust must pay any money received by it into the fund.
- (3) The Heritage Trust may pay money out of the fund for
  - (a) remuneration, expenses and compensation referred to in sections 26 and 27,
  - (b) operation and administration expenses of the Heritage Trust,
  - (c) investments referred to in subsection (4), and
  - (d) any other expenses incurred in the exercise of its powers.
- (4) Money of the fund may be invested in
  - (a) the acquisition, management, conservation and development of property under section 28 (1) (a),
  - (b) loans made under section 28 (1) (i), and
  - (c) investments approved by the Minister of Finance and Corporate Relations.

### **Financial administration**

- 30** (1) The Heritage Trust must establish and maintain an accounting system satisfactory to the Minister of Finance and Corporate Relations, and must render detailed accounts of its revenues and expenditures as required by that minister.
- (2) The Minister of Finance and Corporate Relations may direct the Comptroller General to examine and report on any or all of the financial and accounting operations of the Heritage Trust.

- (3) The accounts of the Heritage Trust must, at least once every year, be audited and reported on by an auditor appointed by the board.
- (4) The Heritage Trust must annually, within 120 days of the end of its fiscal year, submit to the minister
  - (a) a report of the Heritage Trust and its operations for the preceding fiscal year,
  - (b) a financial statement showing the assets and liabilities of the Heritage Trust at the end of the preceding fiscal year, and
  - (c) the annual report of the auditor referred to in subsection (3).
- (5) The report and financial statement referred to in subsection (4) must be laid before the Legislative Assembly by the minister during the next session of the Legislative Assembly following the submission of the report and financial statement to the minister.
- (6) The *Financial Information Act* applies to the Heritage Trust.
- (7) The fiscal year of the Heritage Trust ends on March 31.

### **Property of the Heritage Trust**

- 31** (1) Property acquired by the Heritage Trust under this Part is the property of the government and title to the property may vest in the name of the government or in the name of the Heritage Trust.
- (2) Despite the *Land Act*, property acquired by the Heritage Trust under this Part may be dealt with by the Heritage Trust under this Act.
- (3) Property vested in the Heritage Trust is exempt from taxation, levies and all other charges, except to the extent that the government is liable.

## **Part 4 — General Provisions**

### **Notice of heritage status on land title**

- 32** (1) The minister must file a written notice in the land title office with respect to land that is designated under section 9.
- (2) The minister may file a written notice in the land title office with respect to land
  - (a) for which a notice has been given under section 10 (1),
  - (b) that, in the opinion of the minister, is protected under section 13 (2),
  - (c) for which an order is in effect under section 14, 16 or 21, or
  - (d) that, in the opinion of the minister, has been altered in contravention of section 13 (2).
- (3) On receipt of a notice under subsection (1) or (2) in which the affected land is described sufficiently to be identified in the records of the land title office, the registrar must make a note of the filing on the title of the land.
- (4) If the basis on which notice was filed under subsection (1) or (2) no longer applies to the land, the minister must notify the land title office.
- (5) On receipt of a notice under subsection (4), the registrar must cancel the note made under subsection (1) or (2).
- (6) Notification to the land title office under subsections (1), (2) or (4) must be made in a form satisfactory to the registrar of the land title district.
- (7) The protection of property under this Act is not affected by
  - (a) an error or omission in a notice given by the minister to the registrar,
  - (b) an error or omission in a note made by the registrar under this section, or
  - (c) a failure by the registrar to make or cancel a note on a land title.

(8) In the event of any omission, mistake or misfeasance by the registrar or the staff of the registrar in relation to the making or cancelling of a note under this section,  
(a) the registrar is not liable nor is the government vicariously liable, and  
(b) the assurance fund or the Attorney General as a nominal defendant is not liable under Part 20 of the *Land Title Act*.

### **Service of documents**

**33** (1) Where this Act requires service of a document on a person, other than service in relation to a court application under section 19, the document is sufficiently served on a person if

(a) it is served personally on the person,  
(b) it is sent by registered mail, or a method of delivery that provides proof of delivery, to the person's actual or last known address, or  
(c) in the circumstances described in subsection (2), it is published in accordance with that subsection.

(2) If a document cannot be served personally on a person and the person's actual or last known address cannot be determined after reasonable steps for the purpose have been taken, the document may be served by publishing a notice in the prescribed form in 2 issues, at least one week apart, of a newspaper having general circulation

(a) in the area where the person to be served was last known to reside or carry on business according to the information available to the person serving the document, or  
(b) in the area in which the land is situated if the document relates to land owned by the person to be served.

(3) A document served under subsection (1) (b) is deemed to be received on the earlier of

(a) the date the person to whom it is sent actually receives the document, and  
(b) the expiry of 10 days after the date on which the document was sent.

### **Civil remedies respecting contraventions**

**34** (1) The minister may apply to the Supreme Court for an injunction restraining a person from committing, or continuing to commit, a contravention of this Act or the regulations.

(2) The minister may apply to the Supreme Court for a restoration or compliance order if a person

(a) fails to comply with or contravenes the requirements or conditions of a permit issued under section 12 or 14,

(b) fails to comply with or contravenes an order made under section 14 or 21,

(c) removes property, or attempts to remove property, from British Columbia in contravention of section 13 (1),

(d) moves, removes, damages, desecrates, alters, excavates or digs in property, or removes objects from property in contravention of section 13 (2), or

(e) contravenes a regulation made under section 23 (2) or 37 (2) (e).

(3) An order of the court in respect of an application under subsection (2) may include one or more of the following:

(a) a requirement that the person restore the property to which the matter relates to its condition before the contravention on terms and conditions the court specifies;

(b) a requirement that the person undertake, as the court considers appropriate, compensatory conservation work on the property that was affected or on other heritage property, or that conservation work be performed by others at the expense of that person;

(c) an authorization that the minister may undertake conservation work at the expense of the person;

(d) any other requirements the court considers advisable.

(4) This section applies whether or not a person is charged with an offence under this Act.

### **Indemnity**

**35** (1) Except as provided in section 11 or 14 (9), no compensation is payable to a person for any loss or damage, or for any reduction in the value of property, that results from the operation of this Act, the performance in good faith of any duty under this Act or the exercise in good faith of any power under this Act.

(2) An action for damages must not be brought against the minister, an employee of the government, the Heritage Trust, a director, officer or employee of the Heritage Trust, a member of a committee established or authorized under section 22 or a person who is subject to the direction of the minister or the board of directors of the Heritage Trust, because of anything done or omitted to be done in good faith in the performance or intended performance of a duty or in the exercise or intended exercise of a power under this Act or the regulations.

(3) Subsection (2) does not absolve the government from vicarious liability for an act or omission of a person referred to in that subsection for which act or omission the government would be vicariously liable if the subsection were not in force.

### **Offence and penalty**

**36** (1) A person who does any of the following commits an offence:

(a) contravenes section 13 (6), 14 (1) or (8) or a provision of the *Park Act* referred to in section 23 (2) as it applies to a Provincial heritage property;

(b) fails to comply with or contravenes a requirement or condition of an order or permit under section 12 (2) (a), 14 (2) or (4), 16, 19 (2), 23 (2) or 34 (3);

(c) contravenes a regulation made under section 23 (2) or 37 (2) (e);

(d) contravenes section 13 (1) or (2).

(2) A person convicted of an offence under subsection (1) (a) to (c) is liable to a fine of not more than \$2 000 or to imprisonment for a term of not more than 6 months or to both.

(3) A person convicted of an offence under subsection (1) (d) is liable,

(a) if the person is an individual, to a fine of not more than \$50 000 or to imprisonment for a term of not more than 2 years or to both, or

(b) if the person is a corporation, to a fine of not more than \$1 000 000.

(4) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence also commits the offence and is liable,

(a) if it is an offence under subsection (1) (a) to (c), to the penalty set out in subsection (2), or

(b) if it is an offence under subsection (1) (d), to the penalty set out in subsection (3) (a).

- (5) Section 5 of the *Offence Act* does not apply to this Act or the regulations.
- (6) The time limit for laying an information respecting an offence under this Act or the regulations is 2 years after the facts on which the information is based first came to the knowledge of
- (a) a police officer, police constable, constable or other person employed for the preservation and maintenance of the public peace, or
  - (b) an official designated in writing by the minister.
- (7) A document purporting to have been issued by the official designated under subsection (6) (b) certifying the day on which he or she became aware of the facts on which an information is based, is admissible without proof of the signature of the official appearing to have signed the document, and in the absence of evidence to the contrary, is proof of the matter certified.

### **Power to make regulations**

**37** (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 as follows:

- (a) respecting the form, content and manner of giving notice in relation to this Act;
- (b) respecting the form, content and manner of giving information for registration in the Provincial heritage register under section 3;
- (c) respecting the administration and conservation of Provincial heritage properties;
- (d) prescribing fees for a service, or for use of or admission to a facility, under this Act;
- (e) respecting the maintenance of order at Provincial heritage properties;
- (f) respecting heritage property that may be recorded in the Provincial heritage register under section 3 (1) (f);
- (g) prescribing persons entitled to notice under section 10 (1) (c);
- (h) prescribing the manner in which a notice of designation under section 10 (6) (b) is to be filed in the personal property registry;
- (i) respecting the conduct of a heritage inspection or heritage investigation under section 14.

### **Continuation of former designations**

**38** (1) In this section, "**former Act**" means

- (a) the *Archaeological and Historic Sites Protection Act*, S.B.C. 1972, c. 4,
- (b) the *Archaeological and Historic Sites Protection Act*, R.S.B.C. 1960, c. 15, or
- (c) the *Historic Objects Preservation Act*, R.S.B.C. 1948, c. 145.

(2) All heritage designations made under a former Act that have not been rescinded are continued as if they were designated by the Lieutenant Governor in Council under section 9, but a continuance under this subsection does not entitle any person to compensation under section 11.