

SNL1998 CHAPTER Q-1.1

QUARRY MATERIALS ACT, 1998

Amended:

2004 cL-3.1 s60 (not in force therefore it is not included in this consolidation); 2004 c36 s35

CHAPTER Q-1.1

**AN ACT TO REVISE THE LAW WITH RESPECT TO
QUARRY MATERIALS**

(Assented to December 15, 1998)

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 *Quarry Materials Act, 1998* .

1998 cQ-1.1 s1

Interpretation 2. (1) In this Act

(a) "beach" means an area abutting the modern coast,
normally lying between the low and high water marks
and composed of loose sand, gravel and mud and may
include land lying 300 metres landward from the
ordinary tide mark;

(b) "beach permit" means a beach permit issued under
section 7;

- (c) "department" means the department presided over by the minister;
- (d) "director" means the Director of the Mineral Lands Division of the department;
- (e) "former Act" means the *Quarry Materials Act* ;
- (f)"inspector" means an inspector appointed under section 14;
- (g) "lease" means, unless the context indicates otherwise, a lease issued under section 8;
- (h) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (i)"permit" means a quarry permit issued under section 5;
- (j)"quarry material" means a substance used in its natural form for civil construction or agricultural purposes and includes clay, sand, gravel, rock, soil, peat and slag but does not include slate, marble, granite and similar stone used as dimension stone; and
- (k) "subordinate permit" means a subordinate quarry permit issued under section 6.

(2) Where before 1952 there was a conveyance of Crown land by way of a grant to a person and the grant excepts from the conveyance minerals in, on or under the land, the reference to minerals in the grant shall be considered to include quarry materials.

(3) Notwithstanding paragraph (1)(j), for the purpose of this Act, in the Labrador portion of the province "quarry material" means a substance used in its natural form for construction or agricultural purposes, and includes

- (a) clay, sand, gravel, stone, topsoil, soil, marl, peat and peat moss; and

(b) a mineral rock or stone capable of being cut or polished for use as an ornament, personal adornment or decoration.

1998 cQ-1.1 s2

Crown bound

3. This Act binds the Crown.

1998 cQ-1.1 s3

Exploration licence

4. (1) A person may apply to the minister for an exploration licence to explore for quarry materials.

(2) The minister may issue an exploration licence to a person who applies under subsection (1) for the purpose of sampling, assaying and testing quarry material.

(3) A person issued a licence under this section shall not remove quarry material except for the purpose of sampling, assaying and testing and in accordance with the terms and conditions applicable to that licence.

(4) An exploration licence issued under this section shall not apply to

(a) property that is not vested in the Crown;

(b) an area for which a current permit or lease exists; and

(c) an existing quarry or pit for which a permit or lease under this Act or the former Act has expired.

1998 cQ-1.1 s4

Quarry permit

5. (1) A person may apply to the minister for a quarry permit to dig for, excavate, remove and dispose of quarry materials.

(2) The minister may issue a quarry permit to a person who applies under subsection (1) provided that

- (a) the quarry materials to which the permit applies are vested in the Crown;
- (b) the permit is for a period of not more than one year;
- (c) an application is made in the required form and is accompanied by the required rental fee; and
- (d) a plan in the form required by the minister showing the area of land over which the permit is required is submitted with the application.

(3) A permit issued under this section

- (a) shall describe the area of land to which it applies;
- (b) is subject to the terms and conditions that the minister may prescribe; and
- (c) is subject to the payment of an amount by way of royalty as may be specified, either specially or generally, in the permit within 2 months following the termination of the permit.

(4) A permit is not assignable or renewable.

(5) The holder of a permit shall not allow another person not employed by or acting for that permit holder to dig for, excavate, remove or dispose of quarry materials from the area to which that permit applies unless that person has a subordinate permit for that area.

(6) Where the minister is satisfied that a quarry is not being operated in compliance with this Act or the conditions of a permit issued for that quarry, he or she may cancel that permit and may order that the holder of the permit take the action specified in the order to bring the quarry into compliance with

the permit or to rehabilitate the area as the minister considers necessary.

(7) Notwithstanding another section of this Act, the minister may, where he or she considers it necessary

- (a) in order to manage the quarry material resource;
- (b) to avoid a conflict of land uses; and
- (c) where a permit has been issued in error,

cancel a permit issued under this section.

(8) A permit may be issued to a department of the government of the province.

1998 cQ-1.1 s5

Subordinate quarry permit

6. (1) A person may apply to the minister for a subordinate quarry permit to dig for, excavate, remove and dispose of a specified quantity of quarry materials from an area for which a permit has been issued.

(2) The minister may issue a subordinate quarry permit to a person who applies under subsection (1) provided that

- (a) the quarry materials to which the subordinate permit applies are vested in the Crown;
- (b) the subordinate permit is for a specified period of not more than one year; and
- (c) an application is made in the required form and is accompanied by the required fee.

(3) A subordinate permit issued under this section

- (a) shall describe the area of land to which it applies;

(b) is subject to the terms and conditions that the minister may prescribe; and

(c) is subject to the payment of an amount by way of royalty as may be specified, either specially or generally, in the subordinate permit, in advance where that permit governs the removal of a specified quantity of quarry material or class of them for which a royalty has been fixed under section 11.

(4) Notwithstanding subsection (2), a subordinate permit shall not be

(a) issued without the approval of the permit holder for the location to which the subordinate permit would apply; and

(b) considered to take away the obligation of a permit holder to rehabilitate the area to which that permit applies.

(5) A person shall not dig for, excavate, remove and dispose of quarry materials from an area for which a permit has been issued to another person except in accordance with this section.

(6) A subordinate permit is not assignable or renewable.

(7) The holder of a subordinate permit shall not allow another person not employed by or acting for that subordinate quarry permit holder to dig for, excavate, remove or dispose of quarry materials from the area to which that subordinate quarry permit applies unless that person has a permit or another subordinate permit for that area.

(8) Where the minister is satisfied that a quarry is not being operated in compliance with a subordinate permit issued for that quarry, he or she may cancel that subordinate permit and may order that the holder of that subordinate permit take the action specified in the order to bring the quarry into compliance

with that subordinate permit or to rehabilitate the area as the minister considers necessary.

(9) Notwithstanding another section of this Act, the minister may, where he or she considers it necessary

(a) in order to manage the quarry material resource;

(b) to avoid a conflict of land uses; and

(c) where a subordinate permit has been issued in error,

cancel a subordinate permit issued under this section.

1998 cQ-1.1 s6

Beach permit

7. (1) A person may apply to the minister for a beach permit to quarry, excavate, remove and dispose of quarry material from a beach.

(2) The minister may issue a beach permit to a person who applies under subsection (1) provided that

(a) the removal of the quarry material is for non commercial use;

(b) the quarry material to which the beach permit applies is vested in the Crown;

(c) the beach permit is for a period of not greater than 30 days; and

(d) an application is made in the required form and is accompanied by the required fee.

(3) A beach permit issued under this section

(a) shall describe the area of beach to which it applies;

(b) is subject to terms and conditions that the minister may prescribe; and

(c) is not assignable or renewable.

(4) Where the minister is satisfied that the excavation or removal of quarry material is not carried out in accordance with the beach permit issued, he or she may cancel that beach permit and order its holder to rehabilitate the area as the minister considers necessary.

(5) Notwithstanding another section of this Act, the minister may, where he or she considers it necessary, in order to manage the quarry material resource or to avoid a conflict of land uses, cancel a beach permit issued under this section.

(6) Sections 5, 6 and 8 shall not apply to areas to which this section applies.

1998 cQ-1.1 s7

Quarry leases

8. (1) A person may apply to the minister for a lease of quarry materials.

(2) The minister may issue a lease

(a) where he or she believes that the person applying for that lease has a long term need for a quarry material;

(b) on terms and conditions which he or she may impose;

(c) for not more than 20 years; and

(d) in accordance with the terms and conditions prescribed by regulation.

(3) A lease shall not be issued to a person with respect to quarry materials where a permit is held for the same area by another person.

(4) A lease

- (a) confers upon the lessee the exclusive right to dig for, excavate, remove and dispose of those quarry materials described in the lease;
- (b) is subject to the payment of rent that the minister may fix for the area of land described in the lease;
- (c) is subject to the payment of the amount by way of royalty that may be set under section 11;
- (d) may be renewed by the minister for a term not exceeding 20 years for each renewal and subject to those additional terms, conditions, payment of fees, rentals or royalties that the minister may establish; and
- (e) is subject to cancellation by the minister where the lessee fails to pay the rent or royalty, commits an offence under this Act, or is in breach of a condition of the lease which is not remedied to the satisfaction of the minister.

(5) A lease issued under this section

- (a) shall be signed and sealed by the minister and the lessee; and
- (b) may be assigned or sublet to another person with the consent of the minister, which consent shall not be unreasonably withheld.

(6) Notwithstanding subsection (2), a lease shall not be issued until

- (a) a survey of the perimeter of the area covered by the application for the lease has been carried out by a qualified land surveyor;

- (b) a certified plan of the survey referred to in paragraph (a), with the surveyor's notes and a proper description of the land is filed with the application for the lease;
- (c) the land area to be covered by the lease is marked in the manner required by regulation; and
- (d) a development and rehabilitation plan in the form and containing the information required by the minister is filed with the application for the lease.

(7) A plan referred to in paragraph (6)(d) shall be revised and updated at least once in every 5 years that the lease continues to be valid.

(8) A person who has a lease shall comply with this Act and the terms and conditions applicable to that lease.

(9) The minister may require a permit holder or a person applying for a permit to apply for a lease under this section

- (a) in order to better manage a quarry material resource;
- (b) where the amount of quarry activity carried out or proposed, in the opinion of the minister, warrants operation under a lease;
- (c) where the quarry activity occurs or is proposed to occur throughout the year or part of a year for 4 or more consecutive years;
- (d) where a lease would mitigate a conflict with other land uses; or
- (e) where a lease would ensure the rehabilitation of a quarry site or proposed site.

Rights not conferred 9. A permit, subordinate permit, beach permit and a lease do not confer a right to minerals as defined in the *Mineral Act* .

1998 cQ-1.1 s9

Reservation 10. A person may apply to the minister for and the minister may, in accordance with the regulations, allow that person to have a reservation of an area for the purpose of a future application for a lease or permit under this Act and the minister may establish an annual fee for maintaining that reservation.

1998 cQ-1.1 s10

Royalties 11. (1) The Lieutenant-Governor in Council may, by order, set amounts payable by royalty, either generally, or specifically with respect to the quantities of a quarry material or class of quarry material applicable to a permit, subordinate permit or lease.

(2) The holder of a permit, subordinate permit or lease shall keep and maintain a record of quarry materials excavated and removed from the area of land covered by the permit, subordinate permit or lease and shall, upon demand of an officer authorized by the minister, make those records available for inspection for the purpose of the calculation of a royalty under subsection (1).

1998 cQ-1.1 s11

Royalties collectible on illegal removal 12. (1) Notwithstanding that a person has excavated, dug for, removed, taken or carried away quarry material in contravention of section 22 and has been or is being prosecuted for doing so, that person is liable to and shall pay to the Crown an amount equal to the amount of royalties that would be payable in respect of that quarry material had the material been excavated, dug for, removed, taken or carried away under a valid permit, subordinate permit, beach permit or lease issued under this Act.

(2) An amount owing under this section may be recovered as a debt due to the Crown.

1998 cQ-1.1 s12

Rent **13.** (1) The minister may establish an annual rental rate for a lease and for a permit based upon the size of the land area covered by that lease or permit whether or not that land is vested in the Crown.

(2) The minister may establish an application fee for subordinate permits and beach permits.

1998 cQ-1.1 s13

Inspectors **14.** (1) The minister may appoint or designate persons or a class of persons as inspectors for the purpose of this Act.

(2) The minister may authorize a person employed in the department or a person or class of persons designated under subsection (1) to perform and exercise those duties imposed and powers conferred by this Act upon the minister that may, in the opinion of the minister, be conveniently performed or exercised by that person and the performance or exercise of those duties or powers by that authorized person shall be of the same effect as if they were performed or exercised by the minister.

1998 cQ-1.1 s14

Powers of inspectors **15.** An inspector may, at reasonable times, enter upon the business premises, a quarry or property other than a private dwelling place where a person's records with respect to quarry activities are kept where it is reasonably necessary to determine compliance with this Act and may

(a) inspect the premises, quarry or property and equipment and machinery found there to ascertain that a permit,

subordinate permit, lease and this Act have been complied with; and

- (b) inspect, audit or examine books of account, records, financial statements, including balance sheets and profit and loss statements or other documents at that location.

1998 cQ-1.1 s15

Search and seizure

16. (1) Where an inspector believes on reasonable grounds that a person is contravening or has contravened this Act, the inspector may, with a warrant issued under subsection (2), enter onto commercial, private or other premises or property, and

- (a) examine and inspect the premises or property and make those inquiries that the inspector considers necessary;
- (b) seize, take away and hold anything which on reasonable grounds appears to be used in contravening this Act, including equipment, machinery and motor vehicles; and
- (c) seize and take away manifests, bank statements, books, accounts or records and shall, upon the request of the owner of them, make copies of those manifests, bank statements, books, accounts or records and those copies shall be returned to that owner as soon as is practicable.

(2) A Provincial Court judge who is satisfied upon oath or affirmation that there are reasonable grounds for believing there is on commercial, private or other premises or property, anything that will provide evidence with respect to a contravention of this Act may issue to the person named in the warrant, a warrant to enter commercial, private or other premises or property and search for and seize anything that will provide evidence with

respect to a contravention of this Act, subject to the conditions that may be specified in the warrant.

(3) The permit, subordinate permit or lease holder or other person in charge of the premises or property referred to in this section and a person found there shall give an inspector reasonable help to enable the inspector to carry out his or her duties and functions under this section and shall provide the information that the inspector may reasonably request.

(4) Notwithstanding subsection (1), an inspector may exercise the power of search referred to in that subsection without a warrant issued under subsection (2) where the conditions for obtaining the warrant exist but by reason of exigent circumstance it would not be practical to obtain the warrant.

(5) For the purpose of subsection (4), exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or the loss or destruction of evidence.

1998 cQ-1.1 s16; 2004 c36 s35

Disposal

17. (1) Where a person from whom equipment, machinery, a motor vehicle or other thing has been seized under section 16 is convicted of an offence under this Act in relation to that seizure, the Provincial Court judge hearing the charge, irrespective of another penalty imposed, may order that that equipment, machinery, motor vehicle or other thing shall be forfeited to the Crown to be disposed of as the minister directs.

(2) The proceeds from the sale of equipment, machinery, motor vehicles other things directed to be sold under subsection (1) shall, after payment of costs incurred by the minister in seizing, impounding, holding and disposing of them, be paid into the Consolidated Revenue Fund.

(3) A person from whom equipment, machinery, a motor vehicle or other thing has been seized under section 16 who is not convicted of an offence under this Act in relation to that seizure or against whom an order for seizure is not made under subsection (1) by a Provincial Court judge, shall have that item returned within 3 months from the date of the court proceedings at which the finding of not guilty was made unless further proceedings by way of appeal have been commenced.

1998 cQ-1.1 s17

Action barred

18. An inspector or other person authorized under this Act is not personally liable in an action or a proceeding for or in respect of an act or thing done or omitted to be done by him or her in the performance of his or her duties under this Act.

1998 cQ-1.1 s18

Stop order

19. (1) Where an inspector or other employee of the department whom the minister may authorize for the purpose, is of the opinion that an activity, work or operation is being carried out which contravenes this Act, he or she may order the person responsible to stop that activity, work or operation and to immediately undertake remedial work necessary to comply with this Act and the conditions of a lease, permit, subordinate permit or beach permit.

(2) An order made under subsection (1) shall be signed by the inspector or other employee making the order and shall be served upon the person to whom it is addressed either personally or by certified mail or, where the person engaged in the activity, work or operation is not known, by posting a notice on the property on which that activity, work or operation is taking place.

1998 cQ-1.1 s19

Appeal **20.** (1) A person who feels aggrieved by an order made under section 19 may, within 14 days of the service or posting of the order appeal that order to a judge of the Trial Division by filing a notice of the appeal with the Trial Division and by serving a copy of that notice on the minister or the deputy minister of the department.

(2) The Trial Division may make whatever order with respect to the appeal that appears just.

(3) Notwithstanding that an appeal has been made under this section, an order made under section 19 remains in effect pending the final decision on the appeal.

1998 cQ-1.1 s20

Offence **21.** (1) A person who disobeys an order made under section 19 is guilty of an offence and is liable on summary conviction to a fine of not less than \$10,000 and not more than \$50,000 or to imprisonment for not less than 30 days and not more than 6 months or to both the fine and imprisonment.

(2) Every continuance for a day or for a part of a day of a contravention referred to in subsection (1) constitutes a separate offence.

(3) Where a corporation fails to pay a fine imposed under subsection (1), the court which imposed the fine may order that the directors of the corporation, at the time when the corporation was required to pay the fine, are jointly and individually liable, together with the corporation, to pay the amount of the fine, and the court may order that where those directors fail to pay the fine imposed on them by the court, that any or all of those directors may be imprisoned for not more than 30 days.

1998 cQ-1.1 s21

Prohibition **22.** (1) A person shall not

- (a) excavate, dig for, remove, take or carry away quarry material, the title to which is vested in the Crown;
- (b) prepare a site for the removal of quarry material; or
- (c) where the land is vested in the Crown, bring equipment to or use equipment on that land that could be used to excavate quarry material,

except in accordance with this Act and terms and conditions of a lease, permit, subordinate permit or beach permit issued under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction

- (a) for a first offence or a subsequent offence occurring more than 5 years after a previous conviction for that offence, to a fine of not less than \$2,000 and not more than \$10,000 or to imprisonment for a term of not less than 30 days and not more than 90 days or to both the fine and imprisonment; and
- (b) for a subsequent offence occurring within 5 years of a previous conviction for an offence under subsection (1), to a fine of not less than \$10,000 and not more than \$50,000 or to imprisonment for a term of not less than 30 days and not more than 6 months or to both the fine and imprisonment.

(3) The court may, in addition to imposing a fine under subsection (2), order the offender to restore the land to which the offence relates to a condition satisfactory to the minister and the offender shall carry out the order of the court within the period of time that is considered reasonable by the court.

(4) Where an offender fails to comply with an order under subsection (3), the minister may do the necessary work and charge the offender with the cost of it and that cost may be recovered as a debt due to the Crown.

(5) Every continuance for a day or a part of a day of the contravention referred to in subsection (1) constitutes a separate offence.

(6) Where a corporation fails to pay a fine imposed under subsection (2), the court which imposed the fine may order that the directors of the corporation, at the time the corporation was required to pay the money, are jointly and individually liable, together with the corporation, to pay the amount of the fine, and the court may order that where those directors fail to pay the fine imposed upon them by the court, that any or all of those directors be imprisoned for not more than 30 days.

1998 cQ-1.1 s22

Offence **23.** Where a penalty for an offence is not specifically provided for in another section of this Act, a person who contravenes or does not comply with this Act, an order made under this Act or a term or condition of a permit, subordinate permit or lease issued under this Act is guilty of an offence and liable on summary conviction

(a) for a first offence to a fine of not less than \$100 and not more than \$1,000; and

(b) for a subsequent offence, to a fine of not less than \$500 and not more than \$5,000.

1998 cQ-1.1 s23

Register **24.** The director shall keep a register containing particulars of permits, subordinate permits and leases issued under this Act and the register shall be available for public inspection during normal office hours.

1998 cQ-1.1 s24

Regulations

25. The minister may make regulations

- (a) prescribing the information that may be required for applications made under the Act;
- (b) prescribing the manner in which land is to be marked for the purposes of this Act;
- (c) respecting the terms and conditions of permits, subordinate permits, beach permits, leases and renewed leases;
- (d) prescribing the persons or category of persons who may apply for a lease;
- (e) providing for the restoration and rehabilitation requirements for areas from which quarry materials are removed, taken or carried away and providing for a requirement for a surety to ensure that restoration and rehabilitation;
- (f) restricting the extent of land to which permits, subordinate permits and leases apply;
- (g) respecting information, priorities, prerequisites and other requirements necessary when applying for subsequent permits;
- (h) respecting the content of records required under the Act;
- (i) respecting the reservation of an area and the renewal of a reservation of an area under this Act;
- (j) providing for the exclusion of areas from which quarry materials may be removed, taken or carried away and for the reservation of areas for the removal of quarry materials;

(k) respecting production requirements necessary for the issuance and maintenance of a lease;

(l) prescribing additional duties, functions and powers of the director;

(m) providing for the rectification of minor or typographical errors in permits, subordinate permits and leases; and

(n) generally, to give effect to the purposes of this Act.

1998 cQ-1.1 s25

Fees and forms

26. The minister may set fees and prescribe forms for the purpose and administration of this Act.

1998 cQ-1.1 s26

Title to quarry materials unaffected

27. (1) Nothing in this Act affects the title of a person to quarry material validly acquired in accordance with the law existing at the date of its acquisition.

(2) Notwithstanding the *Interpretation Act*, a permit or lease issued under sections 83, 85 and 88 of *The Crown Lands (Mines and Quarries) Act*, the Act repealed by the *Mineral Act*, continues to exist in accordance with the law in force before July 12, 1977 during the currency of that permit or lease, but section 8 of this Act applies following the termination of a permit issued under that section 83.

1998 cQ-1.1 s27

Exception as quarry material

28. Notwithstanding the provisions of this Act, where

(a) slate, marble, granite or other similar stone used as dimension stone; and

(b) dolomite, limestone, silica and other similar product,

is mined or quarried under a lease issued under the *Mineral Act* and that material is dealt with in a manner which would make the material subject to this Act, that material shall be considered to be a mineral that is subject to the *Mineral Act* .

1998 cQ-1.1 s28

Transitional

29. (1) An exploration licence, quarry permit or quarry lease issued under the former Act with respect to a material which, under this Act, is subject to the *Mineral Act* shall continue to have the former Act apply as if the former Act were still in force until that licence, permit or lease expires, is to be renewed or reissued or one year after the coming into force of this Act, whichever occurs first, at which time that licence, permit or lease shall terminate and the *Mineral Act* shall apply to that material.

(2) An exploration licence, quarry permit or quarry lease issued under the former Act with respect to a quarry material and not referred to in subsection (1), shall continue to have the former Act apply as if the former Act were still in force until the licence, permit or lease expires, is to be renewed or reissued or one year after the coming into force of this Act, whichever occurs first, at which time that licence, permit or lease shall terminate and this Act shall apply to that quarry material.

(3) A person who holds a licence, permit or lease referred to in subsection (1) or (2) which would terminate under either subsection shall, where that person requires it, and before that termination, apply under the *Mineral Act* or this Act for the necessary licence, permit or lease or that person shall lose any right of priority with respect to materials subject to that licence, permit or lease.

1998 cQ-1.1 s29

30. The *Quarry Materials Act* is repealed.

RSN1990 cQ-1 Rep.

1998 cQ-1.1 s30

Commencement

31. This Act shall come into force on a date to be proclaimed by the Lieutenant-Governor in Council. (In force - Jan. 15/99)

1998 cQ-1.1 s31