

Provincial Court Act

CHAPTER 238 OF THE REVISED STATUTES, 1989

as amended by

1992, c. 16, ss. 18-23, 24(2), 24(3) (in so far as it relates to R.S., c. 238, s. 6(3)), 25, 26, 27(1), 29; 1996, c. 23, s. 25; 1998, c. 7; 2000, c. 28, ss. 89-91; 2000, c. 29, s. 31; 2001, c. 5, s. 34; 2004, c. 6, ss. 27, 28; 2006, c. 43; 2013, c. 27; 2013, c. 39, ss. 4-11; 2016, c. 2, ss. 8-14; 2018, c. 1, Sch. A, s. 139



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 2000, c. 28, ss. 89-91; 2000, c. 29, s. 31; 2001, c. 5, s. 34; 2004, c. 6, ss. 27, 28;
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An Act Respecting Judges of the Provincial Court

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Short title

1 This Act may be cited as the *Provincial Court Act*. R.S., c. 238, s. 1; 1992, c. 16, s. 18.

Interpretation

2 In this Act,

(a) “court” means the Provincial Court of Nova Scotia or a judge thereof;

(b) “judge” means a judge of the provincial court and includes, for the purpose of Sections 22 to 27, a judge of the Family Court;

(c) “office” means the office of a judge. R.S., c. 238, s. 2; 1992, c. 16, s. 19; 2013, c. 27, s. 1; revision corrected.

Provincial Court of Nova Scotia

2A (1) There is hereby established a court of record to be known as the Provincial Court of Nova Scotia.

(2) The Governor in Council may determine and declare the seal to be used in the court and by which its proceedings shall be certified and authenticated. 1992, c. 16, s. 20; 1996, c. 23, s. 25.

Appointment of judges

3 (1) The Governor in Council may appoint, on the recommendation of the Attorney General, such judges as he deems necessary.

(2) The Governor in Council may appoint, on the recommendation of the Attorney General, a Chief Judge who shall hold the office of Chief Judge for such term as the Governor in Council may determine.

(2A) The Governor in Council may appoint, on the recommendation of the Attorney General, an Associate Chief Judge who shall hold the office of Associate Chief Judge for such term as the Governor in Council may determine.

(3) The Attorney General may designate a judge to act in the place of the Chief Judge for all purposes during the illness or absence of the Chief Judge and the Associate Chief Judge.

(4) The Attorney General may designate a judge to act in the place of the Associate Chief Judge for all purposes during the illness or absence of the Associate Chief Judge or while the Associate Chief Judge is acting in the place of the Chief Judge.

(5) Except where otherwise provided, the judge has in all respects equal power, authority and jurisdiction. R.S., c. 238, s. 3; 1992, c. 16, s. 21.

Judge from another province

3A (1) Notwithstanding any other provision of this Act, the Attorney General, upon the recommendation of the Chief Judge, may appoint a judge of the provincial court of another province of Canada to preside over an action, case, matter, process, hearing or proceeding in the Province if the Attorney General considers the appointment to be in the public interest.

(2) A judge appointed under subsection (1)

(a) holds office for the term set by the Attorney General so long as the judge remains a judge of the provincial court in another province of Canada;

(b) has the jurisdiction, powers, duties and authority given to judges under Section 7;

(c) shall be paid for services at a daily rate of remuneration equivalent to that paid to a judge appointed under Section 3 for the number of days of service provided during the term of appointment referred to in clause (a);

(d) shall be reimbursed for expenses incurred by the judge in respect of the services provided as if the judge were appointed under Section 3; and

(e) is subject to the authority of the Chief Judge. 2006, c. 43, s. 1.

Oath of office

4 (1) Every judge before taking office shall take and subscribe the following oath before the Chief Judge of the provincial court, a judge of the Court of Appeal or a judge of the Supreme Court:

I,, of in the County of, make oath and say, that I will well and truly serve our Sovereign Lady the Queen in the office of a judge of the provincial court, and I will well do right to all manner of people after the laws of the Province without fear, favor, affection or ill will.

Sworn at
this day of
., 19.,
before me

(2) The oath of office shall be transmitted to the Attorney General. R.S., c. 238, s. 4; 1992, c. 16, s. 22.

Immunity

4A A judge has the same immunity from liability as a judge of the Supreme Court. 1992, c. 16, s. 23.

Qualifications of judge

5 No person shall be appointed or serve as a judge unless he is a barrister of the Supreme Court of at least five years standing. R.S., c. 238, s. 5.

Term of office

6 (1) Every judge shall hold office during good behaviour unless he is removed from office by the Governor in Council as provided in subsection (4).

(2) Except as otherwise provided in this Act and notwithstanding any other enactment, every judge or judge of the Family Court shall retire from office upon reaching the age of seventy years.

(3) *repealed 1992, c. 16, s. 24.*

(4) *repealed 2000, c. 28, s. 89.*

R.S., c. 238, s. 6; 1992, c. 16, s. 24; 2000, c. 28, s. 89; 2004, c. 6, s. 27.

Appointment of retired judges

6A (1) Where it appears to the Chief Judge that it is in the public interest, the Chief Judge may, in accordance with regulations made pursuant to subsection (4), appoint retired judges to act as judges.

(2) Upon appointment, a judge appointed pursuant to subsection (1) has all the power, authority and jurisdiction necessary to carry out the duties assigned to that judge.

(3) A judge appointed pursuant to subsection (1) is not an employee within the meaning of the *Public Service Superannuation Act*.

(4) The Governor in Council, on the recommendation of the Attorney General, may make regulations determining the terms and conditions of the appointment of judges pursuant to subsection (1).

(5) The exercise by the Governor in Council of the authority contained in subsection (4) shall be regulations within the meaning of the *Regulations Act*. 1992, c. 16, s. 25.

Jurisdiction, powers and duties

7 Each judge shall

- (a) have jurisdiction throughout the Province;
- (b) have and exercise all the powers and perform all the duties conferred or imposed upon a judge by or under any Act of the Legislature or of the Parliament of Canada;
- (c) have and exercise the jurisdiction conferred upon a magistrate by Part XIX of the *Criminal Code* (Canada);
- (d) have and exercise all the power, jurisdiction and authority
 - (i) that immediately before the first day of April, 1976, was vested by or under any Act of the Legislature in a magistrate or stipendiary magistrate, and
 - (ii) of one or two or more justices of the peace;
- (e) have and exercise all the powers and perform all the duties conferred or imposed upon a magistrate, stipendiary magistrate or by one or more justices of the peace under any Act of the Parliament of Canada;
- (f) be *ex officio* a justice of the peace and a commissioner for taking affidavits. R.S., c. 238, s. 7.

Reservation of judgment

8 Upon the hearing of any proceeding the presiding judge may, of his own motion, or by consent of parties, reserve judgment until a future day, not later than six months from the day of reserving judgment. R.S., c. 238, s. 8.

Transfer of proceedings

9 Where the initial or any proceedings in any action, cause, prosecution or other matter have been taken before a judge such proceedings may be continued and concluded before any judge within the Province. R.S., c. 238, s. 9.

Restriction on fees

10 Notwithstanding any provision in any other Act of the Legislature or any provision in this Act, no fee shall be taken by any judge from any complainant or informant who is a police officer or constable of a city, town or municipality, or a constable in receipt of a salary from a city, town or municipal council, or a member of the Royal Canadian Mounted Police. R.S., c. 238, s. 10.

Full-time performance of duties

11 (1) No judge shall practise any profession or actively engage in any business, trade or occupation but shall devote his full time to the performance of his duties as a judge.

(2) No judge shall act as a commissioner, arbitrator, adjudicator, referee, conciliator or mediator on any commission or on any inquiry or other proceeding unless the judge is expressly authorized to do so by an Act of the Legislature, by the Governor in Council or by the Chief Judge of the Provincial Court.

(3) A judge authorized ~~pursuant~~ [pursuant] to subsection (2) to act as provided in that subsection shall not receive any remuneration therefor. R.S., c. 238, s. 11; 1992, c. 16, s. 26.

Use of court room or town hall

12 A judge shall have the right to use any court room or town hall belonging to a city, town or municipality in which he may sit but not so as to interfere with the ordinary use of the court room or town hall for other courts or other purposes for which the same is maintained. R.S., c. 238, s. 12.

Process returnable before judge

13 Notwithstanding the provisions of any Act of the Legislature now or hereafter in force, any justice of the peace may make any summons, warrant or other process which he is authorized to issue under any Act of the Legislature returnable before a judge having jurisdiction, and the forms, if any, prescribed in any such Act shall *mutatis mutandis* be sufficient. R.S., c. 238, s. 13.

Designation of judge

14 In every Act and in any proceeding, document or matter by, before or relating to a judge, he may be, and it shall be sufficient for all purposes if he is, described as or designated "judge of the provincial court". R.S., c. 238, s. 14.

Responsibility of Chief Judge

15 (1) The Chief Judge is responsible for the administration of the judicial functions of the court, including, without limiting the generality of the foregoing, the scheduling of the sittings of the court and the assignment of judicial duties.

(2) The Chief Judge may suspend a judge upon such terms and conditions as the Chief Judge may determine where the Chief Judge believes immediate action is necessary.

(3) Within ten days of suspending a judge, the Chief Judge shall request the Judicial Council to investigate the circumstances giving rise to the suspension and to take the appropriate action. R.S., c. 238, s. 15; 1992, c. 16, s. 27.

Judicial Council

16 (1) Subject to Section 17T, a Judicial Council is hereby established for the purpose of this Act consisting of

- (a) the Chief Justice of Nova Scotia, who shall be the Chair of the Council;
- (b) the Chief Judge of the Provincial Court;
- (c) the Chief Judge of the Family Court or, where the Family Court no longer exists, the Associate Chief Judge of the Provincial Court;
- (d) two judges of the Provincial Court or Family Court appointed by the Nova Scotia Provincial Judges' Association;
- (e) the President of the Nova Scotia Barristers' Society;
- (f) a practising member of the Nova Scotia Barristers' Society appointed by the Council of the Society and who has a minimum of five years as a practising member; and
- (g) two persons other than lawyers or retired lawyers, judges or retired judges of any court appointed by the Attorney General of Nova Scotia.

(2) Where a member of the Judicial Council is unable to carry out the duties of a member because of illness, a conflict of interest or any other cause, the member may be replaced for such time period as is considered necessary

- (a) in the case of the Chief Justice of Nova Scotia, by the Chief Justice of the Supreme Court or an Associate Chief Justice of that Court designated by the Chief Justice of Nova Scotia;
- (b) in the case of the Chief Judge of the Family Court, by the Associate Chief Judge of the Family Court or a judge of that Court designated by the Chief Judge;
- (c) in the case of the Chief Judge of the Provincial Court, by the Associate Chief Judge or a judge of that Court designated by the Chief Judge;
- (d) in the case of the Associate Chief Judge of the Provincial Court, by a judge of the Provincial Court designated by the Associate Chief Judge;

(e) in the case of a judge appointed pursuant to clause (d) of subsection (1), by another judge of the Family Court or the Provincial Court appointed for that purpose by the Nova Scotia Provincial Judges' Association;

(f) in the case of the President of the Nova Scotia Barristers' Society or a member appointed pursuant to clause (f) of subsection (1), by another member of the Society appointed for that purpose by the Council of the Society; and

(g) in the case of a person appointed pursuant to clause (g) of subsection (1), by another person appointed for that purpose by the Attorney General.

(3) Subject to subsection (4), members appointed pursuant to clauses (d), (f) and (g) of subsection (1) hold office for terms of three years and may be re-appointed but shall not be appointed for more than two successive terms.

(4) Notwithstanding subsection (3),

(a) one of the first members appointed pursuant to clause (d) of subsection (1) after the coming into force of this Section shall be appointed for a term of four years; and

(b) one of the first members appointed pursuant to clause (g) of subsection (1) after the coming into force of this Section shall be appointed for a term of two years. 2000, c. 28, s. 90.

Powers of Judicial Council

17 (1) The Judicial Council may

(a) receive a complaint;

(b) investigate a complaint;

(c) resolve a complaint;

(d) dismiss a complaint;

(e) adjudicate a complaint;

(f) retain counsel;

(g) hold hearings;

(h) delegate its functions to a committee or a member of the Judicial Council;

(i) determine its own procedures and any procedures governing a review committee.

(2) The Judicial Council shall order the payment by Her Majesty in right of the Province of the reasonable legal fees incurred by a judge in proceedings before a review committee or the Judicial Council, as determined by the Judicial Council in accordance with the regulations, unless the judge is convicted of an

offence contrary to the *Criminal Code* (Canada) in relation to the same circumstances that gave rise to the complaint. 2000, c. 28, s. 90.

Complaint against judge

17A (1) A complaint against a judge of the Provincial Court or the Family Court shall be made in writing by any person to

- (a) the Chief Judge of the Provincial Court in the case of a complaint against a Judge of the Provincial Court; or
- (b) the Chief Judge of the Family Court in the case of a complaint against a Judge of the Family Court.

(2) A complaint against the Chief Judge or Associate Chief Judge of the Provincial Court shall be made in writing to the Chief Judge of the Family Court or, in the absence of the Chief Judge of the Family Court, to the Chief Justice of Nova Scotia, in which case the Chief Justice has the powers and duties of the Chief Judge pursuant to Section 17B.

(3) A complaint against the Chief Judge or Associate Chief Judge of the Family Court shall be made in writing to the Chief Judge of the Provincial Court or, in the absence of the Chief Judge of the Provincial Court, to the Chief Justice of Nova Scotia, in which case the Chief Justice has the powers and duties of the Chief Judge pursuant to Section 17B.

(4) When a complaint is made against a judge of either the Provincial Court or the Family Court and the matter that gives rise to the complaint is ongoing before the judge who is the subject of the complaint, the person to whom the complaint is made pursuant to subsections (1) to (3) may defer dealing with the complaint until the conclusion of the proceedings before the judge. 2000, c. 28, s. 90.

Powers of Chief Judge upon receipt of complaint

17B (1) The Chief Judge to whom a complaint is made pursuant to Section 17A may

- (a) dismiss the complaint and provide written reasons to the complainant if
 - (i) the complaint is not within the jurisdiction of the Judicial Council,
 - (ii) the Chief Judge considers the complaint to be frivolous or vexatious, or
 - (iii) there is no evidence to support the complaint;
- (b) attempt to resolve the complaint;
- (c) refer the complaint to the Chair of the Judicial Council together with a recommendation that the complaint
 - (i) be dismissed,

- (ii) be resolved with the agreement of the judge, or
- (iii) be referred to a review committee for further investigation.

(2) Any discussions between the Chief Judge and the judge complained of respecting the complaint are confidential and shall not be disclosed by the Chief Judge to the Judicial Council. 2000, c. 28, s. 90.

Upon receipt of recommendation of Chief Judge

17C Upon receipt of a recommendation made pursuant to clause (c) of subsection (1) of Section 17B, the Chair of the Judicial Council may either accept the recommendation of the Chief Judge, and advise the complainant and the Judge in writing, or empanel a review committee. 2000, c. 28, s. 90.

Powers of Chief Judge without complaint

17D (1) The Chief Judge of the Family Court may, at any time, without a complaint having been made, review any matter respecting the conduct or fitness for office of a judge of the Family Court and may refer the matter in writing to the Chair of the Judicial Council.

(2) The Chief Judge of the Provincial Court may, at any time, without a complaint having been made, review any matter respecting the conduct or fitness for office of a judge of the Provincial Court and may refer the matter in writing to the Chair of the Judicial Council.

(3) The Chief Justice of Nova Scotia may, at any time, without a complaint having been made, review any matter respecting the conduct or fitness for office of the Chief Judge or Associate Chief Judge of the Family Court or the Chief Judge or Associate Chief Judge of the Provincial Court and may refer the matter in writing to the Chair of the Judicial Council. 2000, c. 28, s. 90.

Upon referral by Chief Judge

17E Upon receipt of a referral made pursuant to Section 17D, the Chair of the Judicial Council shall empanel a review committee. 2000, c. 28, s. 90.

Review committee

17F A review committee shall consist of

- (a) one member of the Judicial Council appointed pursuant to clause (d) of subsection (1) of Section 16;
- (b) one member of the Judicial Council appointed pursuant to either clause (e) or (f) of subsection (1) of Section 16; and
- (c) one member of the Judicial Council appointed pursuant to clause (g) of subsection (1) of Section 16. 2000, c. 28, s. 90.

Duties and powers of review committee

- 17G** The review committee shall investigate the complaint and may
- (a) dismiss the complaint;
 - (b) resolve the complaint with the agreement of the judge; or
 - (c) refer the complaint to a hearing before the Judicial Council.
- 2000, c. 28, s. 90.

Quorum

- 17H** A quorum of the Judicial Council for hearing complaints is five persons
- (a) one of whom must be the Chief Justice of Nova Scotia who shall be the Chair;
 - (b) one of whom must be a member referred to in clause (b) or (c) of subsection (1) of Section 16;
 - (c) one of whom must be a member appointed pursuant to clause (d) of subsection (1) of Section 16;
 - (d) one of whom must be a member referred to in clause 16(1)(e) or appointed pursuant to clause (f) of subsection (1) of Section 16; and
 - (e) one of whom must be a member appointed pursuant to clause (g) of subsection (1) of Section 16. 2000, c. 28, s. 90.

Prohibited participation

17I (1) Notwithstanding clause (b) of Section 17H, where the complaint referred to the Judicial Council is against a judge of the Provincial Court, neither the Chief Judge nor the Associate Chief Judge of the Provincial Court shall participate in the hearing.

(2) Notwithstanding clause (b) of Section 17H, where the complaint referred to the Judicial Council is against a judge of the Family Court, neither the Chief Judge nor the Associate Chief Judge of the Family Court shall participate in the hearing. 2000, c. 28, s. 90.

Hearing in private

17J Where the Judicial Council determines that the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, it may hold all or part of the hearing in private. 2000, c. 28, s. 90.

Powers of Judicial Council

17K Following the hearing of a complaint, the quorum of the Judicial Council that heard the complaint may

- (a) dismiss the complaint;

(b) require the judge to take a leave of absence with pay for the purpose of obtaining counseling, remedial treatment or instruction;

(c) require the judge to obtain counseling, remedial treatment or instruction;

(d) impose such other non-monetary sanctions including reprimand, as the Council considers appropriate in the circumstances; or

(e) recommend that the judge be removed from office if, in the opinion of the Judicial Council, the judge in respect of whom an inquiry or investigation has been made is unable to duly execute the function of the judge's office by reason of

(i) age or infirmity,

(ii) having been guilty of misconduct,

(iii) having failed in the due execution of that office, or

(iv) having been placed, by the judge's conduct or otherwise, in a position incompatible with the due execution of that office.
2000, c. 28, s. 90.

Recommendation for removal from office

17L A recommendation for removal from office shall be made to the Attorney General. 2000, c. 28, s. 90.

Removal from office

17M The Governor in Council may, by order, after receipt of a report by the Judicial Council containing a recommendation that a judge be removed from office, and on the recommendation of the Attorney General, remove the judge from office. 2000, c. 28, s. 90.

Decision to be in writing

17N A decision of the Judicial Council shall be in writing. 2000, c. 28, s. 90.

Distribution of decision

17O The decision of the Judicial Council shall be provided to the complainant, the judge who is the subject of the complaint and the Attorney General. 2000, c. 28, s. 90.

Public Inquiries Act

17P The Judicial Council has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 2000, c. 28, s. 90.

Decision to be public

17Q The decision of the Judicial Council shall be made public by placing it in a file at a location to be determined by the Judicial Council. 2000, c. 28, s. 90.

Annual report of Judicial Council

17R The Judicial Council shall prepare an annual report that shall be submitted to the Attorney General. 2000, c. 28, s. 90.

Regulations

17S (1) The Governor in Council may make regulations regarding payment of reasonable legal fees incurred by a judge in proceedings before the review and hearing committees.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2000, c. 28, s. 90.

Agreement for joint judicial council

17T (1) The Attorney General may enter into an agreement on terms and conditions set out in the Schedule to this Act with the government of any province of Canada to provide for the joint establishment and operation of a joint judicial council in place of the Judicial Council established pursuant to Section 16.

(2) The agreement referred to in subsection (1) comes into force on such day as the Governor in Council orders, at which time the Judicial Council established pursuant to Section 16 shall

- (a) receive no further complaints; and
- (b) continue to deal with any complaints of which it is seized, subject to the procedures and requirements set out in Sections 17 to 17Q,

and, after having dealt with those complaints, that Judicial Council shall cease operating.

(3) For such time as the agreement referred to in subsection (1) is in force, any complaints that would otherwise have been dealt with by the Judicial Council appointed pursuant to Section 16 shall be dealt with by the joint judicial council and that council has the powers, duties and functions contemplated or described in the Schedule to this Act. 2000, c. 28, s. 90.

Administrator of court

18 (1) The Attorney General may designate or appoint a person in the public service to be the administrator of the court.

(2) The administrator shall perform the duties prescribed in the regulations. R.S., c. 238, s. 18.

Judicial notice of appointments

19 The appointment of every judge shall be judicially noticed. R.S., c. 238, s. 19.

Regulations

- 20** (1) The Governor in Council may make regulations
- (a) providing for the payment of expenses of judges;
 - (b) providing for the benefits to which judges are entitled, including
 - (i) leave of absence,
 - (ii) vacation, and
 - (iii) sick leave;
 - (c) determining the support staff of the court and prescribing their functions, duties, procedures and dress;
 - (d) prescribing the safe-keeping of exhibits tendered and received by the court;
 - (e) prescribing records to be kept and reports and returns to be made by the judges and support staff;
 - (f) providing for the safe-keeping, inspection and maintenance of books, documents and papers;
 - (g) prescribing to whom fines, penalties, forfeitures, fees and court costs collected in the court are to be paid and the manner and times for such payment;
 - (h) prescribing the duties of the justices of the peace when acting as support staff to the court;
 - (i) designating a place or places where a judge is to hold sittings;
 - (j) designating a place or places where a judge is to establish and maintain an office;
 - (k) designating the place or places and the area or areas within the Province within which a judge shall exercise his jurisdiction;
 - (l) requiring a judge to act during the absence of another judge;
 - (m) *repealed 1992, c. 16, s. 29.*
 - (n) prescribing the duties of the administrator;
 - (o) respecting such other matters as may be necessary to carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 238, s. 20; 1992, c. 16, s. 29.

Interpretation of Sections 21A to 21N

21 In Sections 21A to 21N,

- (a) “Association” means the Nova Scotia Provincial Judges’ Association;
- (b) “Minister” means the Minister of Justice. 1998, c. 7, s. 1.

Tribunal

21A (1) There shall be a tribunal to recommend the salaries and benefits for judges of the Provincial Court and judges of the Family Court, including the chief judge and the associate chief judge of each court.

(2) A tribunal shall be composed of three persons,

- (a) one of whom shall be appointed by the Association;
- (b) one of whom shall be appointed by the Minister; and
- (c) one of whom shall be appointed by the persons referred to in clauses (a) and (b).

(3) The person referred to in clause (c) of subsection (2) is the chair of the tribunal.

(4) Unless the Association and the Minister agree otherwise, no active or retired Provincially appointed or federally appointed judge, no member or former member of the House of Assembly, no elected member of a municipal council or the Conseil scolaire acadien provincial and no employee, as defined in the *Public Service Superannuation Act*, shall be appointed pursuant to subsection (2).

(5) Where the members appointed pursuant to clauses (a) and (b) of subsection (2) cannot agree on a member to be appointed pursuant to clause (c) of subsection (2), the Dean of Dalhousie Law School, after consultation with the Minister and the Association, shall appoint the chair of the tribunal.

(6) Subject to subsections (7) and (8),

- (a) a member of the first tribunal holds office for a term that expires on the thirty-first day of October, 2001; and
- (b) a member of a subsequent tribunal holds office for a term that expires on the thirty-first day of October of the third year after the year of the member’s appointment.

(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.

(7) Where a vacancy exists on a tribunal, the person or persons who appointed the member whose position is vacant may appoint a replacement member for the unexpired portion of the member's term.

(8) Where a term of the members of a tribunal expires before the members have completed a report, the members may complete the report as though the term had not expired.

(9) The members of a tribunal are entitled to such remuneration and reimbursement for such reasonable expenses as determined by the Minister. 1998, c. 7, s. 1; 2013, c. 39, s. 4; 2016, c. 2, s. 8; 2018, c. 1, Sch. A, s. 139.

Appointment of first tribunal

21B (1) The members of the first tribunal shall be appointed on or before the first day of December, 1998, and the members of each subsequent tribunal shall be appointed on or before the first day of November of the year in which the tribunal is established.

(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. 1998, c. 7, s. 1; 2013, c. 39, s. 5.

Powers of tribunal

21C The persons appointed to a tribunal pursuant to Section 21A have all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. 1998, c. 7, s. 1.

Determination of procedure

21D (1) Subject to this Section, a tribunal may determine its own procedures, including procedures for the making of submissions to the tribunal.

(2) Any member of the public or interested group is entitled to attend a hearing of a tribunal and submit a written submission to the tribunal.

(3) A tribunal may limit submissions, except those from the Minister or the Association, to written submissions only.

(4) Any person is entitled to receive a copy of a written submission made to a tribunal upon paying a reasonable fee for copying.

(5) No later than thirty days after its appointment, the tribunal shall convene a pre-hearing conference with the Minister and the Association. 1998, c. 7, s. 1; 2013, c. 39, s. 6.

Duties of tribunal

21E (1) A tribunal shall inquire into and prepare a report containing recommendations with respect to

(a) the appropriate level of salaries to be paid to judges of the Provincial Court and the Family Court, including the chief judge and associate chief judge of each court;

(b) the appropriate level of *per diem* payments, or payments for part of a day, made to judges for presiding in the Provincial Court or the Family Court where those judges are not receiving salaries;

(c) the appropriate vacation and sick-leave benefits to be provided to judges of the Provincial Court and the Family Court;

(d) pension benefits and increases thereto in respect of increases in the cost of living, long-term disability benefits or salary continuation, life insurance and health and dental benefits for judges of the Provincial Court and the Family Court and the respective contributions of the Province and the judges for such benefits; and

(e) other non-discretionary benefits for judges of the Provincial Court and the Family Court.

(2) Where there is a dispute as to whether a benefit referred to in clause (e) of subsection (1) is a non-discretionary benefit, the Minister or the Association may, within thirty days of receipt of the report, appeal to the Nova Scotia Court of Appeal to have the question determined.

(3) When making recommendations pursuant to this Section, a tribunal shall take into consideration the following:

(a) the constitutional law of Canada;

(b) the need to maintain the independence of the judiciary;

(c) the need to attract excellent candidates for appointment as judges;

(d) the unique nature of the judges' role;

(e) the manner in which salaries and benefits paid to judges in the Province compares to judicial compensation packages in other jurisdictions in Canada, including the federal jurisdiction, having regard to the differences between those jurisdictions;

(f) the provision of fair and reasonable compensation for judges in light of prevailing economic conditions in the Province and the overall state of the Provincial economy;

(g) the adequacy of judges' salaries 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 tribunal;
- (i) the nature of the jurisdiction and responsibility of the court; and
- (j) other such factors as the tribunal considers relevant to the matters in issue. 1998, c. 7, s. 1; 2001, c. 5, s. 34; 2013, c. 27, s. 2.

Periods to be covered

21F (1) The report of the first tribunal shall contain recommendations covering the period from the first day of April, 1999, to the thirty-first day of March, 2002, inclusive, and the report of each subsequent tribunal shall cover a similar three-year period.

(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. 1998, c. 7, s. 1; 2013, c. 39, s. 7.

Deadline for reports

21G (1) The report of the first tribunal shall be submitted to the Minister on or before the first day of March, 1999.

(2) The report of each subsequent tribunal shall be submitted to the Minister on or before the first day of February of the year following the year in which the tribunal is established.

(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. 1998, c. 7, s. 1; 2013, c. 39, s. 8.

Transmittal of information to commission

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. 2013, c. 39, s. 9.

Report

21H (1) Where a tribunal is not able to deliver a unanimous report, the report of the majority of the members of the tribunal is the report of the tribunal or, where there is no majority report, the report of the chair is the report of the tribunal.

(2) The report of a tribunal, including any minority report, shall be delivered immediately to the Minister and the Association.

(3) Copies of the reports referred to in this Section shall be made available, upon request, to any person. 1998, c. 7, s. 1.

Introduction of legislation

21I (1) The Minister shall introduce in the House of Assembly the necessary legislation to implement, on or before the first day of April, 2000, the recommendations contained in the report of the first tribunal that require legislation.

(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) All recommendations contained in the report of the first tribunal, other than those referred to in subsection (1), shall be implemented and shall take effect on the first day of April, 1999, or such later date as determined by the tribunal.

(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. 1998, c. 7, s. 1; 2013, c. 39, s. 10.

Implementation of subsequent reports

21J (1) Recommendations made by a tribunal after the fourteenth day of January, 2016, that are confirmed or varied by the Governor in Council, other than those that require legislation, take effect on the first day of April immediately following the year in which the tribunal is appointed, or such later date as recommended by the tribunal and confirmed or varied by the Governor in Council.

(2) Where recommendations of the tribunal that are confirmed or varied by the Governor in Council require legislation for implementation, the Minister shall, within one year of the report of the tribunal, introduce in the House of Assembly the necessary legislation to implement the recommendations as confirmed or varied by the Governor in Council. 2016, c. 2, s. 9.

Duties of Governor in Council

21K (1) Within forty-five days of receipt of the report prepared by a tribunal pursuant to subsection (1) of Section 21E, the Minister shall forward the report to the Governor in Council.

(2) The Governor in Council shall, without delay, confirm, vary or reject each of the recommendations contained in the report referred to in subsection (1).

(3) Upon varying or rejecting the tribunal's recommendations in accordance with subsection (2), the Governor in Council shall provide reasons for so doing to both the tribunal and the Association.

(4) The Governor in Council shall, without delay, cause the confirmed and varied recommendations to be implemented, and the recommendations have the same force and effect as if enacted by the Legislature once implemented and are in substitution of any existing legislation relating to those matters. 2016, c. 2, s. 9.

Review of proposed legislation

21L (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.

(2) The tribunal shall provide the Minister with its comments within thirty days of the referral to the tribunal, unless the Minister specifies a longer period of time for review and comment by the tribunal. 1998, c. 7, s. 1; 2013, c. 39, s. 11.

Request for change to report

21M (1) The Minister or the Association may, within fifteen days of the receipt of a report of a tribunal, request that the tribunal amend, alter or vary its report where the Minister or the Association are of the view that the tribunal failed to deal with a matter arising from an inquiry or that the tribunal made an error that is apparent on the face of the report.

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

(3) The amendments, alterations or variations in the report referred to in subsection (2) shall only deal with matters referred to the tribunal pursuant to subsection (1).

(4) *repealed 2016, c. 2, s. 10.*

1998, c. 7, s. 1; 2016, c. 2, s. 10.

Right to elect to become member of pension plan

21N (1) In this Section,

(a) “current judges” means any sitting judges, other than retired judges, appointed before a new plan becomes effective;

(b) “existing plan” means the pension plan in effect for the judges on the coming into force of this Act;

(c) “future judges” means any judges appointed after a new plan becomes effective;

(d) “new plan” means any alternative plan or amendments to the existing plan recommended by a tribunal, confirmed or varied by the Governor in Council and brought into effect by an enactment.

(2) Where a new plan is brought into effect, any current judges may, within thirty days of the date the new plan becomes effective, elect in writing, in the form approved by the Superintendent of Pensions, to become members of the new plan.

(3) Any current judges who do not elect in writing to become members of the new plan in accordance with subsection (2) remain members of the existing plan.

(4) Any future judges shall be members of the new plan. 1998, c. 7, s. 1; 2016, c. 2, s. 11.

Public Service Superannuation Act

22 A judge shall be an employee within the meaning of the *Public Service Superannuation Act*. R.S., c. 238, s. 22.

Additional pension benefits

23 (1) In this Section and Section 24,

(a) “common-law partner” of an individual means another individual who has cohabited with the individual in a conjugal relationship for a period of at least two years, neither of them being a spouse;

(b) “spouse”, “child” and “dependant” have the same meaning as in the *Public Service Superannuation Act*.

(2) In addition to the benefits conferred by the *Public Service Superannuation Act* and upon the recommendation of the Attorney General, the Governor in Council may direct the Minister of Finance to pay a pension to

- (a) a judge who
 - (i) has continued in office for at least twenty years and has attained the age of sixty-five years,
 - (ii) has continued in office for at least twenty years and resigns if, in the opinion of the Governor in Council, the resignation is conducive to the better administration of justice or in the public interest, or
 - (iii) ceases to hold office by reason of having attained the age of sixty-five years if a judge on the first day of April, 1976,

in an amount so that the aggregate amount payable to the judge under this Act and the *Public Service Superannuation Act* totals an amount equal to seventy per cent of the average salary authorized for the judge during the last five years of his service;

(b) a judge who serves as a judge for at least five years but less than twenty years and ceases to hold office by reason of having attained the age of sixty-five years or has become afflicted with a mental or physical infirmity that disables the judge from the due execution of judicial duties and the judge resigns as a judge, or by reason of such infirmity is removed as a judge, in an amount equal to one and one-half per cent of the average salary authorized for a judge during the last five years of his service as a judge multiplied by the number of years of such service;

(c) the spouse, common-law partner, child or dependant of a judge who dies and would have been entitled to receive a pension if the judge had attained the age of sixty-five years immediately prior to death or was in receipt of a pension under this Section at the time of death, in the same percentage and payable and terminating under the same terms and conditions as if the judge were receiving or would have received such pension pursuant to the *Public Service Superannuation Act*.

(3) Notwithstanding subsection (2), a pension in addition to the benefits conferred by the *Public Service Superannuation Act* shall be paid in respect of a judge who holds office on or after the first day of January, 1986, to

- (a) a judge who
 - (i) has continued in office for at least ten years, has attained the age of sixty-five years and ceases to hold office, or
 - (ii) has continued in office for at least ten years and resigns if, in the opinion of the Governor in Council, the resignation is conducive to the better administration of justice or in the public interest,

in an amount so that the aggregate amount payable to the judge pursuant to this Act and the *Public Service Superannuation Act* totals an amount equal to seventy per cent of the average salary authorized for the judge during the best three years of the judge's service;

(b) a judge who serves as a judge for at least five years but less than ten years and has attained the age of sixty-five years and resigns as a judge, or has become afflicted with a mental or physical infirmity which disables the judge from the due execution of judicial duties and the judge resigns as a judge or, by reason of such infirmity is removed as a judge, in an amount so that the aggregate amount payable to the judge pursuant to this Act and the *Public Service Superannuation Act* totals an amount equal to thirty-five per cent of the average salary authorized for the judge during the best three years of service plus seven per cent for each year of service after five years until the pension is equal to seventy per cent of the average salary authorized for the judge during the best three years of service;

(c) the spouse, common-law partner, child or dependant of a judge who dies and would have been entitled to receive a pension if the judge had attained the age of sixty-five years immediately prior to death or was in receipt of a pension under this Section at the time of death, in the same percentage and payable and terminating under the same terms and conditions as if the judge were receiving or would have received the pension pursuant to the *Public Service Superannuation Act*.

(4) An additional pension payable pursuant to subsection (2) or (3) shall be increased so that the aggregate amount payable pursuant to this Act and the *Public Service Superannuation Act* is increased in accordance with increases in the cost of living in the amounts and times recommended by a tribunal and confirmed or varied by the Governor in Council.

(5) Notwithstanding subsections (2) and (3), in addition to any benefits conferred by the *Public Service Superannuation Act* and upon the recommendation of the Attorney General, the Governor in Council may direct the Minister of Finance to pay a pension to a judge, or the spouse, common-law partner, child or dependant of a judge, who is in special circumstances of need where the judge has retired or died on or before the first day of April, 1986.

(6) A pension payable pursuant to subsection (2) or (3) shall be paid out of the General Revenue Fund of the Province. R.S., c. 238, s. 23; 2000, c. 29, s. 31; 2004, c. 6, s. 28; 2013, c. 27, s. 3; 2016, c. 2, s. 12.

Pensions for judges appointed on or after April 1, 2002

24 (1) Notwithstanding subsections (2) and (3) of Section 23, a pension is payable in respect of a judge who is appointed on or after the first day of April, 2002, to a judge who

(a) has continued in office for at least twenty years, has attained the age of sixty years and ceases to hold office;

(b) has continued in office for at least ten years and resigns if, in the opinion of the Governor in Council, the resignation is conducive to the better administration of justice or in the public interest;

(c) has continued in office for at least five years and has ceased to hold office by reason of having attained the age of sixty-five years; or

(d) has continued in office for at least five years but fewer than ten years, has become afflicted with a mental or physical infirmity that disables the judge from the due execution of judicial duties, and has resigned as a judge or, by reason of such infirmity, is removed as a judge.

(2) Subject to subsection (1) of Section 25, a pension payable pursuant to subsection (1) shall be calculated as an amount equal to

(a) where the judge has not yet attained the age of sixty-five years, three and one-half per cent of the average of the judge's best three years' salaries multiplied by the number of years of service as a judge to a maximum of twenty years; or

(b) where the judge has attained the age of sixty-five years, the amount otherwise determined in accordance with clause (a) without reference to age, less an amount calculated as seven tenths of one per cent of the average of the best five years' salaries that are within the Year's Maximum Pensionable Earnings for those years, as determined pursuant to the *Canada Pension Plan*, multiplied by the number of years of pensionable service determined pursuant to the *Public Service Superannuation Act*.

(3) The spouse, common-law partner, child or dependant of a judge who dies and would have been entitled to receive a pension, if the judge had attained the age of sixty-five years immediately prior to death, or was in receipt of a pension pursuant to subsection (1) at the time of death, is entitled to a pension in the same percentages and payable terminating under the same terms and conditions as if the judge were receiving or would have received such pension pursuant to the *Public Service Superannuation Act*. 2013, c. 27, s. 4.

Additional pension details

25 (1) A pension payable pursuant to subsection (1) or (3) of Section 24 shall be reduced by any amount payable pursuant to the *Public Service Superannuation Act*.

(2) A pension payable pursuant to subsection (1) or (3) of Section 24 in excess of any amount payable pursuant to the *Public Service Superannuation Act* shall be paid out of the General Revenue Fund of the Province.

(3) Subject to subsection (4), a pension payable pursuant to subsection (1) or (3) of Section 24 shall be increased in accordance with increases in the cost of living in the amount from time to time determined in the manner prescribed by the Governor in Council pursuant to the *Public Service Superannuation Act*.

(4) On and after the first day of January, 2011, a pension payable pursuant to subsection (1) or (3) of Section 24 shall be increased in accordance with increases in the cost of living in the amounts and times determined and recommended by a tribunal.

(5) Notwithstanding subsection (4), on and after the first day of April, 2017, a pension payable pursuant to subsection (1) or (3) of Section 24 shall be increased in accordance with increases in the cost of living in the amounts and times recommended by a tribunal and confirmed or varied by the Governor in Council. 2013, c. 27, ss. 4, 5; 2016, c. 2, s. 13.

Elections

26 (1) Notwithstanding Section 21N and subsection (3) of Section 23, sitting judges as of the thirty-first day of March, 2002, excluding retired judges and judges elevated from the Family Court to the Supreme Court (Family Division), may elect to receive pension benefits to which judges appointed on or after the first day of April, 2002, are entitled, and may make this election at the time of retirement.

(2) A judge who elects to retire before age sixty-five, shall give the Chief Judge notice of this election at least three months before retiring, unless the Chief Judge waives the whole or any portion of the notice period.

(3) The pension benefits of a judge appointed on or after the first day of April, 2002, is governed by Sections 24, 25 and this Section. 2013, c. 27, s. 4.

Contributions

27 (1) Notwithstanding the *Public Service Superannuation Act*, the respective contributions of the Province and the judges for pension benefits are the contributions recommended by a tribunal pursuant to clause (d) of subsection (1) of Section 21E and confirmed or varied by the Governor in Council pursuant to Section 21K.

(2) Where the contributions recommended by a tribunal and confirmed or varied by the Governor in Council exceed those required pursuant to the *Public Service Superannuation Act*, the contributions made in excess of those required by the *Public Service Superannuation Act* shall be paid to the General Revenue Fund of the Province.

(3) Where the contributions required pursuant to the *Public Service Superannuation Act* exceed those recommended by a tribunal and confirmed or varied by the Governor in Council, the amount by which the contributions required pursuant to the *Public Service Superannuation Act* exceed those determined and

recommended by the tribunal and confirmed or varied by the Governor in Council shall be paid out of the General Revenue Fund of the Province. 2016, c. 2, s. 14.

Reference to Public Service Superannuation Act

28 For the purpose of clause (c) of subsection (2) of Section 23, clause (c) of subsection (3) of Section 23 and subsection (3) of Section 24, a reference to the *Public Service Superannuation Act* is a reference to that Act as it read on the tenth day of May, 2010. 2013, c. 27, s. 6.

SCHEDULE

Joint Judicial Council

1 (1) The Minister of Justice may enter into an agreement with any other province to provide for the joint establishment of a judicial council.

- (2) An agreement made pursuant to subsection (1) shall specify
- (a) the parties to the agreement;
 - (b) the composition of the joint judicial council and the manner in which members are appointed and the terms of office of members;
 - (c) the duties and responsibilities of members, including the Chair of the joint judicial council;
 - (d) any power of the joint judicial council to employ an executive secretary and other staff and to maintain offices and the location of the secretary, staff and offices;
 - (e) any power of the joint judicial council to retain or employ counsel;
 - (f) the jurisdiction of the joint judicial council; and
 - (g) the manner in which the costs of the joint judicial council will be apportioned between the parties.

- (3) The joint judicial council may
- (a) receive a complaint;
 - (b) investigate a complaint;
 - (c) resolve a complaint;
 - (d) dismiss a complaint;
 - (e) adjudicate a complaint;
 - (f) retain counsel;
 - (g) hold hearings;
 - (h) delegate its functions to a committee or a member of the Judicial Council;

(i) determine its own procedures governing the hearing and review committees;

(j) delegate to the executive secretary the ability to receive and review complaints and to

(i) determine that the complaint is not within the jurisdiction of the joint judicial council and advise the complainant in writing of this determination,

(ii) dismiss the complaint on the grounds that it is frivolous or vexatious and advise the complainant of this in writing, and

(iii) refer the complaint to the Chief Judge of the Court in which the judge who the complaint relates to presides for review;

(k) determine the composition and functions of a review committee.

(4) The joint judicial council shall order the payment by Her Majesty in right of the Province of the reasonable legal fees incurred by a judge in proceedings before a review committee or the joint judicial council as determined by the joint judicial council in accordance with the regulations unless the judge is convicted of an offence contrary to the Criminal Code (Canada) in relation to the same circumstances that gave rise to the complaint.

(5) The Chief Judge referred to in subclause (ii) of clause (j) of subsection (3) shall review the complaint and

(a) attempt to resolve the complaint; and

(b) refer the complaint to the joint judicial council together with a recommendation that the complaint

(i) be dismissed,

(ii) be resolved with the agreement of the judge, or

(iii) be referred to a review committee for investigation.

(6) Where the complaint is against a Chief Judge or Associate Chief Judge of a Court, the Chief Justice of the Province in which the complaint arose shall take the place of the Chief Judge referred to in subclause (ii) of clause (j) of subsection (3) for the purpose of this Section.

(7) Any discussions between the Chief Judge and the judge complained of respecting the complaint are confidential.

(8) Upon receipt of a recommendation of the Chief Judge pursuant to subsection (5), the Chair of the joint judicial council shall empanel a review committee to consider the complaint.

(9) The review committee may

(a) dismiss the complaint;

(b) resolve the complaint with the agreement of the judge; or

(c) refer the complaint to the joint judicial council for a hearing.

- (10) After a hearing, the joint judicial council may
- (a) dismiss the complaint;
 - (b) require the judge to take a leave of absence with pay for the purpose of obtaining counselling, remedial treatment or instruction;
 - (c) require the judge to obtain counselling, remedial treatment or instruction;
 - (d) impose such other non-monetary sanctions, including reprimand, as the joint judicial council considers appropriate in the circumstances; or
 - (e) recommend the removal of the judge from office.

2 A recommendation for removal from office shall be made to the Attorney General if, in the opinion of the joint judicial council, a judge in the Province in respect of whom a complaint was made is unable to duly execute the function of the judge's office by reason of

- (a) age or infirmity;
- (b) having been guilty of misconduct;
- (c) having failed in the due execution of that office; or
- (d) having been placed, by the judge's conduct or otherwise, in a position incompatible with the due execution of that office.

3 The Governor in Council may, by order, after receipt of a report by the joint judicial council containing a recommendation that a judge appointed by the Province should be removed from office and, on the recommendation of the Minister of Justice, remove the judge from office.

4 Where the joint judicial council determines that the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, it may hold all or part of the hearing in private.

5 A decision of the joint judicial council shall be in writing.

6 The decision of the joint judicial council shall be provided to the complainant, the judge who is the subject of the complaint and the Minister of Justice for the province in which the complaint originated.

7 The decision of the joint judicial council shall be made public by placing it in a file at a location to be determined by the council.

8 The joint judicial council shall prepare an annual report which shall be submitted to the Attorney General of each province.

9 The joint judicial council has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

10 (1) The Governor in Council may make regulations regarding the payment of reasonable legal fees incurred by a judge in proceedings before a review committee or the joint judicial council.

(2) The exercise of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

2000, c. 28, s. 91, Sch.
