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2nd SESSION, 66th GENERAL ASSEMBLY  
Province of Prince Edward Island  
70 ELIZABETH II, 2021

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**(Bill No. 16)**

## **Provincial Court Act**

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Hon. Bloyce Thompson  
Minister of Justice and Public Safety and Attorney General

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GOVERNMENT BILL

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Andrea MacRae  
Acting Queen's Printer  
Charlottetown, Prince Edward Island





## PROVINCIAL COURT ACT

**BILL NO. 16**

**2021**

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

### PART 1 - INTERPRETATION

#### 1. Definitions

In this Act,

- (a) “**advisory committee**” means the Judicial Appointments Advisory Committee appointed pursuant to section 8;
- (b) “**candidate**” means a person who has applied to be appointed as a provincial court judge or whose appointment has been recommended by the advisory committee;
- (c) “**Chief Judge**” means
  - (i) the Chief Judge designated under subsection 4(1), or
  - (ii) a person designated under subsection 4(4) or (7) to act as Chief Judge for the purposes of a complaint referred to in section 31;
- (d) “**Commission**” means the Judicial Remuneration Review Commission continued under section 11;
- (e) “**complainant**” means a person who makes a complaint respecting a judge under section 28;
- (f) “**court**” means the Provincial Court of Prince Edward Island continued under section 3;
- (g) “**Department**” means the Department of Justice and Public Safety;
- (h) “**education in sexual assault law**” means education in sexual assault law that includes instruction respecting evidentiary prohibitions, principles of consent, the conduct of sexual assault proceedings, and myths and stereotypes associated with sexual assault complaints;
- (i) “**former Act**” means the *Provincial Court Act* R.S.P.E.I. 1988, Cap. P-25;
- (j) “**Indemnities and Allowances Commission**” means the Indemnities and Allowances Commission continued or established under the *Legislative Assembly Act* R.S.P.E.I. 1988, Cap. L-7.1;
- (k) “**judge**” means a judge of the court and includes a judge appointed under section 19 to the extent set out in that section and a part-time judge appointed under section 20;

- (l) “**judge of a superior court**” means a judge appointed to a superior court, as defined in subsection 35(1) of the *Interpretation Act* (Canada), and includes a retired judge of a superior court;
- (m) “**Judicial Council**” means the Judicial Council established under section 26;
- (n) “**Minister**” means the Minister of Justice and Public Safety and Attorney General;
- (o) “**panel**” means a panel of the Judicial Council appointed under subsection 36(1);
- (p) “**part-time**” means employment of a judge for irregular hours of duty or for specific intermittent periods, or both, when the services of that judge may not be required for the whole of the normal work period;
- (q) “**respondent**” means a judge
  - (i) who is the subject of a complaint made under section 28, or
  - (ii) in respect of whom an investigation is conducted under section 30;
- (r) “**tribunal**” means either
  - (i) a panel, or
  - (ii) a judge of a superior court designated by the Chief Justice of Prince Edward Island under clause 34(1)(b),as the case may be.

## 2. Administration

- (1) The Minister is responsible for the administration of this Act.

### Delegation

- (2) The Minister may delegate to an employee of the Department any of the powers, responsibilities and functions of the Minister under this Act that the Minister considers advisable.

## PART 2 - PROVINCIAL COURT OF PRINCE EDWARD ISLAND

### 3. Provincial Court of PEI continued

- (1) The Provincial Court of Prince Edward Island, established pursuant to the former Act, is continued.

### Composition of court

- (2) The court shall be composed of the number of judges that the Lieutenant Governor in Council, on the advice of the Minister, considers advisable.

### 4. Designation of Chief Judge

- (1) The Lieutenant Governor in Council may, on the recommendation of the Minister, designate one of the judges referred to in subsection 3(2) as the Chief Judge.

### Term of designation

- (2) A designation under subsection (1) is for a term of five years and terminates on the earliest of
  - (a) the end of the five-year term;



- (b) the effective date of the person's retirement, resignation from office as Chief Judge or removal from office; and
- (c) the date on which the person attains the age of 70 years.

**Delegation by Chief Judge**

- (3) The Chief Judge may delegate to another judge his or her powers, responsibilities and functions under this Act.

**Acting Chief Judge**

- (4) The Minister may designate an acting Chief Judge where
  - (a) the Chief Judge is unable to act as Chief Judge due to incapacity; or
  - (b) no judge has been designated as Chief Judge under subsection (1).

**Authority of acting Chief Judge**

- (5) A judge designated as acting Chief Judge under subsection (4)
  - (a) shall act as Chief Judge for the purposes of this Act; and
  - (b) has the powers, responsibilities and functions of the Chief Judge under this Act.

**Term of acting designation**

- (6) The designation of an acting Chief Judge under subsection (4) continues until
  - (a) the Chief Judge is able to resume his or her duties as Chief Judge; or
  - (b) a Chief Judge is designated under subsection (1).

**Designation for purposes of Part 7**

- (7) Notwithstanding subsection (4), the Minister shall designate an acting Chief Judge
  - (a) for the purposes of a complaint referred to in section 31, on notification by the Judicial Council pursuant to clause 31(a) that the Chief Judge has been named as a respondent; or
  - (b) where the Minister has requested under section 29 an investigation respecting the Chief Judge.

**Term of acting designation**

- (8) A judge designated as acting Chief Judge under subsection (7)
  - (a) acts as Chief Judge and has the powers, responsibilities and functions of the Chief Judge under this Act only with respect to a complaint or request referred to in section 31; and
  - (b) serves as acting Chief Judge only until that complaint or request has been dealt with in accordance with Part 7.

**5. Powers and duties of Chief Judge**

- (1) In addition to the Chief Judge's powers and duties as a judge, the Chief Judge has the power and duty to
  - (a) designate a particular case or matter or class of cases or matters in respect of which a particular judge shall act;
  - (b) designate a particular geographic area in respect of which a particular judge shall act;
  - (c) designate which court facilities shall be used by particular judges;
  - (d) assign duties to judges;

- (e) exercise the powers and perform any duties of the Chief Judge under the *Justice of the Peace Act* R.S.P.E.I. 1988, Cap. J-6; and
- (f) exercise any other powers and perform any other duties that are specified in this Act or prescribed in the regulations.

**Residence of judge**

- (2) Where the residence of a judge has been established for the purpose of servicing a particular geographical area pursuant to clause (1)(b), that geographical area shall not be changed except with the consent of the judge.

**Suspension of sittings of court**

- (3) The Chief Judge may order
  - (a) that all sittings of the court in one or more locations shall be immediately suspended where, in the opinion of the Chief Judge, weather, technological failure or other hazardous or emergency conditions and events exist that threaten the safety or welfare of any person or otherwise prevent the court from continuing to function; and
  - (b) that the clerk of the court shall provide notice of the closure of the court to the persons and in the manner directed by the Chief Judge.

**Code of Conduct**

- (4) The Chief Judge may establish a Code of Conduct for judges, including rules respecting conflict of interest.

**Guidelines**

- (5) The Chief Judge may establish guidelines respecting
  - (a) the conduct of a respondent that constitutes misconduct for the purposes of subsection 42(1); and
  - (b) acts or omissions of a respondent that constitute incompetence for the purposes of subsection 42(2).

**6. Continuing education plan**

- (1) The Chief Judge shall, after consultation with judges and other persons the Chief Judge considers appropriate, establish and implement a continuing education plan for judges.

**Goals of continuing education**

- (2) Continuing education of judges has the following goals:
  - (a) developing and maintaining professional competence in substantive and procedural law, including, but not limited to, education in sexual assault law;
  - (b) developing and maintaining social awareness, including, but not limited to, education in relation to
    - (i) issues of racial and gender equity, and
    - (ii) issues affecting indigenous peoples;
  - (c) encouraging personal growth.

**7. Styles of address**

- (1) A judge appointed under this Act shall be styled “Judge of the Provincial Court” or “Provincial Court Judge” and is entitled to be addressed as “Judge (surname of judge)”.



**Provincial Judge**

- (2) Where in any Act or regulation reference is made to a “Provincial Judge”, the reference shall be deemed to be to a “Provincial Court Judge”.

**PART 3 - JUDICIAL APPOINTMENTS ADVISORY COMMITTEE**

**8. Establishment of advisory committee**

- (1) The Judicial Appointments Advisory Committee may be appointed by the Lieutenant Governor in Council when required for the purposes of filling a current or anticipated vacancy.

**Composition of advisory committee**

- (2) The advisory committee shall be composed of five members of whom
- (a) one shall be the Chief Judge or a nominee of the Chief Judge, who shall be the chairperson;
  - (b) one shall be a lawyer nominated by the Law Society of Prince Edward Island;
  - (c) one shall be a lawyer nominated by the Prince Edward Island Branch of the Canadian Bar Association; and
  - (d) two shall be persons who are neither judges nor lawyers, nominated by the Minister.

**Remuneration**

- (3) A member of the advisory committee, other than a member appointed under clause (2)(a) who is a judge, shall be paid as remuneration an amount equal to the amount paid as remuneration to members of the Indemnities and Allowances Commission.

**Expenses**

- (4) Each member of the advisory committee shall be reimbursed, subject to Treasury Board policy, for the reasonable expenses actually incurred by the member in carrying out the member’s duties.

**Quorum**

- (5) A majority of the members of the advisory committee constitutes a quorum.

**9. Functions**

- (1) The functions of the advisory committee are
- (a) to establish, subject to subsection (2), criteria for the selection of candidates for appointment as judges, including, but not limited to, criteria respecting
    - (i) the assessment of experience, knowledge, community awareness and personal suitability for candidates,
    - (ii) sensitivity to and understanding of issues of gender and racial equity and issues affecting Indigenous peoples,
    - (iii) proficiency in English,
    - (iv) where the advisory committee considers the ability of a candidate to conduct a trial in French to be an asset, though not a requirement for appointment, proficiency in French, and
    - (v) knowledge of the community in which the candidate would serve if appointed;

- (b) to advertise for applications by candidates, in the manner approved by the advisory committee;
- (c) to accept applications by candidates, in the form approved by the advisory committee;
- (d) to evaluate applications by candidates, in the manner approved by the advisory committee; and
- (e) to provide the Minister as required with lists of qualified candidates for appointment as judges.

**Membership in Law Society required**

- (2) A candidate for appointment as a judge shall have been, for at least 10 years, a member in good standing
  - (a) of the Law Society of Prince Edward Island in accordance with the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1; or
  - (b) of the governing body of the legal profession in accordance with the equivalent legislation in force in another province or territory.

**10. Advertising**

- (1) The advisory committee shall advertise for applications by candidates to be appointed as a judge in the manner approved by the advisory committee.

**Evaluation of candidates**

- (2) The chairperson shall call a meeting of the advisory committee to evaluate the qualifications of candidates for appointment as a judge.

**Recommendation to Minister**

- (3) The advisory committee shall, after evaluating the qualifications of candidates, provide to the Minister, as applicable,
  - (a) information respecting the number of applications received and a recommendation for appointment of the qualified candidates;
  - (b) if there is no qualified candidate for a vacant position, a recommendation as to whether the vacant position should be advertised again in accordance with subsection (2); and
  - (c) information respecting the criteria used by the advisory committee to assess the applications.

**Notification not required**

- (4) Notwithstanding subsection (1), if the advisory committee has, within the six-month period prior to the vacancy, provided the Minister with a list of recommended candidates for a position of judge, and the list is not exhausted, the Minister may recommend to the Lieutenant Governor in Council that one of the remaining qualified candidates from that list be appointed to the position pursuant to section 18.



**PART 4 - JUDICIAL REMUNERATION REVIEW COMMISSION****11. Judicial Remuneration Review Commission continued**

- (1) The Judicial Remuneration Review Commission, established pursuant to the former Act, is continued.

**Composition of the Commission**

- (2) The Commission shall be composed of three members appointed by the Lieutenant Governor in Council, of whom
- (a) one shall be a representative of the Government, nominated by the Lieutenant Governor in Council;
  - (b) one shall be a representative of the judges, nominated by the Chief Judge; and
  - (c) one person, who shall act as chairperson, shall be nominated by the persons nominated pursuant to clauses (a) and (b).

**Persons ineligible for appointment**

- (3) The following persons are ineligible to be appointed as members of the Commission:
- (a) a judge of the Provincial Court;
  - (b) an employee, as defined in the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8.

**Term of appointment**

- (4) A member of the Commission shall be appointed for a term not exceeding three years and may be reappointed.

**Vacancy**

- (5) Where a member of the Commission ceases to hold office before the member's term expires, the Lieutenant Governor in Council may appoint a new member who meets the same requirements of subsection (2) to hold office for a term in accordance with subsection (4).

**Continued membership after expiry of term**

- (6) A member of the Commission continues to hold office after the expiry of the member's term until the member is reappointed or a successor is appointed.

**Remuneration**

- (7) A member of the Commission shall be paid remuneration in an amount equal to the amount paid as remuneration to members of the Indemnities and Allowances Commission.

**Expenses**

- (8) Each member of the Commission shall be reimbursed, subject to Treasury Board policy, for the reasonable expenses actually incurred by the member in carrying out the member's duties.

**Quorum**

- (9) A majority of the members of the Commission constitutes a quorum.

**12. Functions**

The functions of the Commission are

- (a) to review salaries, benefits and expenses paid to judges appointed under section 18 or under subsection 2(2) of the former Act; and

- (b) to provide the Minister and the Chief Judge with recommendations respecting the appropriate salary and benefits to be paid to the judges referred to in clause (a).

**13. Powers under Public Inquiries Act**

In the discharge of the functions of the Commission, the Commission and each of its members have all of the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31.

**14. Inquiry respecting salaries and benefits**

- (1) In every third year following the most recent report of the Commission submitted under section 4.6 of the former Act or under subsection 15(1), as the case may be, the Commission shall conduct an inquiry respecting
  - (a) the appropriate level of base salaries for judges;
  - (b) the appropriate design and level of benefits for judges, including compensation for the additional administrative duties of the Chief Judge; and
  - (c) the reimbursement to judges for appropriate expenses.

**Submissions to Commission**

- (2) During its deliberations, the Commission shall receive and consider submissions made by
  - (a) a representative of the Government;
  - (b) the judges or their representative; and
  - (c) any other interested persons or bodies.

**Factors to be considered by the Commission**

- (3) The Commission shall consider the following factors during its inquiry:
  - (a) the need to provide fair and reasonable compensation to judges;
  - (b) any policies made by Treasury Board respecting reimbursement of reasonable expenses;
  - (c) any changes in the cost of living or in real per capita income;
  - (d) the need to attract excellent candidates;
  - (e) the prevailing economic conditions in the province and the overall state of the provincial economy;
  - (f) the salaries and benefits paid to other provincial court judges in other Canadian jurisdictions;
  - (g) any other factors which the Commission considers relevant.

**Application of section 4.6 of former Act**

- (4) Nothing in this section shall be construed as altering the date for which the Commission was required to conduct an inquiry under section 4.6 of the former Act, prior to the coming into force of this Act.

**15. Report and recommendations**

- (1) On completion of its inquiry, the Commission shall submit a written report of its findings to the Minister and to the Chief Judge, including its recommendations respecting
  - (a) the appropriate level of base salary for judges;
  - (b) the appropriate design and level of benefits for judges; and



- (c) the expenses incurred by judges in carrying out their duties that may be reimbursed.

**Report to be tabled in Legislative Assembly**

- (2) The Minister shall table the report of the Commission in the Legislative Assembly
- (a) within 30 days after it has been received by the Minister, if received during a sitting;  
or
- (b) during the sitting immediately following its submission to the Minister.

**16. Adoption and implementation of recommendations**

Where the Legislative Assembly adopts a report tabled in accordance with subsection 15(2), in whole or in part, the Government shall, with due diligence and reasonable dispatch, take whatever steps are necessary to implement the recommendations adopted in accordance with the vote of the Legislative Assembly.

**17. Commission as administrator**

The Commission may, at the written request of the Minister, act as the administrator of any plan designed by the Government to implement the recommendations of the Commission in accordance with the vote of the Legislative Assembly.

## PART 5 - PROVINCIAL COURT JUDGES

**18. Appointment of Provincial Court Judge**

- (1) The Lieutenant Governor in Council may, on the recommendation of the Minister, appoint a person as a judge in accordance with this Part.

**Eligibility to be appointed**

- (2) A person is eligible to be appointed as a judge if the person
- (a) has been recommended for appointment as a judge by the advisory committee under subsection 10(3);
- (b) is 18 years of age or older but not over the age of 70; and
- (c) has agreed to comply with the continuing education plan for judges established by the Chief Judge under subsection 6(1), including any continuing education in sexual assault law that may be required by the Chief Judge.

**Term of office**

- (3) A person appointed as a judge under subsection (1) holds office until the earlier of
- (a) the effective date of the person's retirement, resignation from office or removal from office; or
- (b) the date on which the person attains the age of 70 years.

**Conditions of employment**

- (4) Every judge appointed under this section shall be employed on a full-time basis, and shall at the time of his or her appointment and during his or her term of office be a resident of the province of Prince Edward Island.

**Suspension, removal from office**

- (5) The Lieutenant Governor in Council shall not suspend or revoke the appointment of a judge, except
- (a) in accordance with an order of a tribunal under Part 7 that recommends the suspension or revocation, as the case may be; or
  - (b) where the judge has attained the age of 70 years but has not retired or resigned from office.

**Ineligibility**

- (6) A judge who has attained the age of 70 years shall resign within 14 days.

**Resignation**

- (7) A judge may at any time resign his or her office by notice in writing, signed by him or her, delivered to the Minister.

**19. Appointment of out-of-province judge**

- (1) Notwithstanding subsection 18(2), the Lieutenant Governor in Council may appoint a judge of the provincial court of a province other than Prince Edward Island to preside over proceedings
- (a) on the recommendation of the Chief Judge, where an accused has requested that the proceedings be conducted in French; or
  - (b) on the recommendation of the Minister, where the Lieutenant Governor in Council considers the appointment appropriate in the circumstances.

**Powers, remuneration, etc. of out-of-province judge**

- (2) A judge appointed under subsection (1)
- (a) shall hold office until his or her retirement, resignation or removal from office from the provincial court of that other province;
  - (b) shall not practise law in Prince Edward Island during the term of the appointment;
  - (c) subject to subsection (3), shall have all the powers, rights, privileges and duties conferred on a judge appointed under section 18;
  - (d) shall receive the same remuneration as that for a judge appointed under section 18, calculated by reference to a daily rate for each day on which services are provided;
  - (e) shall be subject to the authority of the Chief Judge in accordance with section 5.

**Other provisions do not apply**

- (3) A judge appointed under this section is not subject to clauses 18(2)(a) and (c), sections 49, 51 and 55 and Part 7.

**20. Appointment of part-time judge**

- (1) Notwithstanding section 18 and subject to this section, the Lieutenant Governor in Council may, on the request of the Chief Judge specifying the reasons for and the terms of the proposed appointment, appoint a retired judge to act as a part-time judge according to the terms and conditions specified in the instrument of appointment.



**Eligibility**

- (2) A retired judge is eligible for appointment under subsection (1) if the retired judge has agreed to comply with the continuing education plan established by the Chief Judge pursuant to subsection 6(1).

**Maximum part-time service**

- (3) The maximum part-time service of a retired judge under subsection (1) shall not, in any calendar year, exceed one-third of the normal period of full-time service.

**Remuneration**

- (4) A part-time judge shall be paid, for each full day of service, an amount equal to the annual salary of a full-time judge divided by 220.

**Pension continued**

- (5) A retired judge appointed under this section may continue to receive the pension to which the judge is entitled under this Act or the former Act while acting as a part-time judge.

**Practice of law prohibited**

- (6) A retired judge appointed pursuant to this section shall not practise law in the province during the term of the appointment.

**Term of office**

- (7) The term of office of a part-time judge is terminated on the earliest of the date on which the person
- (a) resigns;
  - (b) is removed from office; or
  - (c) attains the age of 70 years.

**21. Jurisdiction**

- (1) Every judge has jurisdiction throughout the province and, without limiting the generality of that jurisdiction, every judge has jurisdiction in the City of Charlottetown, the City of Summerside and all other municipalities in the province.

**Powers**

- (2) Every judge shall
- (a) exercise the jurisdiction conferred upon a provincial court judge by the *Criminal Code* (Canada);
  - (b) have all the same powers and authority to preserve order in any court over which he or she presides as may be exercised by a judge of the Supreme Court;
  - (c) have all the powers and authority possessed or vested in two or more justices of the peace;
  - (d) exercise all the powers and perform all of the duties conferred or imposed upon a provincial court judge, magistrate, provincial magistrate, or one or more justices of the peace under any enactment or Act of the Parliament of Canada; and
  - (e) have the power, authority and jurisdiction to try municipal ticket offences under a bylaw made pursuant to the *Municipal Government Act* R.S.P.E.I. 1988, Cap. M-12.1.

**22. Continuation of authority**

- (1) A judge who resigns or retires after starting to hear a matter remains seized of the matter after the effective date of resignation or retirement until the matter is concluded or for a period of 12 weeks, whichever occurs first.

**Powers during period**

- (2) During the period referred to in subsection (1), the judge may, as if the judge had not resigned or retired,
- (a) continue to hear evidence and argument in the matter;
  - (b) give judgment in the matter; and
  - (c) make an order or do anything else in the judge's jurisdiction to complete the matter.

**23. Rehearing of a matter**

- (1) Subject to the *Criminal Code* (Canada), the Chief Judge may set down a matter for rehearing by another judge where the judge hearing the matter
- (a) dies or is suspended or removed from office, or a recommendation is made by a tribunal to remove the judge from office;
  - (b) resigns or retires and does not give judgment within the time allowed under subsection 22(1); or
  - (c) is appointed to a superior court.

**Hearing de novo**

- (2) A rehearing of a matter referred to in subsection (1) shall be a hearing *de novo*.

**24. Continuation of a matter following judgment**

- (1) Subject to the *Criminal Code* (Canada), the Chief Judge may set a matter down to be continued by another judge where the judge has given judgment in a matter, and
- (a) the judge dies or is suspended or removed from office, or a recommendation is made by a tribunal to remove the judge from office, before the matter is completed; or
  - (b) the judge hearing the matter resigns or retires, and does not complete the matter within the time allowed under subsection 22(1).

**Authority to complete matter**

- (2) The judge who continues a matter described in subsection (1) may make any order that is appropriate to complete the matter.

**25. Judge unable to complete matter**

- (1) Subject to the *Criminal Code* (Canada), the Chief Judge may, after consulting with the parties to a matter, set a matter down for rehearing or to be continued by another judge, as the case may be, where a judge is unable to complete a matter for any reason not set out in sections 23 and 24.

**Application of sections**

- (2) Subsections 23(2) and 24(2), as the case may be, apply to a rehearing or continuance of a matter by a judge who presides at the rehearing or continuance of the matter under subsection (1).



**PART 6 - JUDICIAL COUNCIL****26. Definition**

- (1) In this Part, “**judge**” means a judge of the Provincial Court or a judge of the provincial court of another province.

**Establishment of Judicial Council**

- (2) The Judicial Council is hereby established.

**Composition**

- (3) The Judicial Council shall be composed of
- (a) the Chief Justice of Prince Edward Island, or a judge of a superior court nominated by the Chief Justice, who shall act as chairperson;
  - (b) the Chief Judge; and
  - (c) six persons appointed by the Lieutenant Governor in Council, of whom
    - (i) one shall be a judge of a superior court, other than the judge of a superior court referred to in clause (a), nominated by the Chief Justice of Prince Edward Island,
    - (ii) two shall be judges of the provincial courts of other provinces, nominated by the chief judge of each judge’s respective provincial court,
    - (iii) one shall be a nominee of the Law Society of Prince Edward Island who is not an employee as defined in the *Civil Service Act*, and
    - (iv) two shall be persons nominated by the Minister, neither of whom is
      - (A) a judge or former judge,
      - (B) a judge or former judge of a superior court,
      - (C) a member or former member of a law society in Canada, or
      - (D) an employee as defined in the *Civil Service Act*.

**Temporary replacement**

- (4) Where a member of the Judicial Council is unable to carry out the duties of a member because of illness, a conflict of interest or any other reason, the member may be replaced for the duration of the member’s inability to act
- (a) in the case of the member referred to in clause (3)(a) or subclause (3)(c)(i), by a judge of a superior court designated by the Chief Justice of Prince Edward Island for that purpose;
  - (b) in the case of the member referred to in clause (3)(b), by a judge of the Provincial Court designated by the Chief Judge for that purpose;
  - (c) in the case of a member referred to in subclause (3)(c)(ii), by a judge designated for that purpose by the chief judge of the provincial court of the other province in which the member is a judge;
  - (d) in the case of the member referred to in subclause (3)(c)(iii), by another person designated by the Law Society for that purpose; and
  - (e) in the case of a member referred to in subclause (3)(c)(iv), by another person designated by the Minister for that purpose.

**Term of appointment**

- (5) A member of the Judicial Council referred to in clause (3)(c) shall be appointed for a term not exceeding three years.

**Replacement**

- (6) Where a member of the Judicial Council referred to in clause (3)(c) ceases to hold office before the expiry of the member's term, the Lieutenant Governor in Council may appoint a new member who meets the same criteria specified in clause (3)(c) to hold office for a term in accordance with subsection (5).

**Remuneration**

- (7) A member of the Judicial Council who is not a judge or a judge of a superior court shall be paid as remuneration an amount equal to the amount paid as remuneration to the members of the Indemnities and Allowances Commission.

**Reimbursement for expenses**

- (8) Each member of the Judicial Council shall be reimbursed, subject to Treasury Board policy, for the reasonable expenses actually incurred by the member in carrying out the member's duties.

**Quorum**

- (9) Five members of the Judicial Council constitute a quorum, including
- (a) at least three members who are either judges or judges of a superior court; and
  - (b) two members who are neither judges nor judges of a superior court.

**27. Powers of Judicial Council**

The Judicial Council may, in accordance with Part 7,

- (a) receive a complaint;
- (b) investigate a complaint;
- (c) resolve a complaint;
- (d) dismiss a complaint;
- (e) adjudicate a complaint;
- (f) retain counsel;
- (g) hold hearings;
- (h) delegate its functions to a subcommittee or a member of the Judicial Council; and
- (i) determine its own procedures and any procedures governing a subcommittee.

**PART 7 - REVIEW OF FITNESS TO SERVE AS PROVINCIAL COURT JUDGE**

**28. Complaint respecting judge**

- (1) Any person may make a complaint to the Chief Judge alleging that a judge is not fit to perform the judge's duties or has engaged in misconduct.



**Complaint respecting Chief Judge**

- (2) Any person may make a complaint to the Judicial Council alleging that the Chief Judge is not fit to perform the Chief Judge's duties or has engaged in misconduct.

**Making a complaint**

- (3) A person may make a complaint under subsection (1) or (2) by
- (a) stating the complaint and the grounds for the complaint in writing;
  - (b) signing the complaint; and
  - (c) delivering the complaint to the chief clerk of the court.

**Delivery to Judicial Council**

- (4) On receipt of a complaint made under subsection (3), the chief clerk of the court shall forward the complaint as soon as practicable to the Chief Judge or chairperson of the Judicial Council, as the case may be.

**Review by chairperson**

- (5) The chairperson of the Judicial Council shall review all complaints received by the Judicial Council.

**Dismissal of complaint**

- (6) The Chief Judge or the chairperson of the Judicial Council shall
- (a) dismiss a complaint received under subsection (3) where, in the opinion of the Chief Judge or the chairperson, the complaint
    - (i) falls outside the jurisdiction of the Chief Judge or the Judicial Council, as the case may be,
    - (ii) concerns a matter that is trivial, or
    - (iii) is not made in good faith; and
  - (b) notify the complainant and respondent of the decision to dismiss the complaint under this section.

**Request to Judicial Council**

- (7) Where the Chief Judge does not dismiss a complaint in accordance with subsection (6), the Chief Judge shall make a request under section 29 that the Judicial Council investigate the complaint.

**29. Request to investigate**

The Chief Judge or the Minister may request in writing that the Judicial Council investigate whether a judge is fit to perform the judge's duties or has engaged in misconduct.

**30. Judicial Council to investigate**

- (1) The Judicial Council shall commence an investigation respecting the fitness of a judge to perform the judge's duties or the alleged misconduct of a judge where
- (a) a request is received under section 29; or
  - (b) the chairperson, after reviewing a complaint received under subsection 28(2), considers that an investigation is advisable.

**Appointment of investigator**

- (2) The Judicial Council may appoint an investigator to investigate the fitness of a judge to perform the judge's duties or the alleged misconduct of the judge, as the case may be.

**Powers to investigate**

- (3) For the purposes of an investigation, the Judicial Council or an investigator may
- (a) require to be produced for inspection, or for the purpose of obtaining copies or extracts, any record or document that the Judicial Council or investigator considers relevant to the investigation; and
  - (b) question any person whose information the Judicial Council or investigator considers relevant to the investigation.

**31. Complaint, request respecting Chief Judge**

Where a complaint received under section 28 names the Chief Judge as a respondent or a request is received under section 29 in respect of the Chief Judge,

- (a) in the case of a complaint, the chairperson of the Judicial Council shall promptly notify the Minister of the complaint;
- (b) the judge designated pursuant to subsection 4(7) shall perform the duties and exercise the powers of the Chief Judge under this Part in respect of that complaint or request; and
- (c) the Chief Judge shall not act as a member of the Judicial Council in respect of that complaint or request.

**32. Provision of copy of complaint, request**

- (1) As soon as practicable after the receipt of a complaint under section 28 that is not dismissed under subsection 28(6) or a request under section 29, the Judicial Council shall
- (a) provide to the respondent
    - (i) a copy of the complaint or request, and
    - (ii) written notice of the respondent's right to submit a response to the complaint or request under subsection (2); and
  - (b) notify the Chief Judge and the Minister of the complaint or request, as the case may be.

**Written response**

- (2) A respondent may submit a response to a complaint or request to the Judicial Council within 30 days after being provided with a copy of the complaint or request under clause (1)(a).

**Service of response**

- (3) The Judicial Council shall, immediately after the expiry of the period referred to in subsection (2), provide a copy of
- (a) a response to a complaint submitted under subsection (2) to the complainant; and
  - (b) a response to a request submitted under subsection (2) to the Chief Judge or the Minister, as the case may be.

**33. Authority of Judicial Council**

- (1) On the completion of an investigation, the Judicial Council
- (a) may



- (i) dismiss the complaint in accordance with clause 28(6),
  - (ii) refer the matter to the Chief Judge to take any corrective action that the Chief Judge considers necessary using the powers of the Chief Judge under this Act, or
  - (iii) order a hearing into the fitness or alleged misconduct of the judge; and
- (b) shall submit to the Chief Judge and the Minister a report setting out
- (i) the nature of the investigation,
  - (ii) the relevant facts,
  - (iii) the findings, and
  - (iv) any corrective action taken.

**Notification**

- (2) Where the Judicial Council orders a hearing under subclause (1)(a)(iii), the Judicial Council shall, as soon as practicable, give written notice to the complainant and the respondent that a hearing has been ordered.

**Notice of resolution of complaint**

- (3) Where the Judicial Council has not ordered a hearing under subclause (1)(a)(iii), the Judicial Council shall give written notice of the resolution of the matter as soon as practicable
- (a) to the complainant and the respondent, where the investigation was initiated in response to a complaint; and
  - (b) to the respondent and the Chief Judge or the Minister, as the case may be, where the investigation was initiated in response to a request under section 29.

**Order for hearing**

- (4) The Judicial Council shall order a hearing into the fitness or alleged misconduct of a judge on receiving a request from the Minister to do so.

**34. Where hearing is ordered, election**

- (1) Within 14 days of being notified that a hearing has been ordered under subclause 33(1)(a)(iii), the respondent shall elect as a tribunal to conduct the hearing either
- (a) a panel of the Judicial Council; or
  - (b) a judge of a superior court to be designated by the Chief Justice of Prince Edward Island.

**Result of failure to elect**

- (2) Where the respondent fails to make an election within the period referred to in subsection (1), a panel of the Judicial Council is the tribunal.

**Report to be provided to tribunal legal counsel**

- (3) After the tribunal is constituted, the Judicial Council shall give the tribunal and any legal counsel retained under subsection 39(4) a copy of the report prepared by the Judicial Council under clause 33(1)(b).

**Report to respondent**

- (4) The tribunal shall ensure that a copy of the report referred to in subsection (3) is provided to the respondent and the respondent's legal counsel, if any.

**Suspension of respondent when hearing ordered**

- (5) Where a hearing is ordered, the respondent is suspended, with pay, from all duties as a judge pending completion of the matter.

**Respondent's expenses**

- (6) All reasonable expenses incurred by the respondent for the purpose of attending and making representations at the hearing for and on the respondent's behalf shall be paid out of the Operating Fund.

**35. Confidentiality of report**

- (1) Subject to subsection (2), a copy of any report prepared by the Judicial Council under clause 33(1)(b) that is received by a member of a tribunal, the respondent or the legal counsel referred to in subsections 34(3) or (4) is confidential, and shall not be disclosed by the person except in the performance of the person's duties under this Act or as provided in subsection (2).

**Disclosure permitted**

- (2) Information contained in the report referred to in subsection (1) may be disclosed
- (a) where the person to whom it relates consents in writing to the disclosure, to the persons specified and for the purpose of the hearing;
  - (b) to a person employed by the tribunal for the purposes of administering this Part; and
  - (c) to legal counsel, for the purposes of seeking legal advice respecting, or participating in, a hearing under this Part.

**36. Composition of panel**

- (1) The Judicial Council may appoint a panel of the Judicial Council as a tribunal, composed of a quorum.

**Conflict of interest of member of panel**

- (2) A member of the panel who has a conflict of interest in respect of a matter that is before the panel shall
- (a) immediately disclose the nature of the conflict of interest to the panel; and
  - (b) refrain from attempting to influence the disposition of the matter or participating in consideration of the matter.

**37. Judge of superior court as tribunal**

Where the respondent has elected a judge of a superior court as the tribunal under clause 34(1)(b), the Chief Justice of Prince Edward Island shall designate a judge of a superior court as the tribunal.

**38. Scope of hearing**

In conducting a hearing, the tribunal may consider all matters related to a respondent that are relevant to the fitness of the respondent to perform the respondent's duties as a judge, including, but not limited to,

- (a) mental or physical disability;
- (b) misconduct;



- (c) failure in the execution of the respondent's office; and
- (d) conduct incompatible with the due execution of the respondent's office.

**39. Duty of tribunal**

- (1) Where a complaint or matter has been referred to a tribunal, the tribunal shall
  - (a) inquire into the complaint or matter by holding a hearing as soon as practicable; and
  - (b) conduct its proceedings in accordance with the rules of natural justice.

**Notice to respondent**

- (2) The tribunal shall give the respondent
  - (a) reasonable notice of the time and place of the hearing;
  - (b) particulars of the matter being inquired into; and
  - (c) the opportunity, in person or by counsel, to be heard, to cross-examine witnesses and to adduce evidence.

**Notice to complainant, Minister**

- (3) The tribunal shall give the complainant and the Minister
  - (a) reasonable notice of the time and place of the hearing; and
  - (b) particulars of the matter being inquired into.

**Legal counsel for hearing**

- (4) For the purposes of a hearing, the tribunal may retain legal counsel and determine legal counsel's remuneration, which shall be paid by the Government of Prince Edward Island.

**Resignation of respondent**

- (5) Where a respondent resigns after an investigation has been commenced under section 30 or a hearing has been ordered by the Judicial Council, the investigation or hearing shall be completed unless the Minister orders otherwise.

**Hearing in absence of respondent**

- (6) Where the respondent fails to appear at a hearing after being served with notice in accordance with subsection (2), the tribunal may proceed with the hearing in the absence of the respondent and make any decision, determination or order as if the respondent were in attendance.

**Hearing to be public**

- (7) A hearing under this Act shall be held in public unless the tribunal considers that the hearing or any part of it should be held in private because
  - (a) the interests of a person other than the respondent may be detrimentally affected if the hearing, or part of the hearing, is not held in private; or
  - (b) the desirability of avoiding public disclosure of financial, personal or other matters in the interest of a person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

**Protection of identity of witness**

- (8) A tribunal may, on the request of a witness whose testimony or evidence is of a confidential or personal and sensitive nature, order that no person publish the identity of the witness or any information that could disclose the identity of the witness.

**40. Power to compel attendance, production**

- (1) For the purposes of conducting a hearing under this Act, a tribunal may order a person to do either or both of the following:
- (a) attend, in person or by electronic means, before the tribunal to give evidence on oath or affirmation or in any other manner;
  - (b) produce for the tribunal a record or thing in the person's possession or control.

**Service of order**

- (2) An order under subsection (1) shall be in the form of a summons, served on the person by personal delivery or registered mail to the person's last known address.

**Power to enforce summons, punish for contempt**

- (3) A tribunal may make an order finding a person to be in contempt, and may impose a fine, not to exceed \$2,000, on the person or commit the person for contempt where the person has been served with a summons under this section and fails or refuses to
- (a) attend before the tribunal;
  - (b) take an oath or make an affirmation;
  - (c) answer questions at the hearing; or
  - (d) produce records or things in the person's possession or control.

**Failure of respondent to comply**

- (4) Where a respondent fails to comply with a summons issued by a tribunal or a member of the tribunal, or refuses to answer a question under oath or affirmation that was directed to be answered by the tribunal or a member of the tribunal, the failure or refusal may be held by the tribunal to be grounds for finding that the respondent is not fit to carry out the duties of a judge.

**41. Power of tribunal at hearing**

- (1) A tribunal
- (a) may do all things necessary to provide a full and proper hearing in respect of a matter;
  - (b) may deal with multiple matters concerning a respondent severally or in combination; and
  - (c) may hear any matter in addition to the matter before the tribunal that arises in the course of its proceedings and that may demonstrate, in respect of the respondent, whether the respondent is fit to carry out the duties of a judge.

**Opportunity to respond**

- (2) Where a tribunal hears an additional matter referred to in clause (1)(c), the tribunal shall give the respondent a reasonable opportunity to respond to the matter.

**Rules of evidence**

- (3) A tribunal is not bound by strict rules of evidence or the provisions of the *Evidence Act* R.S.P.E.I. 1988, Cap. E-11.



**42. Fitness to carry out duties, misconduct**

- (1) A respondent may be found unfit to carry out the duties of a judge if
- (a) the respondent is found by a tribunal to have contravened this Act, the regulations, a direction of the Chief Judge or the code of conduct established by the Chief Judge pursuant to subsection 5(4) in a manner that, in the opinion of the tribunal, relates to the respondent's suitability to carry out the duties of a judge;
  - (b) the respondent has been found guilty of an offence that, in the opinion of the tribunal, relates to the respondent's suitability to carry out the duties of a judge;
  - (c) the respondent refuses or fails to cooperate fully in respect of the investigation or hearing of a matter under this Act;
  - (d) the respondent contravenes an order made under this Act; or
  - (e) the conduct of the respondent constitutes misconduct as set out in the guidelines established by the Chief Judge under subsection 5(5).

**Incompetence**

- (2) A respondent may be found unfit to carry out the duties of a judge by reason of incompetence where, in the opinion of the tribunal,
- (a) the conduct of the respondent does not demonstrate the knowledge, skill or judgment expected of a judge;
  - (b) the respondent is unable to carry out the duties of a judge for any reason, including that the respondent is impaired by illness, addiction or other incapacity; or
  - (c) the conduct of the respondent constitutes incompetence as set out in the guidelines established by the Chief Judge under subsection 5(5).

**43. Determination of tribunal**

- (1) On concluding a hearing, a tribunal shall determine whether or not the respondent is fit to carry out the duties of a judge.

**Order**

- (2) A tribunal may make one or more of the following orders:
- (a) an order directing the respondent to undergo additional education or training;
  - (b) an order directing the respondent to participate in counselling or a rehabilitative treatment program;
  - (c) an order reprimanding the respondent;
  - (d) an order recommending that the Lieutenant Governor in Council order a suspension of the appointment of the respondent for a specified period of time or until the occurrence of a specified future event;
  - (e) an order recommending that the Lieutenant Governor in Council revoke the appointment of the respondent;
  - (f) an order imposing any other sanction that the tribunal considers appropriate.

**Service of notice of determination and order**

- (3) Within 60 days after the completion of a hearing, the tribunal shall serve
- (a) written notice of and reasons for the determination made under subsection (1), and a copy of any order made under subsection (2), on
    - (i) the respondent,
    - (ii) the complainant, if any,

- (iii) the Chief Judge, and
- (iv) the Minister; and
- (b) written notice of the respondent's right to appeal the determination made under subsection (1), and any order made under subsection (2), on the respondent.

**Order in effect when served**

- (4) An order of a tribunal is in effect when it is served on the respondent and remains in effect pending an appeal unless the Supreme Court, on application, stays the order pending the outcome of the appeal.

**Failure to comply with order**

- (5) Where the Chief Judge is satisfied that a respondent has failed to comply with an order of a tribunal, the Chief Judge may, without a further hearing, make an order suspending the respondent subject to any terms and conditions that the Chief Judge considers appropriate.

**Service of order**

- (6) Where the Chief Judge makes an order under subsection (5), the Chief Judge shall serve a copy of the order and reasons for the order on the respondent.

**Order in effect when served**

- (7) An order made by the Chief Judge under subsection (5) is in effect when it is served on the respondent.

**44. Right of respondent to appeal**

- (1) A respondent may appeal
  - (a) a determination of a tribunal made under subsection 43(1); or
  - (b) an order of a tribunal made under subsection 43(2),to the Court of Appeal within 30 days after being served with notice of the determination or a copy of the order.

**Notice of appeal**

- (2) Notice of an appeal under subsection (1) shall be served on the Chief Judge and the Minister.

**Decision of Court of Appeal**

- (3) On hearing an appeal, the Court of Appeal may
  - (a) confirm, revoke or vary the determination or order appealed from;
  - (b) refer the matter, or any issue, back to the tribunal for further consideration; or
  - (c) provide any direction that it considers appropriate.

**Costs of appeal**

- (4) The Court of Appeal may make any order that it considers appropriate as to the costs of an appeal.



**PART 8 - GENERAL****45. Protection from personal liability**

- (1) No action for damages or other legal proceeding lies or shall be instituted against the Minister, the Chief Judge, a judge, the advisory committee or any member of the advisory committee, the Commission or any member of the Commission, the Judicial Council or any member of the Judicial Council, a tribunal or any member of a tribunal, an investigator or any other person acting under the authority of this Act or the regulations for anything done or omitted to be done in good faith in the exercise or intended exercise of a power or the performance or intended performance of a duty under this Act or the regulations.

**Indemnification**

- (2) A person referred to in subsection (1) shall be compensated out of the Operating Fund for any costs incurred by the person in defending an action for damages or other legal proceeding described in subsection (1).

**46. Confidentiality of information**

- (1) All information acquired by a person in relation to any person or matter under this Act, whether of a documentary nature or otherwise, is confidential to the extent that its release would tend to reveal personal information about a person identifiable from the release of the information.

**Consent for release of information**

- (2) No person who received confidential information under this Act shall permit the release of the information to any person without the consent of the person from whom the information was obtained and the person to whom the information relates.

**Release without consent**

- (3) Notwithstanding subsection (2), a person may permit the release of confidential information without the consent of the person from whom the information was obtained or the person to whom the information relates
- (a) to a Minister of the Government or a person acting under the authority of a Minister;  
or
  - (b) if the release is otherwise provided for under this Act.

***Freedom of Information and Protection of Privacy Act***

- (4) This section prevails notwithstanding the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01.

**47. Service of documents**

A document to be served or given to a person under this Act for which no other method of service is specified may be served

- (a) by personal delivery to the person to whom it is directed;
- (b) by sending it by registered mail to the person's last known address; or
- (c) by another method authorized by the Chief Judge.

**48. Oaths or affirmations of office**

- (1) Every judge shall, on his or her appointment, and before commencing his or her duties as a judge, take and subscribe, before the Chief Judge or, in the Chief Judge's absence, a judge of the Supreme Court, the following oaths or affirmations of office:
- (a) I, ....., do swear [or affirm] that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts reposed in me as a judge; and
  - (b) I, ....., do solemnly promise and swear [or affirm] that I will be faithful and bear true allegiance to Her (or His) Majesty (naming the reigning sovereign for the time being), her (or his) heirs and successors.

**Transmittal to Clerk of Executive Council**

- (2) The oath or affirmation of office and oath or affirmation of allegiance, when taken and subscribed, shall be transmitted immediately to the Clerk of Executive Council.

**49. Pension**

Every judge appointed on or after April 1, 1997, is entitled to a pension as recommended by the Commission and adopted by the Legislative Assembly.

**50. Additional remuneration only with approval of Minister**

Every power, duty or function referred to in subsection 21(2) and any additional duty, function or matter undertaken by a judge pursuant to any statutory provision shall be exercised without any additional remuneration from any source, unless the payment of additional remuneration is approved by the Minister.

**51. Holidays, vacation, sick leave**

- (1) Every judge
- (a) may observe the same holidays as are observed by employees under the *Civil Service Act*;
  - (b) is entitled to vacation with pay as recommended by the Commission and adopted by the Legislative Assembly; and
  - (c) is entitled to sick leave as established for employees under the *Civil Service Act*.

**Leave of absence for illness**

- (2) In the event of an illness that may incapacitate a judge for an extended period, the Lieutenant Governor in Council may grant a leave of absence for the period on the terms the Lieutenant Governor in Council consider appropriate.

**Sabbatical leave**

- (3) The Lieutenant Governor in Council may, on application, grant sabbatical leave, on full pay, to any judge with seven years' consecutive service, for a period not exceeding one year, for purposes of further study or for other purposes the Lieutenant Governor in Council considers are in the better interests of or advantageous to the better administration of justice in the province.



**52. Regulations**

The Lieutenant Governor in Council may make regulations

- (a) respecting additional duties and powers of the Chief Judge;
- (b) respecting the effect of a suspension ordered by the Chief Judge under clause 5(3)(a) on matters required to be done at or within a specified time that expires during the suspension;
- (c) respecting the remuneration to be paid to investigators and members of a tribunal appointed under this Act;
- (d) respecting the Judicial Remuneration Review Commission, including
  - (i) providing for the administration of the Commission, and
  - (ii) respecting the procedures to be followed by the Commission in carrying out its inquiry and making recommendations;
- (e) respecting the Judicial Appointments Advisory Committee, including
  - (i) providing for the administration of the Committee, and
  - (ii) respecting the procedures to be followed by the Committee in assessing candidates and making recommendations;
- (f) respecting the Judicial Council, including providing for its administration;
- (g) respecting hearings under Part 7, including providing for the administration of a tribunal;
- (h) establishing a rules committee to make rules of court, subject to the approval of Lieutenant Governor in Council, in relation to the practice and procedure of the Provincial Court, including but not limited to
  - (i) the composition of the committee,
  - (ii) the administration of the committee, and
  - (iii) the procedures to be followed by the committee;
- (i) respecting procedural matters not provided for in the rules of court;
- (j) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.

**PART 9 - TRANSITIONAL MATTERS****53. Appointment under former Act**

- (1) On the coming into force of this section, the appointment under the former Act of a person as a judge that was in effect on the coming into force of this section is continued as an appointment of the person as a judge under this Act.

**Designation as Chief Judge under former Act**

- (2) On the coming into force of this section, the designation under the former Act of a person as Chief Judge that was in effect on the coming into force of this section is continued as a designation of the person as Chief Judge under this Act.

**Term**

- (3) The designation under the former Act of a person as Chief Judge referred to in subsection (2) expires as specified in the original designation.

**54. Investigations, inquiries, hearings**

On the coming into force of this section, an investigation, inquiry or hearing in respect of the fitness of a judge to carry out his or her duties that was commenced under the former Act prior to and not concluded on the coming into force of this section shall be continued in accordance with the former Act as it existed immediately before the coming into force of this Act.

**55. Entitlement to pension - judge appointed prior to April 1, 1997**

- (1) Every judge appointed before April 1, 1997, is entitled to a pension in the following circumstances:
- (a) if he or she became a judge after having served as a stipendiary magistrate prior to 1974, when he or she reaches the age of 65 years, irrespective of his or her years of service as a judge;
  - (b) if he or she has 10 years of service as a judge and has reached the age of 65 years, upon reaching the age of 65 years;
  - (c) if he or she has 20 years of service as a judge but has not reached the age of 65 years, when he or she resigns office and in the opinion of the Lieutenant Governor in Council the resignation is conducive to the better administration of justice in the province;
  - (d) if he or she has three years of service as a judge and becomes afflicted with some permanent infirmity disabling him or her from the due execution of his or her office, when he or she resigns his or her office or by reason of such infirmity is removed from office.

**Amount of pension**

- (2) The pension payable under subsection (1), except as otherwise provided in this section, is in the amount of two-thirds of the salary payable to the judge at the time of the judge's retirement or removal from office, and shall be paid monthly and for the balance of the term of the judge's natural life.

**Resignation or retirement, pension**

- (3) Where a judge who has 10 or more years of service resigns or is dismissed from office, the judge is entitled to a pension payable at age 65 calculated at the rate of 3.3 per cent of the salary payable to the judge at the time of the judge's retirement or removal from office, multiplied by the number of years of service given as a judge.

**Contribution to pension, none**

- (4) Judges shall not be required to contribute to the pension established in this section, and a judge who is dismissed or resigns from office and is not entitled to a pension under subsection (1) is not entitled to monetary or other compensation.

**Dependant's pension**

- (5) Where a judge dies, the judge's surviving spouse, so long as he or she remains unmarried, and dependent children are entitled to a pension as follows:
- (a) if the judge had less than 10 years' service as a judge, no pension is payable;
  - (b) if the judge has retired or been removed from office because of some permanent disability disabling the judge from the due execution of his or her office and is entitled to a pension under subsection (1), one-half the pension being paid to the judge while on pension is payable to the judge's spouse and 10 per cent of the pension being paid to the judge is payable to each of the judge's dependent children,

but in no case shall the percentage of pension payable to dependent children exceed 40 per cent;

- (c) if the judge had more than 10 years' service as a judge, one-half of the pension that would have been payable to the judge had he or she retired at age 65 is payable to the judge's surviving spouse and 10 per cent of the pension that would have been payable to the judge is payable to each of the judge's dependent children, but in no case shall the percentage of pension payable to dependent children exceed 40 per cent.

**Continuing pension, disabled child**

- (6) Notwithstanding subsection (5), a dependent child who is disabled to the extent that he or she will be disabled and dependent beyond the age of 18 years is entitled to a continuation of a pension benefit under subsection (5) for so long during his or her natural life as he or she remains disabled and dependent.

**Annual cost of living increase**

- (7) The Minister of Finance shall annually, on or before March 31, increase the pension payments otherwise being paid under this section by an amount based on increases in the Consumer Price (all items) Index for Canada (1981 equals 100) and calculated at a rate prescribed by the regulations, not exceeding the rate of 8 per cent of the annual pension that is payable.

**Application to judges appointed after April 1, 1997**

- (8) This section does not apply to a judge appointed on or after April 1, 1997.

## PART 10 - CONSEQUENTIAL AMENDMENTS, COMMENCEMENT

### 56. Appeals Act

- (1) **The *Appeals Act* R.S.P.E.I. 1988, Cap. A-13, is amended as provided by this section.**
- (2) **Section 1 of the Act is amended by the deletion of the words "*Provincial Court Act* R.S.P.E.I. 1988, Cap. P-25" and the substitution of the words "*Provincial Court Act* R.S.P.E.I. 1988, Cap. P-25.1".**

### 57. Dog Act

- (1) **The *Dog Act* R.S.P.E.I. 1988, Cap. D-13, is amended as provided by this section.**
- (2) **Clause 1(j.1) of the Act is amended by the deletion of the words "*Provincial Court Act* R.S.P.E.I. 1988, Cap. P-25" and the substitution of the words "*Provincial Court Act* R.S.P.E.I. 1988, Cap. P-25.1".**

### 58. Highway Traffic Act

- (1) **The *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5, is amended as provided by this section.**

- (2) **Clause 1(j.1) of the Act is amended by the deletion of the words “*Provincial Court Act R.S.P.E.I. 1988, Cap. P-25*” and the substitution of the words “*Provincial Court Act R.S.P.E.I. 1988, Cap. P-25.1*,”.**

**59. Liquor Control Act**

- (1) **The *Liquor Control Act R.S.P.E.I. 1988, Cap. L-14*, is amended as provided by this section.**
- (2) **Clause 1(r) of the Act is amended by the deletion of the words “*Provincial Court Act R.S.P.E.I. 1988, Cap. P-25*” and the substitution of the words “*Provincial Court Act R.S.P.E.I. 1988, Cap. P-25.1*,”.**

**60. Municipal Government Act**

- (1) **The *Municipal Government Act R.S.P.E.I. 1988, Cap. M-12.1*, is amended as provided by this section.**
- (2) **Subclause 226(2)(e)(ii) of the Act is amended by the deletion of the words “*Provincial Court Act R.S.P.E.I. 1988, Cap. P-25*” and the substitution of the words “*Provincial Court Act R.S.P.E.I. 1988, Cap. P-25.1*,”.**

**61. Summary Proceedings Act**

- (1) **The *Summary Proceedings Act R.S.P.E.I. 1988, Cap. S-9*, is amended as provided by this section.**
- (2) **Clause 1(b) of the Act is amended by the deletion of the words “section 2 of the *Provincial Court Act R.S.P.E.I. 1988, Cap. P-25*” and the substitution of the words “the *Provincial Court Act R.S.P.E.I. 1988, Cap. P-25.1*”.**

**62. Youth Justice Act**

- (1) **The *Youth Justice Act R.S.P.E.I. 1988, Cap. Y-3*, is amended as provided by this section.**
- (2) **Subsection 3(2) of the Act is amended by the deletion of the words “*Provincial Court Act R.S.P.E.I. 1988, Cap. P-25*” and the substitution of the words “*Provincial Court Act R.S.P.E.I. 1988, Cap. P-25.1*”.**

**63. Repeals**

- (1) **Subject to subsection (2), the *Provincial Court Act R.S.P.E.I. 1988, Cap. P-25*, is repealed.**
- (2) **Sections 14 to 16 of the *Provincial Court Act* are repealed on the date on which section 14 of the *Justice of the Peace Act R.S.P.E.I. 1988, Cap. J-6*, comes into force.**
- (3) **Section 5 of *An Act to Amend the Provincial Court Act S.P.E.I. 1996, c. 32*, is repealed.**



**64. Commencement**

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

## EXPLANATORY NOTES

**SECTION 1** establishes definitions for the purposes of the Act.

**SECTION 2** provides that the Minister of Justice and Public Safety and Attorney General is the Minister responsible for the administration of the Act, and authorizes the Minister to delegate any of the Minister's powers, responsibilities and functions under the Act as the Minister considers advisable to an employee of the Department.

**SECTION 3** continues the Provincial Court of Prince Edward Island and provides that it is composed of the number of judges the Lieutenant Governor in Council considers advisable.

**SECTION 4** authorizes the Lieutenant Governor in Council to designate one of the judges as the Chief Judge for a term not to exceed five years. The section also authorizes the Chief Judge to delegate powers, responsibilities and functions to another judge, and authorizes the Minister to designate an acting Chief Judge where the Chief Judge is unable to act or a Chief Judge has not been designated, and establishes the term of that designation. Finally, the section requires the Minister to designate an acting Chief Judge for the purposes of Part 7 of the Act, and establishes the term of that designation.

**SECTION 5** sets out the powers and duties that are specific to the office of Chief Judge, and authorizes the Chief Judge to establish a Code of Conduct for judges and guidelines respecting misconduct and incompetence for the purposes of subsections 43(1) and (2).

**SECTION 6** requires the Chief Judge, after the required consultations, to establish and implement a continuing education plan for judges that meets the goals specified in subsection 6(2).

**SECTION 7** specifies the style of address of a judge of the Provincial Court and deems a reference in an enactment to a "Provincial Judge" to be a reference to a "Provincial Court Judge".

**SECTION 8** establishes the Judicial Appointments Advisory Committee and provides for its membership, remuneration and other operating requirements.

**SECTION 9** specifies the functions of the advisory committee in managing the process for the selection of candidates for appointment as judges.

**SECTION 10** sets out the process to be followed where the Minister determines that the position of a judge is vacant.

**SECTION 11** continues the Judicial Remuneration Review Commission and provides for its membership, term of appointment, remuneration and other operating requirements.

**SECTION 12** specifies the functions of the Commission.

**SECTION 13** provides that the Commission and its members have all of the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*.

**SECTION 14** requires the Commission to conduct an inquiry at three-year intervals respecting the specified matters. The Commission is required to receive and consider submissions and to consider the specified factors during its inquiry.



**SECTION 15** requires the Commission to submit a written report of its findings and its recommendations respecting the specified matters to the Minister. The Minister is required to table the report of the Commission in the Legislative Assembly as specified.

**SECTION 16** requires the Government, where the Commission's report has been adopted by the Legislative Assembly in whole or in part, to take whatever steps are necessary to implement the recommendations adopted with due diligence and reasonable dispatch.

**SECTION 17** authorizes the Commission, at the request of the Minister, to act as administrator of any plan by Government to implement the recommendations of the Commission in accordance with the vote of the Legislative Assembly.

**SECTION 18** authorizes the Lieutenant Governor in Council, on the recommendation of the Minister, to appoint a person as a judge, and establishes the eligibility criteria to be met by the person. The section also establishes the term of office of a judge, the conditions of employment and conditions respecting a judge's suspension or removal from office. A judge who attains the age of 70 years is required to resign within 14 days.

**SECTION 19** authorizes the Lieutenant Governor in Council to appoint a judge of the provincial court of another province to preside over proceedings in the specified circumstances, and sets out the conditions and provisions that apply to that judge.

**SECTION 20** authorizes the Lieutenant Governor in Council, on the request of the Chief Judge, to appoint a retired judge as a part-time judge, and sets out the requirements that apply to the part-time judge, including eligibility, maximum service, term of office, remuneration and pension during service.

**SECTION 21** establishes the jurisdiction and powers of judges.

**SECTION 22** provides that a judge who resigns or retires after starting to hear a matter remains seized of the matter until the matter is concluded, or for a period of 12 weeks, whichever occurs first. During that time the judge is authorized to continue to deal with the matter as if the judge had not resigned or retired.

**SECTION 23** authorizes the Chief Judge, subject to the *Criminal Code* (Canada), to set a matter down for rehearing by another judge where the original judge is unable, for the specified reasons, to complete it.

**SECTION 24** authorizes the Chief Judge, subject to the *Criminal Code* (Canada), to set a matter down to be continued by another judge where the original judge has given judgment in the matter but is unable, for the specified reasons, to complete it.

**SECTION 25** authorizes the Chief Judge, subject to the *Criminal Code* (Canada), to set a matter down for rehearing or to be continued by another judge, as the case may be, where the original judge is unable to complete it for any reason not set out in sections 23 and 26.

**SECTION 26** establishes the Judicial Council as the body responsible for receiving and dealing with complaints about judges, provides for its composition and the appointment of its members, including temporary replacements for members, the term of appointment of the members, their remuneration and reimbursement for expenses, and quorum.

**SECTION 27** establishes the powers of the Judicial Council to deal with complaints and to administer the process set out in Part 7 of the Act.

**SECTION 28** provides that any person may make a complaint to the Chief Judge that a judge is unfit or has engaged in misconduct, or to the Judicial Council that the Chief Judge is unfit or has engaged in misconduct. The complaint must be in writing, state the grounds on which it is made and be signed by the complainant and delivered to the chief clerk of the court. The complaint shall be reviewed by the Chief Judge or the chairperson of the Judicial Council, as the case may be, and may be dismissed in the specified circumstances.

**SECTION 29** authorizes the Chief Judge or the Minister to request in writing that the Judicial Council investigate whether a judge is fit to perform the judge's duties or has engaged in misconduct.

**SECTION 30** requires the chairperson of the Judicial Council to investigate the fitness of a judge to perform the judge's duties where the chairperson considers an investigation advisable or receives a request from the Chief Judge or the Minister. The chairperson may appoint an investigator to conduct the investigation into the fitness or alleged misconduct of the judge. The section also sets out the powers of the chairperson or the investigator, as the case may be, to conduct the investigation.

**SECTION 31** provides that where a complaint received under section 28 or a request made under section 29 names the Chief Judge as a respondent, the chairperson of the Judicial Council shall promptly notify the Minister of the complaint, the acting Chief Judge designated by the Minister under subsection 4(7) shall perform the duties and exercise the powers of the Chief Judge with respect to that complaint, and the Chief Judge shall not act as a member of the Judicial Council in respect of that complaint.

**SECTION 32** requires the chairperson of the Judicial Council, as soon as practicable after the receipt of a complaint under section 28 or a request under section 29, to notify the Minister of it and to provide the respondent with a copy of the complaint or request and written notice of the respondent's right to submit a response within 30 days. Where the chairperson receives a response, the chairperson shall provide it to the complainant or to the Chief Judge or Minister, as the case may be.

**SECTION 33** authorizes the chairperson of the Judicial Council, on completion of an investigation, to dismiss the complaint in the specified circumstances, refer the matter to the Chief Judge to take any corrective action that the Chief Judge considers necessary within the scope of the Chief Judge's powers or order a hearing into the matter. Where the chairperson of the Judicial Council orders a hearing, the chairperson must notify the complainant and the respondent. The section also provides that the chairperson of the Judicial Council shall order a hearing on the request of the Minister. Where the chairperson does not order a hearing, the chairperson is required to give notice as specified.

**SECTION 34** requires the respondent, if a hearing is ordered pursuant to section 33, to elect as a tribunal to conduct the hearing either a panel or a judge of a superior court to be designated by the Chief Justice of Prince Edward Island. If the respondent fails to make an election, the panel is the tribunal. The Judicial Council is required to provide the report prepared pursuant to clause 33(1)(b) to the tribunal and its legal counsel, if any, and the tribunal is required to provide copies to the respondent and the respondent's legal counsel, if any. The respondent is suspended from all duties as a judge, with pay, pending completion of the hearing.

**SECTION 35** provides that, except for the specified disclosures, the report of the chairperson prepared under clause 33(1)(b) is confidential and shall not be disclosed by a person who receives it pursuant to section 34 except in the performance of the person's duties under the Act.

**SECTION 36** specifies the composition of the panel and requires that a member who has a conflict of interest in respect of the matter must immediately disclose it and refrain from attempting to influence or participate in consideration of the matter.

**SECTION 37** authorizes the Chief Justice of Prince Edward Island to appoint a judge of a superior court as the tribunal, where the respondent has made that election pursuant to clause 34(1)(b).



**SECTION 38** sets out the scope of the tribunal's hearing.

**SECTION 39** sets out the duties and authority of the tribunal in conducting the hearing, and provides that the hearing shall be held in public unless the tribunal considers that the hearing, or a part of it, should be held in private for the specified reasons.

**SECTION 40** sets out the tribunal's powers in conducting the hearing, including compelling the attendance of persons and the production of evidence, and the power to enforce its summons and impose a punishment for contempt of its process. The section also provides that a respondent's failure or refusal to comply with a summons of the tribunal or to answer its questions may be held by the tribunal to be grounds for finding the respondent unfit to carry out the duties of a judge.

**SECTION 41** authorizes the tribunal to do all things necessary for a full and proper hearing, including dealing with multiple matters concerning a respondent, severally or in combination, and also relevant matters arising in the course of the proceedings.

**SECTION 42** specifies the circumstances in which a respondent may be found unfit due to misconduct or incompetence.

**SECTION 43** requires the tribunal, on concluding the hearing, to determine whether the respondent is fit to carry out the duties of a judge, and specifies the orders the tribunal may make in accordance with that determination.

**SECTION 44** provides that a respondent may appeal the tribunal's determination or order to the Court of Appeal within 30 days of being served with the notice of the determination or the order, as the case may be. The section also sets out the powers of the Court of Appeal on hearing the matter.

**SECTION 45** provides protection from personal liability for the specified persons for anything done or omitted to be done in good faith in the exercise or intended exercise of a power or the performance or intended performance of a duty under the Act or regulations

**SECTION 46** provides that information acquired by a person under the Act is confidential and shall not be released except with the consent of the persons to who it relates, except in the specified circumstances. The section prevails notwithstanding the *Freedom of Information and Protection of Privacy Act*.

**SECTION 47** specifies the general methods of service of documents under the Act.

**SECTION 48** specifies the oath or affirmation of office to be taken by a judge on appointment.

**SECTION 49** provides that every judge appointed on and after April 1, 1997, is entitled to a pension as recommended by the Commission and adopted by the Legislative Assembly.

**SECTION 50** provides that a judge shall not receive additional remuneration from any source for exercising the powers specified under subsection 21(2), or undertaken pursuant to another statutory provision, unless the additional remuneration is approved by the Minister.

**SECTION 51** provides for holidays, vacations with pay, sick leave, leave of absence for illness and sabbatical leave for judges.

**SECTION 52** authorizes the Lieutenant Governor in Council to make regulations as specified for the purposes of the Act.

**SECTION 53** continues the appointments of judges and the designation of the Chief Judge made under the former Act.

**SECTION 54** provides for the continuation of an investigation, inquiry or hearing that was commenced under the former Act and not concluded on the coming into force of the section.

**SECTION 55** provides for the continuation of entitlement to a pension of a person who was appointed as a judge prior to April 1, 1997, in the same terms as under section 8 of the former Act.

**SECTIONS 56 to 62** make consequential amendments to other specified Acts.

**SECTION 63** provides for the repeal of the former Act, and also the repeal of section 5 of *An Act to Amend the Provincial Court Act* S.P.E.I. 1996, c. 32. This section, which amended the former Act to provide for the establishment of a Judicial Council by agreement with another province, was never proclaimed and is now unnecessary.

**SECTION 64** provides that the Act comes into force on a date to be fixed by proclamation of the Lieutenant Governor in Council.





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(Bill No. 16)

**Provincial Court Act**

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	March 9, 2021
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

**SIGNATURES:**

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Honourable Antoinette Perry, Lieutenant Governor

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Honourable Colin LaVie, Speaker

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Joseph Jeffrey, Clerk

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Hon. Bloyce Thompson  
Minister of Justice and Public Safety and Attorney General

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GOVERNMENT BILL

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2021  
2nd SESSION, 66th GENERAL ASSEMBLY