

NOVA SCOTIA PROVINCIAL JUDGES' SALARIES AND BENEFITS TRIBUNAL
(2011 – 2014)

REPORT AND RECOMMENDATIONS FOR THE PERIOD
APRIL 1, 2011 to MARCH 31, 2014

TRIBUNAL MEMBERS

Professor Bruce P. Archibald, Q.C.
Ms. Terry L. Roane, Q.C.
Mr. Ronald A. Pink, Q.C.

December 5, 2011
Halifax, Nova Scotia

I. INTRODUCTION

1. This is the Report of the 2011-2014 Tribunal for the Determination of the Salaries and Benefits for Provincial and Family Court Judges of the Province of Nova Scotia. The Tribunal was constituted in November 2010 pursuant to section 21A of the *Provincial Court Act*, R.S.N.S. 1989, c. 238 as amended, for the reporting period which starts April 1, 2011 and ends March 31, 2014 (the Tribunal members' formal appointments ending October 31, 2013 in accordance with the *Act*). The current Tribunal is composed of Professor Bruce P. Archibald, Q.C. (Chair) and members Ms. Terry L. Roane, Q.C. (appointee of the Minister of Justice) and Mr. Ronald A. Pink, Q.C. (appointee of the Nova Scotia Provincial Judges' Association). In compliance with section 21D of the *Act*, which provides for public participation in the Tribunal's proceedings, the Tribunal (with the assistance of the Court Services Division of the Department of Justice) caused notices of the public hearing to be placed in the Chronicle Herald, Amherst Daily News, Cape Breton Post, Truro Daily News, New Glasgow Daily News and the Courier de Nouvelle Écosse newspapers. No members of the general public sought to present submissions to the Tribunal with the exception of Mr. James Rossiter, then President of the Nova Scotia Branch of the Canadian Bar Association, who sent a letter in support of the positions taken by the Judges in their written submissions. Substantial written submissions were received from Ms. Sarah Bradfield and Ms. Agnes MacNeil on behalf of Marion Tyson, Q.C., Deputy Minister of Justice, representing the Government of Nova Scotia, as well as from Mr. S. Bruce Outhouse and Mr. R. Lester Jesudasson representing the Nova Scotia Provincial Judges' Association ("the Association").

2. As a result of scheduling difficulties, the hearing could not be held on May 24, 2011 as advertized, but went forward on June 9, 2011 in the facilities of the Nova Scotia Labour Board in Halifax. In addition to three members of the Provincial judiciary (Judges William Digby, Alan

Tufts and Jamie Campbell), two members of the public were in attendance: a law student, Mr. Aaron Martins, and a reporter by the name of Gillian Cormier. An article appeared under Ms. Cormier's by-line in the on-line news service "all Nova Scotia.com" with the headline "JUDGES AND PROVINCE AT WAR OVER PAY HIKE", dated June 10, 2011. The article provided a brief summary of some aspects of the oral arguments made by the Government and the Association. The attention grabbing headline, however, exaggerated certain normal aspects of an adversarial style proceeding and suggested attitudes and behaviors which were simply not present. The Government and Association, while presenting their respective points of view in a spirited and robust manner, were hardly bellicose. Counsel for both "parties" to the proceeding presented their respective positions respectfully and with civility. Moreover, they had collaborated prior to the hearing in order to prepare jointly five volumes of factual materials which enabled the presentation of complex information and argument in a highly efficient one-day hearing. The Tribunal thanks counsel for their diligence and professionalism in this regard.

3. The mandate of the Tribunal is set out in section 21E(1) of the *Provincial Court Act*, which reads as follows:

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

- (a) the appropriate level of salaries to be paid to judges of the Provincial Court and the Family Court, including the chief judge and associate chief judge of each court;
- (b) the appropriate level of per diem payments, or payments for part of a day, made to judges for presiding in the Provincial Court or the Family Court where those judges are not receiving salaries;
- (c) the appropriate vacation and sick-leave benefits to be provided to judges of the Provincial Court and the Family Court;
- (d) pension benefits, 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;

This provision is not unlike analogous provisions found in similar legislation from other Canadian jurisdictions.

4. In the exercise of its mandate, the Tribunal must be guided by the non-exhaustive list of factors set out in section 21E(3) of the *Provincial Court Act* which reads as follows:

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

- (a) the constitutional law of Canada;
- (b) the need to maintain the independence of the judiciary;
- (c) the need to attract excellent candidates for appointment as judges;
- (d) the unique nature of the judges' role;
- (e) the manner in which salaries and benefits paid to judges in the Province compares to judicial compensation packages in other jurisdictions in Canada, including the federal jurisdiction, having regard to the differences between those jurisdictions;
- (f) the provision of fair and reasonable compensation for judges in light of prevailing economic conditions in the Province and the overall state of the Provincial economy;
- (g) the adequacy of judges' salaries having regard to the cost of living and the growth or decline in real per capita income in the Province;
- (h) the relevant submissions made to the tribunal;
- (i) the nature of the jurisdiction and responsibility of the court; and
- (j) other such factors as the tribunal considers relevant to the matters in issue. 1998, c. 7, s. 1;

These factors, too, are not uncommon in judicial compensation commission statutes across Canada. Unlike other Canadian jurisdictions, however, the Legislative Assembly of the Province of Nova Scotia has stated in sections 21(J), 21(K), 21(L) and 21(M) of the *Provincial Court Act* that it will be bound by the recommendations of the Tribunal. Thus, Nova Scotia has avoided the unfortunate spectacle, which has arisen in some other Canadian jurisdictions (where judicial compensation commission reports are advisory only), of judges suing governments for failure to implement their tribunal's recommendations. This Tribunal, in the face of the sobering trust reposed in it by the legislature of the Province, must bring to its deliberations all the care and wisdom it can muster.

5. The broad legal context for the exercise of this Tribunal's mandate was described by the 2004-2007 Tribunal in the following manner:

Judicial compensation commissions, such as this Tribunal, became a constitutional necessity following the decision of the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3. The purpose of these commissions is to safeguard judicial independence, the hallmarks of which are security of tenure, administrative independence and financial security. Judicial compensation commissions are intended to do this by creating an "institutional sieve", or structural separation, between government and the judiciary so as to prevent direct negotiations between judges and the government. This institutional distance is intended to "de-politicise" the relationship between governments and judges, and ensure that there can be no manipulation of the judiciary by government, or appearance thereof, through the process of establishing terms of remuneration and other employment benefits for judges.

6. As the Tribunal indicated in its 2008-2011 Report, we do not commence each cycle of recommendations by starting from a blank slate. The process has become institutionalized since the 1998 amendments which set out the Tribunal's authority as described above. The Tribunal has a duty to ensure that its recommendations are responsive to the public interest as expressed in

the factors enumerated above from section 21E(3) of the *Provincial Court Act*. As mentioned, the general public is invited to attend and make written submission, as has occurred sometimes in the past. However, in practical terms the process is dominated by the Government and the Association, whom we shall refer to as “the parties” for sake of convenience. But as indicated in the last Report, this does not mean that the proceedings before the Tribunal are merely akin to a private sector “interest arbitration” in which issues are framed by the parties and settled between them without regard to the public interest. Nonetheless, the Tribunal in this 2011-2014 round is content to address the issues raised by “the parties”, in the absence of interventions from members of the public who may have competing views. We take this approach because other issues which could be raised under the Tribunal’s mandate in section 21E(1) have generally been discussed and resolved in previous reports from the Tribunal. In some considerable measure, then, the status quo on issues of benefits for Provincial judges which are not discussed in this Report have received the Tribunal’s positive imprimatur in the past and can be left undisturbed in the absence of evidence that these matters should be revisited.

7. The main issues which have been raised for consideration in this round are pensions and salaries. Considerable time and effort were expended by the parties on both of these sets of issues, and their views on each diverge from one another. The parties also addressed certain issues related to group assurance, health and dental plans, as well as vehicle leasing and reimbursement for use of personal vehicles, and finally the question of adjustment of payments to per diem judges. For the most part, the parties were in agreement in relation to the manner of resolving these secondary issues; however, the Tribunal must address these latter matters in relation to the governing factors in section 21E(3) of the *Act*, in a manner similar to that required for the contested issues of salaries and pensions, in order to ensure our recommendations accord with the public interest.

II. PENSIONS

8. Pensions have become a matter of great concern to all Canadians in the recent past, particularly since the “Financial Crisis and Great Recession” of 2008 which were only just becoming manifest at the time of the writing of this Tribunal’s 2008-2011 Report. In 2002, this Tribunal approved a joint proposal from the Government and the Association to put into place new pension arrangements for the provincial judges and this was implemented by the Province. Differing pension provisions may apply for judges appointed before or after April 1, 2002. In addition, a judge may elect to have his or her pension paid in accordance with the *Public Service Superannuation Act (PSSA)* which governs the pensions of government employees, or to be paid in accordance with the judicial pensions under the *Provincial Court Act*, section 23. (The former approach is usually advantageous for judges who were formerly civil servants who had contributed under the *PSSA*, while the latter may be preferred by judges appointed from the private-sector bar.) Section 22 of the *Provincial Court Act* states: “A judge shall be an employee within the meaning of the *Public Service Superannuation Act*”. This blanket statement, though in apparent tension with section 23 of the *Act* which sets out pension rules for judges which differ from those under the *PSSA*, does mean that all Provincial judges can take advantage of a PSSP mechanism which allows members to make additional tax deductible contributions to enhance their pensions. It also means that administrative savings are possible. Thus judges’ pensions, in any of the above variants, are, for reasons of ease, efficiency and available expertise, administered by the Nova Scotia Pension Agency, which carries out such tasks for several different public and para-public pension schemes.

9. The Nova Scotia Pension Agency’s description of the current pension situation for provincial judges taken from its website is attached to this Report as Appendix A. Pension issues

have come before this Tribunal in the past and were the subject of recommendations in 2004, 2007, 2008 and 2010. However, these recommendations and their implementation need not be addressed here in any detail since they are sufficiently summarized in Appendix A.

10. As a result of the 2008 crisis in the bond and equity markets, investment values declined, and actuarial estimates deemed that many North American pension funds were seriously underfunded. The Nova Scotia Public Service Superannuation Plan was no exception. A report by the “Mercer” actuarial consulting group dated June 17, 2010, and entitled *Nova Scotia Public Service Superannuation Plan: Report on the Actuarial Valuation for Funding Purposes as at December 31, 2009*, confirmed the PSSP’s underfunded status. The fund had actuarial assets of \$3,393,660,000, an actuarial liability of \$4,896,618,000, and thus an unfunded liability of \$1,502,958,000. This \$1.5 billion unfunded liability meant that the Plan at the end of 2009 had a funding ratio of 69.3%. These were the evaluation results on a “going-concern basis. Mercer also calculated the Plan’s financial position on a wind-up basis (unlikely though that eventuality might be) as having a wind-up deficiency of \$3,702,440,000. The Government, not surprisingly, concluded that immediate action had to be taken to rectify the unfunded liability of the PSSP, and it also apparently concluded that in the long-term the Province’s credit rating could be enhanced by changing the administration of the PSSP so that it would no longer be the formal guarantor of the Plan. The Government thus not only changed the PSSP’s operating rules, it also proposed likely changes to its governance structure. These proposed changes, however, could have an adverse impact on the pensions of Provincial judges.

11. The substantive changes to the Public Service Superannuation Plan were effected by legislation which received Royal Assent on May 11, 2010, and may be summarized as follows:

- a. New employees who joined the plan on or after April 6, 2010 will be entitled to unreduced pension when their age (55 or more) + years of service = 85 (for other plan members it is 80);
- b. Early retirement will be available for employees who joined the plan on or after April 6, 2010 at a minimum age of 55 (formerly 50)
- c. Surviving spouses will receive 60% of their spouse's pension benefits (formerly 66 2/3%), also for employees who joined the plan on or after April 6, 2010;
- d. Deferred pensions would no longer be indexed prior to commencement, effective January 1, 2011;
- e. Indexing provisions were set at 1.25% each January 1, from 2011 to 2015;
- f. Indexing is to be set based on the health of the plan for five year periods commencing January 1, 2016.

The Government's submission stated the intention was that the PSSP would be brought to fully funded status through these and other reforms by December 31, 2010.

12. While the foregoing substantive changes, and in particular the indexation of benefits at 1.25% for each year from 2011 to 2015, were of concern to the Association, the changes to the governance structure were thought even more problematic. The Minister of Finance is currently the Trustee of the PSSP and the plan is of the "defined benefits" variety, with the government under an obligation to top up any underfunding from the Consolidated Revenue Fund. However, the legislation of April/May 2010, provides for a transition to a board of independent trustees who will manage the PSSA pension fund, subject to strict statutory guidelines: see the *Financial Measures (2010) Act*, Stats. N.S. 2010, c. 3. The trustees, who will be appointed to represent the Government as employer and various employee groups within the plan, will have the authority, in accordance with statutory limits, to change contribution rates and pension benefits, including indexation. The Province made a "one time" payment of \$536 million to assist in removal of the unfunded liability on the understanding that once the fund under independent trustee management is operative, the Government will no longer be responsible for shortfalls in funding. The Association describes this state of affairs as a transformation of the PSSP from a "defined

benefits” to a “targeted benefits” plan. The benefits payable will be targeted to a level which the independent trustees believe can be paid based on contributions rates, salary levels, investment success (or failure) and actuarial calculations related to plan demographics (numbers of contributors, numbers of pensioners in say, life-expectations, etc.). The Government, of course, will no longer have this risk on its books.

13. From a procedural perspective, the Government was caught in an awkward situation when introducing these pension changes. It had to make major alterations to the province’s public pensions regime in a budgetary/legislative process which, of necessity, must be characterized by a high degree of secrecy. On the other hand, the Province is bound by its obligations under the Constitution and the *Provincial Court Act* to consult with this Tribunal before making changes to Provincial judges’ pensions. The PSSP has approximately 31,300 members, of whom only 36 are Provincial Court judges. With the Government’s attention firmly, and understandably, on the big picture, the situation of the Provincial judges apparently fell through the cracks. The effective date of some changes to the PSSP was April 6, 2010 while the benefit indexation rate of 1.25% came into effect on January 1, 2011. The Government at first assumed that, through certain technical rules of statutory interpretation, its pension reforms could simply be applied to Provincial judges without consulting the Tribunal. It then revised its opinion, and concluded that, consistent with section 21E(1)(d) of the *Provincial Court Act*, the Tribunal’s approbation for the application of the changes to the judges would have to be obtained. The Government was then caught by the statutory timetable of the Tribunal with the former members’ tenure ending on October 31, 2010, new members only being appointed in November, 2010, and with the Association objecting to a rushed process to try to get a Tribunal decision prior to pension changes effective January 1, 2011. Of course, the new Tribunal’s statutory mandate runs from April 1, 2011 to March 31, 2014. In any event, the parties agree that

the pension issues in dispute now are squarely before this Tribunal and ripe for elaboration of Tribunal recommendations to resolve the associated problems.

14. The Government's position is that the Tribunal ought simply to recommend approval of its statutory changes to the *Public Service Superannuation Plan* for application to Provincial judges, "subject to the additional provisions of the *Provincial Court Act*". The Government is entirely sanguine about the prospect of an independent Board of Trustees operating the PSSP, and argues that the judges' full inclusion in the Plan does not affect their judicial independence. On the question of indexation of pension benefits at 1.25% for the next five years, and thereafter in accordance with the performance of the Plan as determined by a Board of Trustees, the Government sees this as a normal aspect of the judges' status as members of the Plan. Limited indexation is said to be required to keep the Plan solvent, and the Government asserts that judges ought to make their contribution in this regard like all other plan members. The Government also warns the Tribunal against "carving the judges out" of the Plan:

Finally, the alternative also ought to be considered. If the Judges were not part of the public plan, then as a very small group of very high income earners, a separate pension plan would likely be significantly more expensive to operate. No matter how the contributions to an expensive plan are split, all of the dollars funding the plan come from the public purse, whether they are paid as salary and then deducted or the Province's contributions are increased. The source of the dollars is the same. The cost is not the only factor to be considered, but it is an important one given the current economic condition of the Province.

15. The Association argues that the position of the Government on the pension issue is unconstitutional, inconsistent with the statutory factors set out in the *Provincial Court Act*, and harmful to the interests of both the judges and the public. In so far as the PSSP governance is concerned, the Association's view is that treating judges as ordinary members of the Plan will subject them to the decision of a Board of Trustees where they will be unrepresented and their

interests subordinated to those of the vast numbers of other Plan members. Such a situation would involve the Tribunal's abandonment of its statutory mandate to review judicial compensation issues, including pensions, on a triennial basis. The Association submits that the prospect of retiring with an adequate pension is an important aspect of the judicial compensation package and is a significant issue in relation to the recruitment of Provincial judges, particularly from the private bar. As such, the Association sees adequate pensions for Provincial judges under the Tribunal's oversight as an integral part of the financial security necessary to maintain the constitutional requirement for judicial independence. On the issue of indexing of pension benefits, the Association asserts that the rate of 1.25% over the next five years, as compared with the "consumer price index for a maximum of 6%" set by Cabinet regulation (as has been the rule for many years and one approved by this Tribunal), will adversely affect judges' pensions to a significant degree if one assumes even a modest inflation rate of, say, 3%. The Association notes that most Canadian jurisdictions adjust pension benefits for judges in accordance with the full increase in a relevant Consumer Price Index to a maximum cap which varies between 5% and 7% (Newfoundland at a fixed indexation rate of 1.2% is an outlier in this regard).

16. With respect, the Tribunal has come to the conclusion that the Government's proposal to simply include Provincial judges with public and/or civil servants in the *Public Service Superannuation Plan* under its newly devised parameters does not comport with the constitutional standards embodied in the *Provincial Court Act* for establishing judicial compensation. The *PCA* establishes criteria by which Provincial judges' salaries and benefits (including pensions) are to be calibrated. The provisions of the *Financial Measures (2010) Act* are not sufficiently nuanced to respond to the substantive concerns found in section 21E(3) of the *PCA* when it comes to establishing the terms and conditions of Provincial judges' pensions. The issue of the indexation of pension benefits is a good example to which we will return below.

17. More importantly, the Tribunal shares the concerns of the Association that the independent Board of Trustees, to which the Government apparently intends to entrust the management of the *PSSP*, does not have the mandate, and will inevitably not have the structure, which will allow it to respond to the criteria established in the *Provincial Court Act* when dealing with the pensions of Provincial judges. The PSSP Board of Trustees is bound by the new sections 9 through 19 of the *Public Service Superannuation Act* to ensure that the funded ratio of the Plan is at 100%, and “with the advice of the plan’s actuary and other reliant advisors” set contribution rates, cost of living increases, and plan improvements, and establish a strategic reserve fund, all the while keeping an eye on “the then-current economic situation or other extraordinary circumstances”. Section 19B(2)(e)(11) does exhort the Board of Trustees to consider “the equities among plan participants”, but there is certainly no statutory recognition of the particular constitutional status of judges.

18. In addition to the economically far reaching, if conceptually narrow, mandate of the Board of Trustees, there are structural and procedural issues in relation to Provincial judges and their pensions. If the Board is to have approximately equal numbers of employer and member appointees, and if member appointees are representative of union and non-union active employees as well as pensioners, and if union employees were to be represented by persons associated with the major public sector unions, it is hard to imagine that there would be room on such a Board of Trustees, concerned with over 30,000 members, for serious consideration of the interests of 36 Provincial judges. In inevitably rough and tumble debates over levels of contribution rates, actuarial calculations, investment performance and decisions and levels of benefits in relation to the cost of living, it is only reasonable to assume that the interests, concerns and constitutional status of the judges will easily get lost. Moreover, it is questionable whether it would be consistent with the constitutional status and independent role of judges in

society that their Association should be represented on the Board of Trustees. Merely to contemplate such an idea highlights the clash between the role of the Board of Trustees and the constitutional and statutory role of this Tribunal.

19. Thus the new governance structure and the mandate of the Board of Trustees, to say nothing of the rigid rules in the newly amended *Public Service Superannuation Act*, are not a good fit with the approach taken to pension issues in the Provincial Court Act, including the role of the Tribunal. Therefore, the Tribunal cannot accede to the Government's proposal that Provincial judges should, for all practical purposes, be governed by the rules of the *Public Service Superannuation Plan* as set out in the PSSA or established from time to time by the independent Board of Trustees.

20. On the other hand, no one is suggesting that a totally separate pension plan be established under the *Provincial Court Act* alone. Such an arrangement, while respecting the principle of judicial independence in formal terms, might impose unnecessary costs, cause administrative headaches and adversely affect some or all of the Provincial judges. For these pragmatic reasons, a compromise which involves the independent setting of pension parameters by this Tribunal in combination with a variant of the pre-existing piggy-back arrangement between Provincial judges' pensions and the PSSP is desirable. A tweaking of the status quo rather than a re-invention of the wheel is surely in the public interest as defined in section 21E(3) of the *PCA*, which includes the Government's financial concerns that must fall under subsection 21E(3)(e) and (f), among others.

21. Several judicial compensation commissions have cited with approval the following excerpt from Professor Marty Friedland's famous report "A Place Apart: Judicial Independence and Accountability" (Ottawa, Canadian Judicial Council, 1995) at p. 66:

"Pensions are a crucial part of judicial security. If a judge's pension is inadequate or insecure, there is a danger that the judge will not be fully independent while sitting on the bench. Section 100 of the Constitution states that salaries, allowances, and pensions "shall be fixed and provided by the Parliament of Canada". If the pension is not adequate and secure, the judge may be inclined to favour a side that may be important in the judge's future, in particular, the government that may be looked to for a pension. Worse, the judge may be tempted to accept favours or bribes from litigants while on the bench. Prime Minister Sir Wilfrid Laurier brought in legislation in 1903 providing for pensions at full salary (later reduced to two-thirds of salary), stating that the object was "to put judges above temptation, to ensure their dignity and independence, and to make them what they should be, the impartial arbiters of all differences in the community". So it is in society's interest to ensure that pension arrangements are good ones...for the sake of society, not for the sake of the judges." [footnotes omitted]

The Tribunal is convinced of the wisdom of these remarks, and of the fact that they are consistent with the approach to judicial independence found in our *Provincial Court Act*. The Tribunal therefore recommends that the pensions of Provincial Court judges be paid in accordance with the following principles, and that the *Provincial Court Act* be amended, where necessary, to reflect these principles:

Recommendation 1 – Pensions

That Provincial judges' pensions be paid in accordance with the following principles, and that the *Provincial Court Act* be amended, where necessary, to reflect these principles.

- (a) A judge shall continue to be an employee within the meaning of the *Public Service Superannuation Act*;
- (b) A judge, in addition to the benefits conferred by the *Public Service Superannuation Act*, shall continue to have access, where appropriate, to the benefits currently conferred under subsection 23(2) and 23(3) of the *Provincial Court Act*;
- (c) The contribution rates payable by a judge in relation to pensions shall be those recommended by this Tribunal from time to time;

- (d) The rates of indexation of pension benefits payable to Provincial judges shall be those recommended by this Tribunal from time to time; and
- (e) Any difference, if applicable, between the pension payable to a judge under the *Provincial Court Act* and that payable under the *Public Service Superannuation Act* shall continue to be paid from the Consolidated Revenue Fund of the Province.

The Tribunal believes that such an approach to establishing the parameters for the pensions of Provincial judges respects the principle of judicial independence, while continuing to maintain the administrative and financial benefits to be derived from the fact that judges' pensions will be partially integrated with the PSSP. This will continue to be the case regardless of whether the Public Service Superannuation Plan falls to be administered by an independent Board of Trustees or not. While funding Provincial judges' pensions will ultimately continue to be the responsibility of the Province, it is highly unlikely that this state of affairs in relation to the pensions of 36 people will have an adverse effect on the Province's credit rating.

22. Consistent with the foregoing principles, the Tribunal must make a recommendation on the matter of pension benefit indexation. The most recent comparative figures on indexing pension benefits for judges across Canada are as follows:

Jurisdiction	Rate of Indexation
Federal Jurisdiction (s. 96 judges)	100% of CPI
Yukon	100% of CPI
Northwest Territories	200% of CPI
British Columbia	Discretionary by Trustees but 100% indexing has always been provided
Alberta	100% of Alberta CPI
Saskatchewan	75% of Saskatchewan CPI up to 5%, and 50% of Saskatchewan CPI over 5%
Manitoba	66.7% of Canada CPI

Ontario	100% of Canada CPI
Quebec	100% of CPI for the Province of Quebec
Nova Scotia	100% of Canada CPI up to 6%
New Brunswick	100% of Canada CPI up to 5%
Prince Edward Island	100% of Canada CPI up to 6%
Newfoundland & Labrador	60% of CPI to max. indexing of 1.2%

In view of the factors set out in section 21E(3) of the *Provincial Court Act*, and in particular balancing (b) the need to maintain independence of the judiciary and (e) the need to attract excellent candidates against (e) fair judicial compensation in the light of prevailing provincial economic conditions, and (g) the cost of living issues in the Province, the Tribunal recommends:

Recommendation 2 – Pension Indexation

That indexation of Provincial judges' pension benefits from January 1, 2011 to March 31, 2014 correspond to 75% of the Canadian Consumer Price Index to a maximum of 5%.

III. SALARIES

23. The salary for Nova Scotia Provincial Judges for the fiscal year ending March 31, 2011, as established through the formula adopted by the 2008-2011 Tribunal, was \$207,577. This is the starting point for the arguments for change made by the parties in relation to the factors set out in section 21E(3) of the *Provincial Court Act*. We will briefly set out the arguments, and this Tribunal's assessment of them, in relation to each factor, before establishing our overall conclusions upon which our salary recommendations are based.

- (a) **The Constitutional Law of Canada; and**
- (b) **The Need to Maintain the Independence of the Judiciary.**

24. These two factors are inextricably linked, and in some measure, may be thought, in the context of salaries, to be oriented to the same issues. The Constitution requires judicial independence in order that the Judicial Branch may function appropriately in relation to both Executive and Legislative Branches of government. Judicial independence, as stated in the *Valente* case, consists of financial security, security of tenure and administrative independence. The *PEI Reference* case held that financial security embodies three requirements: (i) that salaries be set by an independent commission; (ii) that no negotiations are permitted between government and judiciary; and (iii) that salaries may not fall below a minimum level. Since the first two requirements are met by the system in Nova Scotia under the *Provincial Court Act*, the issue falls to be argued around proposition (iii). Judicial salaries must be such as to place judges in a financial situation where they will not be corrupted by the temptation to curry favour among certain litigants in order to gain financial advantage. This principle, of course, operates in a context where, to maintain independence, judges are forbidden from engaging in any other occupation or “side-line” for financial gain. Judicial salaries must be such as to allow judges, with appropriate prudence and economy, to enjoy a style of life for them and for their families which will not put them under debilitating financial stress that might compromise their abilities to do their jobs with singlemindedness and integrity.

25. There was no suggestion from either the Government or the Association that current salaries for Provincial judges in Nova Scotia puts their capacity for judicial independence at risk. Judicial salaries are well above the average income for Nova Scotians which was \$39,523.64 in 2010. At current salary levels, Nova Scotia’s Provincial judges can be expected to govern their financial affairs in such a manner as to be above reproach in so far as judicial independence is concerned. As such, the Tribunal concludes that constitutional minima and need to maintain

judicial independence are not a critical factor in upwardly adjusting current salaries. However, other factors, as will be seen below, will have a greater impact in this regard.

(c) The Need to Attract Excellent Candidates for Appointment as Judges

26. The Association argued that salaries must be such as to “induce the most qualified lawyers to leave practice” if this criterion is to be met. The Government submissions agree that this factor “...directs the Tribunal to ensure that the compensation package recommended is sufficient to encourage lawyers of high standing to seek appointment”. Both parties accept the 2008 Tribunal’s observation that “...provincial judicial salaries must be such as to attract a number of excellent candidates from both the public and private bars in all areas of the Province, including Halifax”. The Government went through the biographical profiles of those judges appointed since the last Tribunal’s Report in 2008, and asserted that their qualifications, experience, character and diversity, all indicate that current salary levels must be such as to achieve the objective in question. The Government concluded: “There is no evidence that the Province has been unable to attract excellent candidates as a result of the Nova Scotia judicial salary levels”. The Tribunal is in accord with these observations. However, we note the use of the past tense in the Government’s conclusions. A key issue for the Tribunal in weighing this factor against the others in section 21E(3) of the *Provincial Court Act* is to ensure that judicial salaries over the next three years continue to be at relative levels which continue to attract excellent candidates to the Provincial judiciary. We cannot be content to merely rest on past success. The public interest requires that well qualified and experienced lawyers of high standing continue to apply for appointment to upcoming vacancies.

**(d) The Unique Nature of the Judge’s Role and
(i) The Nature, Jurisdiction and Responsibility of the Courts**

27. There is no dispute over the fact that Provincial judges play an important role in Nova Scotian society. They adjudicate family disputes in some contexts, and form the backbone of the administration of the criminal justice system in the Province. In this latter connection, they preside over all but a small number of very serious matters which are reserved for the Supreme Court of Nova Scotia (murder and the like), but even in these latter cases they will usually conduct preliminary inquiries. In adjudicating on guilt or innocence in the vast majority of criminal trials in the Province, and in sentencing offenders, Provincial judges wield powers which have a far reaching impact on our citizenry. They will also make decisions on constitutional and other matters which impact on the roles and conduct of police, prosecutors and correctional officials. As mentioned above they must be independent and unbiased and be perceived as such. They are prohibited, as noted above, from practicing "...any profession, or actively engage in any business, trade or occupation" by section 11 of the *Provincial Court Act*. Moreover, judicial codes of conduct limit, in the interests of avoiding perceptions of bias, prohibit judges from participating in various forms of social activity which would otherwise be normal for most people (charity fund raising for example). In Professor Friedland's phrase, judges occupy "a place apart" in society and they pay a social, emotional and economic price for the privilege. These were matters highlighted in the Association submissions.

28. On the other hand, the Government submissions, taking the above for granted, stressed the fact that, in the time since the last Tribunal's salary recommendations, there has been no significant change in the admittedly unique role that Provincial judges play in our society. The jurisdiction of Provincial courts is unaltered, increases in appearances appear to be balanced by increases in the numbers of cases closed, the number of judges has increased but workloads vary from one area of the Province to another, and Nova Scotia's provincial judges, unlike some in

other provinces, benefit from specialized activities by justices of the peace which alleviate the burden on Provincial courts to some degree. Moreover, the Government observes that the role of a Provincial judge provides "...interesting, creative work – one of the benefits of judicial office". The Government's conclusion, however, is that "...there is no foundation to support an increase in judicial salaries pursuant to this factor".

29. The Tribunal takes the point that there has been no significant change in the jurisdiction or responsibilities of Provincial judges over the past three years, and that the evidence in relation to this factor does not justify any *radical* upward adjustment in salary. However, this factor relative to other considerations must be taken into account in balancing the need for salary adjustment.

(e) Comparison with Judicial Compensation Packages in other Canadian Jurisdictions

30. The interpretation of this factor is always a bone of contention between the parties, and therefore the full wording from the statute is worth setting out verbatim. The Tribunal is required to take into consideration under Provincial Court Act s. 21E(3)(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."

With respect to salaries, it is not entirely easy to get up-to-date and reliable data from all jurisdictions, since the processes for establishing judicial compensation vary from province to province, judicial compensation commissions are at different stages in their respective cycles of recommendation, and governments in each jurisdiction take different approaches to the recommendations which they may receive. That having been said, the relative orders of magnitude for current provincial judicial salaries across Canada can be derived from the

following table. This table was presented in the initial written submission of the Association, but was amended by the Tribunal in the light of recommendations made by the *2009 Alberta Judicial Compensation Commission Report* which was released on September 6, 2011 (after the Tribunal's hearing), but forwarded to the Tribunal by the Association and commented upon in correspondence from the Government.

**TABLE 3 – ACTUAL AND APPROVED SALARIES
AS OF APRIL 1, 2011***

JURISDICTION	SALARY
NEWFOUNDLAND & LABRADOR	\$208,448
PRINCE EDWARD ISLAND	\$216,268
NEW BRUNSWICK	\$204,700
QUEBEC	\$227,488
ONTARIO	\$252,274
MANITOBA	\$199,722
SASKATCHEWAN	\$238,943
ALBERTA	\$255,000
BRITISH COLUMBIA	\$231,138
NORTHWEST TERRITORIES	\$233,255
YUKON TERRITORIES	\$228,880
CANADIAN AVERAGE (excluding N.S.)	\$227,011

*As amended to reflect the 2009 Alberta recommendations as of September 6, 2011

It should be noted that the current salary of federally appointed judges who sit in the Nova Scotia Supreme Court is \$281,100 per year – considerably above the level of any provincial court judges across the country, including those in Alberta and Ontario.

31. The Association, as in the past, put considerable emphasis on what it sees as the currently unjustifiable gap between Nova Scotia provincial judges and their federally appointed counter-

parts (\$73,523). It urged this Tribunal to reduce that gap as has been the strategy of some earlier Nova Scotia salary tribunals, since the Nova Scotia–Federal gap is now the largest it has ever been. The Association believes that this sort of gap makes it harder to recruit judges to the provincial court bench when the federal salaries are so much more attractive. The Association also notes with approval that in the past Nova Scotia judicial salary tribunals have sometimes set the Nova Scotia provincial judges’ salaries at slightly above the national average, and urges the Tribunal to do so this time. (It is to be recalled that the practice of the PEI judicial salary compensation commission is to set their provincial judges’ salaries at the national average.) The Association also urges the Tribunal to avoid the temptation to exclude “outliers” in the comparative exercise, whether these be Alberta and Ontario on the high side or Newfoundland, New Brunswick and Manitoba (whose governments have refused to implement compensation commission recommendations) on the low side.

32. The Government points out that while some previous Nova Scotia tribunals have been concerned with the federal-provincial gap, “no tribunal has accepted any notion of parity”. Furthermore, the Government argues that the differential is not artificial:

“The differential is reflective of the reality that the federal rate is set at a level to attract candidates across the entire country, in disparate geographic regions, from major metropolitan areas, with varying costs of living, and is set by a payor with vastly different economic resources.”

The Government argues that the Association’s approach invites the Tribunal to fail to have regard to the differences between the jurisdictions as mandated by section 21E(3)(e). The Government also states that there is no clear evidence that the federal-provincial gap distorts recruitment of judges in relative terms. The Government then points out that the federal rate is set, in part, by reference to the rates of pay of Deputy and Assistant Deputy Ministers in the

Federal Government, which are comparatively high. As a follow-up, the Government thus argues that this Tribunal should have regard to the salaries of Nova Scotia Deputy and Assistant Deputy Ministers (at an approximate maximum annual salary of \$189,211 and \$165,252 respectively), although it recognizes that Nova Scotian Tribunals since the 1998 legislation have not done this (it is not a factor to which explicit mention is made in the statute...). In so far as judicial salaries are concerned, the Government notes that the exercise is a difficult one, but suggests that "...traditional comparator groups for Nova Scotia, based on the sizes of their respective populations and their economic status, are Newfoundland, P.E.I., New Brunswick and Manitoba". It also notes that the current Nova Scotia salary is roughly equal to the current average judicial salary for those provinces. However, the Government acknowledges that "[a]n averaging approach is replete with problems", since it "represents a fettering of the discretion of the Tribunal", it does "not even approximate a full consideration of the factors spelled out in subsection 21E(3)", and it "fails to properly take into account the differences" among Canadian jurisdictions.

33. The Tribunal appreciates the relative merits of each of the parties' arguments on the "judicial comparator" factor. However, like the parties, is concerned that these matters must be weighed carefully against the final two substantive factors of section 21E(3) which have to do with broader economic questions.

- (f) **Prevailing Economic Conditions in the Province, and**
- (g) **The Provincial Cost of Living and Real Per Capita Income**

34. These two closely linked economic factors from section 21E(3) read as follows. The Tribunal must consider:

- (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; and
- (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

In some measure, the first of these might be thought addressed primarily to the issue of the “ability of the Province to pay”, while the second to the “capacity of the judges to make ends meet” in terms of personal finances. However, there may be broader comparative economic issues at stake in relation to each factor.

35. In relation to the first factor the Association urged the Tribunal to focus on the long-term outlook for the Province, look at objective criteria rather than what might be “politically expedient” for the Government (deficit reduction), and to set judicial salaries at levels which preserve judicial independence and enhance their unique role even if this results in some financial discomfort for the Government. The Association asserts that, as found by the 2001 Newfoundland Commission, there is no basis for fear that an increase in judges' salaries will cause a ripple effect in demands on the part of other public servants. In this particular exercise, the Association emphasizes the optimistic statements from the Minister of Finance, Graham Steele, about the Provincial economy. It notes that in his Budget Address for the fiscal year 2011-2012, the Minister forecast a surplus of \$447.2 million for fiscal 2010-11 rather than the original deficit estimate of \$222.1 million. Moreover, for the second year in a row the Finance Minister predicts total spending will be under budget. In addition, the 2010-11 surplus was large enough for the Government to put \$37.8 million against the provincial net direct debt – only the 7th time in the past 50 years that this has happened. These measures have reduced the net direct forecast for the year by \$1 billion to \$13.068 billion. The Association therefore reasons that, despite current economic uncertainties, the Province's situation is better than in the midst of the

2008 recession when the Tribunal last reported, and that the economic outlook for the Province is better than it was in the 1990's when Nova Scotia judges' salaries exceeded the national average.

36. In terms of a general approach to factor 21E(3)(e), the Government urges the Tribunal to put stress on "the provision of fair and reasonable compensation for judges" in the economic circumstances where everyone is belt tightening and judges are already held in high regard by a public which has confidence in the judiciary. In other words, in relation to factors (e) and (f), the Government asserts that the Province's structural debt and "ability to pay" are critical factors where at current levels of judicial salaries, judicial independence is not at risk. In support of its position, the Government notes that unemployment has been above 9% in the Province for the last two years and growth in jobs has stagnated, which means decreasing tax revenue and likely increased community service expenditures for the Government. (The Government also notes that judges are essentially immune from these vicissitudes of life for ordinary Nova Scotians.) Meanwhile, there is the structural debt mentioned above with spending to increase to \$9.3 billion for 2011-2012, while revenues will not attain that level. In addition, almost 10 cents of every tax dollar paid by Nova Scotians is spent on debt servicing, and of the \$8.3 billion the Government puts into departmental spending, 55% (approximately \$4.5 billion) is spent on wages. It is in this context, the Government states, that the Finance Minister has announced a "Four Year Back-to-Balance Plan" which includes restoring the Harmonized Sales Tax to 15%, introducing new taxes for high income earners, and the changes to the Public Service Superannuation Plan discussed at length above. A critical additional element of this "Back-to-Balance" plan is reduce the annual increases in the Provincial Government wage bill from 2.9% per annum to 1%. Indeed, this is the basis for the Government's proposed salary increase for this Tribunal's triennial cycle: 1% for 2011-2012 which would put the basic salary for Provincial judges at \$209,653, and 1% increases for each of the two years thereafter.

37. Weighing all of the above factors in the light of the relevant submissions made to the Tribunal by the parties, the Tribunal has concluded that the base salary for Provincial judges for the first year of the triennial cycle commencing April 1, 2011 shall be \$214,000. While this amount (which represents an increase of 3%) is in excess of the 1% proposal by the Government, is slightly above the minimum proposed by the Association, but is well below the national average which it suggested as the most desirable outcome from the Association's perspective. The Tribunal believes this base amount reflects an appropriate balance of the factors in section 21E(3) which gives due weight to the economic constraints which the Province finds itself in at the moment. With respect to any "ripple effect" in negotiations with other public servants which might attend the Tribunal's recommendation for an increased base salary in excess of 1%, the Tribunal can only respond that it is doing its best to balance the constitutionally mandated factors in the *Provincial Court Act*. Whether other public servants try to make analogous, or dare one suggest, potentially spurious, claims to occupy a similarly unique context in regard to fair compensation from the Government (or from tax payers) is a situation over which the Tribunal obviously has no control and one which is not relevant to its statutory mandate. Going forward for the remaining two years of the triennial cycle, the Tribunal has concluded that the fairest approach to balancing the factors from section 21E(3) is to provide the Provincial Judges with an increase which corresponds to the change in the Nova Scotia Industrial Aggregate Index (IAI) for the preceding calendar year. Thus the Tribunal recommends:

Recommendation 3 – Salaries

- (a) That Provincial Judges' salaries for the year 2011-2012 be set at \$214,000; and
- (b) That for the years 2012-2013 and 2013-2014 salaries be increased by the percentage increase (if any) in the Nova Scotia Industrial Aggregate Index (IAI) for the preceding calendar year.

IV. ADJUSTED COMPENSATION FOR PER DIEM JUDGES

38. When court dockets are highly charged or other circumstances require judicial personnel beyond the complement of regularly sitting full-time Provincial judges, the Chief Judge is empowered to call upon the services of retired judges, who are then paid on a daily or "per diem" basis for the day at days when they preside in court. The Tribunal, in previous reports, has considered the question of payment for per diem judges and most recently the Tribunal for the 2008-2011 triennial cycle recommended that per diem judges be paid per day at the rate of 1/219 the salary of a full-time judge. The Chief Judge is allotted and administers a maximum annual budget for the purpose of appointing such per diem judges from time to time as required.

39. The Association in its submissions noted that a problem has arisen due to the current method of remuneration for per diem judges. Per diem judges are paid for "sitting days". From time to time a retired judge, particularly in the context of criminal proceedings, may travel from his or her home to a court in a distant part of the Province only to find upon arrival that the docket set for several days has collapsed, and he or she has no cases to preside over during the scheduled period. (This can happen where an accused changes a plea of not guilty to a plea of guilty, or the Crown for some reason withdraws or stays charges, etc.) Under the current regime the per diem judge does not get compensated for making him or herself available for the scheduled time and expending the time to travel to and from the court location. An analogous problem can arise in relation to complex family law cases, where a per diem provincial judge may spend considerable time studying the pleadings, documentary evidence and submissions in preparation for a hearing, only to find on arrival at the court that the parties have achieved a settlement. The Association has proposed a modest, partial solution for these situations which

create unfairness and inconvenience for *per diem* judges whose services are often essential to the administration of justice within the Province.

40. The Association urges the Tribunal to recommend that the Chief Judge be authorized to compensate *per diem* judges for “non-presiding time” in unusual circumstances (sending a judge a considerable distance for a multi-day hearing which does not occur, or preparation in complex family cases which settle, etc.). This recommendation is made on the assumptions that there will be no change in the current *per diem* rate, and that the budget allocated to the Chief Judge for remuneration of *per diem* judges not be increased. The Government makes no objection to this recommendation and, indeed, appears to be in support of it.

41. The Tribunal has concluded that the Association’s proposal makes sense and is in accord with the Tribunal’s mandate under section 21E(1)(5) and the factors in section 21E(3) of the *Provincial Court Act*. Therefore, the Tribunal recommends:

Recommendation 4 – Per Diem Judges Compensation Adjustment

That the Chief Judge be authorized, at his or her discretion, to compensate a judge for non-presiding time, for a day, days or fractions thereof, in unusual circumstances, or in family matters where preparation exceeds that which could routinely be expected to be offset by payment for presiding time not actually required.

V. GROUP LIFE INSURANCE, HEALTH AND DENTAL BENEFITS

42. Under Provincial Court Act section 21E(1)(d), the Tribunal is required to inquire into and make recommendations with respect to “...life insurance, and health and dental benefits...” among other matters. Previous Tribunals have made recommendations which have led to the Provincial judges being included, for reasons of cost and efficiency, in benefit plans contracted by the Public Service Commission with private benefit plan providers which are largely

composed of members of the civil or public service. The Tribunal has concluded that including judges in these benefit plans has significant practical advantages and poses no threat to judicial independence, or any inconsistency with the factors found in section 21E(3) of the *Provincial Court Act*. For example, the Health and Dental Plan is a contributory, self-insured plan jointly funded by plan members and the Province, with the Government contributing 65% of the funding.

43. Practical issues have arisen in the past, and will no doubt arise again in the future, by virtue of the fact that on an annual basis the parties to the plans review these plans to assess their coverage, “claims experience” and the contribution rates required to support such coverage in the light of plan utilization by its members. As the Government states, “objective criteria” are used to determine the appropriate contribution rates (at 65% from the Province and 35% by plan members) required to sustain the plan benefits. No plan members are involved in these negotiations between the Public Service Commission, as the policy holder, and the relevant service provider—these are parties to the contract creating the plan in question. Plan members, including judges, are simply informed of the new benefits and/or contributions rates which have been negotiated on their behalf.

44. The above-described system has, of course, created inconvenience for the Government, the Association and the Tribunal in so far as the Provincial judges’ membership is concerned. On several occasions, the Government and the Association have had to apply to the Tribunal in the middle of the triennial cycle for approval of newly negotiated coverage and contribution rates in so far as they apply to the judges, since these administrative matters do not arise neatly at the commencement of the Tribunal’s mandate when its recommendations are being formulated. The parties have been regularly put to the time and expense of making submissions to the Tribunal in

mid-mandate, and the Tribunal has had to issue supplementary reports, which, in the end, have simply endorsed the changes to the plans in question which have been negotiated by policy holders, plan providers and plan administrators.

45. The Government has proposed, and the Association has agreed, that the Tribunal recommend in advance that any changes in group benefit plans for the years 2011-2014 of which Provincial judges are members be approved *without* the need for submissions from the parties and supplementary reports from the Tribunal. The Government quite sensibly argues that there is no possibility for, nor any appearance of, political interference in relation to judges when rate changes affecting hundreds of plan members are implemented through the process described above. Moreover, the judges, the public and the Government benefit through this membership by judges in a plan which is administered more cheaply and efficiently for a huge group of members (of which judges are a part) than could ever be the case of a plan established solely for 36 or so judicial members.

46. The Tribunal has concluded that this joint proposal from the Government and the Association with respect to group benefits plans makes eminent good sense and is consistent with the Tribunal's mandate under section 21E(1) of the *Provincial Court Act* and the factors which govern its deliberations under section 21E(3). Therefore, the Tribunal recommends:

Recommendation 5 – Group Benefit Plans

That all changes to member contribution rates for the Group Assurance, Health and Dental Plans during the 2011-2014 period are hereby deemed to be approved in advance and applicable to Provincial judges as plan members without further submissions from the parties or supplemental reports from the Tribunal.

VII. LEASING OF VEHICLES AND TRAVEL COMPENSATION

47. As stated in the Government's initial submission, the parties and the Tribunal have been consistent in the view that travel reimbursement arrangements available to civil servants and certain elected officials (Cabinet members and opposition leaders) be available to Provincial judges. The Tribunal in its 2008-2011 Report made a series of recommendations based on then current Government policy which allowed for leasing of vehicles, use of a government "fleet card" to a certain maximum for use while on government business, or use of standard mileage reimbursement for use of personal vehicles while on government business. This policy for elected government officials was altered in 2009 to remove the leasing option for elected officials. Despite this change for elected officials, the Government and the Association agree that a leasing option should still be available for judges who travel in excess of 30,000 kilometers per year, but that the Government's policy on choosing fuel efficient and environmentally responsible vehicles should apply to such leasing arrangements. The parties also agree that those judges who choose to use their own vehicles for travel to and from their judicial responsibilities should receive reimbursement for such use in accordance with the policies from time to time applicable to vehicles owned by elected officials.

48. This Tribunal believes that, consistent with recommendations of previous tribunals, the matters of vehicle leasing and compensation for use of personal vehicles on judicial business is properly a matter which falls into its mandate under section 21E(1)(e) of the *Provincial Court Act* as a non-discretionary benefit, even if one subject to a judge's personal choice. Travel may be a necessary part of the job for some Provincial judges and they deserve to have their expenses in this regard properly reimbursed or compensated for within the limits of the factors set out in section 21E(3). As with group benefits however, both the parties and the Tribunal agree that the

Government's system for civil servants and/or elected officials is a fair and equitable mechanism for setting policies in this regard, and one which ought to be allowed to apply to judges, with some modification, though without the need for the parties to seek approval from this Tribunal for policy changes to the system which occur in the midst of the Tribunal's triennial cycle. Therefore, the Tribunal makes the following recommendation:

Recommendation 6 – Vehicle Leasing and Travel Compensation

That travel compensation or reimbursement for vehicle used for Provincial judges be governed by the following:

- (a) Lease arrangements will continue to be available as an option for Provincial judges who travel in excess of 30,000 kilometers per year; and
- (b) Use of personal vehicles is to be reimbursed at the per kilometer rate found in clause 10(1)(3) of the "Kilometrage Rates, Monthly Allowances and Transportation Allowances Regulations made under sections 7 and 45 of the Civil Service Act, R.S.N.S. 1989, c. 70 as amended, from April 1, 2011 to March 31, 2014; and
- (c) Chapters 7.2 Vehicle Policy of the *Government of Nova Scotia Common Services Manual*, as amended from time to time, shall apply to any leasing option exercised by the Provincial judge from April 1, 2011 to March 31, 2014.

VIII. SUMMARY OF RECOMMENDATIONS AND CONCLUSION

49. The Tribunal hereby confirms that all current terms and conditions of employment of Nova Scotia Provincial and Family Court, not altered by the current Report, but rather resulting from the recommendations of previous Tribunals under the Provincial Court Act, be continued in effect. The Tribunal also confirms that the recommendations of the Report, as summarized below, take effect as of April 1, 2011 unless otherwise specified.

51. The Summary of Recommendations in this Report is as follows:

Recommendation 1 – Pensions

That Provincial Judges' pensions be paid in accordance with the following principles, and that the *Provincial Court Act* be amended, where necessary, to reflect these principles.

- (a) A judge shall continue to be an employee within the meaning of the *Public Service Superannuation Act*;
- (b) A judge, in addition to the benefits conferred by the *Public Service Superannuation Act*, shall continue to have access, where appropriate, to the benefits currently conferred under subsection 23(2) and 23(3) of the *Provincial Court Act*;
- (c) The contribution rates payable by a judge in relation to pensions shall be those recommended by this Tribunal from time to time;
- (d) The rates of indexation of pension benefits payable to Provincial judges shall be those recommended by this Tribunal from time to time; and
- (e) Any difference, if applicable, between the pension payable to a judge under the *Provincial Court Act* and that payable under the *Public Service Superannuation Act* shall continue to be paid from the Consolidated Revenue Fund of the Province.

Recommendation 2 – Pension Indexation

That indexation of Provincial judges' pension benefits from January 1, 2011 to March 31, 2014 correspond to 75% of the Canadian Consumer Price Index to a maximum of 5%.

Recommendation 3 – Salaries

- (a) That Provincial Judges' salaries for the year 2011-2012 be set at \$214,000; and
- (b) That for the years 2012-2013 and 2013-2014 salaries be increased by the percentage increase (if any) in the Nova Scotia Industrial Aggregate Index (IAI) for the preceding calendar year.

Recommendation 4 – Per Diem Judges Compensation Adjustment

That the Chief Judge be authorized, at his or her discretion, to compensate a judge for non-presiding time, for a day, days or fractions thereof, in unusual circumstances, or in family matters where preparation exceeds that which could routinely be expected to be offset by payment for presiding time not actually required.

Recommendation 5 – Group Benefit Plans

That all changes to member contribution rates for the Group Assurance, Health and Dental Plans during the 2011-2014 period are hereby deemed to be approved in advance and applicable to Provincial judges as plan members without further submissions from the parties or supplemental reports from the Tribunal.

Recommendation 6 – Vehicle Leasing and Travel Compensation

That travel compensation or reimbursement for vehicle used for Provincial judges be governed by the following:

- (a) Lease arrangements will continue to be available as an option for Provincial judges who travel in excess of 30,000 kilometers per year; and
- (b) Use of personal vehicles is to be reimbursed at the per kilometer rate found in clause 10(1)(3) of the “Kilometrage Rates, Monthly Allowances and Transportation Allowances Regulations made under sections 7 and 45 of the Civil Service Act, R.S.N.S. 1989, c. 70 as amended from April 1, 2011 to March 31, 2014; and
- (c) Chapters 7.2 Vehicle Policy of the *Government of Nova Scotia Common Services Manual* as amended from time to time shall apply to any leasing option exercised by the Provincial judge from April 1, 2011 to March 31, 2014.

52. The members of the Tribunal are pleased to have reached a consensus on the foregoing recommendations, all of which are respectfully submitted to the Honourable Ross Landry, Minister of Justice, pursuant to sections 21A through 21N of the *Provincial Court Act*.

Dated at Halifax, Nova Scotia,
This 5th day of December, 2011



Bruce P. Archibald, Q.C.
Chair



Terry L. Roane, Q.C.
Government Nominee



Ronald A. Pink, Q.C.
Association Nominee

APPENDIX A**NOVA SCOTIA PENSION AGENCY
Provincial and Family Court Judges' Pension Coverage**

<http://novascotiapension.ca/publicserviceplan/Judges'Page>


[Teachers' Plan](#)
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[New Member Page](#)
[Members](#)
[Pensioners](#)
[Web Links for Members & Pensioners](#)
[Deputy Ministers' Pension Coverage](#)
[Provincial & Family Court Judges' Pension Coverage](#)
[Cost of Living Adjustment](#)
[Employers](#)
[Pension Plan Structure and Text](#)
[Investment Reports](#)
[Pension Plan Updates and News](#)
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Provincial and Family Court Judges' Pension Coverage

Click here to download the Judges Pension Coverage Brochure

Public Service Superannuation Act

Members of the Public Service Superannuation Plan (PSSP), including Provincial and Family Court Judges, may qualify for pension benefits under the Public Service Superannuation Act when one of the following criteria is met.

Eligibility

- at least 50 years of age, with age plus years of service equaling at least 80;
- at least 60 years of age, with 2 or more years of service;
- at least 55 years of age, with 2 or more years of service (this is a reduced pension).

Calculation of Benefit¹

2% X Highest 5 Years Average Salary X Years of Pensionable Service

Note: At age 65 the pension benefit is recalculated as a result of integration with the Canada Pension Plan (CPP).

¹ Lump sum payments such as retroactive compensation can artificially inflate pension estimates if they have not been correctly reported to us. It is possible that your actual pension benefits may be lower and you should take this into consideration.

Provincial and Family Court Judges Supplementary Pension Rules

A Judge qualifies for a Judge's pension under the Provincial Court Act when one of the following criteria is met. If neither of the criteria are met, the pension benefit and eligibility would be determined under the normal provisions of the Public Service Superannuation Act (above).

Eligibility for an Unreduced Pension

- at least 65 years of age with at least 5 years of service as a Judge;
- at least 60 years of age with at least 20 years of service as a Judge.

Calculation of Benefit¹

3.5% X Highest 3 Years Average Salary X Years of Service as a Judge (to a maximum of 20 years)

Note:



- At age 65 the pension benefit is recalculated as a result of integration with the Canada Pension Plan (CPP).
- Employment status at the time of retirement must be such that the Judge is retiring from a Judge's position.
- A Judge's total pension will be the greater of the benefit payable under the Public Service Superannuation Act and the benefit payable under the Provincial Court Act.
- If applicable, the Province's Consolidated Fund will pay the difference between the pension payable under the Provincial Court Act and that payable under the Public Service Superannuation Act.

¹ Lump sum payments such as retroactive compensation can artificially inflate pension estimates if they have not been correctly reported to us. It is possible that your actual pension benefits may be lower and you should take this into consideration.

Additional Options

There is an additional option available for Judges appointed prior to April 1, 2002. A Judge may qualify for an alternative pension under Section 23 of the Provincial Court Act.

Eligibility

At least 65 years of age with at least 5 years of service as a Judge

Calculation of Benefit¹

7% X Highest 3 Years Average "Authorized" Salary X Years of Service as a Judge (to a maximum of 10 years)

Note:

- This pension is not reduced at age 65, i.e. it is in addition to the benefit payable under the Canada Pension Plan (CPP).
- Employment status at the time of retirement must be such that the Judge is retiring from a Judge's position.
- A Judge's total pension will be the greater of the benefit payable under the Public Service Superannuation Act and the benefit payable under the Provincial Court Act.
- The Province's Consolidated Fund will pay the difference, if applicable, between the pension payable under the Provincial Court Act and that payable under the Public Service Superannuation Act.

¹ Lump sum payments such as retroactive compensation can artificially inflate pension estimates if they have not been correctly reported to us. It is possible that your actual pension benefits may be lower and you should take this into consideration.

Canada Pension Plan Benefits

Canada Pension Plan (CPP) benefits may be drawn at age 65 or taken as early as age 60. If CPP benefits are drawn early, a reduced amount is calculated by the Canada Pension Plan. For information on CPP benefits please contact the Canada Pension Plan at 1-800-277-9914.

The pension payable under the Public Service Superannuation Act or the Provincial Court Act is not affected by the date the Judge elects to start drawing CPP benefits.

Survivor Benefits

Surviving Spouse

If a sitting Judge with at least 5 years of service dies, a surviving spouse would be entitled

to receive 100% of the pension benefit that the Judge would have been entitled to receive if he or she were eligible to retire. This benefit is guaranteed to be paid for a period of 5 years. After the end of the 5-year guarantee period, the spouse would receive 66 2/3% of the Judge's pension benefit, payable for life.

If the Judge dies within 5 years after retiring, the surviving spouse would receive 100% of the Judge's pension benefit for the rest of the 5-year guarantee period, at the end of which the spouse would receive 66 2/3% for life. If a Judge dies after the 5-year guarantee period, a surviving spouse would be entitled to receive 66 2/3% of the Judge's pension benefit, payable for life.

Surviving Children

Surviving children up to 18 years of age (or 25, if in full-time attendance at an educational institution) are eligible to receive 10% of a Judge's pension benefit. If there are more than 3 eligible children, 33 1/3% of the Judge's pension benefit is divided equally among them. Note that during the 5-year guarantee period, children's benefits are deducted from the 100% benefit paid to a surviving spouse. If there is no surviving spouse, eligible surviving children would be entitled to share the 66 2/3% spouse's benefit.

Surviving Dependants

A dependant is defined as a person who is related to the Plan member who is dependent on the Plan member by reason of physical or mental infirmity. If there is no surviving spouse or child but there is an eligible dependant(s), the dependant(s) would be entitled to receive the survivor benefit that would have been payable to the spouse, divided on an equal basis.

No Surviving Spouse, Children or Dependants

If a Judge dies in service and is not survived by a spouse, child, or eligible dependant, a refund of his or her pension contributions plus interest will be paid to the designated beneficiary or estate. If a Judge without eligible survivors retires and then dies before receiving pension payments at least equal to his or her pension contributions plus interest, a refund of the difference will be paid to the designated beneficiary or estate.

Disability Benefits

Judges with between 5 and 10 years of service as a Judge who become disabled, or Judges with at least 10 years of service as a Judge who resign and whose resignation is deemed to be in the public interest or conducive to the better administration of justice, are entitled to receive a Judge's pension calculated at the 7% accrual rate, to a maximum of 10 years. (If the Judge was appointed on or after April 1, 2002, the Judge's pension will be calculated at the 3.5% accrual rate, to a maximum of 20 years.)

Alternatively, as a member of the Public Service Superannuation Plan, a Judge who becomes disabled is entitled to receive Long-Term Disability equal to 65% of their pre-disability salary. For information regarding Long-Term Disability benefits please contact:

NS Public Service LTD Plan Trust Fund
Halifax Professional Centre
5991 Spring Garden Road, Suite 901
Halifax, NS B3H 1Y6
Tel: 902-461-0421
Toll free: 1-877-461-0421
Fax: 902-466-3406
Email enquiries: comments@nsps-ltd.com

Contributions

Contribution rates are set by the Minister of Finance. There are two rates of contribution. Effective July 5, 2009 the lower rate, 8.4%, is payable on earnings up to and including the Year's Maximum Pensionable Earnings (YMPE), and the higher rate, 10.9%, is payable on earnings in excess of the YMPE.

The YMPE is a figure established by the Canada Pension Plan on January 1 of each year. Pension contributions cease to be deducted at the earlier of: accruing 35 years of pensionable service, or reaching 71 years of age.

The following is an example of the calculation. The YMPE for 2011 is \$48,300. If a judge earns \$170,000 in 2011, his or her contributions to the Public Service Superannuation Plan would be \$17,322.50, calculated as follows:

$8.4\% \times \$48,300 = \$4,057.20$
 $10.9\% \times (\$170,000 - \$48,300) = \$13,265.30$
Total Contributions for 2011: \$17,322.50

Note: Prior to July 5, 2009 the contribution rates were 7.4% and 9.6%, below and above the YMPE, respectively.

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