

**NOVA SCOTIA PROVINCIAL COURT JUDGES'
SALARIES & BENEFITS TRIBUNAL**

2023-2026

Tribunal Members:

Scott Sterns, Chair
Ronald Pink, KC
John C. MacPherson, KC

Andrew Taillon on behalf of the Honourable Brad Johns
Minister of Justice and Attorney General
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INTRODUCTION

1. Pursuant to Section 21A of the *Provincial Court Act* (“the Act”):
 - (1) There shall be a tribunal to recommend the salaries and benefits for judges of the Provincial Court and judges of the Family Court, including the Chief Judge and the Associate Chief Judge of each Court.
 - (2) A tribunal shall be composed of three persons
 - (a) One of whom shall be appointed by the Association
 - (b) One of whom shall be appointed by the Minister and
 - (c) One of whom shall be appointed by the persons referred to in Clauses A and B.
2. Ronald Pink was appointed pursuant to Section 21A, 2(a). John MacPherson was appointed pursuant to Section 21A, 2(b) and Scott Sterns was appointed pursuant to Section 21A, 2(c).
3. A hearing was held in Halifax on November 17, 2022. During the hearing, oral submissions were received from the Nova Scotia Provincial Judges Association and the Minister of Justice for the Province of Nova Scotia. In addition to the oral submissions received on November 17, 2022, significant documentary evidence was presented by the parties. A list of the documents received is set out in Appendix B.
4. What follows are the recommendations of the Nova Scotia Provincial Court Judges’ Salaries and Benefits Tribunal (“the Tribunal”) for 2023 to 2026.

THE ROLE OF THE TRIBUNAL

5. The Tribunal is responsible for considering and recommending the salary and benefits conferred on Provincial Court and Family Court judges for the Province of Nova Scotia. Section 21E(1) of the *Provincial Court Act* (The “Act”) states:

Duties of tribunal

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

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

- b. the appropriate level of *per diem* payments, or payments for part of a day, made to judges for presiding in the Provincial Court or the Family Court where those judges are not receiving salaries;
 - c. the appropriate vacation and sick-leave benefits to be provided to judges of the Provincial Court and the Family Court;
 - d. pension benefits and increases thereto in respect of increases in the cost of living, long-term disability benefits or salary continuation, life insurance and health and dental benefits for judges of the Provincial Court and the Family Court and the respective contributions of the Province and the judges for such benefits; and
 - e. other non-discretionary benefits for judges of the Provincial Court and the Family Court.
6. The role of the Tribunal was discussed in *Provincial Court Judges' Association of New Brunswick v. New Brunswick Minister of Justice et al.*, [2005] 2 SCR 286, at paragraphs 14 and 15 :

[14] The [PEI] *Reference* laid the groundwork to ensure that provincial court judges are independent from governments by precluding salary negotiations between them and avoiding any arbitrary interference with judges' remuneration. The commission process is an "institutional sieve" (*Reference*, at paras. 170, 185 and 189) – a structural separation between the government and the judiciary. The process is neither adjudicative interest arbitration nor judicial decision making. Its focus is on identifying the appropriate level of remuneration for the judicial office in question. All relevant issues may be addressed. The process is flexible and its purpose is not simply to "update" the previous commission's report. However, in the absence of reasons to the contrary, the starting point should be the date of the previous commission's report.

[15] Each commission must make its assessment in its own context. However, this rule does not mean that each new compensation commission operates in a void, disregarding the work and recommendations of its predecessors. The reports of previous commissions and their outcomes form part of the background and context that a new compensation committee should consider. A new commission may very well decide that, in the circumstances, its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary. If on the other hand, it considers that previous reports failed to set compensation and benefits at the appropriate level due to particular

circumstances, the new commission may legitimately go beyond the findings of the previous commission, and after a careful review, make its own recommendations on that basis.

7. In exercising their role, section 21E (3) (a)-(j) of the *Act* lists the factors that the Tribunal must consider:

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

- (a) the constitutional law of Canada;
- (b) the need to maintain the independence of the judiciary;
- (c) the need to attract excellent candidates for appointment as judges;
- (d) the unique nature of the judges' role;
- (e) the manner in which salaries and benefits paid to judges in the Province compares to judicial compensation packages in other jurisdictions in Canada, including the federal jurisdiction, having regard to the differences between those jurisdictions;
- (f) the provision of fair and reasonable compensation for judges in light of prevailing economic conditions in the Province and the overall state of the Provincial economy;
- (g) the adequacy of judges' salaries having regard to the cost of living and the growth or decline in real *per capita* income in the Province;
- (h) the relevant submissions made to the tribunal;
- (i) the nature of the jurisdiction and responsibility of the court;
and
- (j) other such factors as the tribunal considers relevant to the matters in issue. 1998, c. 7, s. 1; 2001, c. 5, s. 34; 2013, c. 27, s. 2.

ISSUES

8. It must be mentioned at the outset that the parties to this proceeding, the Minister of Justice for the Province of Nova Scotia, and the Nova Scotia Provincial Judges Association, are to be commended for their level of cooperation, professionalism and manner of presentation. Both parties cooperated throughout this proceeding. Both parties provided clear and

articulate presentations with significant agreement on most major issues. The parties did identify seven potential issues. The Tribunal is pleased to note that the parties reached agreement and provided joint submissions on six of the seven issues. The Tribunal commends both parties.

9. The issues identified by the parties are:
 1. Salaries from April 1, 2023 to March 30, 2026;
 2. Family leave benefits for judges;
 3. The appropriate level of *per diem* payment for judges who are not paid salaries;
 4. Pension indexation;
 5. The carryover of unexpended professional development allowances for full-time judges;
 6. The Chief Judge's discretion to reimburse excess professional development expenses incurred by *per diem* judges;
 7. The continuation of all other benefits not specifically addressed.

10. As noted above, the parties reached agreement on 6 of the 7 identified issues. Only issue 6, The Chief Judge's discretion to reimburse excess professional development expenses incurred by *per diem* judges, was not the subject of agreement.

THE SECTION 21E FACTORS

THE CONSTITUTIONAL LAW OF CANADA

11. The parties agree and recognize the constitutional requirement for judicial independence. The parties agree and recognize that negotiations between the Government and the judiciary are not permissible, thus the role of this Tribunal. The parties also agree and recognize that judicial independence is a cornerstone of Canadian democracy and an important element of Canadian constitutionalism.

12. The Tribunal is both bound by, and guided by, Reference re Remuneration of Judges of the Provincial Court to Prince Edward Island, [1997] 3 SCR 3 (Volume 2, Tab 4):
 - 9 Although these cases implicate the constitutional protection afforded to the financial security of provincial court judges, the purpose of the

constitutional guarantee of financial security — found in s. 11(d) of the Charter, and also in the preamble to and s. 100 of the Constitution Act, 1867 — is not to benefit the members of the courts which come within the scope of those provisions. The benefit that the members of those courts derive is purely secondary. Financial security must be understood as merely an aspect of judicial independence, which in turn is not an end in itself. Judicial independence is valued because it serves important societal goals — it is a means to secure those goals.

10 One of these goals is the maintenance of public confidence in the impartiality of the judiciary, which is essential to the effectiveness of the court system. Independence contributes to the perception that justice will be done in individual cases. Another social goal served by judicial independence is the maintenance of the rule of law, one aspect of which is the constitutional principle that the exercise of all public power must find its ultimate source in a legal rule. It is with these broader objectives in mind that these reasons, and the disposition of these appeals, must be understood.

13. The Tribunal also accepts and is guided by the submissions of the Minister:

“The foundational principle of judicial impartiality, decision-making that is and is seen to be free from outside influence, is supported by the nature and workings of the Tribunal. The Tribunal members have a fixed term, the appointments are representative of the parties and not entrusted exclusively to one branch of government (*Provincial Court Judges’ Association of New Brunswick v. New Brunswick Minister of Justice et al.*, [2005] 2 SCR 286, (Volume 2, Tab 3, paragraph 16). The open public hearing, the ability to provide the Tribunal with objective information, the consideration of the mandated factors as well as any other relevant data, and a fair and reasoned set of recommendations from a decision-making body separate and apart from the executive and judicial branches, all exemplify the components providing assurance of independence.”

14. The Tribunal agrees and places significant weight on the constitutional requirement of judicial independence and the constitutional barrier that prevents judges from negotiating directly. The Tribunal accepts as fundamentally important that the Court must be separate in authority and function from all other participants in the justice system.

JUDICIAL INDEPENDENCE

15. Similar to the constitutional law of Canada factor, judicial independence is a fundamental principal which informs all recommendations of the Tribunal. The Tribunal accepts and endorses the comments at pages 7 – 8 of the 2008 Tribunal when reviewing this factor:

...the Tribunal has concluded the current salaries of Nova Scotia Provincial and Family Court judges are not below the “minimum level” referred to by the Supreme Court which would give rise to immediate pressures capable of jeopardising judicial independence as safeguarded by Canadian constitutional law. Thus, at this point in time the Tribunal, while cognizant of the importance of factors (a) and (b) of section 21E(3), does not see them as having a determinative impact on the present need for adjustment of judicial salaries...

16. We also accept the comments of the 2014-2017 Tribunal at paragraph 8:

The first two factors in Section 21E(5) *sic* of the *Act*, (a) constitutional law of Canada and (b) the need to maintain the independence of the judiciary, were alluded to in the introduction to this Report. This is not the place to engage in a full exegesis of Canadian constitutional law in so far as it impacts on the judiciary. Suffice it to repeat that the Nova Scotia system for establishment of salaries and benefits for provincially appointed judges is compliant with constitutional requirements. This is a proposition over which there was no dispute among those making submissions to the Tribunal, and which has been common ground over the past 15 years of deliberations by various incarnations of the Tribunal. It is also common ground that the current salaries, benefits, working conditions and institutional arrangements for Nova Scotia’s provincial judges are generally such as to protect judicial independence, in relation to the executive branch of government and in relation to private litigants who appear before our judges. These are the main concerns with respect to the capacity of the Province’s judges to maintain their neutrality and objectivity when dealing with those who come before them, so as to sustain and promote the rule of law in our corner of Canada’s constitutional democracy. Thus, while constitutional law and the need to maintain judicial independence are foundational to this whole exercise, these factors are not determinative for resolving the particular questions which relate to the issues under consideration in this round of recommendations.

17. It is our view that judicial independence must be maintained and the recommendations of this Tribunal meet that goal.

EXCELLENT CANDIDATES

18. The Tribunal accepts the submissions of the Minister:

Subsection 21E(3)(c) of the *Provincial Court Act* requires the Tribunal to take into account “the need to attract excellent candidates for appointment as judges” in any recommendations it makes. The rationale for this factor

is obvious; no compensation scheme can meet the public interest if it does not result in continued competence in the ranks of the judiciary. This factor should be assessed in terms of the many qualities that can define an excellent candidate, including relevant experience, depth of knowledge, standing in the legal community, and the need for a diverse bench in terms of gender balance, minority representation, geographical representation, and bilingualism.

The current provincial and family judiciary in Nova Scotia is one that can clearly be held in high regard, indicating that the salary and benefits available to provincial court judges has met the goal of attracting excellent candidates. The Minister directs the Tribunal to Volume 5, Tab 6, for biographical information of the seven judges appointed since the previous Tribunal sitting. The Minister points to these appointments as evidence that the ability of the current compensation scheme to attract excellent candidates continues.

19. The Tribunal is alive to the need to attract exception candidates and believes these recommendations meet that goal.

THE UNIQUE NATURE OF THE JUDGES' ROLE

20. The Tribunal is grateful to the detailed and often similar submissions of the parties. In many areas the parties are in agreement, including the unique nature of the judges role. As such, the Tribunal is pleased to accept the submissions of the Minister at paras 35 – 37:

[35] “Provincial and Family Court judges have a great responsibility to and authority over the individuals appearing before them. The Minister appreciates the burden placed upon the shoulders of the judiciary in terms of the significance and impact of their decisions. The Association has highlighted the emotional stress inherent in the position, as noted in the 2008-2011 Tribunal Report, paragraph 13:

... In addition, the Association emphasized that besides this economic price of the lost professional opportunities for judges there are also social and emotional costs. Among these are the emotional stresses of having to make daily decisions which have lasting implications for the lives and families of those who appear before provincial judges as well as society as a whole. The judges do this under the constant pressure of having to work “error free” in the eyes of courts of appeal and the “court of public opinion” in order to maintain the credibility of the administration of justice, yet still ensuring judicial independence.

[36] The 2008-2011 Tribunal Report reviewed the elements which contribute to the uniqueness of the position of judges in our community. These include the emotional weight of their significant work, the social isolation and requirement to maintain public confidence in the justice system, as well as the respect and privilege bestowed upon them. Following its review and reflection on this statutory criterion, the Tribunal commented at paragraph 15:

The Tribunal is alert to the Association's arguments on the unique economic, social and emotional circumstances in which the judges may find themselves. It is also cognizant of the fact that while civil servant salaries and the salaries of other public servants are not formally a relevant comparator group under the Act, their current salaries could generally be said to reflect their unique status as public servants in the largest sense. During this round of Tribunal deliberations, we have thus concluded that this factor cannot be seen to have a determinative impact one way or the other as to adjustment of salaries.

[37] The 2017-2020 Tribunal Report stated as follows regarding the unique role of the judiciary:

It is well known that Provincial Court judges are the segment of the judiciary in this Province who are, for the most part, the true criminal law specialists, whose expertise and experience in the field can be relied upon. By comparison, other judges in the Province deal with criminal matters on a more occasional basis. Day in and day out, Provincial Court judges mete out criminal justice and struggle with the question of whether accused persons are guilty or not, and if guilty, what the sentence should be. The liberty and security of the person of significant members of Nova Scotian citizens is in the hands of the Provincial Court on a constant basis. This is unique, and stressful, work."

21. Because of this unique and challenging role, a higher wage is necessary to reflect this stressful work. Consistent with the constitutional requirements, the judicial branch must be set above and apart from others in both the private and public sector, including the executive branch of government.

COMPARATOR TO OTHER JURISDICTIONS

22. The parties have provided extensive data and extensive submissions related to inter-jurisdictional comparisons. The Tribunal has reviewed them all in detail.
23. Importantly, while both parties evaluate the data in a different ways, they reach a common conclusion. The parties have agreed:

- The annual salary of a Nova Scotia provincial judge shall be increased to amount equal to eighty percent (80%) of the Federally Appointed Judge Salary Rate.
24. The Tribunal accepts this joint recommendation. The Tribunal accepts the submissions of both parties regarding comparators, and particularly the final result when comparators of other jurisdictions are considered.
- The annual salary of a Nova Scotia provincial judge shall be increased to amount equal to eighty percent (80%) of the Federally Appointed Judge Salary Rate.

FAIR AND REASONABLE COMPENSATION

25. The Tribunal accepts that it is a requirement that judicial salaries should be set based on objective criteria, not political expediencies. The Tribunal is thankful for the data and information provided by the parties which provide helpful information on the overall state of the economy in Nova Scotia. As was the case with previous tribunals, this Tribunal was provided with the fiscal brief prepared by the Province. This information provided to the Tribunal, with helpful background on the prevailing economic conditions, and the state of the Nova Scotia provincial economy, has been considered in full.
26. The Tribunal is mindful of the inflationary pressures that apply to all Nova Scotians, including provincial court judges. The Tribunal also notes that the fiscal brief noted that the “all items CPI inflation rate for Nova Scotia in 2021 was 4.1%”.
27. Having considered the significant data provided by the parties, particularly by the Province, the Tribunal believes its recommendations satisfy the Section 21(e)3(f) criteria of 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.

THE ADEQUACY OF JUDICIAL SALARIES HAVING REGARD TO THE COST OF LIVING

28. It is admitted by both parties that the cost of living is increasing. As noted immediately above, inflation is impacting all Nova Scotians including judges. As it will with all Nova Scotians, inflation will have a significant impact on the buying power of provincial judges.
29. The Tribunal has considered the adequacy of judicial salaries having regard to the cost of living. There is no dispute, the cost of living is rising. Provincial judges’ compensation should rise as well. The recommendations of this Tribunal reflect that.

THE NATURE OF THE JURISDICTION AND RESPONSIBILITY OF THE COURT

30. The Tribunal accepts the submission of the Province that the nature of the criminal jurisdiction of the Provincial Court is “critical” to the administration of justice for Nova Scotians. The Tribunal highlights the use of the term “critical”. We have been provided

with the data on crime rates, crime severity and the role of the court dealing with these significant issues. We acknowledge and agree with the submission of the Province when it describes provincial judges as “the front line” (paragraph 193 submissions of the Province). The Tribunal also accepts the submission of the Province that:

“Changes in the common law and the *Criminal Code* of Canada continue to have profound impacts on the work of Nova Scotia’s provincial judges...”

“...the provincial court continues to struggle with the pressures brought about by the Supreme Court’s decision in *R. v. Jordan*, 2016 SEC 27...”

31. When these significant factors are combined with the impact of COVID 19, Bill C-75 and its alteration to the preliminary inquiry process, and the new record screening regime, it is clear that the nature of the jurisdiction and responsibilities of the court is significant. The Tribunal notes and accepts the submissions of the Province contained at pages 63-66 of its brief in which some of the detailed complexities facing provincial judges are set out.
32. Given the challenges inherent in the jurisdiction and responsibility of the court, the Tribunal is confident that its recommendations fully consider this issue.

OTHER FACTORS

33. The Tribunal has considered the voluminous information and submissions of the parties in reaching its recommendations. The Tribunal is aware of no other factors.

RECOMMENDATIONS

34. As noted above, the Parties have identified seven issues:
 1. **Salaries** from April 1, 2023 to March 30, 2026;
 2. **Family leave benefits** for judges;
 3. The appropriate **level of *per diem* payment for judges** who are not paid salaries;
 4. **Pension indexation**;
 5. The **carryover of unexpended professional development allowances** for full-time judges;
 6. **Chief Judge’s discretion to reimburse excess professional development expenses** incurred by *per diem* judges;

7. The continuation of **all other benefits** not specifically addressed.
35. After full consideration of the submissions of the parties, the *Provincial Court Act*, particularly s.21E(3)(a)-(i), we make the following recommendations:

Recommendation 1 – Salaries

The Tribunal recommends that Nova Scotia Provincial Judges' salaries for the period from April 1, 2023 to March 31, 2026 be established in the following manner:

- From April 1, 2023 to March 31, 2024, the annual salary of a Nova Scotia provincial judge shall be increased to an amount equal to eighty percent (80%) of the Federally Appointed Judge Salary Rate for that period;
- From April 1, 2024 to March 31, 2025, the annual salary of a Nova Scotia provincial judge shall be increased to an amount equal to eighty percent (80%) of the Federally Appointed Judge Salary Rate for that period; and
- From April 1, 2025 to March 31, 2026, the annual salary of a Nova Scotia provincial judge shall be increased to an amount equal to eighty percent (80%) of the Federally Appointed Judge Salary Rate for that period.

Recommendation 2 – Family Leave Benefits

- The Tribunal recommends that family leave benefits be established for Nova Scotia's Provincial Court judges in the accordance with the Family Leave Policy attached as Appendix A. The Tribunal also recommends that, subject to agreement in writing, by both the Minister of Justice for the Province of Nova Scotia, and the Nova Scotia Provincial Judges Association, appendix A may be amended to insure it complies with the laws of the Province of Nova Scotia.

Recommendation 3 – Remuneration for *Per Diem* Judges

- The Tribunal recommends, with respect to the level of *per diem* payment for judges presiding where those judges are not receiving salaries, that the full-day rate be calculated at 1/217 of the applicable annual salary for full time-time provincial judges as calculated pursuant to Recommendation 1 herein.

Recommendation 4 – Pension Indexation

- The Tribunal recommends that the rate of pension indexation for Provincial Judges for the period from April 1, 2023 to March 31, 2026 continue to be 75% of the Consumer Price Index for the appropriate preceding calendar year to a maximum increase of 5%.

Proposed Recommendation 5 – Professional Development Allowance Carryover

The Tribunal recommends that the existing quantum and terms of professional development allowances for full-time Provincial Judges continue subject to the following modification:

- There shall be carryover of any unused portion of a professional development allowance for a maximum of one calendar year.

Proposed Recommendation 6 – Chief Judges’ discretion to reimburse excess professional development expenses incurred by *per diem* judges

- The Tribunal recommends that the Chief Judge be authorized, at their discretion, to reimburse a *per diem* judge for their professional development expenses, an amount up to the annual amount of professional development expenses allowed a full time-time provincial judge, from the annual Provincial Court Budget.

Proposed Recommendation 7 - The General Issue of Continuity

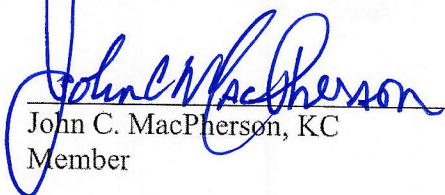
- The Tribunal recommends that all matters of judicial compensation referred to in Section 21E(1) of the *Provincial Court Act* not made the subject of recommendations in this Report shall be governed by the current terms and conditions for Provincial Court Judges as recommended by the 2017-2020 Tribunal or by previous Tribunals, where applicable.



Scott Sterns, Chair



Ronald Pink, KC
Member



John C. MacPherson, KC
Member

APPENDIX "A"

NOVA SCOTIA PROVINCIAL COURT JUDGES FAMILY LEAVE POLICY

1. **STATEMENT OF PURPOSE**

Policies to support women during their childbearing years and to assist women and men in balancing the demands of their career and family responsibilities provide long-term benefits for society, and contribute to the promotion of equality, human dignity, and respect. This policy outlines the maternity, adoption and parental leave and benefit entitlement of judges.

2. **MATERNITY LEAVE**

2.1.1 Eligibility

The maternity leave portion of this policy is applicable to judges who are pregnant or have given birth.

Every such judge is eligible for maternity leave for the length of time described in Section 2.2.

Every such judge is eligible for the paid maternity leave described in Section 2.3

2.1.2 Length and Timing

An eligible judge is entitled to a period of maternity leave of up to 26 continuous weeks.

Maternity leave may commence as early as 8 weeks before the expected date of birth and as late as the actual birth date.

Pregnancy-related illnesses requiring absence from work prior to and after the maternity leave period are not covered by this policy. Judges should refer to applicable sick-leave policies and disability benefit plans.

2.1.3 Remuneration for Judges Eligible for Paid Maternity Leave

A judge eligible for maternity leave is entitled to 26 weeks of paid maternity leave.

A judge on paid maternity leave is entitled to receive, during the period provided for in this section 100% of her salary for the period (the “Maternity Benefit”).

2.2 Benefits

The Government of Nova Scotia will maintain all benefits for a judge on maternity leave in accordance with its usual practice for all judges throughout the entire period of the maternity leave. In addition, a Judge who takes maternity leave may take paid parental leave immediately following maternity leave, thereby extending the total paid leave to 38 weeks.

2.3 Reimbursement

A judge who has taken paid maternity leave is expected to return to work as a judge for a period of not less than 12 months following her return from leave.

If a judge who has taken a paid maternity leave does not return to work as a judge for that period, that judge must repay a pro rata share of the benefits paid during the maternity leave.

3. ADOPTION LEAVE

3.1 Eligibility

The adoption leave portion of this policy is applicable to judges who are the primary caregivers of an adopted child during the period of the adoption leave. Primary caregiver means the person who is the primary carer of a newborn or newly adopted child at the time of birth or adoption and who continues to be the primary carer immediately following birth or day of placement. The primary carer is the person who meets the child’s physical needs more than anyone else.

Every such judge is eligible for adoption leave for the length of time described in Section 3.2.

Every such judge is eligible to receive the remuneration described in Section 3.3.

3.2 Length and Timing

The maximum cumulative period of adoption leave for a judge who is the primary caregiver of a newly adopted child is 26 continuous weeks.

Adoption leave commences on the date on which the child comes into the judge’s care or becomes available for adoption.

3.3 Remuneration for Judges Eligible for Paid Adoption Leave

A Judge eligible for adoption leave is entitled to 26 weeks of paid adoption leave.

A Judge on paid adoption leave is entitled to receive, during the period provided for in this section 100% of his or her salary for the period (the "Adoption Benefit").

3.4 Benefits

The Government of Nova Scotia will maintain all benefits for a judge on adoption leave, in accordance with its usual practice for all judges, throughout the entire period of the adoption leave. In addition, a judge who takes adoption leave, may take paid parental leave, immediately following adoption leave, thereby extending the total paid leave to 38 weeks.

3.5 Reimbursement

A judge who has taken paid adoption leave is expected to return to work as a judge for a period of not less than 12 months following his or her return from leave.

If a judge who has taken a paid adoption leave does not return to work as a judge for that period, that judge must repay a pro rata share of the benefits paid during the adoption leave.

4. PARENTAL LEAVE

4.1 Eligibility

The parental leave portion of this policy is applicable to judges with newborns or newly adopted children.

Every such judge is eligible for parental leave for the length of time described in Section 4.2.

Every such judge is eligible to receive the remuneration described in Section 4.3.

4.2 Length and Timing

The maximum cumulative period of parental leave for judges with newborns or newly adopted child is 12 continuous weeks.

A judge on maternity leave or adoption leave wishing to take parental leave must take that leave consecutive to the maternity leave or adoption leave, as the case may be.

A judge who is not the parent taking maternity leave or adoption leave must take parental leave either

- during the period commencing 8 weeks before the estimated date of birth or the estimated date on which the child comes into the judge's care, as the case may be and end within 12 weeks after the actual date of birth; or
- on actual date on which the child comes into the judge's care or within 12 weeks of the conclusion of the maternity leave or adoption leave of the judge's spouse.

4.3 Remuneration for Judges Eligible for Paid Parental Leave

A judge eligible for parental leave is entitled to 12 weeks of paid parental leave.

A judge on paid parental leave is entitled to receive, during the period provided for in this section 100% of his or her salary for the period (the "Parental Benefit").

4.4 Benefits

The Government of Nova Scotia will maintain all benefits for a judge on parental leave, in accordance with its usual practice for judges, throughout the entire period of the parental leave.

4.5 Reimbursement

A judge who has taken paid parental leave is expected to return to work as a judge for a period of not less than 12 months following his or her return from leave.

If a judge who has taken a paid parental leave does not return to work as a judge for that period, that judge must repay a pro rata share of the benefits paid during the parental leave.

5. CONSEQUENCES OF LEAVE

At the commencement of any period of leave covered by this policy, the salary and benefits payable to the judge shall be at exactly the same level as the judge received prior to the commencement of leave. In the event of any increase to the salary or benefits paid to the judges of the Court during the period of leave, the judge on leave shall receive the same increase. Provided that the judge on leave shall not increase his or her entitlement to sick leave days or holiday days during the leave period.

6. NOTICE AND APPROVAL PROCEDURES

6.1 Notice and Confirmation

Except in the case of a medical emergency or adoption when its timing is unexpected, a judge must notify the Chief Judge, in writing, in advance of his or her intention to take a leave for which he or she is eligible. The notice should specify the approximate starting date of the leave and the estimated date of return and should be submitted to

the Chief Judge as soon as possible and not less than 2 months prior to the leave period (except in the case of a medical emergency or other unforeseen event preventing reasonable notice from being given).

The Chief Judge will promptly confirm the terms of the leave.

6.2 Approval of Excess Leave

Leave requests in excess of the policy period will be subject to the approval of the Chief Judge.

The criteria for approval will include the needs of the requesting judge and time for proper planning to meet the demands of the court.

7. TRANSITIONAL PROCEDURES

7.1 Transition or Support Plan

After notice of intention to take a leave has been submitted by a judge pursuant to Section 6.1, that judge will, as soon as reasonably possible, provide a written plan to the Chief Judge which addresses the following matters:

- (a) transfer of responsibility of judicial duties and resumption of those responsibilities when the judge returns from leave;
- (b) the judge's intentions and expectations regarding continuation of any duties or responsibilities until the commencement of the leave and continuation of any duties or responsibilities while on leave, such as the availability of the judge for consultation and the possibility of continued participation on committees or administrative work;
- (c) administrative issues such as mode of communication with the office, remote access to the computer system, mobile device usage, e-mail and voice mail access and notification, any administrative support, and any office space required while on leave;
- (d) any accommodation anticipated to be required both before and after return from leave (e.g. room for breastfeeding); and,
- (e) resumption of judicial duties, including assignment to committees and administrative work, at the conclusion of the leave period.

8. LEGISLATION

8.1 Applicable Legislation

This policy will be deemed to incorporate any changes required to comply with applicable legislation from time to time. It will be updated to reflect such changes as soon as practicable.

APPENDIX “B”

1. Written submissions filed on behalf of the Minister of Justice for the Province of Nova Scotia.
2. Written submissions filed on behalf of the Nova Scotia Provincial Judges Association.
3. Reply submissions filed on behalf of the Minister of Justice for the Province of Nova Scotia.
4. Book of Documents filed on behalf of the Provincial Judges Association.
5. Written submissions filed by the Chief Judge of the Provincial and Family Courts.
6. Fiscal brief September 2022 filed by the Nova Scotia Department of Finance and Treasury Board.
7. Volume I, Part I - Legislation Across Canada.
8. Volume I, Part II - Legislation Across Canada.
9. Volume II - Case Law.
10. Volume III - Reports and Recommendations – Nova Scotia.
11. Volume IV, Part I - Judicial Compensation Commission Reports Excluding Nova Scotia.
12. Volume IV, Part II - Judicial Compensation Commission Reports Excluding Nova Scotia.
13. Volume V, Part I - Salaries and Benefits, Statistics and Reports.
14. Volume V, Part II - Salaries and Benefits, Statistics and Reports.