



BILL NO. 14

Government Bill

*1st Session, 62nd General Assembly
Nova Scotia
62 Elizabeth II, 2013*

**An Act to Amend Chapter 244
of the Revised Statutes, 1989,
the Justices of the Peace Act,
and Chapter 238 of the Revised Statutes, 1989,
the Provincial Court Act**

CHAPTER 39
ACTS OF 2013

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 12, 2013**

The Honourable Lena Metlege Diab
Minister of Justice

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 244
of the Revised Statutes, 1989,
the Justices of the Peace Act,
and Chapter 238 of the Revised Statutes, 1989,
the Provincial Court Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 2 of Chapter 244 of the Revised Statutes, 1989, the *Justices of the Peace Act*, as enacted by Chapter 28 of the Acts of 2000, is amended by

(a) adding immediately after clause (a) the following clauses:

(aa) “Association” means the Nova Scotia Presiding Justices of the Peace Association;

(ab) “commission” means a commission established pursuant to this Act;

(b) striking out the period at the end of clause (e) and substituting a semi-colon; and

(c) adding immediately after clause (e) the following clause:

(f) “tribunal” means a tribunal established pursuant to Section 21A of the *Provincial Court Act*.

2 Chapter 244 is further amended by adding immediately after Section 11 the following Sections:

11A (1) There shall be a commission to determine the hourly rate to be paid to presiding justices of the peace.

(2) The person selected as chair of the tribunal in accordance with subsection 21A(3) of the *Provincial Court Act* is the commission.

(3) Where the chair of the tribunal is unable or unwilling to be the first commission, the Dean of the Schulich School of Law at Dalhousie University shall appoint the first commission.

(4) The commission is entitled to remuneration and reimbursement for reasonable expenses as determined by the Minister.

11B (1) The commission shall inquire into and prepare a report containing recommendations with respect to

(a) the hourly rate to be paid to presiding justices of the peace; and

(b) the annual adjustments to the hourly rate in respect of cost-of-living increases.

(2) The hourly rate referred to in subsection (1) must be a percentage of the *per diem* payment made to judges not receiving salaries as recommended by the tribunal pursuant to clause 21E(1)(b) of the *Provincial Court Act*.

(3) A presiding justice of the peace is not entitled to any benefits.

(4) When making recommendations pursuant to this Section, the commission shall take into consideration the following:

- (a) the constitutional law of Canada;
- (b) the need to maintain the independence of the presiding justices of the peace;
- (c) the need to attract excellent candidates for appointment as presiding justices of the peace;
- (d) the unique nature of the role of presiding justices of the peace;
- (e) the manner in which the hourly rate paid to presiding justices of the peace in the Province compares to the hourly rates paid to presiding justices of the peace in other jurisdictions in Canada, having regard to the differences amongst those jurisdictions;
- (f) the provision of a fair and reasonable hourly rate for presiding justices of the peace in light of prevailing economic conditions in the Province and the overall state of the Provincial economy;
- (g) the adequacy of the hourly rate for presiding justices of the peace having regard to the cost of living and the growth or decline in real *per capita* income in the Province;
- (h) the relevant submissions made to the commission;
- (i) the nature of the jurisdiction and responsibility of the presiding justices of the peace;
- (j) public sector compensation trends;
- (k) the financial policies and priorities of the Province;
- (l) the part-time nature of the employment of presiding justices of the peace;
- (m) other such factors as the commission considers relevant to the matters in issue.

11C (1) The first commission holds office until January 14, 2016.

(2) Each subsequent commission holds office for a term of three years commencing on January 15th following the day the previous commission ceases to hold office.

11D The commission has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

11E (1) Subject to this Section, the commission may determine its own procedures, including procedures for the making of submissions to the commission.

(2) The commission shall consider all written materials transmitted by the tribunal pursuant to subsection 21GA of the *Provincial Court Act*.

(3) The commission shall provide copies of all materials referred to in subsection (2) to the Association and the Minister.

(4) The commission shall consider any written submissions from the Association and the Minister.

(5) The commission may submit written questions to the Association and to the Minister after the commission has reviewed written submissions referred to in subsection (4).

(6) The commission may, where it considers it necessary to complete its report, convene a hearing to receive oral submissions from the Association and the Minister.

11F Notwithstanding subsection 21D(1) of the *Provincial Court Act*, the Association and any presiding justice of the peace do not have standing to make submissions to a tribunal established pursuant to Section 21A of the *Provincial Court Act* on matters referred to in clause 21E of the *Provincial Court Act*.

11G The report of the first commission must contain recommendations covering the period from April 1, 2014 to March 31, 2020, inclusive, and the report of each subsequent commission must cover each subsequent six-year period.

11H (1) The report of the first commission must be submitted to the Minister on or before December 1, 2014.

(2) The report of the second commission must be submitted to the Minister on or before December 1, 2019.

(3) The report of subsequent commissions must be submitted to the Minister on or before the first day of December of every sixth year thereafter.

11I (1) Where recommendations of the commission require legislation for implementation, the Minister shall, within one year of the report of the commission, introduce in the House of Assembly the necessary legislation to implement the recommendations.

(2) Recommendations made in the report of a commission, other than those that require legislation, take effect on the first day of April in the year immediately following the year in which the commission is required to submit its report.

11J Upon receipt of the report of the commission, the Minister shall forward the report to the Governor in Council and, subject to Section 11I, the Governor in Council shall cause the recommendations contained in the report with respect to the matters referred to in subsection 11B(1) to be implemented and the recommendations have the same force and effect as if enacted by the Legislature and are in substitution for the provisions of this Act or any regulations made pursuant to this Act relating to those matters.

11K (1) Where the Minister proposes to introduce legislation that deals with matters referred to in subsection 11B(1) other than that required to implement the recommendations of the commission, the Minister shall forward the proposed legislation to the commission for review and comment.

(2) The commission shall provide the Minister with its comments within 30 days, unless the Minister specifies a longer period of time for review and comment by the commission.

11L (1) The Minister or the Association may, within 15 days of the receipt of the commission's report, request the commission amend, alter or vary its report if the Minister or the Association is of the view that the commission failed to deal with a matter arising from an inquiry or that the commission made an error that is apparent on the face of the report.

(2) Where the commission amends, alters or varies its report pursuant to subsection (1), the commission shall, within 15 days, deliver to the Minister and the Association the amended, altered or varied report.

(3) The amendments, alternations or variations in the report referred to in subsection (2) must only deal with matters referred to the commission pursuant to subsection (1).

(4) The decision of the commission pursuant to this Section is final and binding on the Minister and the Association.

3 Clause 12(1)(e) of Chapter 244 is repealed.

4 Section 21A of Chapter 238 of the Revised Statutes, 1989, the *Provincial Court Act*, as enacted by Chapter 7 of the Acts of 1998, is amended by adding immediately after subsection (6) the following subsection:

(6A) Notwithstanding subsection (6) and subject to subsections (7) and (8),

(a) a member of the tribunal who holds office upon the coming into force of this subsection holds office for a term that expires on the fourteenth day of January, 2016; and

(b) a member of a subsequent tribunal holds office for a term that expires on the fourteenth day of January of the third year after the year of the member's appointment.

5 Section 21B of Chapter 238, as enacted by Chapter 7 of the Acts of 1998, is amended by

(a) adding "(1)" immediately after the Section number; and

(b) adding the following subsection:

(2) Notwithstanding subsection (1), the members of each subsequent tribunal must be appointed on or before the fifteenth day of January of the year in which the tribunal is established.

6 Section 21D of Chapter 238, as enacted by Chapter 7 of the Acts of 1998, is amended by adding immediately after subsection (4) the following subsection:

(5) No later than thirty days after its appointment, the tribunal shall convene a pre-hearing conference with the Minister and the Association.

7 Section 21F of Chapter 238, as enacted by Chapter 7 of the Acts of 1998, is amended by

(a) adding “(1)” immediately after the Section number; and

(b) adding the following subsection:

(2) Notwithstanding subsection (1), the report of the tribunal that is in place upon the coming into force of this subsection must contain recommendations covering the period from the first day of April, 2014, to the thirty-first day of March, 2017, inclusive, and the report of each subsequent tribunal must cover a similar three-year period.

8 Section 21G of Chapter 238, as enacted by Chapter 7 of the Acts of 1998, is amended by adding immediately after subsection (2) the following subsections:

(3) Notwithstanding subsection (2), the report of the tribunal in place upon the coming into force of this subsection must be submitted to the Minister on or before the first day of October, 2014.

(4) Notwithstanding subsections (2) and (3), the report of the first tribunal established after the coming into force of this subsection must be submitted to the Minister on or before the first day of October, 2016, and the report of each subsequent tribunal every third year thereafter.

9 Chapter 238 is further amended by adding immediately after Section 21G the following Section:

21GA (1) In 2014, the tribunal shall transmit to the commission established pursuant to the *Justices of the Peace Act* all written materials submitted to the tribunal for the preparation of the tribunal’s report for that year.

(2) In 2019 and every sixth year thereafter, the tribunal shall transmit to the commission established pursuant to the *Justices of the Peace Act* all written materials submitted to the tribunal for the preparation of the tribunal’s report for that year.

(3) The transmission of the written materials referred to in subsections (1) and (2) must occur upon their filing with the tribunal.

10 (1) Section 21I of Chapter 238, as enacted by Chapter 7 of the Acts of 1998, is amended by adding immediately after subsection (1) the following subsection:

(1A) Notwithstanding subsection (1), the Minister shall introduce in the House of Assembly the necessary legislation to implement, on or before the first day of October, 2015, the recommendations contained in the report of the tribunal in place upon the coming into force of this subsection.

(2) Section 21I of Chapter 238, as enacted by Chapter 7 of the Acts of 1998, is further amended by adding immediately after subsection (2) the following subsection:

(2A) Notwithstanding subsection (2), all recommendations contained in the report of the tribunal in place upon the coming into force of this subsection, other than those referred to in subsection (1A), must be implemented and must

take effect on the first day of April, 2014, or such later date as determined by the tribunal.

11 Subsection 21L (1) of Chapter 238 is repealed and the following subsection substituted:

(1) Where the Minister proposes to introduce legislation that deals with matters referred to in subsection (1) of Section 21E that may affect judges of the Provincial Court or the Family Court, other than that required to implement the recommendations of the tribunal, the Minister shall forward the proposed legislation to the tribunal for review and comment.
