

LAW AMENDMENTS COMMITTEE

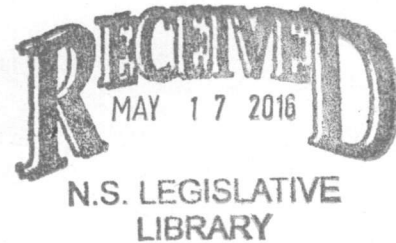
Red Room, Province House

Monday, May 16, 2016

12:00 Noon

Bill #171 - Art Gallery of Nova Scotia Act (amended)

No representation



Bill #174 - Financial Measures (2016) Act

12:00 noon

1. Bruce Outhouse, Q.C. , *NS Provincial Judges Association*
2. Judge David Walker, President
Canadian Association of Provincial Court Judges (CAPCJ)
3. Dennis James, Q.C., Vice-President
Canadian Bar Association Nova Scotia Branch
4. Nan McFadgen, President
CUPE Nova Scotia
- ~~5. Hughes Randall,~~

**Bill #177 - Municipal Government Act (amended) and
Halifax Regional Municipality Charter (amended)**

1:00 pm

1. Alan North
2. Penelope Russell
3. Patricia Cuttell *Burby*
North End Business Association
4. Carla Nicholson
Quinpool Road Mainstreet District Association

2:00 pm

5. Andrew Murphy
6. Maggie MacDonald,
Managing Director of Government Relations
Halifax Regional Municipality
7. Paul MacKinnon, Executive Director
Downtown Halifax Business Commission

8. Tristan Cleveland

3:00 pm

9. Michelle Champriss
Sackville Business Association

~~10. Graziella Grbac, Executive Director
Mainstreet Dartmouth Business Improvement District~~

Bill 174

Law Amendments Committee

May 16, 2016

Speaking Notes

S. Bruce Outhouse, Q.C.

representing the Nova Scotia Provincial Judges Association

Brief Background

1. Nova Scotia has had a Judges Salary Tribunal since 1988.
2. It has always been a binding process.
3. In 1997, the Supreme Court of Canada issued a decision (the 'PEI Reference' case) which established a number of basic principles and rules with respect to setting judicial salaries. These rules are:
 - (a) Judges are not "public servants or government servants".
 - (b) Judges and the Courts must be independent of government because of "their roles as protector of the Constitution and the fundamental values embodied in it, including the rule of law, fundamental justice, equality and preservation of the democratic process".
 - (c) Consequently, to ensure judicial independence, Government and Judges are prohibited from negotiating about judicial salaries and benefits.

- (d) Governments cannot unilaterally set salaries and benefits for judges.
 - (e) Instead, judicial salaries can only be maintained or changed by recourse to an independent tribunal.
 - (f) The salary tribunals so established must be independent, objective and effective.
 - (g) The purpose of establishing the tribunals was to “de-politicize” the setting of judicial salaries and benefits.
- None of these principles and rules are in dispute.
 - Following the 1997 Supreme Court’s decision, all of the provinces had to establish salary tribunals. Nova Scotia already had a tribunal but it made some changes in the Tribunal process to better conform with the Supreme Court’s decision.
 - A number of provinces opted not to give the salary tribunals the authority to make binding decisions and reserved to government the right to reject

tribunal recommendations. Nova Scotia retained its binding model, and NWT and the Yukon also adopted binding models. Ontario adopted a binding model except for pensions. Manitoba has a binding model on salary, provided the salary does not exceed the average of judges salaries in N.S., N.B. and Saskatchewan.

- Saskatchewan also has a binding model on salary, provided that the salary does not exceed the national average for the other provinces and territories. As an aside, both Saskatchewan and N.B. have “negative resolution” provisions. If the government doesn’t reject the salary tribunal recommendations within a fixed time, the recommendations automatically become binding. The Association’s position is that the proposed amendments to the *Provincial Court Act* should not be enacted at all; however, if they do go forward in some form, a negative resolution provision similar to Saskatchewan’s or N.B.’s should be included.
- Predictably, some governments essentially ignored the recommendations of their salary tribunal. The judges in those provinces became frustrated and sued the government. Protracted litigation ensued across the country. Four of the cases, one from N.B., one from Alberta, one from Quebec, and one

from Ontario were heard together by the Supreme Court of Canada in 2004 (the “Bodner” case). The Court was clearly displeased with the litigation. It stated:

The salary tribunals “were intended to remove the amount of judges’ remuneration from the political sphere and to avoid confrontation between governments and the judiciary”.

9 ...Prior to the *Reference*, salary review was between Provincial Court judges, or their association, and the appropriate minister of the provincial Crown. Inevitably, disagreements arose.

10 The often spirited wage negotiations and the resulting public rhetoric had the potential to deleteriously affect the public perception of judicial independence. However independent judges were in fact, the danger existed that the public might think they could be influenced either for or against the

government because of issues arising from salary negotiations. The *Reference* reflected the goal of avoiding such confrontations. Lamer C.J.'s hope was to 'depoliticize' the relationship by changing the methodology for determining judicial remuneration (para. 146).

11 Compensation commissions were expected to become the forum for discussion, review and recommendations on issues of judicial compensation. Although not binding, their recommendations, it was hoped would lead to an effective resolution of salary and related issues. Courts would avoid setting the amount of judicial compensation, and provincial governments would avoid being accused of manipulating the courts for their own purposes.

Those were the hopes, but they remain unfulfilled. In some provinces and at the federal level, judicial

commissions appear, so far, to be working satisfactorily. In other provinces, however, a pattern of routine dismissal of commission reports has resulted in litigation. Instead of diminishing friction between judges and governments, the result has been to exacerbate it. Direct negotiations no longer take place but have been replaced by litigation. These regrettable developments cast a dim light on all involved....

Salary Table

- Includes salaries for Provincial and Family Court Judges from all ten provinces, the Northwest Territories and the Yukon as well as the salary of all Federally appointed judges.
- Covers the period from fiscal 2003/04 to 2016/17.
- If you look at the 2003/04 column, first you'll see the salary for provincial and family court judges in Nova Scotia was \$160,140.
- That ranked 8th highest out of the 13 jurisdictions including the NWT, Yukon and Federally appointed judges.
- Considering just the provinces, the N.S. salary was 6th out of 10 – behind Ontario, Alberta, B.C. and P.E.I. in that order.
- However, you will also notice that the salaries in N.S., Newfoundland, P.E.I., Saskatchewan, Manitoba and B.C. all fell within a range of \$5,000.

- Then look at column 2015/16 (the fiscal year just completed). (It's the most appropriate comparator because there are 7 jurisdictions, including N.S., where the actual salary figures for 2016/17 aren't known yet.)
- So when you look at 2015/16, you'll see that N.S. Provincial and Family Court judges are now next to the lowest paid in Canada. Only provincially appointed judges in Newfoundland & Labrador are paid less and that is because they haven't had a salary increase since 2012/13. The Newfoundland & Labrador Salary and Benefits Tribunal has recently recommended increases for the years from 2013/14 to 2016/17. Those salaries are set out in footnote 11. The recommended salaries are \$238,025 for last year and \$247,546 for 2016/17.
- The Tribunal's report has been tabled in the Newfoundland & Labrador House of Assembly and the Government has until next month to respond.
- Obviously, if the recommendations are accepted, Nova Scotia's Provincial and Family Court judges will become the lowest paid in the country.

- You should be aware that Newfoundland & Labrador governments have previously rejected recommendations from their Tribunals.
- They rejected the 1997 Roberts Tribunal as well as the 2011 Hoegg Tribunal. The judges there took the Government to court and won in both cases.
- Regardless of whether Nova Scotia judges wind up as the lowest paid or second lowest paid in the country, however, one thing is perfectly clear. The existing binding process in N.S. has not resulted in judicial salaries which can by any means be seen as unreasonable or unaffordable.
- The provinces where the governments have the power to reject recommendations of their tribunals have wound up paying higher salaries than Nova Scotia.
- And in the process, most of them have spent hundreds of thousands of dollars embroiled in unseemly litigation with their judges – only to see the Tribunal recommendations ultimately implemented as a result of that litigation.

- More importantly, the litigation put a great deal of strain on the relationship between those governments and judges which is in nobody's best interest.
- Nova Scotia has been spared all this. There has been no litigation of any kind related to the recommendations of our Judicial Salary Tribunal, going back over a period of nearly 30 years. Why? Because the Tribunal process has been binding. In the Government's written submission to the 2014-17 Judicial Salary Tribunal, it lauded the existing system:

“Nova Scotia has long benefitted from such an independent process for judicial remuneration, having established and followed a binding Tribunal process since the late 1980s, with the exception of periods of wage restraint. The process dictates both salary and benefits for the provincial court judges.

The existence of this Tribunal establishes financial security for judges. It is clear to all that the compensation of the judges are not fixed by the executive, but set independently of it. No reasonable person would consider any provincial court judge in

this province, or the court as a whole, to be possibly influenced in their determination of a case by a concern over their salary or benefits at the hands of the executive.”

IF IT'S NOT BROKE, DON'T FIX IT!

- The system which currently exists has worked well in the past and there is absolutely no reason to believe it won't continue to work well in the future if it's left as it is.
- Conversely, based on the experience in other provinces where governments have the power to reject Tribunal recommendations, it is almost certain that removing the binding nature of the Tribunal's recommendations will politicize the setting of judges salaries. Doing so would inevitably lead to litigation and, as you can see from the salary table, very probably lead to higher judicial salaries in this province than would be the case under the present system.

The Proposed Amendments won't Achieve the Government's Objectives

Although the amendments would give the Government the right to reject the Tribunal's recommendations and, for example, set a lower salary than recommended by the Tribunal, they by no means guarantee that the recommendations won't be implemented. The Government has to give reasons for rejecting the Tribunal's recommendations. If those reasons are challenged in the Supreme Court of Nova Scotia and are found wanting, then the Tribunal's recommendations will prevail. The bottom line is that the Government does not and cannot have the final say with respect to the salaries of Provincial and Family Court judges. That simply isn't permissible under the Constitution.

From an historic perspective, it's fair to say that the superior courts tended to give governments some leeway when assessing their reasons for rejecting the salary recommendations of Tribunals; in more recent years, however, the Courts have shown an increasing tendency to rule against government adjustments including in the provinces of New Brunswick, British Columbia, Newfoundland & Labrador (twice) and Alberta (twice). In fact, since the Bodner case in 2004, no government rejections of judicial salary recommendations have survived challenge in the superior courts.

In summary, enacting the proposed amendments to the *Provincial Court Act* would be a regressive step which would ultimately reflect badly on the administration of justice in this province. It would lead to litigation and would not achieve the government's objective.

Therefore, I strenuously urge each and every member of this committee to treat this matter with the careful consideration it deserves and not to support the proposed amendments.

Judges Salaries Across Canada

Jurisdiction	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
Federal	216,600	232,300	237,400	244,700	252,000	260,000	267,200	271,400	281,100	288,100	295,500	300,800	308,600	314,100 ^[1]
British Columbia	161,250	161,250	161,250	198,000	202,356	220,000	225,500	231,138	231,138	231,138	242,464 ^[2]	236,950 ^[3]	240,504	244,112
Alberta ^[4]	200,000	210,000	220,000	220,000	220,000	220,000	250,000	255,000	257,550	263,731	273,000	279,825	286,821	293,991
Saskatchewan ^[5]	158,000	161,634	165,190	195,000	198,900	204,552	220,916	229,753	238,943	248,010	254,458	260,819	272,295	282,184
Manitoba ^[6]	156,560	161,257	168,000	173,040	178,230	192,166	201,774	211,862	218,000	224,104	230,155	239,000	249,277	254,263
Ontario ^[7]	206,348	213,054	219,979	228,338	234,503	242,007	248,057	252,274	262,113	267,355	274,574	279,791	287,345	Next JCC
Québec (from July 1 to June 30)	155,069	205,000	210,954	217,533	217,533 + 3,198 for CPI	220,872 + 3,339 for ½ CPI	221,270	225,737	227,488	230,723	236,722 ^[8]	238,379	241,955	Next JCC
New Brunswick	150,706	172,000	177,200	182,500	186,000	199,700	204,700	204,700	204,700	204,700 ^[9]	204,700	204,700	246,880	Next JCC
Nova Scotia	160,140	163,342	172,000	176,300	180,708	197,000	202,910	207,577	214,000	216,183	222,993	231,500	234,509	+NS CPI
Prince Edward Island ^[10]	161,627	169,439	174,904	186,349	196,144	204,835	213,360	216,268	223,774	235,080	239,472	243,538	250,050	Nat average
Newfoundland & Labrador ^[11]	159,181	159,181	165,230	168,535	173,591	177,063	197,425	203,348	209,448	215,732	215,732	215,732	215,732	215,732
Northwest Territories	182,972	199,980	201,766	206,404	209,255	215,254	221,254	227,254	233,254	249,582	252,414	256,606	260,302	2016 JRC
Yukon	178,000	189,900	195,407	199,901	215,742	222,214	228,880	235,746	242,819	250,103	257,606	262,758	268,013	2016 JCC

All Salaries run from April 1 to March 31 in each fiscal year, except as noted.

Endnotes on page 2.

[1] Federal judges receive a statutory salary increase effective April 1st each year, which is based on the annual percentage change in the "Industrial Aggregate Index" for Canada, as published by Statistics Canada for the preceding calendar year to a maximum of 7%. The 2016 Quadrennial Commission will consider whether any further increase is appropriate for the fiscal years 2016-2019.

[2] On March 27, 2015, the Court of Appeal for British Columbia ordered Government to implement the recommendations of the 2010 JCC. The salaries recommended by that JCC are therefore shown for the years 2011/12, 2012/13, and 2013/14. The Government was denied leave to appeal to the SCC.

[3] The British Columbia salary rates for 2014/15 to 2016/17 are as per the Government of British Columbia's Response to the Report of the 2013 Judges Compensation Commission (the 2013 Report) and are lower than the 2013 JCC's recommendations, which were as follows for the years 2014/15, 2015/16 and 2016/17 respectively: \$241,500, \$245,122, and

Puisne Judges Salaries Across Canada

\$250,024. The British Columbia judges have filed for judicial review of the Government's response to the 2013 Report.

[4] The 2013 Alberta JCC Report was provided to the Minister on March 30, 2015. In July 2015, the Government announced its decision to accept all of the recommendations.

[5] The Saskatchewan JCC issued its Report on December 31, 2014. All recommendations were accepted on January 30, 2015.

[6] The 2014 Manitoba JCC made recommendations for the period April 1, 2014 to March 31, 2017. The salary recommendations were accepted by the Legislature. The JCC recommended a salary of \$239,000 effective April 1, 2014, followed by increases in each of the years following based on the percentage increase in Average Weekly Earnings in Manitoba over the preceding calendar year. According to CanSim Table 281-0027, the % increase in the AWE in Manitoba over 2014 was 4.27%, resulting in a salary of \$249,205 for 2015. According to the same database, the increase effective April 1, 2016 should be 1.99%.

[7] In addition to any salary adjustments recommended by a JCC, Ontario judges receive a statutory salary increase effective April 1st of each year which is based on the percentage change in the "Industrial Aggregate Index" for Canada as published by Statistics Canada for the preceding 12 month period (April 1-March 31) to a maximum of 7%.

[8] The 2013 Rapport du Comité de la rémunération des juges recommended salaries for judges of the Court of Québec at \$238,300 for 2013/14 with increases for 2014/15 and 2015/16 equal to the increases in the Québec Consumer Price Index. On February 18, 2014, the National Assembly adopted a resolution endorsing the Government's response to the Committee's Report, which response reduced the recommended salary for 2013/14 to \$236,722. The Quebec salaries are effective on July 1s of each year, not April 1st as in the other jurisdictions.

[9] In New Brunswick, the 2012 JRC Report was dated June 5, 2015. The Government responded to it in December 2015 and determined that effective April 1, 2015, NB judges would be paid a salary equal to 80% of the salary paid to s.96 judges.

[10] In PEI, successive commissions have recommended that PEI judges should be paid a salary equal to the national average. The figure for 2015/16 has yet to be determined.

[11] In Newfoundland & Labrador, the 2014 Salary and Benefits Tribunal conducted its hearing in late May 2015, and will make recommendations for the four-year period April 1, 2012 to March 31, 2017. The Report has been tabled in the Legislature but the Government has yet to respond to the recommendations. The salaries recommended for are \$222,204 for 2013/14; \$228,870 for 2014/15; \$238,025 for 2015/16 and \$247,546 for 2016/17

Presentation to the Nova Scotia Law Amendments Committee May 16, 2016

Good Morning, I am Judge David Walker, I am from New Brunswick, where I was appointed to our Provincial Court in 1997, I am also a Deputy Judge of the Territorial Court of the Northwest Territories.

I am President of the Canadian Association of Provincial Court Judges, also known as CAPCJ, and I appreciate very much the opportunity to say a few words here today, in regards to the intended changes to the **Nova Scotia Provincial Court Act**.

In 1973 a small group of judges from across Canada gathered in St. John's Newfoundland to create a national association. This was CAPCJ.

Those were different times. The role and stature of provincially and territorially appointed courts was unclear. The concept of Judicial Independence was not understood as it is today.

In the 40 years that has passed CAPCJ has grown to represent all of the nearly 1100 provincially and territorially appointed judges in Canada. While the Nova Scotia Provincial Court Judges are members of CAPCJ, I really come to speak on behalf of our national membership..

The Preamble to the CAPCJ Constitution provides:

WHEREAS the independence of the judiciary is the cornerstone of a free and democratic society;

Whereas the Canadian Association of Provincial Court Judges affirms that it has a primary responsibility to protect and maintain the principle of judicial independence for the benefit of all Canadians;

And it is Judicial Independence and its benefit to all Canadians that I wish to speak today.

Not many years after our founding, in 1982 the **Canadian Charter of Rights and Freedoms** came into force. It provides in s11:

Any person charged with an offence has the right

d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

The SCC has written that ‘litigants who engage our judicial system should be in no doubt that they are before a judge who is demonstrably independent and motivated only by a just and principled result’ (**Bodner** para1)

And further: “The judiciary must both be and be seen to be independent: (para 6)

“The components of judicial independence are: security of tenure, administrative independence and financial security”(para 7).

When it was perceived that the financial security or independence of judges was been compromised by arbitrary decisions on the part of various governments, litigation resulted and in 1997, the SCC released its decision commonly referred to as the PEI Reference Case.

This decision, written by Chief Justice Lamer, required that the various provinces and territories create independent commissions or tribunals to determine the compensation of judges. Various versions were put in place across the country, and not long after, the Tribunal in Nova Scotia was created with its first members appointed by December 1998.

The proposed amendments seek to fundamentally change a model that has, I submit stood the people of Nova Scotia in good stead for nearly 30 years.

The SCC did not require that the Tribunal Recommendations be binding-in fact, it said the opposite at para 176:

The model mandated as a constitutional minimum by s. 11(d) is somewhat different from the ones I have just described. My starting point is that s. 11(d) does not require that the reports of the commission be binding, because decisions about the allocation of public resources are generally within the realm of the legislature, and through it, the executive. The expenditure of public funds, as I said above, is an inherently political matter. Of course, it is possible to exceed the constitutional minimum mandated by s. 11(d) and adopt a binding procedure, as has been done in some provinces.

CAPCJ does not take the position that the amendments are unlawful, your government is within its rights to do so. While we ask that you be mindful of and protect Judicial Independence, be assured that the judiciary recognizes that there must also be political independence.

While CAPCJ acknowledges that the removal of the binding recommendations made in Nova Scotia by its tribunal is not an interference with the judicial independence of provincial court judges in Nova Scotia, it does diminish that independence.

The concern of CAPCJ is that it is clear from the **PEI Reference** case that one of the objectives of the Supreme Court in mandating a form of a commission, or tribunal to make recommendations to government on the salary and benefits which should be paid to the judiciary, is to depoliticize as far as possible the process of fixing judicial remuneration.

If the tribunal recommendations are binding it means that there is not only a total absence of any suggestion of political interference, there is a guarantee of that absence. As importantly, especially to the public, the ordinary citizen of Nova Scotia, there is an unmistakable appearance of judicial independence, an assurance of judicial independence, and a confidence in judicial independence, which will not otherwise exist.

If you remove the binding nature of the tribunal recommendations, then in each of those ways judicial independence will be diminished.

Only where recommendations are binding is there an absence of even the hint of politicization in the tribunal or commission process.

It is perhaps ironic that the existing tribunal process has in the result, kept the salaries and benefits of Nova Scotia judges near the bottom of the range of compensation for all judges across Canada. Indeed, the salary of a Nova Scotia judge is currently the second lowest of any of the 12 provincial/territorial court judges of Canada, and will fall to the lowest if the current recommendations of the tribunal in Newfoundland are followed.

There is a school of thought that believes that where a tribunal or committee is empowered to make recommendations which are binding, rather than being subject to review by its empowering authority, that tribunal or committee will exercise far greater restraint than it might otherwise because it is aware that its recommendations are not the final word. Knowing that its mistakes cannot be challenged or even corrected, it tends to act far more cautiously and prudently than it otherwise might.

And this is the true testament of Judicial Independence and your judges here in Nova Scotia, for it is in their fundamental acceptance of the validity of your process, their assurance that their independence is protected that they and all judges in Canada are so concerned. In plain language you currently have the gold standard of Judicial Independence, a model which is the envy of almost every other Court in Canada. That is because Judicial Independence which is for the benefit of the public seems to find voice only through the judiciary even though it may result in a lower level of compensation for the judges. It is a further irony that Judges of other Courts have ultimately achieved success in circumstances where reports are non-binding, but only after great expense and years of litigation.

You can be assured that the Nova Scotia Provincial Court is of the highest quality, respected throughout Canada its decisions referenced and relied upon.

It has been an honour to say a few words on behalf of my Association. I would be happy to answer your questions.



THE CANADIAN
BAR ASSOCIATION
Nova Scotia Branch

May 16th, 2016

My name is Dennis James and I am here today in my capacity as Vice President of the Canadian Bar Association (Nova Scotia).

We are a professional association of over 1650 members in Nova Scotia. An important part of our mandate includes seeking improvements in the law and enhancing the administration of justice. Judicial independence is a cornerstone of our constitutional democracy. The high quality of our judiciary is critical to the people of Nova Scotia and judicial independence is one of the safeguards.

The CBA (NS) is very concerned that the provisions of Part II of the *Financial Measures Act* will have a negative impact on the justice system, and in part, are unconstitutional. Our concern is heightened by the fact that an issue as important as this is buried in the middle of a budget bill. We feel that Part II of the Act has been impaired by a process that is disrespectful to the judiciary and has failed to seek critical input. A ten minute attendance before the Law Amendments Committee does not substitute for a respectful discussion of this important issue.

It is important for this Committee to pause and reflect on what is being proposed. In 1988, the Legislature decided that it was prudent to add to our *Provincial Court Act*, amendments which first introduced the concept of the independent tribunal and made the salary recommendation binding.

In 1998 the Legislature, with a minority government, passed further amendments that were intended to address the impact of the 1997 decision from the Supreme Court of Canada in *Re: Prince Edward Island Provincial Court Judges*. In introducing these amendments for second reading, then Justice Minister Dr. Jim Smith said this:

Our judicial system must be free from political interference. This legislation responds to the requirements of the Supreme Court decision. This

allows us to protect and maintain the essential independence of the judiciary...

The 1998 amendments included a provision that made the recommendations of the independent tribunal binding in all respects of compensation.

The proposed amendments to the *Provincial Court Act* introduced through the *Financial Measures Act* will intrude on this system that this Legislature has twice endorsed. And for no good reason. In the words of the last tribunal comprised of Professor Bruce Archibald, Brian Johnston QC and Ronald Pink QC:

This current Report therefore reflects 15 years of experience under what many observers might consider to be the most constitutionally enlightened system for a judicial compensation commission in Canada.....This circumstance has no doubt led to the fact that, in Nova Scotia, the Government and the Provincial Judges Association have avoided the unproductive spectacle of periodic litigation between them as in other jurisdictions, where governments have been tempted to ignore compensation commission recommendations and judges have taken the government to court. The Nova Scotia model, thus complies admirably with Supreme Court of Canada's various decisions mandating an independent compensation commission to ensure a proper separation of powers between government and judiciary in a constitutional democracy.

We concur. Therefore, it is concerning that the Government has determined to move away from this current, effective system to take a step back to a circumstance which may well foster tension and uncertainty.

I borrow from the words of the National President of the CBA, Janet Fuhrer, from her address to the independent tribunal for superior court judicial compensation:

From a practical perspective, Canadians want to know that when they appear in court, the judge will be impartial. Canadians must have confidence that when cases are decided, judges have no financial incentive in the outcome.

So this means not only that judges have no personal or financial interest in the case, but that they are free from concern about whether the outcome of the case will please or displease the government, who provides their compensation. If judges were embroiled in pay disputes with the government, Canadians would be concerned that judges might be inclined to issue decisions that favour the government.

It is important to say that the provincial court judges are not public sector workers. The judiciary is the third pillar of our constitutional system. This point cannot be overstated.

There appears to be a suggestion that Nova Scotia is an outlier due to the binding effect of tribunal recommendations and that is a reason for change. To this we say one can be an outlier for good or bad reasons. We think the Nova Scotia model has worked well for 28 years. All the evidence is that the independent tribunal members have fulfilled their obligations carefully and well, taking into account all the factors required to be considered.

We also note that Nova Scotia is not alone. Ontario's legislation includes a system that has a binding salary recommendation. Manitoba has a system that includes a binding recommendation if the salary would have the judges within the average of comparisons with counterparts. For ease of reference I include the legislation from those jurisdictions in the material that I will leave behind.

Having spoken to the merits of the Nova Scotia system, the CBA recognizes that other jurisdictions have independent tribunal models that do not include this binding provision. This effect of the *Financial Measures Act* is not, in and of itself, unconstitutional even though we disagree.

However there are deficiencies in the proposed amendments that causes us to be concerned. As well, in two sections we say the proposed legislation is precarious and raises issues of constitutionality.

The legislation is deficient due to its failure to heed the lessons learned from the 2005 reference decision by the Supreme Court of Canada. In that decision the Court had an opportunity to consider instances where governments did not accept the recommendations of the respective independent tribunals. In its decision the Court set out principles that must be followed if the work of the independent tribunal is not accepted.

The *Financial Measures Act* amendment simply says reasons have to be given if tribunal recommendations are not accepted. The drafters missed the opportunity to embed important moderating factors that would lessen the discretion of the Governor in Council. Instead the Act is drafted to give the Governor in Council the widest discretion which is not consistent with the principles of the 2005 Supreme Court of Canada decision. This is a serious concern to the CBA (NS).

The Act could have and should have included language that causes:

- The Governor in Council to show deference to the work of the Tribunal;
- Prevents the Governor in Council from simply insisting on the position it may have argued before the Tribunal; and,
- Force the Governor in Council to reach a decision on the same factors and facts as the Tribunal;

Those who propose the legislation may answer by saying that they will follow these principles. To that we say these principles are known and should have been added to the language of the Bill. When one tramples into this sensitive constitutional relationship one must be measured, careful

and allow time for perspectives to be shared. The disappointing manner in which these amendments have been handled has resulted in flawed legislation.

Finally, there are two aspects of the *Act* that raise serious questions of constitutionality. There are two instances of an imprecise time frame in proposed Section 21 K. The first relates to the Governor in Council's obligation to respond to the report and the second relates to the Governor in Council's implementation of recommendations. The phrase included is "shall without delay". Someone may argue that this is a clear statement, however, it leaves the timing of the response and the implementation very much an open question. What is delay? What is delay in the context of the agenda of the Governor in Council?

One of the touchstones of good legislation is a statutory framework, including time frames, to deal with compensation, and respect for that framework. The possibility of an unknown timeframe for response suggests delay. Delay erodes the legitimacy of the process, serves to attack judicial compensation and undermines judicial independence.

Instead of the phrase "shall without delay" the language should include a defined time frame for both the response to an independent tribunal and implementation and the period for both should be no more than 90 days after the date of the Tribunal's report.

In closing, the CBA (NS) is of the strong belief that the *Financial Measures Act* should be amended to remove Part II from the legislation. The matters being addressed are of a constitutional nature and they intrude into a cornerstone value of our democracy. If the government wishes to revisit the method of independent review of judicial compensation it should be done with great care, with transparency and in a manner respectful to the judiciary.

This is simply too important to include in budget legislation that is subject to a confidence vote. It is too important an issue to be tied up in a political manoeuvre and the fact that it is now does not bode well. Thank you for this opportunity.

**An Act to Amend Chapter 13
of the Acts of 1976,
the Judges of the Provincial Court Act**

(Assented to the 25th day of May, A.D. 1988)

Be it enacted by the Governor and Assembly as follows:

1 Chapter 13 of the Acts of 1976, the *Judges of the Provincial Court Act*, is amended by adding immediately following Section 16 thereof the following Section:

16A (1) The Governor in Council shall, on or before the first day of November each year, appoint a tribunal to determine

(a) the salaries for judges of the provincial court and judges of the Family Court, including the chief judge of each court; and

(b) *per diem* payments made to judges for presiding in the provincial court or the Family Court where those judges are not receiving salaries.

(2) The tribunal shall be composed of one person appointed by the Governor in Council from among nominees selected by the judges of the provincial court and the judges of the Family Court and two other persons appointed by the Governor in Council and, after appropriate consultation with the chief judges of both courts, the Governor in Council shall designate one of the three persons as chairman.

(3) The persons appointed to the tribunal pursuant to subsection (2) have all the powers, privileges and immunities of a commissioner appointed pursuant to the Public Inquiries Act and shall deliver their report containing recommendations to the Governor in Council on or before the first day of February

in the year immediately following the year in which they are appointed.

(4) The Governor in Council, upon receipt of the report containing the recommendations of the tribunal, shall cause the recommendations to be implemented and the recommendations shall have the same force and effect as if enacted by the Legislature and are in substitution for the provisions of this Act or the *Family Court Act* or any regulations made pursuant to this Act or the *Family Court Act* relating to salary and *per diem* payments for judges of the provincial court or judges of the Family Court.

(5) The recommendations apply, from the first day of April immediately following the year in which the tribunal is appointed, until subsequently changed.

(6) Notwithstanding subsection (5), the first tribunal appointed pursuant to this Section may make recommendations in respect of the fiscal year during which the tribunal is appointed.

An Act
of
the

(Assented to

Be it enacted by

1 Clause (k) of 1978, the *Credit Union* clause substituted the

(k) "mem union or a mem text requires;

2 Section 13 adding immediately following line thereof the words "as may from time to time"

3 Section 16 following Section 15

16 Interest calculated on partially paid-up

4 Section 17 adding immediately following thereof the words "minimum"

5 Section 22 striking out the words thereof and substituting

BILL NO. 68

(as amended)



*1st Session, 57th General Assembly
Nova Scotia
47 Elizabeth II, 1998*

Government Bill

Provincial Court Act (amended)

CHAPTER 7 OF THE ACTS OF 1998

The Honourable James A. Smith, M.D.
Minister of Justice

First Reading: November 6, 1998

Second Reading: November 13, 1998

Third Reading: November 17, 1998 (WITH COMMITTEE AMENDMENTS)

Royal Assent: November 18, 1998



An Act to Amend Chapter 238 of the Revised Statutes, 1989, the Provincial Court Act

Be it enacted by the Governor and Assembly as follows:

1 Section 21 of Chapter 238 of the Revised Statutes, 1989, the *Provincial Court Act*, is repealed and the following Sections substituted:

21 In Sections 21A to 21N,

(a) "Association" means the Nova Scotia Provincial Judges' Association;

(b) "Minister" means the Minister of Justice.

21A (1) There shall be a tribunal to determine 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 school board 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.

(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.

21B 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.

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*.

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.

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 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, 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.

21F 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.

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.

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.

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.

(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.

21J (1) Recommendations made in the reports of the second and subsequent tribunals, 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 determined by the tribunal.

(2) Where recommendations of a tribunal 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.

21K Upon receipt of the report from a tribunal, the Minister shall forward the report to the Governor in Council and the Governor in Council shall cause the recommendations contained in the report pursuant to subsection (1) of Section 21E 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 the *Family Court Act* or any regulations made pursuant to this Act or the *Family Court Act* relating to those matters.

21L (1) The Minister shall forward to a tribunal for review and comment any proposed legislation that deals with those matters referred to in subsection (1) of Section 21E and that may affect judges of the Provincial Court or the Family Court.

(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.

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

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 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.



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Manitoba Laws

This is an **unofficial version**.

If you need an official copy, use the bilingual (PDF) version.

This version is current as of May 11, 2016.

It has been in effect since November 5, 2015.

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C.C.S.M. c. C275

The Provincial Court Act

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1 In this Act

"**board**" means the Judicial Inquiry Board established in section 32; (« Commission »)

"**Chief Judge**" means the judge appointed under this Act as the Chief Judge of the Provincial Court of Manitoba; (« juge en chef »)

"**civil servant**" means a person who is an employee as defined in *The Civil Service Act*; (« fonctionnaire »)

"**community justice of the peace**" means a person appointed as a community justice of the peace under section 40; (« juge de paix communautaire »)

"**council**" means the Judicial Council established in subsection 37(1); (« Conseil »)

"**court**" means the Provincial Court of Manitoba; (« tribunal »)

"**judge**" means a judge of the Provincial Court of Manitoba; (« juge »)

"**judicial justice of the peace**" means a person appointed as a judicial justice of the peace under section 40; (« juge de paix judiciaire »)

"**justice of the peace**" means a judicial justice of the peace, a staff justice of the peace or a community justice of the peace; (« juge de paix »)

"**minister**" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"**Provincial Court**" means the Provincial Court of Manitoba continued under this Act and "**Provincial Court (Criminal Division)**" means the Provincial Court of Manitoba (Criminal Division) and "**Provincial Court (Family Division)**" means the Provincial Court of Manitoba (Family Division); (« Cour provinciale »)

"**staff justice of the peace**" means a person appointed as a staff justice of the peace under section 40. (« juge de paix provenant de la fonction publique »)

S.M. 1989-90, c. 34, s. 2; S.M. 1994, c. 14, s. 2; S.M. 2005, c. 8, s. 2.

PART I

PROVINCIAL COURT

Continuation of Provincial Court

2(1) The Provincial Court of Manitoba is continued as a court of record.

Salary at end of term

9.1(2) An Associate Chief Judge whose term expires continues to be a judge of the court and shall carry out the functions of a judge of the court. He or she is entitled to receive the greater of the current annual salary of a judge of the court and the annual salary he or she received immediately before the term expired.

Application

9.1(3) This section applies to a judge appointed as an Associate Chief Judge after this section comes into force.

S.M. 2001, c. 40, s. 6.

GENERAL PROVISIONS

Judge to devote full time to duties

10(1) Subject to subsections (4) and (5), no judge appointed on a full-time basis shall

- (a) carry on, engage in, practise or conduct a business, trade, profession or occupation; or
- (b) act as a commissioner, arbitrator, adjudicator, umpire or mediator on a matter or proceeding, except with the approval of the Chief Judge.

No extra remuneration

10(2) Except as provided in subsection (3), no judge appointed on a full-time basis shall accept any salary, fee or other remuneration for doing any of the things mentioned in clause (1)(a) or #(b) or for acting as adjudicator pursuant to an appointment and designation under *The Human Rights Code*.

Expenses excepted

10(3) A judge acting as commissioner, arbitrator, adjudicator, referee, umpire, conciliator or mediator in any matter or proceeding on the direction of the Lieutenant Governor in Council, a judge acting as adjudicator pursuant to an appointment and designation under *The Human Rights Code*, and a judge acting as persona designata under *The Law Enforcement Review Act*, may receive reasonable travelling and other expenses incurred by him away from his ordinary place of residence while acting in that capacity or in the performance of the duties and services of the office in the same amount and under the same conditions as if he were performing a function or duty as a judge if the expenses are paid by the government in respect of a matter within the legislative authority of the Legislature.

Winding up practice, etc.

10(4) A judge newly appointed on a full-time basis may, with the approval of the Chief Judge, wind up his practice of law or any other business, commercial or professional activities in which he was engaged within a reasonable time of his appointment.

Acting as master or registrar of Q.B.

10(5) Nothing in this section prevents a judge from acting, with the approval of the Chief Judge, as a master or deputy registrar of the Court of Queen's Bench.

R.S.M. 1987 Supp., c. 31, s. 5; S.M. 1989-90, c. 34, s. 6; S.M. 1992, c. 44, s. 13; S.M. 2009, c. 32, s. 95.

11 [Repealed]

S.M. 2001, c. 40, s. 7.

COMPENSATION COMMITTEE

Definitions

11.1(1) In this section,

"associate chief judge's designated average" means, for a year in which a compensation committee is appointed, the average of three annual salary rates, one for each of New Brunswick, Nova Scotia and Saskatchewan, being paid on April 1 of that year to the associate chief judges of the provincial courts of those provinces; (« traitement désigné du juge en chef adjoint »)

"chief judge's designated average" means, for a year in which a compensation committee is appointed, the average of three annual salary rates, one for each of New Brunswick, Nova Scotia and Saskatchewan, being paid on April 1 of that year to the chief judges of the provincial courts of those provinces; (« traitement désigné du juge en chef »)

"compensation committee" means a Judicial Compensation Committee appointed under subsection (2); (« comité chargé de la rémunération »)

"judge's designated average" means, for a year in which a compensation committee is appointed, the average of three annual salary rates, one for each of New Brunswick, Nova Scotia and Saskatchewan, being paid on April 1 of that year to the full-time judges of the provincial courts of those provinces, other than the chief judge or the associate chief judges. (« traitement désigné du juge »)

Compensation committee appointed

11.1(2) On or before April 1, 2002 and on or before April 1 in every third year after 2002, a compensation committee, to be known as the Judicial Compensation Committee, must be appointed by the Lieutenant Governor in Council in accordance with subsections (5) to (10).

Review by compensation committee

11.1(3) A compensation committee shall investigate, report and make recommendations with respect to the following:

- (a) the salaries to be paid to
 - (i) the Chief Judge,
 - (ii) an Associate Chief Judge, and
 - (iii) a judge of the court, other than the Chief Judge or an Associate Chief Judge; and
- (b) the benefits to be paid, including pensions, vacations, sick leave, disability benefits, travel expenses and allowances, to the Chief Judge, an Associate Chief Judge and a judge of the court.

Effective period of recommendations

11.1(4) The recommendations of a compensation committee must be made for the fiscal year of the government that begins on April 1 of the year in which the compensation committee is appointed, and for each of the next two fiscal years.

Composition of compensation committee

11.1(5) A compensation committee consists of the following three members appointed by the Lieutenant Governor in Council:

- (a) one person designated by the minister;
- (b) one person designated by the judges of the court;
- (c) one person, who shall act as chairperson, designated by the members who are designated under clauses (a) and (b).

Prohibition re members

11.1(6) No judge or retired judge of the court, or of any other court, and no person employed in the civil service of the government or by a crown corporation, or retired from such employment, shall be appointed as a member of a compensation committee.

Minister designates a member

11.1(7) On or before January 15 of a year in which a compensation committee must be appointed, the minister must notify the judges of the court that a compensation committee will be appointed and designate a member under clause (5)(a).

Judges designate a member

11.1(8) On or before January 31 of a year in which a compensation committee must be appointed, the judges of the court must designate a member under clause (5)(b).

Designation of a chairperson

11.1(9) On or before March 1 of a year in which a compensation committee must be appointed, the persons referred to in clauses (5)(a) and (b) must designate a chairperson under clause (5)(c).

If no agreement re chairperson

11.1(10) If the persons referred to in clauses (5)(a) and (b) are unable to agree on a chairperson, the Dean of the Faculty of Law of the University of Manitoba, after consultation with the minister and the judges, shall designate the chairperson on or before March 31.

Term of committee member

11.1(11) The term of a member of a compensation committee ends when the compensation committee's report is submitted.

Member absent or incapable

11.1(12) In the event of the absence or incapacity of a member, the Lieutenant Governor in Council may, in accordance with subsections (5) and (6), appoint a substitute member for the unexpired portion of the term.

Conduct of review by compensation committee

11.1(13) To the greatest extent possible, a compensation committee must conduct its review in an inquisitorial manner, assessing evidence it determines is relevant and necessary to enable it to make the recommendations referred to in subsection (3).

Powers of compensation committee

11.1(14) A compensation committee

- (a) may interview persons, examine records and documents and make inquiries as the compensation committee considers necessary;
- (b) may establish its own rules of practice and procedure for the inquiries, interviews and examinations referred to in clause (a) and for the conduct of hearings; and
- (c) has the powers, protection and privileges of commissioners under Part V of *The Manitoba Evidence Act*.

Remuneration and expenses

11.1(15) A member of the compensation committee is entitled to receive remuneration and reimbursement for expenses, as determined by the Lieutenant Governor in Council.

Factors to be considered

11.1(16) In making its report and recommendations, the compensation committee must consider the following factors:

- (a) the nature of the judges' role and the independence of the judiciary;
- (b) the need to attract and retain excellent applicants to the judiciary and the statistics with respect to the recruitment, retention, resignation and retirement of judges;
- (c) the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions in Manitoba and the overall economic and financial state of the Manitoba economy;

- (d) the principle that public resources must be managed efficiently and effectively in the context of the government's current financial position;
- (e) the cost of living and the growth or decline in real per capita income in Manitoba;
- (f) the manner in which the compensation package paid to judges in Manitoba compares to judicial compensation packages in other jurisdictions in Canada, having regard to the differences between jurisdictions.

Salary information required in the report

11.1(17) The compensation committee's report must set out the following information as to salaries paid to judges on April 1 of the year in which the compensation committee is appointed:

- (a) with respect to the provincial courts of New Brunswick, Nova Scotia and Saskatchewan, the salary of the chief judge, the salary of an associate chief judge, and the salary of a full-time judge, for each of those courts;
- (b) the chief judge's designated average;
- (c) the associate chief judge's designated average;
- (d) the judge's designated average.

Chairperson to certify salary comparisons for three year period

11.1(18) In the report of the compensation committee, the chairperson must certify, for the fiscal year in which the compensation committee is appointed and for each of the next two fiscal years,

- (a) the salary recommended for the Chief Judge for each year, and whether that salary is equal to or less than the chief judge's designated average, or whether it is more than the chief judge's designated average;
- (b) the salary recommended for an Associate Chief Judge for each year, and whether that salary is equal to or less than the associate chief judge's designated average, or whether it is more than the associate chief judge's designated average;
- (c) the salary recommended for a judge of the court, other than the Chief Judge or an Associate Chief Judge, for each year, and whether that salary is equal to or less than the judge's designated average, or whether it is more than the judge's designated average.

Reasons for recommendations required

11.1(19) The compensation committee must give reasons for each of its recommendations.

Report given to minister and judges

11.1(20) Within 180 days after the compensation committee is appointed, it must give its report, including recommendations, to the minister, the Chief Judge, the Associate Chief Judges and the judges of the court. Until the report is tabled in the Legislative Assembly, it is confidential and must not be made public or disclosed to a person outside the government or the provincial judiciary.

Request to clarify report

11.1(21) Within seven days after the report of the compensation committee is submitted, the chief judge, an associate chief judge, a judge of the court or the minister, may request the compensation committee to clarify the report or a part of it. The compensation committee must consider the request and provide any clarification to the persons who received the report under subsection (20) within 15 days after the request is made. The report is not considered to be submitted until the clarification is provided.

Minister to table report

11.1(22) The minister shall table the report of the compensation committee in the Assembly within 15 days after it is submitted if the Assembly is sitting, or if it is not, within 15 days after the beginning of the next sitting.

When recommendations re salaries are binding

11.1(23) For each year for which the compensation committee makes recommendations, the following recommendations are binding on both the government and the judges:

- (a) the salary recommended for the Chief Judge for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the chief judge's designated average;
- (b) the salary recommended for an Associate Chief Judge for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the associate chief judge's designated average;
- (c) the salary recommended for a judge of the court other than the Chief Judge and an Associate Chief Judge, for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the judge's designated average.

Referral to standing committee

11.1(24) Within 20 days after the report of the compensation committee is tabled, the recommendations of the compensation committee, except those that are binding on the government under subsection (23), must be referred to a standing committee.

Completing report

11.1(25) The standing committee must complete its report to the Assembly within 120 days after the date of referral.

Reporting to Assembly

11.1(26) The chairperson of the standing committee must present the report to the Assembly within five days after the report is completed if the Assembly is sitting, or if it is not, within five days after the beginning of the next sitting.

Report of standing committee re recommendations

11.1(27) With respect only to those recommendations of the compensation committee that have been referred to it, the standing committee may in its report

- (a) accept one or more of the recommendations;
- (b) reject one or more of the recommendations; or
- (c) reject one or more of the recommendations and set the salaries or benefits that are to be substituted for the salaries or benefits proposed by the rejected recommendations;

and if the standing committee rejects a recommendation, it must provide reasons for each recommendation rejected.

Implementing recommendations if vote in Assembly

11.1(28) If a vote of concurrence takes place in the Assembly within 21 days after the standing committee's report is presented, the recommendations respecting salaries and benefits that are contained in the report of the standing committee and concurred in by the Assembly must be implemented in accordance with the vote.

Implementing recommendations if no vote in Assembly

11.1(29) If no motion of concurrence is voted on in the Assembly within 21 days after the standing committee's report is presented, the recommendations of the compensation committee respecting salaries and benefits must be implemented.

Adjusting time periods

11.1(30) Any time period within which the standing committee or the Assembly must act under this section

- (a) shall, if the Assembly is dissolved, be suspended until 15 days after the beginning of the first session of the next Assembly; and
- (b) may be extended, by resolution of the Assembly, for a period of time that is reasonably necessary to respond to dire and exceptional circumstances confronting the Assembly or the government.

Implementation by government

11.1(31) The government must, with due diligence and reasonable dispatch, take whatever steps are necessary to implement the recommendations referred to in subsections (23), (28) and (29).

Costs of compensation committee process

11.1(32) The judges of the court are entitled to costs prescribed in the regulations with respect to their participation in the compensation committee process. The Lieutenant Governor in Council may make regulations prescribing costs under this subsection and may set a total limit on the costs.

S.M. 1989-90, c. 34, s. 7; S.M. 2001, c. 40, s. 8.

ANNUAL REPORT

Annual report re administrative accountability to the public

11.2(1) Within three months after the end of each fiscal year of the government, beginning with the fiscal year ending on March 31, 2003, the Chief Judge must prepare an annual report about the activities and functioning of the court during the year.

Information to be included in annual report

11.2(2) The annual report must contain the following information:

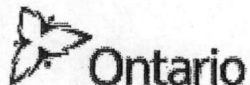
- (a) the number and type of cases and proceedings according to categories of accused;
- (b) the number and type of cases and proceedings, including final dispositions, reviews and inquests;
- (c) the availability of trial dates;
- (d) the contingent liability of the government for public funds that results from unused vacation leave or retirement allowances of the judges;
- (e) the effective utilization of the court, including the average daily use of courtrooms by the Provincial Court in Winnipeg and in locations outside Winnipeg;
- (e.1) the number of inquests conducted under *The Fatality Inquiries Act*;
- (e.2) with respect to each inquest report under *The Fatality Inquiries Act* completed that year, the length of time from the completion of the inquest until the report was completed;
- (f) any other information that, in the opinion of the Chief Judge, should be made available to the public to promote public understanding of the courts and the role of the judiciary;
- (g) any other information that may be required by the regulations concerning the operation, functioning and administration of the court, including statistical information.

Annual report submitted to minister by Chief Judge

11.2(3) The Chief Judge must submit the annual report to the minister who must table it in the Assembly within 15 days after receiving it if the Assembly is sitting, or if it is not, within 15 days after the beginning of the next sitting.

Annual report made available to the public

11.2(4) The minister shall ensure that the report is made available to the public after it has been tabled in the Assembly. If the Assembly is not sitting when the minister receives the report, the minister must make it available to the public within 15 days after receiving it.



[Français](#)

Courts of Justice Act

R.S.O. 1990, CHAPTER C.43

Consolidation Period: From April 19, 2016 to the [e-Laws currency date](#).

Last amendment: 2016, c. 5, Sched. 7.

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14.	Chief Justice, Associate Chief Justice and regional senior judges of Superior Court of Justice; Senior Judge of Family Court
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16.	Composition of court for hearings

<u>38.</u>	Jurisdiction of Ontario Court of Justice
<u>39.</u>	Judge to preside
<u>40.</u>	Appeals
<u>41.</u>	Penalty for disturbance outside courtroom
	<u>PROVINCIAL JUDGES</u>
<u>42.</u>	Appointment of provincial judges
<u>43.</u>	Judicial Appointments Advisory Committee
<u>44.</u>	Full and part-time service
<u>45.</u>	Application for order that needs be accommodated
<u>46.</u>	Outside activities
<u>47.</u>	Retirement
<u>48.</u>	Resignation and election
	<u>ONTARIO JUDICIAL COUNCIL</u>
<u>49.</u>	Judicial Council
<u>50.</u>	Complaint against Chief Justice, Associate Chief Justice or regional senior judge of the Ontario Court of Justice
<u>51.</u>	Other duties of Judicial Council
<u>51.1</u>	Rules
<u>51.2</u>	Use of official languages of courts
<u>51.3</u>	Complaint re provincial judge
<u>51.4</u>	Role of subcommittee
<u>51.5</u>	Mediation
<u>51.6</u>	Adjudication by Council
<u>51.7</u>	Compensation
<u>51.8</u>	Removal for cause
<u>51.9</u>	Standards of conduct
<u>51.10</u>	Continuing education
<u>51.11</u>	Performance evaluation
<u>51.12</u>	Consultation
	<u>PROVINCIAL JUDGES' REMUNERATION</u>
<u>51.13</u>	Remuneration and framework agreement
	<u>MISCELLANEOUS</u>
<u>52.</u>	Meetings of judges
<u>53.</u>	Regulations
	PART IV RULES OF COURT
<u>65.</u>	Civil Rules Committee
<u>66.</u>	Civil Rules
<u>67.</u>	Family Rules Committee

3. Encouraging personal growth. 1994, c. 12, s. 16.

Performance evaluation

51.11 (1) The Chief Justice of the Ontario Court of Justice may establish a program of performance evaluation for provincial judges, and may implement the program when it has been reviewed and approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

Duty of Chief Justice

(2) The Chief Justice shall make the existence of the program of performance evaluation public when it has been approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

Goals

(3) The following are among the goals that the Chief Justice may seek to achieve by establishing a program of performance evaluation for judges:

1. Enhancing the performance of individual judges and of judges in general.
2. Identifying continuing education needs.
3. Assisting in the assignment of judges.
4. Identifying potential for professional development. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

Scope of evaluation

(4) In a judge's performance evaluation, a decision made in a particular case shall not be considered.

Confidentiality

(5) A judge's performance evaluation is confidential and shall be disclosed only to the judge, his or her regional senior judge, and the person or persons conducting the evaluation.

Inadmissibility, exception

(6) A judge's performance evaluation shall not be admitted in evidence before the Judicial Council or any court or other tribunal unless the judge consents.

Application of subs. (5), (6)

(7) Subsections (5) and (6) apply to everything contained in a judge's performance evaluation and to all information collected in connection with the evaluation. 1994, c. 12, s. 16.

Consultation

51.12 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Justice of the Ontario Court of Justice shall consult with judges of that court and with such other persons as he or she considers appropriate. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (15, 18, 20).

PROVINCIAL JUDGES' REMUNERATION

Remuneration and framework agreement

Provincial Judges Remuneration Commission

51.13 (1) The committee known as the Provincial Judges Remuneration Commission in English and as Commission de rémunération des juges provinciaux in French is continued. 1994, c. 12, s. 16.

Composition and functions

(2) The composition and functions of the Commission are as set out in Appendix A of the framework agreement set out in the Schedule to this Act. 1994, c. 12, s. 16.

Framework agreement

(3) The framework agreement forms part of this Act. 1994, c. 12, s. 16.

Same

(4) The reference in paragraph 11 of the framework agreement to public servants as defined in the *Public Service Act* is deemed to be a reference to public servants employed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 20 (1).

MISCELLANEOUS

Meetings of judges

Superior Court of Justice

52. (1) The judges of the Superior Court of Justice shall meet at least once in each year, on a day fixed by the Chief Justice of the Superior Court of Justice, in order to consider this Act, the rules of court and the administration of justice generally. 1994, c. 12, s. 17; 1996, c. 25, s. 9 (14, 17).

Family Court

(2) The judges of the Family Court shall meet at least once in each year, on a day fixed by the Chief Justice of the Superior Court of Justice, in order to consider this Act, the rules of court and the administration of justice generally. 1998, c. 20, Sched. A, s. 22 (9).

(2.1) REPEALED: 2009, c. 33, Sched. 2, s. 20 (12).

Regional senior judges, Superior Court of Justice

(2.2) The regional senior judges of the Superior Court of Justice and the Senior Judge of the Family Court shall meet at least once in each year with the Chief Justice and the Associate Chief Justice of the Superior Court of Justice, on a day fixed by the Chief Justice, in order to consider this Act, the rules of court and the administration of justice generally. 1998, c. 20, Sched. A, s. 22 (10).

(3) REPEALED: 2009, c. 33, Sched. 2, s. 20 (13).

Regional meeting of judges

(4) The judges of the Court of Ontario in each region shall meet at least once in each year in order to consider this Act, the rules of court and the administration of justice in the region generally, on a day fixed jointly by the regional senior judge of the Superior Court of Justice and the regional senior judge of the Ontario Court of Justice. 2006, c. 21, Sched. A, s. 7.

(5) REPEALED: 2009, c. 33, Sched. 2, s. 20 (14).

Regulations

53. (1) The Lieutenant Governor in Council may make regulations,

- (a) fixing the number of judges of the Superior Court of Justice for the purpose of clause 12 (1) (e);
- (a.1) fixing the number of judges of the Superior Court of Justice who are members of the Family Court appointed under clause 21.2 (1) (e);
- (a.2) fixing the remuneration of provincial judges;
- (a.3) providing for the benefits to which provincial judges are entitled, including benefits respecting,
 - (i) leave of absence and vacations,
 - (ii) sick leave credits and payments in respect of those credits, and
 - (iii) pension benefits for provincial judges and their surviving spouses and children;
- (b) fixing the remuneration of case management masters and providing for the benefits to which they are entitled;
- (b.1) fixing the remuneration of deputy judges of the Small Claims Court;
- (c) prescribing a period of time for the purposes of subsection 86.1 (2);

1. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of The Regional Municipality of Haldimand-Norfolk, deemed to be a reference to the following areas:
 - i. All the area of the County of Haldimand as it existed on the 31st day of March, 1974.
 - ii. All the area of the County of Norfolk as it existed on the 31st day of March, 1974.
2. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of The Regional Municipality of Niagara, deemed to be a reference to the following areas:
 - i. All the area of the County of Lincoln as it existed on the 31st day of December, 1969.
 - ii. All the area of the County of Welland as it existed on the 31st day of December, 1969.
3. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of The Regional Municipality of Sudbury and the Territorial District of Sudbury, deemed to be a reference to all the area in The Regional Municipality of Sudbury and in the Territorial District of Sudbury.
4. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of an area described below, deemed to be a reference to all the area in the areas described below:
 - i. All the area in the County of Victoria.
 - ii. All the area in the County of Haliburton.
 - iii. All the area in any part of the townships of Sherborne, McClintock, Livingstone, Lawrence and Nightingale located in Algonquin Park, so long as the part remains part of Algonquin Park. R.S.O. 1990, c. C.43, s. 151.

Meaning unchanged

151.1 Despite the repeal of the *Municipal Act*, for the purposes of this Act and any provision of another Act or regulation that relates to the operation of the courts or the administration of justice, the terms "county", "district", "union of counties", "regional municipality" and "district municipality" have the same meaning as they did on December 31, 2002, unless the context otherwise requires. 2002, c. 17, Sched. F, Table.

SCHEDULE

APPENDIX A OF FRAMEWORK AGREEMENT

BETWEEN:

Her Majesty the Queen in right of the Province of Ontario represented by the Chair of Management Board
("the Minister")

and

the Judges of the Ontario Court (Provincial Division) and the former Provincial Court (Civil Division) represented by the respective Presidents of The Ontario Judges Association, The Ontario Family Law Judges Association, and the Ontario Provincial Court (Civil Division) Judges' Association

("the Judges")

These are the terms to which the Minister and the Judges agree:

Definitions

1. In this agreement,

"Commission" means the Provincial Judges' Remuneration Commission; ("Commission")

"Crown" means Her Majesty the Queen in right of the Province of Ontario; ("Couronne")

"judges' associations" means the associations representing the Judges of the Ontario Court (Provincial Division) and the former Provincial Court (Civil Division); ("associations de juges")

"parties" means the Crown and the judges' associations. ("parties")

Introduction

2. The purpose of this agreement is to establish a framework for the regulation of certain aspects of the relationship between the executive branch of the government and the Judges, including a binding process for the determination of Judges' compensation. It is intended that both the process of decision-making and the decisions made by the Commission shall contribute to securing and maintaining the independence of the Provincial Judges. Further, the agreement is intended to promote co-operation between the executive branch of the government and the judiciary and the efforts of both to develop a justice system which is both efficient and effective, while ensuring the dispensation of independent and impartial justice.

3. It is the intention of the parties that the binding process created by this document will take effect with respect to the 1995 Provincial Judges Remuneration Commission, and thereafter.

4. The Minister or the Judges may designate one or more persons to act on their behalf under this agreement.

Commission and Appointments

5. The parties agree that the Provincial Judges Remuneration Commission is continued.

6. The parties agree that the Commission shall consist of the following three members:

1. One appointed jointly by the associations representing provincial judges.
2. One appointed by the Lieutenant Governor in Council.
3. One, who shall head the Commission, appointed jointly by the parties referred to in paragraphs 1 and 2.

7. The parties agree that the members of the Commission shall serve for a term of three years beginning on the first day of July in the year their inquiry under paragraph 13 is to be conducted.

8. The parties agree that the term of office of the persons who are members of the Commission on May 1, 1991 shall expire on June 30, 1995.

9. The parties agree that the members of the Commission may be reappointed when their term of office expires.

10. The parties agree that if a vacancy occurs on the Commission, a replacement may be appointed for the unexpired part of the term.

11. The parties agree that judges and public servants, as defined in the *Public Service Act*, shall not be members of the Commission.

12. The parties agree that the members of the Commission shall be paid the remuneration fixed by the Management Board of Cabinet and, subject to Management Board's approval, the reasonable expenses actually incurred in carrying out their duties.

Scope

13. The parties agree that in 1995, and in every third year after 1995, the Commission shall conduct an inquiry respecting:

- (a) the appropriate base level of salaries,
- (b) the appropriate design and level of pension benefits, and
- (c) the appropriate level of and kind of benefits and allowances of provincial judges.

14. The parties agree that in addition to the inquiry referred to in paragraph 13, the Commission may, in its discretion, conduct any further inquiries into any matter relating to salary levels, allowances and benefits of provincial judges that are mutually agreed by the judges and the Government of Ontario.

15. The parties agree that the Commission whose term begins on July 1, 1995 and all subsequent Commissions shall begin their inquiry under paragraph 13 immediately after their term begins and shall, on or before the thirty-first day of December in the year the inquiry began, present recommendations and a report to the Chair of the Management Board of Cabinet.

16. The parties agree that the Commission shall make an annual report of its activities to the Chair of Management Board and the Chair shall table the report in the Legislature.

Powers and Procedures

17. The parties agree that the Commission may retain support services and professional services, including the services of counsel, as it considers necessary, subject to the approval of the Management Board.

18. The parties agree that the representatives of the Judges and the Lieutenant Governor in Council may confer prior to, during or following the conduct of an inquiry and may file such agreements with the Commission as they may be advised.

19. The parties agree that the Commission may participate in joint working committees with the judges and the government on specific items related to the inquiry of the Commission mentioned in paragraphs 13 and 14.

20. The parties agree that in conducting its inquiries, the Commission shall consider written and oral submissions made by provincial judges' associations and by the Government of Ontario.

21. The parties agree that the following rules govern the presentation to the Commission of submissions by provincial judges' associations and by the Government of Ontario, and their consideration by the Commission:

1. Each judges' association is entitled to receive advance disclosure of written submissions by the Government of Ontario and is entitled to make a written submission in reply.
2. The Government of Ontario is likewise entitled to receive advance disclosure of written submissions by provincial judges' associations and is entitled to make a written submission in reply.
3. When a representative of the Government of Ontario or of a judges' association makes an oral submission, the Commission may exclude from the hearing all persons except representatives of the Government of Ontario and of the judges' associations.
4. The representatives of the Government of Ontario and of the judges' associations are entitled to reply to each other's oral submissions.
5. If people have been excluded from the hearing under paragraph 3, the submissions of the Government of Ontario and of the judges' associations shall not be made public except to the extent that they are mentioned in the Commission's report.

22. The parties agree that the Commission may hold hearings, and may consider written and oral submissions from other interested persons and groups.

23. The parties agree that the Government of Ontario and the provincial judges' associations are entitled to be present when other persons make oral submissions to the Commission and are entitled to receive copies of other persons' written submissions.

24. Despite the repeal of the *Public Inquiries Act*, in connection with, and for the purposes of, any inquiry, the Commission or any member thereof has the powers of a commission under that Act.

Criteria

25. The parties agree that the Commission in making its recommendation on provincial judges' compensation shall give every consideration to, but not limited to, the following criteria, recognizing the purposes of this agreement as set out in paragraph 2:

- (a) the laws of Ontario,
- (b) the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions in the province and the overall state of the provincial economy,
- (c) the growth or decline in real per capita income,
- (d) the parameters set by any joint working committees established by the parties,
- (e) that the Government may not reduce the salaries, pensions or benefits of Judges, individually or collectively, without infringing the principle of judicial independence,
- (f) any other factor which it considers relevant to the matters in issue.

Report

26. The parties agree that they may jointly submit a letter to the Commission requesting that it attempt, in the course of its deliberations under paragraph 13, to produce a unanimous report, but in the event that the Commission cannot deliver a majority report, the Report of the Chair shall be the Report of the Commission for the purpose of paragraphs 13 and 14.

Binding and Implementation

27. The recommendations of the Commission under paragraph 13, except those related to pensions, shall come into effect on the first day of April in the year following the year the Commission began its inquiry, except in the case of salary recommendations which shall come into effect on the first of April in the year in which the Commission began its inquiry and shall have the same force and effect as if enacted by the Legislature and are in substitution for the provisions of any schedule made pursuant to this Agreement and shall be implemented by the Lieutenant Governor in Council by order-in-council within sixty days of the delivery of the Commission's report pursuant to paragraph 15.

28. The parties agree that the Commission may, within thirty days, upon application by the Crown or the judges' associations made within ten days after the delivery of its recommendations and report pursuant to paragraph 15, subject to affording the Crown and the judges' associations the opportunity to make representations thereupon to the Commission, amend, alter or vary its recommendations and report where it is shown to the satisfaction of the Commission that it has failed to deal with any matter properly arising from the inquiry under paragraph 13 or that an error relating to a matter properly under paragraph 13 is apparent on the report, and such decision is final and binding on the Crown and the judges' associations, except those related to pensions.

29. Where a difference arises between the Crown and the judges' associations relating to the implementation of recommendations properly within the scope of issues set out in paragraph 13, except those related to pensions, the difference shall be referred to the Commission and, subject to affording the Crown and the judges' associations the opportunity to make representation thereupon to the Commission, its decision is final and binding on the Crown and the judges' associations.

30. The parties agree that the recommendations with respect to pensions, or any reconsideration under paragraph 28 of a matter relating to pensions, shall be presented to the Management Board of Cabinet for consideration.

31. The parties agree the recommendations and report of the Commission following a discretionary inquiry pursuant to paragraph 14 shall be presented to the Chair of Management Board of Cabinet.

32. The parties agree that the recommendations of the Commission in consequence of an inquiry pursuant to paragraph 14 shall be given every consideration by Management Board of Cabinet, but shall not have the same force and effect as recommendations referred to in paragraph 13.

33. The parties agree that if the Management Board of Cabinet endorses recommendations referenced in paragraph 30 or 31, or some variation of those recommendations, the Chair of Management Board shall make every effort to implement them at the earliest possible date, following subsequent approval from Cabinet.

Disputes

34. The parties agree that if disputes arise as to whether a recommendation is properly the subject of an inquiry referenced in paragraph 13, or whether the recommendation falls within the parameters of paragraph 27 or 30, or with respect to the process, either party may require the Commission to consider the matter further.

35. The parties agree that requests by either party, made under paragraph 34, shall be presented to the Commission for consideration within one month of the presentation of the report to the Chair of Management Board.

36. The parties agree that the Commission, upon receiving notice from either party as set out in paragraph 34, shall present to the Chair of Management Board a decision with respect to the said matter, within one month of receiving such notice.

37. The parties may, during the course of the Commission's inquiry set out in paragraph 34, present either written or oral positions to the Commission for consideration on the said matter, which shall be disclosed to either party.

38. The parties agree that the decision of the Commission, as set out in paragraph 36, shall be given every consideration and very great weight by the Management Board of Cabinet.

39. Neither party can utilize the dispute clauses to limit, or to narrow, the scope of the Commission's review as set out under paragraph 13, or the binding effect of recommendations within its scope as set out under paragraphs 27 and 28.

40. The parties agree that in the event that an item(s) is referred to the Commission under paragraph 34, the Minister will proceed to implement the other recommendations of the Commission as set out in paragraphs 27, 28 and 33, except where the matter in dispute under paragraph 34 directly impacts the remaining items.

Review

41. The parties agree that either party may, at any time, request the other party to meet and discuss improvements to the process.

42. The parties agree that any amendments agreed to by the parties in paragraph 41 shall have the same force and effect as if enacted by the Legislature and are in substitution for the provisions of this Act or any schedule made pursuant to this Act.

Communication

43. The parties agree that all provincial judges should be made aware of any changes to their compensation package as a result of recommendations of the Commission.

44. The parties agree that all provincial judges should receive updated copies of legislation, regulations or schedules as necessary, related to compensation changes.

Salaries and Indexing

45. The parties agree that effective on the first day of April in every year after 1995, the annual salaries for full-time provincial judges shall be adjusted as follows:

1. Determine the Industrial Aggregate for the twelve-month period that most recently precedes the first day of April of the year for which the salaries are to be calculated.
2. Determine the Industrial Aggregate for the twelve-month period immediately preceding the period referred to in paragraph 1.
3. Calculate the percentage that the Industrial Aggregate under paragraph 1 is of the Industrial Aggregate under paragraph 2.
4. If the percentage calculated under paragraph 3 exceeds 100 per cent, the salaries are to be calculated by multiplying the appropriate salaries for the year preceding the year for which the salaries are to be calculated by the lesser of that percentage and 107 per cent.
5. If the percentage calculated under paragraph 3 does not exceed 100 per cent, the salaries shall remain unchanged.

46. In paragraph 45, "Industrial Aggregate" for a twelve-month period is the average for the twelve-month period of the weekly wages and salaries of the Industrial Aggregate in Canada as published by Statistics Canada under the authority of the *Statistics Act* (Canada).

47. The salaries, allowances and benefits of provincial judges shall be paid out of the Consolidated Revenue Fund.

Additional Provisions

48. This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

APPENDIX B OF FRAMEWORK AGREEMENT	
Judicial Salaries	
Date	Formula
April 1, 1991	\$124,250
April 1, 1992	0%
April 1, 1993	AIW*
April 1, 1994	AIW*
*Note: See paragraph 46 of Appendix "A".	

1994, c. 12, s. 48; 2009, c. 33, Sched. 6, s. 50.

Note: A reference in a court seal or printed court form to the name of a court or the title of an official changed by the Statutes of Ontario, 1996, chapter 25, section 8 does not prevent the form or seal from being used during the one year period following April 19, 1999. This section applies only to court seals and printed court forms in existence on that date. See: 1996, c. 25, ss. 10, 11 (2).

Français



**SUBMISSION TO THE NOVA SCOTIA
MINISTER OF FINANCE
PRE-BUDGET CONSULTATION**

February 26, 2016

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Canadian Union of Public Employees

Nova Scotia

The Canadian Union of Public Employees (CUPE) Nova Scotia is a union of more than 19,000 members province wide working together for better wages and working conditions, strong public services, and a prosperous economy that is enjoyed by all Nova Scotians.

CUPE members work to deliver public services in healthcare, including hospitals, long term care and home care; education, both school boards and post-secondary; municipalities; provincial highways; and community services, among other sectors of the economy.

CUPE members are proud to provide services in our communities as we work toward a better society, a better standard of living and safe working conditions for all.

Our members do this work every day, and their collective experience equips us to make a positive and informed contribution to the budgeting process of the province.

CUPE supports the development of vibrant, healthy communities and strong local economies. A provincial budget that invests in people and public services is key to realizing this goal.

CUPE is concerned that the fiscal plan laid out by the Minister of Finance focused on spending cuts, cuts to services, selling of public assets, privatization and suppression of public sector wages is an economic strategy now widely discredited by leading economists.

Cuts impact public and private sector employment, private sector businesses, tax revenues and out-migration. Cuts disproportionately affect the young, the most vulnerable and rural communities.

As Nova Scotia continues to emerge from the 2008 recession, with an aging population and a significant rural population, it is investment - not cuts - that is needed. As Federal Finance Minister Bill Morneau has said, "The right approach is to invest in the economy."¹

¹ Bruce Champion-Smith, "Despite sea of red, Grits commit to investment", *Toronto Star*, February 23, 2016.

Nova Scotia's fiscal situation

Nova Scotia's 2015-2016 deficit projected at \$100 ml or 0.3% of GDP (Sept 28, 2015) revised upwards to \$241 ml or 0.6% of GDP (Dec 15, 2015) is very low and compares favourably to other provinces. (See Figure 1)

Figure 1 Deficit as % GDP

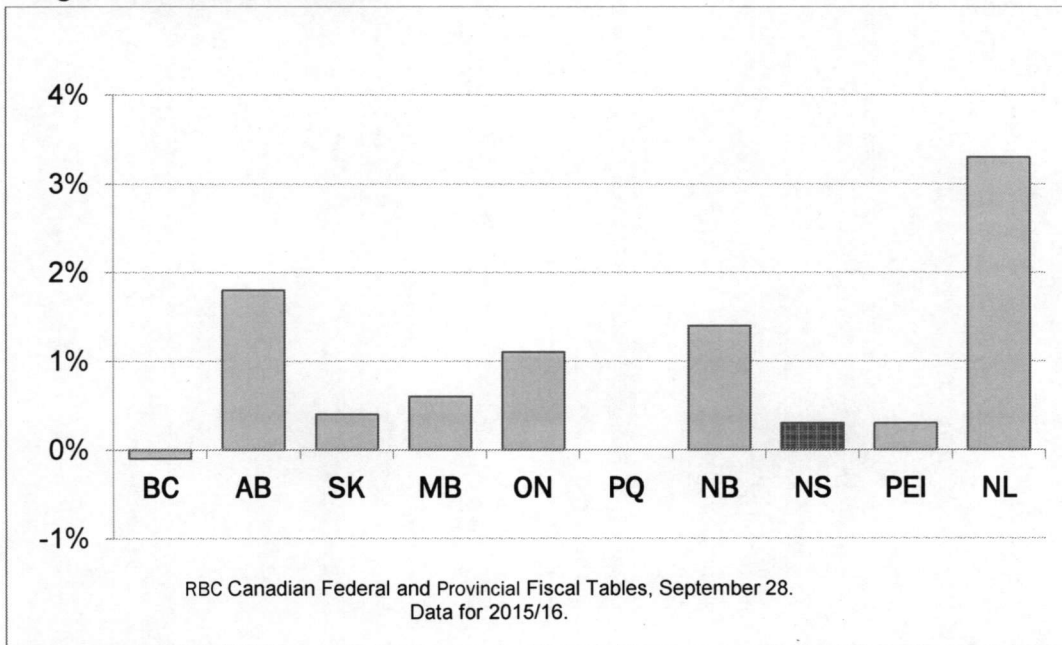
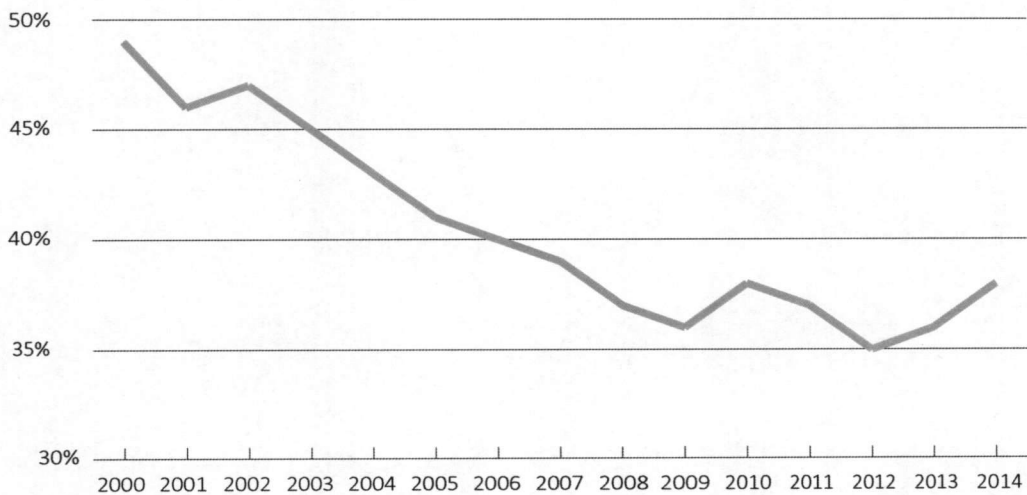


Figure 2 Nova Scotia's Debt to GDP Ratio, 2000-2014

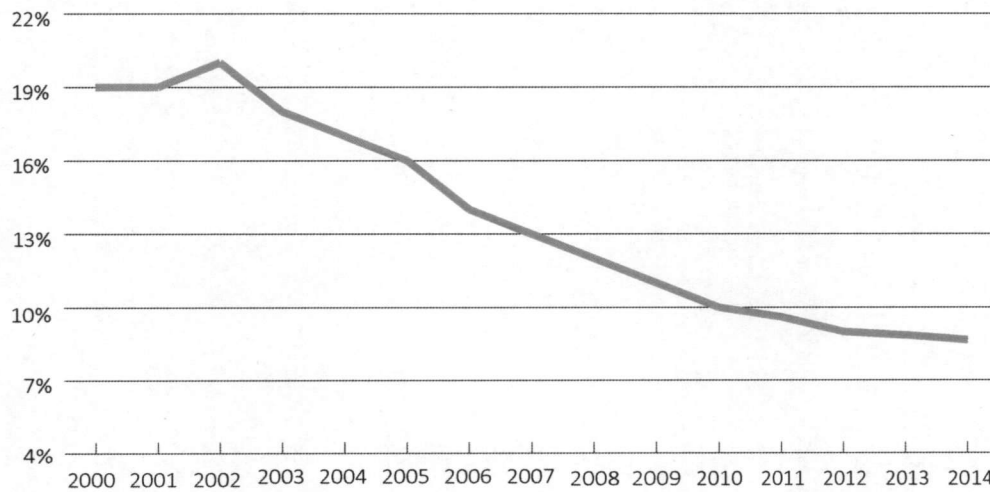


Source: Nova Scotia Department of Finance, Public Accounts, 2000-2014

Nova Scotia's ability to manage its debt has improved significantly over the past decade. Debt servicing charges as a percentage of GDP have fallen. (See Figure 2)

In fact, the proportion of Nova Scotia's total spending on debt charges is dramatically less today than it was 15 years ago. (See Figure 3)

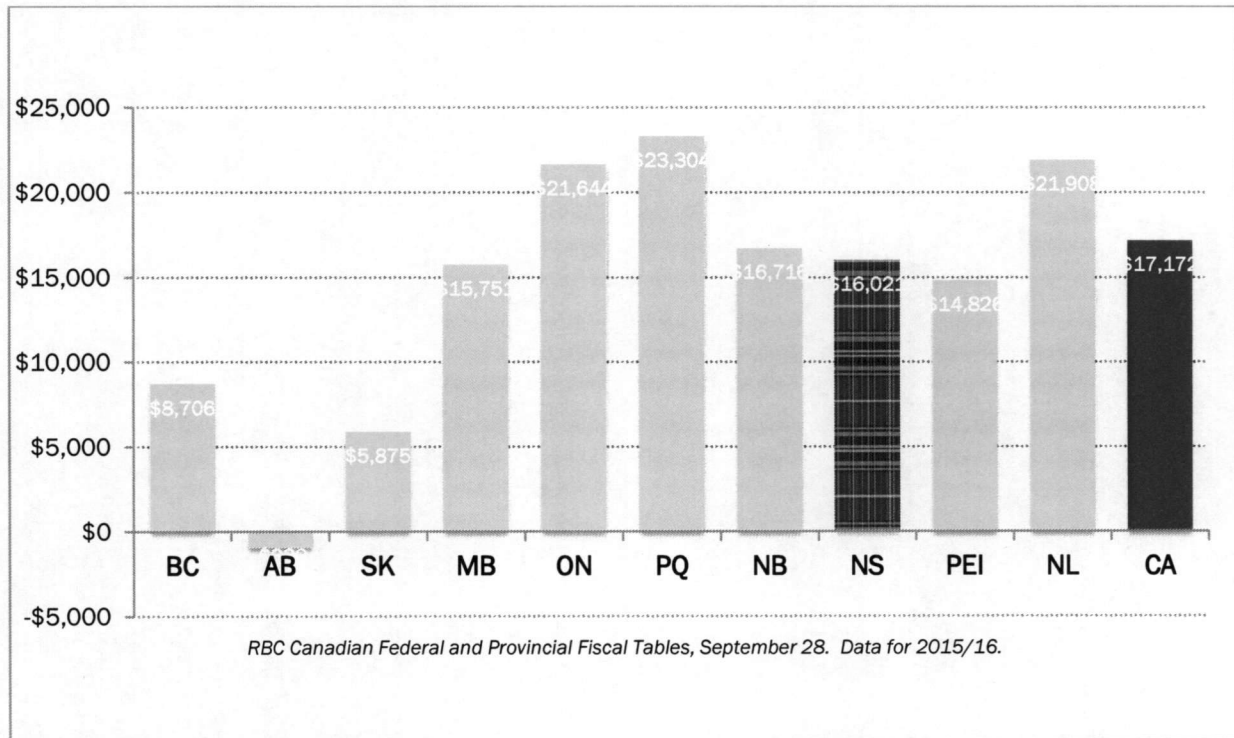
Figure 3
Nova Scotia's Debt Charges as a Percentage of Total Expenditures, 2000-2014



Source: Nova Scotia Department of Finance, Public Accounts, 2000-2014

Nova Scotia's net public debt is also mid-range among the provinces. At about \$16,000 per person, the debt level is well below any level that would be of concern. (See Figure 4) This debt financed public assets such as schools, roads, bridges, hospitals, community centres and the like that contribute to the quality of everyday life for Nova Scotians.

Figure 4 Nova Scotia's Net Public Debt per Person



An examination of Nova Scotia's fiscal situation shows that government does not need to impose drastic measures in a mad rush to eliminate the deficit.

Government is projecting a return to surplus in 2016/2017 based largely on a public sector wage freeze and cuts in public spending.

Cutting public services and public sector wages will not improve the fiscal situation. Time and again such austerity measures have proven to be disastrous for the economy.

The former Conservative government in New Brunswick, for example, introduced significant cuts to public spending and services. This resulted in the worst economic downturn in 30 years for the province and increased unemployment above rates during the Great Depression. Revenues declined and the deficit increased.

Nova Scotia needs a different approach to the economy and it needs a fundamentally different fiscal strategy.

Public Sector Jobs and Growth Multipliers

Instead of cutting spending to deal with a fiscal problem that has been wildly exaggerated, the province should focus on growing the economy, creating jobs and providing better services to families.

Using the federal government's economic growth and job creation multipliers, the positive effects of public spending on jobs and growth are clear. For every million dollars spent on these investments, the return are significantly higher than for tax cuts. (See Figure 5)

The International Monetary Fund (IMF) study, *Fiscal Multipliers and the State of the Economy* released in December 2012, analyzed decades of data on the world's major industrialized countries to estimate how changes in government spending or revenue affect economic output. The study found that it is much better to deal with deficits by increasing taxes, rather than implementing drastic austerity budget cuts.²

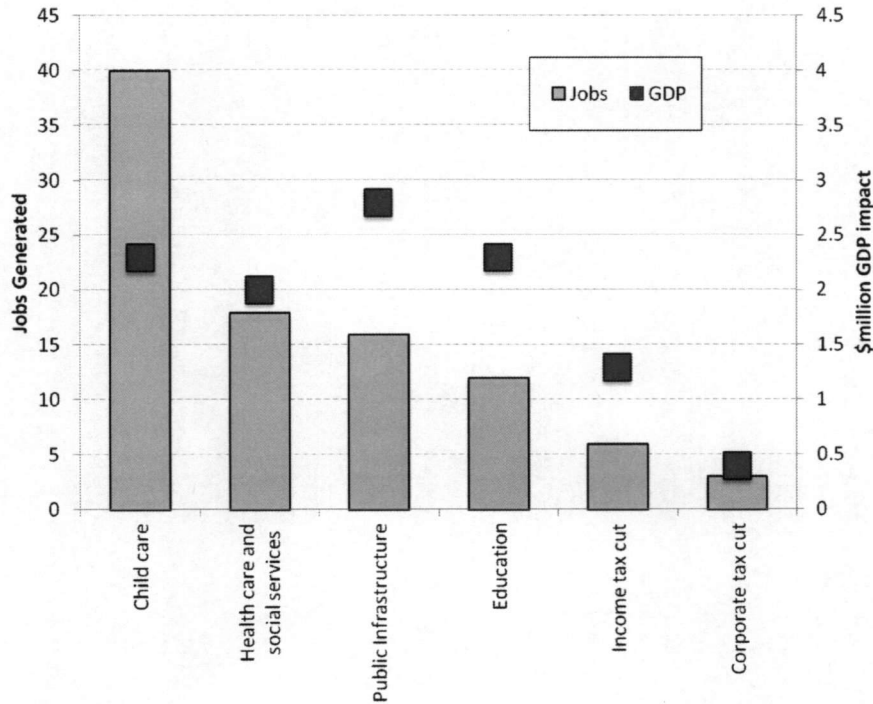
Public spending drives private spending. Public sector wages buy groceries and cars. Public sector workers shop in downtowns. As the economy grows, the public sector needs to grow as well to sustain private spending by consumers and business alike. If the economy shrinks, the public sector needs to grow even faster to compensate for the fall in private spending.

Investing in public services strengthens the provincial economy, enhances our communities and attracts people and investment to Nova Scotia. This is a fiscal strategy that will create a sustainable economy, grow revenues and address any deficit issues.

² Anja Baum, Marcos Poplawski-Ribeiro, and Anke Weber, *Fiscal Multipliers and the State of the Economy*, IMF Working Paper /12/286, December, 2012

Figure 5 Public Investment Yields Strongest Economic Impact

Public Investment Yields Strongest Economic Impact
(per \$1 Million invested or spent)



Source: *Federal Budget 2009* (p.240), Informetrica Ltd *Macroeconomic Impacts* (2009) and Centre for Spatial Economics, *Economic Impacts of Early Learning and Care* (2011). Prepared by Toby Sanger CUPE National

Spending on early learning and child care provides more short-term economic stimulus than other major sectors of the economy. The GDP multiplier (the increase in GDP generated from a dollar increase in spending) in the early learning and child care sector is \$2.23.

Early Learning and Childcare

Well directed public spending on child care is a public investment, not a public cost and is part of the solution to Nova Scotia’s economic challenges. Every \$1 million invested in high quality child care creates 47 jobs and brings a \$2.23 million return in short and long-term benefits to Nova Scotia — including educational benefits as well as increased earnings and reduced social costs.³

³ Robert Fairholm, “Short-term impact analysis of an expansion of regulated early learning and care in Nova Scotia”, Centre for Spatial Economics”, December 2011, www.childcarecanada.org/documents/research-policy-practice/11/12/short-term-impact-analysis-expansion-regulated-early-learn.

Recent analysis by highly-respected economist Robert Fairholm shows that investing in early learning and childcare would provide the strongest economic boost in terms of jobs and economic growth for Nova Scotia, significantly higher than other sectors. What's more, it could also almost pay for itself in terms of increased revenues for governments from the additional jobs and economic activity.⁴

TD Economics went further in 2012 by recommending that public spending on child care become a top priority. It concluded that the widespread and long-lasting economic, social, and health benefits for children and society far outweighed the costs. It also noted that Canada is last among its peer countries on public spending on child care.

The Nova Scotia government is severely underfunding regulated child care. Low wages make it difficult to attract and retain the qualified staff needed for high quality programming. Volunteer boards without adequate resources are pressed to meet community needs. For-profit corporations are expanding their reach in the absence of a long-term policy framework. Fees of \$30 to \$40 a day are prohibitive. Parents across the province struggle to access affordable, quality, public child care despite the wealth of research that shows good public policy on child care is pivotal to a healthy economy. CUPE continues to encourage the use of schools or other public education facilities to provide a publicly funded and publicly delivered early learning and child care system.

Pitfalls of toll road privatization

CUPE is alarmed that the government of Nova Scotia is paying almost a million dollars to a private company to recommend if there should be tolls on eight section of series 100 highways totaling 301.2 kilometers. The company is also to handle public consultations on the issue.⁵

As studies in both Canada and the United States have shown, the economics and governance of privatized roads are "highly problematic"⁶. For existing roads, outsourcing borrowing against future toll revenue to a private entity is likely to generate less money than a public entity could produce with the same tolls because private toll operators have higher borrowing costs and must divert some revenues to their shareholder profits. In addition to the fiscal downsides, fragmentation, loss of public control over transportation

⁴ Matthew Pearson, "Boost child care spending for big payoff, bank urges" *Ottawa Citizen*, 26 November 2012
www.ottawacitizen.com/business/Boost+child+care+spending+payoff+bank+urges/7612611/story.html#ixzz2OrNg45Kt

⁵ Nova Scotia Department of Transportation and Infrastructure, News Release, "Tender Awarded for Tolling Feasibility Study", September 21, 2015.

⁶ U.S. PIRG Education Fund, "Private Roads, Public Costs: The Facts About Toll Road Privatization and How to Protect the Public", Spring, 2009.

policy and the inability to plan for future public needs in contracts that stretch over multiple decades are damaging to the public interest.

New Brunswick's Auditor General determined that the province paid \$55 million more in interest costs for the Fredericton to Moncton highway contract to MRDC because the roadbuilder had to borrow money at higher interest rates than government could.⁷

The government of Nova Scotia is paying an effective interest rate of 10 per cent for 30 years, twice its rate for borrowing, for the P3 Cobequid Pass Toll Highway. A briefing note prepared on P3s for government estimates that more than \$300 million in tolls were produced by this stretch of highway, for a deal that saw private financiers put up just \$66 million. That's a return on investment of more than 350 per cent!⁸

Road privatization deals may look like an easy "quick fix", but taxpayers will not receive full value for the years of toll revenues paid for by future generations and not collected for public uses.

Auditor Generals find public-private partnerships increase costs

Public-Private Partnerships (P3s) are proven to unnecessarily increase costs. Despite many promises of private sector efficiency for the delivery of public services, this has not been borne out. Recent high-profile failures of these schemes have resulted in cost overruns, poorly managed facilities, loss of democratic control, and undermined workers' wages and benefits.⁹

Successive Auditor General Reports have highlighted problems with P3s¹⁰:

In her 2014 Report, Ontario's Auditor General reviewed 74 P3 projects and concluded that the province paid \$8 billion more to private contractors than would have been spent had these projects been provided through the public sector. She also questioned the main justification for using P3s – the assertion that they transferred risk to the private sector. The P3 projects used unrealistically high risk transfer, averaging about 50 per cent of the capital costs.

⁷ CBC News, "Auditor-General questions toll highway deal", December 7, 1999 at <http://www.cbc.ca/news/canada/auditor-general-questions-toll-highway-deal-1.192397>.

⁸ Nova Scotia Public Accounts Committee, *Hansard*, December 2, 2015.

⁹ The Centre for Civic Governance, *Public-Private Partnerships: Understanding the Challenge A Resource Guide*, Second Edition, June 2009.

¹⁰ CUPE Research, *CUPEFACTS*, "What provincial auditors have said about P3s", April 2015.

In 2014 the Auditor General of British Columbia raised major concerns about the high cost of debt through P3 projects. The interest rates on this \$2.3 billion of P3 debt ranged from 4.42 per cent to 14.79 per cent. Her review shows that P3 projects are creating higher levels of debt than if the government had financed the projects itself, since interest rates are almost double with P3s.

In 2010, the provincial auditor of Quebec found that the Montreal University Health Care Centre (MUHC) P3 cost more than the public option, and that the analysis used to compare the P3 model to a conventional public model was extremely faulty. Instead of the P3 model saving \$33 million, the provincial auditor found that the public model would have saved \$10 million. The auditor's special report to the National Assembly also found that there was a cost overrun of over \$108 million to the original price tag of \$5.2 billion.

In 1998, the Auditor General of New Brunswick reviewed two P3s in that province: Evergreen P3 School and Wackenhut's Miramichi Youth Facility. The Auditor General concluded that the capital cost of the Evergreen School would have cost \$774,576 less had the province done the work itself and that the Youth Facility cost the Province \$700,000 more because of higher financing costs through the private corporation Wackenhut.

In 1995, the Auditor General of Canada reviewed the Confederation Bridge P3 project and concluded that the construction cost \$45 million more than if the government had directly borrowed the money.

Nova Scotia can learn from its own P3 schools experience. Auditor Generals found the P3 route to build 39 schools has cost the province millions more dollars to build and operate than the traditional public procurement program. Beginning in June 2016, Nova Scotia must decide to purchase the schools outright or renew the leases. CUPE believes these public assets should be returned to public ownership and control.

Public-private partnerships (P3s) have been shown to be a false economy, costing far more over the long-term and delivering less. Now that the new federal Trudeau Liberal government has eliminated the "P3 screen" requirement that recipients of federal infrastructure funding must consider P3s, Nova Scotia should follow the lead of their federal counterparts and move away from P3s.

Monetization of public assets reduces revenues

Selling off public assets – particularly those that generate revenue or those that will increase in value – and privatizing public services are very short-sighted and regressive

measures. While it may provide an immediate cash grab, it rarely pays off over the long-run and increases costs on those who can afford the least.

The sale or “monetization” of Nova Scotia’s Land Registry, Registry of Joint Stock, and Registry of Motor Vehicles would involve not just a sell-off of valuable public assets (and so a lower level of assets), but also lower revenues and potential revenues.

Nova Scotia’s registry of motor vehicles alone generates about \$120 million a year and costs about \$35 million to operate. Selling the registries for a lump sum now means the loss of millions of dollars in future revenues. It makes no economic sense.¹¹

Nova Scotia land surveyors claim outsourced land registries elsewhere in Canada have seen a tripling of fees and reduced access.¹² For example, Ontario’s land registry system was fully privatized in 2003. After being purchased by Teranet, offices were closed, services were cut and new fees introduced.

No matter how the service is managed, the public ends up paying for it. We either pay up front, with taxes, or we pay while accessing the services, with user fees. In 2005 the top 15 executives at Teranet made \$167.2 million.¹³

Instead of selling off its public assets, the province should be increasing them, as smart governments elsewhere in the world are doing.¹⁴

Home support should not be commercialized

CUPE Nova Scotia commends the provincial government for not restructuring home support through the introduction of a compulsory competitive bidding system. Competitive bidding is the wrong policy choice and would throw Nova Scotia’s home support system into chaos. Ontario’s twenty-year experience is evidence of that.

Competitive bidding would pave the way for commercialization of Nova Scotia’s home support services, pushing out non-profit agencies with deep roots in Nova Scotia’s communities. Instability in the sector would negatively impact continuity of care. Uncertainty around working conditions would contribute to staff turnover and recruitment and retention issues. Scarce health care dollars will end up paying for higher administrative fees and corporate profits.

CUPE has long advocated that homecare must operate under the principles of the *Canada Health Act* and should be integrated into the continuum of health care services.

¹¹ Michael Gorman, “Private Sector asked for interest in N.S. motor vehicle, land registries”, *Chronicle Herald*, July 21, 2015.

¹² Paul Withers, “Nova Scotia land surveyors stand against privatization of land registry”, *CBC News*, September 10, 2015.

¹³ Eric Reguly, “Why Teranet Plans came up short”, *Globe and Mail* June 6, 2006

¹⁴ Christopher Hume, “Selling off assets a bad bargain for city”, *Toronto Star*, March 1, 2015.

Care should provide dignified lives for care recipients and dignified employment for workers in the homecare system.

Improve and expand our public health care system

Better quality public health care is not only important in its own right, but also helps businesses compete, creates jobs and improves productivity. Improved health care is estimated to be responsible for about 25 per cent of productivity growth in recent decades.

Nova Scotia's public health care system is threatened by recent federal funding restrictions, cuts, privatization and the abandonment of federal leadership in improving health care. The federal government used to fund 50 per cent of provincial health care funding; soon it is projected to be less than 20 per cent. This leaves the province of Nova Scotia facing the fiscal pressure of rising health care needs.

CUPE urges the Nova Scotia provincial government to continue to press the federal government to negotiate a new health care funding accord with provinces and territories, providing annual 6 per cent increases in federal funding over a decade, tied to improvements to public health care. This was a key recommendation of Premiers at their 2015 Council of the Federation meeting.

CUPE further urges the Nova Scotia government not to back-track on demands to re-establish the equalization component of the Canada Health Transfer (CHT). Changes made by the former Federal Conservative Government to the CHT have cost Nova Scotia dearly (\$20.3 million in 2014/2015 and \$24.3 million in 2015/2016). A long-term agreement that takes the aging population of some provinces into account is essential to the fiscal health of Nova Scotia. CUPE is concerned that Atlantic premiers may now be backing away from asserting this position with the new Liberal federal government.¹⁵ A new Health Accord and reinstatement of the equalization portion of the CHT would have positive impacts on Nova Scotia's bottom line.

Conclusion

Instead of narrowly focusing on spending cuts, outsourcing and privatization, CUPE urges the government to focus on what they were elected to do, what their federal cousins are promising to do and what's best for Nova Scotia: creating jobs, improving public services for families and growing the economy.

¹⁵ Jacques Poitras, "Premiers say increase in transfer payments for health care unlikely", CBC News NB, February 10, 2016 at <http://www.cbc.ca/news/canada/new-brunswick/atlantic-premiers-health-care-1.3442644>

STOOD

**Bill #174
Financial Measures (2016) Act**

CHANGES RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE

PAGE 1 - add after Clause 1 the following heading and Clause:

PART I

FINANCE ACT

2 Chapter 2 of the Acts of 2010, the *Finance Act*, is amended by adding immediately after Section 80 the following Section:

80A (1) Where, after the coming into force of this Section, an agreement is entered into by or on behalf of the Province that provides for the payment of management fees by the Province to a person other than a party to the agreement, the Province shall, within thirty days, publicly disclose the amounts to be paid and the terms of payment.

(2) Where, before the coming into force of this Section, an agreement was entered into by or on behalf of the Province that provides for the payment of management fees by the Province to a person other than a party to the agreement and where, on the coming into force of this Section, there remain any obligations to be fulfilled under the agreement, the Province shall, within thirty days of the coming into force of this Section, publicly disclose the amounts to be paid and the terms of payment.

PAGES 1 to 7,

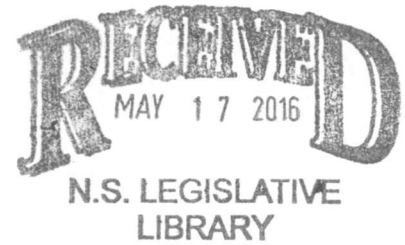
- (a) **PARTS I to VI** - renumber as II to VII; and
- (b) **Clauses 2 to 20** - renumber as 3 to 21 and change cross-references accordingly.

LAW AMENDMENTS COMMITTEE

Red Room, Province House

Tuesday, May 17, 2016

11:00 am



Bill #174 - Financial Measures (2016) Act

Deferred from previous meeting

**Bill #177 - Municipal Government Act (amended) and
Halifax Regional Municipality Charter (amended)**

Deferred from previous meeting

DEFEATED

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