



PLEASE NOTE

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the [*Table of Public Acts*](#).

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CHAPTER P-25

PROVINCIAL COURT ACT

- 1. In this Act** Definitions
- (a) “Chief Judge” means the Chief Judge designated pursuant to subsection 2(1); Chief Judge
- (a.1) “Commission” means the Judicial Remuneration Commission established by section 4.1; Commission
- (b) “court” means the Provincial Court of Prince Edward Island established in section 2; court
- (c) “judge” means a judge of the court and includes a judge appointed pursuant to section 2.1 to the extent set out in that section; judge
- (d) “Minister” means the Minister of the Crown designated by the Lieutenant Governor in Council to have the administration of this Act; Minister
- (e) “part-time” in relation to a judge, means employment for irregular hours of duty or for specific intermittent periods, or both, when the services of that judge may not be required for the whole of the normal work period. R.S.P.E.I. 1974, Cap. P-24,s.1; 1975,c.78,s.1; 1996.c.32,s.1; 1997,c.2,s.1; 1997,c.68,s.1. part-time
- PROVINCIAL COURT OF PRINCE EDWARD ISLAND
- 2. (1)** There is hereby established the Provincial Court of Prince Edward Island which shall be composed of such number of judges as the Lieutenant Governor in Council may consider advisable; one of the judges may be designated by the Lieutenant Governor in Council as the Chief Judge. Provincial Court of P.E.I. established, number of judges
- (2) The Lieutenant Governor in Council may appoint as judges, persons who have the following qualifications: Appointment of judges
- (a) membership in good standing under the *Law Society and Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6; and
- (b) membership in good standing at the bar of a province of Canada for at least five years immediately preceding the date of his appointment.
- (3) Judges appointed under this Act shall be styled “Judge of the Provincial Court” or “Provincial Court Judge” and are entitled to be addressed as “Judge (surname of judge)”. Styles of address

Provincial Judge	(4) Where in any Act or regulation reference is made to “Provincial Judge”, the reference shall be deemed to be to “Provincial Court Judge”. R.S.P.E.I. 1974, Cap. P-24,s.2; 1975,c.78,s.3.
Bilingual judge	2.1 (1) Notwithstanding any other provision of this Act, the Lieutenant Governor in Council may appoint a bilingual judge of the provincial court of a province other than Prince Edward Island to preside over proceedings where an accused has requested that the proceedings be conducted in French.
Powers, remuneration, etc., of bilingual judge	(2) A judge appointed pursuant to subsection (1) <ul style="list-style-type: none"> (a) shall hold office until his or her retirement, resignation or removal from office from the provincial court of that other province; (a.1) shall not practice law in Prince Edward Island during the term of the appointment; (b) shall have all the powers, rights, privileges and duties conferred upon a judge pursuant to sections 6 and 11 and clause 12(1)(a); (c) shall receive such remuneration as is prescribed by the Lieutenant Governor in Council; (d) shall be reimbursed for his or her expenses in accordance with subsection 3(4.1); (e) shall be subject to the authority of the Chief Judge in accordance with section 4.
Other provisions do not apply	(3) No other provisions of this Act apply to a judge appointed under this section. 1996,c.32,s.2; 1997,c.68,s.2.
Term of office	3. (1) Every judge appointed under this Act shall hold office until his retirement, resignation from office, or removal from office.
Residency in province	(2) Every judge shall be employed on a full-time basis, and shall at the time of his appointment and during his term of office be a resident of the province of Prince Edward Island.
Part-time judge	(2.1) Repealed by 1997,c.68,s.3.
Maximum period of part-time service	(2.2) Repealed by 1997,c.68,s.3.
Remuneration	(2.3) Repealed by 1997,c.68,s.3.
Pension, retired judge	(2.4) Repealed by 1997,c.68,s.3.
Remuneration	(3) Repealed by 1997,c.68,s.4.
Existing judges	(3.1) Repealed by 1996,c.32,s.3.
Remuneration between May 17/95 and March 31/97	(3.2) Notwithstanding subsection (3), the remuneration of judges

- (a) for the period from May 17, 1995, to March 31, 1996 shall be the average of the remuneration of provincial court judges in the other provinces of Canada, less 4.5%; and
- (b) for the period from April 1, 1996, to March 31, 1997, shall be the average of the remuneration of provincial court judges in the other provinces of Canada, less 1.5%.

(4) Repealed by 1997,c.68,s.4.

Chief Judge

(4.1) Repealed by 1997,c.68,s.4.

Expenses

(5) Every power, duty or function referred to in subsection 6 (2) or any additional duty, function or matter undertaken by a judge pursuant to any statutory provision shall be exercised without any additional remuneration from any source, unless the payment of additional remuneration is approved by the Minister. R.S.P.E.I. 1974, Cap. P-24,s.3; 1977,c.32,s.1; 1988,c.54,s.1; 1990,c.48,s.1; 1994,c.49,s.1; 1994,c.51,s.10; 1995,c.32,s.10; 1996,c.32,s.3; 1997,c.2,s.2; 1997,c.68,s.3; 1997,c.68,s.4.

Additional remuneration only with approval of Minister

3.1 (1) Notwithstanding section 3 and subject to this section, the Lieutenant Governor in Council may, upon the request of the Chief Judge specifying the reasons for and the terms of the proposed appointment, appoint a retired judge to be a part-time judge according to the terms and conditions specified in the instrument of appointment.

Part-time judge

(2) The term of appointment under subsection (1) shall not, in any calendar year, exceed one-third of the normal period of full-time service.

Maximum period of part-time service

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

Remuneration

(4) A retired judge appointed pursuant to this section may continue to receive the pension established by this Act while acting as a part-time judge.

Pension continued

(5) A retired judge appointed pursuant to this section shall not practice law in the province during the term of the appointment. 1997,c.68,s.5.

Practice of law prohibited

4. (1) The Chief Judge has the power and duty to administer the provincial court, including the power and duty to

Functions of Chief Judge

- (a) designate a particular case or other matter or class of cases or matters in respect of which a particular judge shall act;
- (b) designate a particular geographical area in respect of which a particular judge shall act;
- (c) designate which court facilities shall be used by particular judges;

	(d) assign duties to judges.
Residence of judge	(2) Where the residence of a judge has been established for the purpose of servicing a particular geographical area pursuant to clause (1)(b), that residence shall not be changed except with the consent of the judge. 1987,c.56,s.1.
Commission	4.1 (1) A Commission, to be known as the Judicial Remuneration Review Commission, is hereby established.
Report to Minister	(2) The Commission shall <ul style="list-style-type: none"> (a) review salaries, benefits and expenses paid to judges, including judges appointed on or after April 1, 1997; and (b) provide to the Minister and to the Chief Judge, a report with recommendations regarding the appropriate salaries and benefits to be paid to judges. 1997,c.68,s.6; 2002,c.37,s.1.
Composition of the Commission	4.2 (1) Subject to subsection (2), the Commission shall be appointed by the Lieutenant Governor in Council and shall consist of <ul style="list-style-type: none"> (a) one person nominated by the Lieutenant Governor in Council as representative of the government; (b) one person nominated by the Chief Judge as a representative of the judges; and (c) one person, who shall act as chairperson, nominated by the persons nominated pursuant to clauses (a) and (b).
Who may not be appointed	(2) Judges and public servants, as defined in the <i>Civil Service Act</i> R.S.P.E.I. 1988, Cap. C-8 shall not be appointed to the Commission. 1997,c.68,s.6.
Remuneration of members of Commission	4.3 Members of the Commission shall be paid <ul style="list-style-type: none"> (a) an amount equal to the amount paid to members of the Indemnities and Allowance Commission; and (b) subject to Treasury Board policy, the reasonable expenses actually incurred in carrying out the duties of the Commission. 1997,c.68,s.6; 2004,c.36,s.3.
Term of office	4.4 The first term of office of the members of the Commission shall end on June 30, 2000 and thereafter, the term of office of the members of the Commission shall be three years. 1997,c.68,s.6.
Powers of commissioner of inquiry	4.5 The Commission, and each member thereof has the powers of a commissioner under the <i>Public Inquiries Act</i> R.S.P.E.I. 1988, Cap. P-31. 1997,c.68,s.6.
Inquiry respecting salaries and benefits	4.6 Before June 30, 1998, and in every third year thereafter, the Commission shall conduct an inquiry respecting

- (a) the appropriate level of base salaries for judges;
- (b) the appropriate design and level of benefits for judges, including compensation for the additional administrative duties of the Chief Judge; and
- (c) the reimbursement to judges for appropriate expenses. 1997,c.68,s.6.

4.7 During its deliberations, the Commission shall receive and consider submissions from Submissions to Commission

- (a) the government of the province;
- (b) the judges or their representative; and
- (c) any other interested persons or bodies. 1997,c.68,s.6.

4.8 The Commission, in making its report and recommendations, shall give due consideration to the following criteria: Criteria to be considered by Commission

- (a) the need to provide fair and reasonable compensation to judges;
- (b) Treasury Board policy and other relevant considerations respecting judges' expenses;
- (c) any changes in the cost of living or in real *per capita* income;
- (d) the need to attract excellent candidates;
- (e) the prevailing economic conditions in the province and the overall state of the provincial economy;
- (f) the salaries and benefits paid to other Provincial Court Judges in other Canadian jurisdictions;
- (g) any other criteria which the Commission considers relevant to the matters in issue. 1997,c.68,s.6; 2004,c.36,s.3.

4.9 (1) Subject to subsection (2), a report submitted to the Minister pursuant to section 4.1 shall, within 30 days after it is submitted, be tabled by the Minister in the Legislative Assembly. Report to be tabled in Legislative Assembly

(2) Where the Legislative Assembly is not in session when a report is submitted pursuant to subsection (1), the Minister shall table the report not later than 30 days after the opening of the next session of the Legislative Assembly. 1997,c.68,s.6; 2002,c.37,s.2. *Idem*

4.10 Where the Legislative Assembly adopts a report submitted pursuant to section 4.1, in whole or in part, the Government shall, with due diligence and reasonable dispatch, take whatever steps may be necessary to implement the report in accordance with the vote of the Legislative Assembly. 1997,c.68,s.6. Adoption and implementation of report

4.11 Sections 4.1 to 4.10, inclusive, are deemed to have come into force on September 25, 1997. 1997,c.68,s.6. Date effective

4.12 The Commission may, at the written request of the Minister, act as the administrator of any plan designed by the Government to implement Commission as administrator

a report of the Commission in accordance with the vote of the Legislative Assembly. 2002,c.37,s.3.

Oaths of office

5. (1) Every judge shall, upon his appointment, and before engaging upon his duties as a judge, take and subscribe, before the Chief Judge, or in his absence, a judge of the Supreme Court, the following oaths of office:

(a) I,, do swear that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts reposed in me as a judge; and

(b) I,, do solemnly promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors.

Filing of oath

(2) The oath of office and oath of allegiance upon being taken and subscribed shall be transmitted forthwith to the Clerk of the Executive Council. R.S.P.E.I. 1974, Cap. P-24,s.5; 1996,c.32,s.4; 1997,c.2,s.3.

Jurisdiction

6. (1) Every judge has jurisdiction throughout the province, and without limiting the generality thereof, every judge has jurisdiction in the City of Charlottetown and the City of Summerside and all other towns and villages in the province.

Powers

(2) Every judge shall

(a) exercise the jurisdiction conferred upon a provincial court judge by the *Criminal Code* (Canada) R.S.C. 1985, Chap. C-46;

(a.1) have all the powers and authority possessed or vested in two or more justices of the peace;

(b) exercise all the powers and perform all the duties conferred or imposed upon a provincial court judge, magistrate, provincial magistrate, or one or more justices of the peace under any Act of the Parliament of Canada;

(c) exercise all the power and authority now vested by or under any Act of the legislature in a provincial court judge, stipendiary magistrate, or provincial magistrate or in two justices; and

(d) exercise all the power, authority and jurisdiction of a magistrate or any other person authorized to try offences against municipal bylaws under the *Municipalities Act* R.S.P.E.I. 1988, Cap. M-13 or the Acts relating to the City of Charlottetown or the City of Summerside. R.S.P.E.I. 1974, Cap. P-24,s.6; 1977,c.32,s.2; 1983,c.33,s.66; 1987,c.56,s.2; 1990,c.48,s.2.

Retirement

7. (1) Every judge appointed after the coming into force of this Act shall retire from office upon his attaining the age of sixty-five years.

(2) Notwithstanding subsection (1) any stipendiary magistrate appointed prior to the coming into force of this Act may elect to hold office until he attains the age of seventy years. R.S.P.E.I. 1974, Cap. P-24,s.7. Stipendiary magistrates, retirement option

8. (1) Every judge appointed before April 1, 1997 is entitled to a pension Entitlement to pension

(a) if he became a judge after having served as a stipendiary magistrate prior to 1974, when he reaches the age of sixty-five years, irrespective of his years of service as a judge;

(b) if he has ten years of service as a judge and has reached the age of sixty-five years, upon reaching the age of sixty-five years;

(c) if he has twenty years of service as a judge but has not reached the age of sixty-five years, when he resigns office and in the opinion of the Lieutenant Governor in Council the resignation is conducive to the better administration of justice in the province;

(d) if he has three years of service as a judge and becomes afflicted with some permanent infirmity disabling him from the due execution of his office, when he resigns his office or by reason of such infirmity is removed from office.

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

(3) Where a judge has ten or more years of service, and he resigns or is dismissed from office, he is entitled to a pension payable at age sixty-five calculated at the rate of three decimal three per cent of the salary payable to him at the time of his retirement or removal from office, multiplied by the number of years of service given as a judge. Resignation or retirement, pension

(4) Judges shall not be required to contribute to the pension established in this section, and a judge who is dismissed or resigns from office and is not entitled to a pension under subsection (1), is not entitled to monetary or other compensation. Contribution to pension, none

(5) Where a judge dies, his widow, so long as she remains unmarried, and dependent children are entitled to a pension as follows: Dependant's pension

(a) if he had less than ten years of service as a judge, no pension is payable;

(b) if he has retired or been removed from office because of some permanent disability disabling him from the due execution of his office and is entitled to a pension under subsection (1), one-half the pension being paid to him while on pension is payable to his wife and ten per cent of the pension being paid to him is payable to his dependent child or to each of his dependent children, but in no case

shall the percentage of pension payable to dependent children exceed forty per cent;

(c) if he had more than ten years service as a judge, one half of the pension that would have been payable to him had he retired at age sixty-five is payable to his widow and ten percent of the pension that would have been payable to him is payable to his dependent child or each of his dependent children, but in no case shall the percentage of pension payable to dependent children exceed forty per cent.

Continuing pension, disabled child	(6) Notwithstanding subsection (5), a dependent child who is disabled to the extent that he will be disabled and dependent beyond the age of eighteen years is entitled to a continuation of a pension benefit under subsection (5) for so long during his natural life as he remains disabled and dependent.
Annual cost of living increase	(7) The Provincial Treasurer shall annually, on or before March 31, increase the pension payments otherwise being paid under this Act by an amount based on increases in the Consumer Price (all items) Index for Canada (1981 equals one hundred) and calculated at a rate prescribed by the regulations, not exceeding the rate of eight per cent of the annual pension that is payable.
Application to judges appointed after April 1, 1997	(8) This section does not apply to a judge appointed on or after April 1, 1997 R.S.P.E.I. 1974, Cap. P-24, s.8; 1983,c.1,s.6; 1986,c.5,s.2; 1993,c.29,s.4; 1997,c.2,s.4; 2002,c.37,s.4.
Judges appointed on or after April 1, 1997	8.1 Every judge appointed on or after April 1, 1997 is entitled to a pension as recommended by the Commission and adopted by the Legislative Assembly. 2002,c.37,s.5,6.
Resignation	9. A judge may at any time resign his office by notice in writing, signed by him, delivered to the Minister. R.S.P.E.I. 1974, Cap. P-24,s.9.
Inquiry by Supreme Court judge	10. (1) Where the Lieutenant Governor in Council has reason to believe that a judge is guilty of misbehaviour or is unable to perform his duties properly, he shall by order appoint a judge of the Supreme Court to inquire into and report on the matter.
Powers	(2) A judge of the Supreme Court who is appointed pursuant to subsection (1) has, for the purposes of the inquiry, all the powers of a commissioner under the <i>Public Inquiries Act</i> , R.S.P.E.I. 1988, Cap. P-31 and may direct that the inquiry be open to the public or held in camera.
Notice	(3) The judge whose behaviour is the subject of the inquiry shall be given notice of the time and place appointed for the inquiry and he may attend with counsel of his choice, produce evidence and cross-examine witnesses.

(4) All reasonable expenses incurred by the judge for the purpose of attending and making representations at the inquiry for and on his behalf shall be paid out of the Operating Fund.

Expenses

(5) Where the report of the judge of the Supreme Court confirms that the judge is guilty of misbehaviour or is unable to perform his duties properly, the judge of the Supreme Court shall report to the Lieutenant Governor in Council and shall make one or more of the following recommendations:

Recommendations

- (a) dismiss the complaint;
- (b) reprimand the judge;
- (c) recommend that the judge be suspended for a determinate period;
- or
- (d) recommend that the judge be dismissed from office.

(6) Where the report of the judge of the Supreme Court does not find that the judge is guilty of misbehaviour or is unable to perform his duties properly, the judge shall resume the duties of his office.

Resumption of Duties

(7) Where the report of inquiry recommends that the judge be suspended for a determinate period or recommends that the judge be dismissed from office, the Lieutenant Governor in Council may

Powers of Lieutenant Governor in Council

- (a) suspend the judge for such period of time as the Lieutenant Governor in Council may consider advisable; or
- (b) remove the judge from office.

(8) The judge of the Supreme Court shall give a copy of his report to the judge whose behaviour is the subject of the inquiry. 1995,c.32,s.10; 1997,c.20,s.3.

Copies of report

11. (1) Except as provided in this Act, no action lies or may be instituted against a judge, or justice of the peace for any act done by him in the execution of his duties unless the act was done maliciously or without reasonable cause.

Limitation of action

(2) A judge shall have the same immunity from civil proceedings as a judge of a superior court of criminal jurisdiction and shall be compensated out of the Operating Fund for any costs incurred in maintaining such immunity. R.S.P.E.I. 1974, Cap. P-24,s.11; 1987,c.56,s.3; 1997,c.20,s.3.

Immunity from civil action

12. (1) Every judge

Additional powers and privileges

- (a) may exercise the same powers and authority to preserve order in any court over which he presides as may be exercised by a judge of the Supreme Court;
- (b) may observe the same holidays as are observed by employees under the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8;

(c) is entitled to vacation with pay of four weeks in each year; and
 (d) is entitled to sick leave as established for employees under the
Civil Service Act.

Leave of absence
for illness

(2) In the event of illness of such nature as may incapacitate a judge for an extended period, the Lieutenant Governor in Council may grant a leave of absence for the period on such terms as he may consider appropriate. R.S.P.E.I. 1974, Cap. P-24,s.12.

Sabbatical leave

13. The Lieutenant Governor in Council may, upon application, grant sabbatical leave, upon full pay, to any judge having seven years consecutive service for a period not exceeding one year for purposes of further study, or for such other purposes as may be considered to be in the better interests of or advantageous to the better administration of justice in the province. R.S.P.E.I. 1974, Cap. P-24,s.13.

JUSTICE OF THE PEACE

Justices of the
peace, appointment

14. (1) The Lieutenant Governor in Council may appoint such and so many persons as justices of the peace as he may consider advisable for the better administration of justice in the province.

Municipal
jurisdiction

(1.1) The Minister in making an appointment under subsection (1) may limit the jurisdiction of a justice of the peace to matters related to the enforcement of municipal laws.

Designation for
purposes of the
Marriage Act

(1.2) When making an appointment of a justice of the peace under subsection (1), the Lieutenant Governor in Council may designate the justice of the peace as a justice of the peace who may perform marriage ceremonies under the *Marriage Act*.

Term of office

(2) A person appointed as a justice of the peace under subsection (1) holds office for a term prescribed by the Lieutenant Governor in Council not exceeding five years but upon the expiration of his term of office he may apply to the Lieutenant Governor in Council for reappointment.

Certificate of office

(3) Where a person is appointed under subsection (1), the Lieutenant Governor in Council shall issue a certificate to the person specifying thereon the name, address and term of office of the justice of the peace, and whether the justice of the peace is designated as a justice of the peace who may solemnize marriages under the *Marriage Act*; a justice of the peace while exercising a jurisdiction vested in him shall prominently display his certificate. R.S.P.E.I. 1974, Cap. P-24,s.14; 1992,c.55,s.1; 1996,c.32,s.6; 1997,c.2,s.5; 2005,c.12,s.10.

Removal from
office

15. Justices of the peace may be removed from office by the Lieutenant Governor in Council for cause or where in the opinion of the Lieutenant

Governor in Council the province does not require a justice of the peace in the area in which the justice of the peace resides. R.S.P.E.I. 1974, Cap. P-24,s.16; 1992,c.55,s.2; 1996,c.32,s.6.

16. Notwithstanding any Act to the contrary, justices of the peace have jurisdiction to hear and accept guilty pleas and not guilty pleas for offences or violations or non-compliance under any Act of the province or any bylaw made under the authority of any such Act, and may impose such fines, penalties and terms of imprisonment as may be prescribed for committing such offences, and may collect and give receipts for payment of any fines or penalties paid. 1978,c.17,s.1; 1992,c.55,s.3.

Jurisdiction

GENERAL

17. The Lieutenant Governor in Council may make regulations for the better carrying out of the intent and purpose of this Act, and without limiting the generality thereof, may make regulations

Regulations

- (a) respecting inquiries and the form and content of reports under section 10;
 - (b) respecting the duties and powers of the Chief Judge;
 - (c) respecting rules of court governing the operation and conduct of a court presided over by a judge or by a justice of the peace; and
 - (d) respecting the qualifications, duties, responsibilities and jurisdiction of justices of the peace;
 - (e) respecting the Judicial Remuneration Review Commission; and
 - (f) generally providing for the better administration of this Act.
- R.S.P.E.I. 1974, Cap. P-24, s.17; 1975,c.78,s.5; 1987,c.56,s.5; 1997,c.6;8,s.7.