

# *The Provincial Court Act, 1998*

*being*

Chapter P-30.11\* of the *Statutes of Saskatchewan, 1998* (effective June 11, 1998, except subsection 66(1)) as amended by *The Statutes of Saskatchewan, 2001, c.51; 2004, c.22 and 65; 2005, c.27; 2007, c.11; 2009, c.25; 2011, c.13; 2012, c.14; 2013, c.27; 2014, c.E-13.1 and c.25; and 2016, c.24.*

**\*NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

## **NOTE:**

**This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.**

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## CHAPTER P-30.11

### An Act respecting the Provincial Court of Saskatchewan and making consequential amendments to other Acts

#### PART I Preliminary Matters

##### Short title

1 This Act may be cited as *The Provincial Court Act, 1998*.

##### Interpretation

2 In this Act:

- (a) **“association”** means the Saskatchewan Provincial Court Judges’ Association;
- (b) **“chief judge”** means the chief judge of the court appointed pursuant to section 7;
- (c) **“commission”** means, except where otherwise provided, a Provincial Court Commission established pursuant to section 36;
- (d) **“commission regulations”** means regulations made by a commission pursuant to section 44, 46, 47 or 49;
- (e) **“council”** means the Judicial Council continued pursuant to section 53;
- (f) **“court”** means the Provincial Court of Saskatchewan continued pursuant to section 3;
- (g) **“incapacity”** means the inability of a judge to perform his or her duties as a result of a physical or mental condition or disorder;
- (h) **“judge”** means, except where otherwise provided, a judge appointed pursuant to this Act, and includes the chief judge and an associate chief judge;
- (i) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (j) **“misconduct”** includes conduct unbecoming a judge;
- (k) **“regulations”**, except where otherwise provided, means the regulations made by the Lieutenant Governor in Council pursuant to section 65;
- (l) **“temporary judge”** means a judge appointed pursuant to section 17.

**Continuation of court**

- 3(1) The Provincial Court of Saskatchewan is continued.
- (2) The court is a court of record.

1998, c.P-30.11, s.3.

**Independence of court**

- 4 The Legislative Assembly affirms the independence of the court and the judges.

1998, c.P-30.11, s.4.

## PART II

### Judges

**Jurisdiction, powers and duties of judges**

- 5(1) A judge may preside over the court at any place in Saskatchewan.
- (2) A judge has:
- (a) jurisdiction throughout Saskatchewan;
  - (b) the power and authority that is vested in or conferred on two justices of the peace sitting and acting together pursuant to any law in force in Saskatchewan;
  - (c) the power to perform the acts and duties that a provincial magistrate, other magistrate or one or more justices of the peace may perform pursuant to any Act of the Parliament of Canada;
  - (d) the power to perform the acts and duties that a provincial magistrate is authorized or required to perform pursuant to any Act;
  - (e) the jurisdiction that was, by any law, statute or custom previously in force in Saskatchewan, vested in or capable of being exercised by a provincial magistrate, a judge of the magistrates' courts, a justice of the peace or two justices of the peace sitting and acting together; and
  - (f) the right to exercise any other powers and to perform any other duties that are, by order of the Lieutenant Governor in Council, conferred on or vested in a judge.
- (3) A judge shall exercise the powers and perform the duties mentioned in subsection (2).
- (4) By virtue of his or her office, a judge is:
- (a) a justice of the peace for Saskatchewan;
  - (b) a judge of the youth justice court for Saskatchewan pursuant to the *Youth Criminal Justice Act* (Canada); and
  - (c) a coroner.

1998, c.P-30.11, s.5; 2004, c.65, s.23.

**Appointment of judges**

- 6(1)** The Lieutenant Governor may, by letters patent under the Great Seal, appoint any persons as judges that the Lieutenant Governor considers necessary.
- (2) No person is eligible to be appointed as a judge unless the person:
- (a) is a member in good standing of the bar of one of the provinces of Canada and has been such a member for at least 10 years immediately preceding the day on which the person is appointed; or
  - (b) has other legal or judicial experience that is satisfactory to the council.
- (3) A person who is a judge of the court on the day before this section comes into force is deemed to be appointed a judge pursuant to subsection (1).

1998, c.P-30.11, s.6.

**Appointment of chief judge and associate chief judges**

- 7(1)** After the minister has consulted with the president of the association to determine whether the proposed appointee will enjoy the confidence of the court, the Lieutenant Governor in Council may appoint a judge to hold office as the chief judge of the court for a non-renewable term of seven years or until the judge:
- (a) resigns as chief judge;
  - (b) attains the age of retirement prescribed in section 13; or
  - (c) is removed or retired from office pursuant to section 62.
- (2) With the consent of the chief judge, the Lieutenant Governor in Council may appoint one or more judges to hold office as associate chief judges of the court for a term recommended by the chief judge that is not longer than the unexpired portion of the term of the chief judge.
- (3) If the chief judge ceases to hold office as chief judge before the expiry of an associate chief judge's term of appointment, the appointment of the associate chief judge terminates on the appointment of a new chief judge.
- (4) An associate chief judge shall perform the functions delegated to him or her by the chief judge.
- (5) In the case of the incapacity or absence of the chief judge or if the office of the chief judge is vacant, the associate chief judge, the associate chief judge designated by the chief judge pursuant to subsection (6) or the judge designated by the minister pursuant to subsection (7):
- (a) shall act as chief judge;
  - (b) has all of the powers of the chief judge; and
  - (c) shall perform all of the duties of the chief judge.
- (6) If there is more than one associate chief judge, the chief judge shall designate one of the associate chief judges to act as chief judge pursuant to subsection (5).
- (7) If there is no associate chief judge, the minister may designate a judge to act as chief judge pursuant to subsection (5).

1998, c.P-30.11, s.7.

**Powers and duties of chief judge**

- 8 In addition to his or her powers and duties as a judge, the chief judge may:
- (a) designate a particular case or matter, or category of cases or matters, with respect to which a particular judge or particular justices of the peace must act;
  - (b) after consultation with the minister, designate court facilities at which the court shall sit;
  - (c) designate particular court facilities and offices that are to be used by particular judges and justices of the peace;
  - (d) designate the times at which judges or justices of the peace must hold court at any place;
  - (e) delegate any functions that the chief judge considers appropriate to an associate chief judge;
  - (f) assign to another judge any duties that, in the opinion of the chief judge, are administrative duties;
  - (g) assign duties to judges and justices of the peace;
  - (h) direct a judge to act in the place and exercise the powers of another judge who is or expects to be absent, during the period of that judge's absence;
  - (i) direct and supervise generally the duties and sittings of justices of the peace;
  - (j) exercise any other powers and perform any other duties that are prescribed in the regulations.

1998, c.P-30.11, s.8; 2011, c.13, s.3.

**8.1 Repealed.** 2011, c.13, s.3.**Residence of judges**

- 9(1) When a judge is appointed, the minister shall designate the place at which the judge must establish his or her residence.
- (2) Subject to subsection (3) and the approval of the minister, after a judge is appointed, the chief judge may designate the place at which the judge must establish his or her residence.
- (3) Except on the recommendation of the council, the chief judge shall not change the residence of a judge without the judge's consent.

1998, c.P-30.11, s.9.

**Oath or affirmation of office**

10(1) Before exercising jurisdiction as a judge, a judge shall take and subscribe the following oath or affirmation of allegiance and oath or affirmation of office before a person authorized to administer oaths in Saskatchewan:

I, \_\_\_\_\_, of \_\_\_\_\_, Saskatchewan, do swear/solemnly affirm that I will well and truly serve our Sovereign Lady the Queen in the office of a judge of the Provincial Court of Saskatchewan and that I will duly and faithfully and according to the best of my ability and knowledge execute the several duties and powers of a judge of that court.

Sworn/solemnly affirmed before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(2) The oath or affirmation of office and allegiance taken by a judge must be forwarded to the chief judge, who shall file the oaths or affirmations in his or her office.

1998, c.P-30.11, s.10.

**Restrictions on judges**

11(1) No judge shall practise, or actively engage in, any business, trade or occupation unless he or she is authorized to do so by the council.

(2) Every judge, other than a temporary judge, shall devote his or her full time to the performance of the duties of a judge unless the judge:

(a) is otherwise authorized by the Lieutenant Governor in Council or by an Act; and

(b) has obtained the approval of the chief judge.

(3) No judge shall act as a commissioner, arbitrator, adjudicator, referee, conciliator or mediator on any commission or on any inquiry or other proceeding unless the chief judge has been consulted prior to the appointment of the judge as commissioner, arbitrator, adjudicator, referee, conciliator or mediator, and:

(a) in a matter within the legislative authority of Canada, the judge is by an Act of the Parliament of Canada expressly authorized to act or is authorized or appointed to act by the Governor in Council; or

(b) in a matter within the legislative authority of Saskatchewan, the judge is by an Act expressly authorized to act or is authorized or appointed to act by the Lieutenant Governor in Council.

(4) Subsection (3) does not apply to a judge who is required or authorized to assess or ascertain compensation or damages pursuant to any public Act or any public Act of the Parliament of Canada.

(5) The definition of "commission" in section 2 does not apply to this section.

1998, c.P-30.11, s.11.

**Judge not disqualified where certain complainants related**

12 No judge is disqualified from acting with respect to any matter by reason of the complainant or informant being related to the judge, where the complainant or informant is acting in a public or official capacity.

1998, c.P-30.11, s.12.

**Retirement**

13(1) Subject to subsections (2), (3) and (7) to (10), every judge shall retire at the end of the month in which he or she attains the age of 65 years.

(2) A judge who was a judge of the magistrates' courts on September 30, 1978 shall retire at the end of the month in which he or she attains the age of 70 years.

- (3) With the approval of the chief judge for each period, a judge other than the chief judge may continue in office past the end of the month in which the judge attains the age of 65 years for successive periods of one year until the end of the month in which the judge attains the age of 70 years.
- (4) Subsection (3) does not apply to judges mentioned in subsection (2).
- (5) The chief judge shall:
- (a) in consultation with the association, develop criteria, to be submitted for the approval of the council, to govern decisions by the chief judge in granting or refusing to grant an approval pursuant to subsection (3); and
  - (b) use the criteria approved by the council in granting or refusing to grant that approval.
- (6) Where the chief judge refuses to grant an approval pursuant to subsection (3), the judge who requested the approval may appeal that decision to the council.
- (7) Subject to subsection (8), with the approval of the council for each period, the chief judge may continue in office as chief judge past the end of the month in which the chief judge attains the age of 65 years for successive periods of one year until the end of the month in which the chief judge's term as chief judge expires.
- (8) Where the chief judge attains the age of 70 years during a period of continuation pursuant to subsection (7), the period of continuation terminates at the end of the month in which the chief judge attains the age of 70 years.
- (9) Subject to subsection (10), where a chief judge has continued in office as chief judge pursuant to subsection (7) and the continuation terminates before the end of the month in which the chief judge attains the age of 70 years, the former chief judge may, with the approval of the successor chief judge for each period, continue in office as a judge past the end of the month in which the former chief judge's term as chief judge expires for successive periods of one year.
- (10) Where the former chief judge attains the age of 70 years during a period of continuation pursuant to subsection (9), the period of continuation terminates at the end of the month in which the former chief judge attains the age of 70 years.
- (11) The criteria mentioned in subsection (5) apply to an approval by a successor chief judge pursuant to subsection (9).
- (12) Where the successor chief judge refuses to grant an approval pursuant to subsection (9), the former chief judge who requested the approval may appeal that decision to the council.

1998, c.P-30.11, s.13.

#### **Resignation**

- 14 A judge may resign by giving written notice to the minister.

1998, c.P-30.11, s.14.



**Protection against removal from office**

**15(1)** A judge shall not be removed from office unless:

- (a) a hearing has been held pursuant to section 58; and
- (b) the council has recommended the judge's removal pursuant to section 62.

(2) For the purposes of subsection (1), retirement pursuant to section 13 does not constitute removal from office.

1998, c.P-30.11, s.15.

**Disposal of pending business**

**16(1)** Where a judge ceases to hold office, any business pending before the judge may, on the application of any party, be taken up and proceeded with by any other judge.

(2) In any case mentioned in subsection (1), any pending summons, warrant, process, order, conviction or other matter or thing may be taken up, proceeded with and enforced by a judge, notwithstanding that the proceedings were not initially taken before the judge.

1998, c.P-30.11, s.16.

**Temporary judges**

**17(1)** Subject to subsection (1.1), the chief judge may appoint a person from the list compiled pursuant to section 18 to act in the place and exercise the powers of a judge where:

- (a) a judge is or expects to be absent from his or her duties pursuant to this Act; or
- (b) in the opinion of the chief judge, additional judges are urgently required to meet the business of the court.

(1.1) Before appointing a person mentioned in subclause 18(2)(b)(iii.1) as a temporary judge, the chief judge must obtain the consent of the chief judge of the province in which the judge is currently appointed.

(2) A person appointed pursuant to subsection (1) is deemed to be a judge and may exercise all the powers of a judge appointed pursuant to this Act.

1998, c.P-30.11, s.17; 2011, c.13, s.4.

**Agreements re temporary judges**

**17.1** The minister, on behalf of the government, may enter into an agreement with the government of another province:

- (a) providing that the Government of Saskatchewan will reimburse the government of the other province for the salary and expenses of a person mentioned in subclause 18(2)(b)(iii.1) who is appointed to sit in Saskatchewan as a temporary judge; and
- (b) providing for reciprocal or other arrangements between the Government of Saskatchewan and the government of the other province with respect to:
  - (i) temporary judges; and
  - (ii) judges of the Provincial Court appointed on a temporary basis in that other province.

2011, c.13, s.5.

**List of names**

18(1) The minister may cause a list to be compiled of persons who are eligible to be appointed as temporary judges.

(2) Persons are eligible to be appointed as temporary judges if they:

- (a) meet the requirements of subsection 6(2);
- (b) are members of any of the following categories:
  - (i) judges who have retired;
  - (ii) judges who have resigned;
  - (iii) judges of any other court in Saskatchewan who have retired or resigned from that court;
    - (iii.1) provincial court judges, as defined in the *Criminal Code*, from a province other than Saskatchewan;
    - (iii.2) provincial court judges, as defined in the *Criminal Code*, from a province other than Saskatchewan who have retired;
    - (iii.3) superior court judges from a province other than Saskatchewan who have retired or resigned;
  - (iv) retired or non-practising lawyers; and
- (c) consent to be on the list mentioned in subsection (1).

(3) A person whose name is on the list mentioned in subsection (1) may request that his or her name be removed from the list by sending a written notice to the minister, and the person's name is deemed to be removed from that list on the later of:

- (a) the day on which the minister receives the written notice; and
- (b) the date, if any, specified in the written notice.

(4) Except as the result of a request pursuant to subsection (3), a removal pursuant to subsection (4.1) or section 62 or the death of a person, the minister shall not remove any names from the list mentioned in subsection (1).

(4.1) The minister may remove a person mentioned in subclause (2)(b)(iii.1) from the list mentioned in subsection (1) if that person has been suspended or removed from office as a provincial court judge in a province other than Saskatchewan.

(4.2) The minister shall cause the list mentioned in subsection (1) and any changes to that list to be published in the Gazette.

(5) The following provisions apply, with any necessary modification, to persons whose names are included in the list mentioned in subsection (1):

- (a) section 4;
- (b) this Part, other than sections 7, 9, 13 and 20;
- (c) Part V;
- (d) sections 63, 64 and 65.

**Entitlement to salary, etc.**

**19(1)** Subject to subsection (2), a judge is entitled:

- (a) to receive a salary in an amount determined in accordance with this Act and the commission regulations;
- (b) to receive other remuneration, allowances and benefits in accordance with this Act and the commission regulations; and
- (c) to vacation leave in accordance with this Act and the commission regulations.

(2) Subject to section 32, the salary, remuneration, allowances, benefits and additional retirement benefits to which judges are entitled pursuant to this Act and the commission regulations are a charge on and shall be paid out of the general revenue fund.

(3) Notwithstanding anything in this Act, in exceptional circumstances the Legislative Assembly may reduce judges' salaries in a manner that meets constitutional tests of judicial independence.

1998, c.P-30.11, s.19.

**Disability allowance**

**20(1)** Subject to an order made pursuant to subsection 62(3), a disability allowance shall be paid to a judge who:

- (a) in the opinion of the council, is temporarily or permanently incapacitated; and
- (b) on the day that the judge becomes incapacitated, has served continuously as a judge for at least three months.

(2) Where the council determines pursuant to subsection (1) that a judge qualifies for a disability allowance, the payment of a disability allowance shall not commence until the judge has used all of his or her accumulated sick leave.

(3) Where the council is of the opinion that a judge's incapacity is temporary, the judge is entitled to a disability allowance, calculated in accordance with the regulations, that provides a benefit that:

- (a) is equal to the salary the judge would have been entitled to receive if he or she were not incapacitated; and
- (b) is to be paid to the judge for the period specified by the council, which shall not exceed six months.

(4) Where the council is of the opinion that the judge's incapacity is permanent, the judge is entitled to a disability allowance, calculated in accordance with the regulations, that provides a benefit equal to 70% of the salary the judge would have been entitled to receive if he or she were not incapacitated.

(5) Where the council has made a determination that a judge qualifies for a temporary disability allowance, it may, at any time during the period mentioned in clause (3)(b), review its determination and:

- (a) extend the period during which the judge is to receive a temporary disability allowance to a date not later than 12 months from the day on which the judge began receiving the temporary disability allowance;

- (b) determine that the judge's incapacity is permanent; or
  - (c) determine, pursuant to subsection (6), that the payment of the disability allowance should be discontinued.
- (6) Where, in the opinion of the council, after holding any inquiry that it considers advisable, a judge to whom a disability allowance is granted is no longer incapacitated, the payment of the disability allowance shall be discontinued on the conditions determined by the council.
- (7) For the purpose of calculating a pension, retirement benefit or annuity, the annual salary of a judge for any period during which the judge was receiving a disability allowance is deemed to be the salary the judge would have been entitled to receive if he or she were not incapacitated.
- (8) The payment of a disability allowance shall not continue past the day on which the judge begins to receive a pension or annuity.

1998, c.P-30.11, s.20; 2011, c.13, s.7.

### PART III Pensions and Other Benefits

#### Interpretation of Part

##### 21 In this Part:

- (a) **“child”** includes a step-child;
- (b) **“fund”** means the Judges of the Provincial Court Superannuation Fund continued pursuant to section 32;
- (c) **“judge”** does not include a temporary judge;
- (d) **“spouse”** means:
  - (i) a person who is married to a judge or former judge; or
  - (ii) if a judge or former judge is not married, a person with whom the judge or former judge is cohabiting as a spouse at the relevant time and who has been cohabiting continuously with the judge or former judge as his or her spouse for at least one year prior to the relevant time.

1998, c.P-30.11, s.21.

#### Pension to judge

**22(1)** Subject to subsection (3), a judge who is 65 years or more on the day that he or she ceases to be a judge shall be paid a pension for life in accordance with this Act and the commission regulations.

(2) Subject to subsection (3), a judge who is less than 65 years on the day that he or she ceases to be a judge and who has served as a judge continuously for at least two years shall be paid a pension for life in accordance with this Act and the commission regulations.

(3) A judge who made an election to receive the annuity benefits to which he or she was entitled pursuant to *The Magistrates' Courts Act* shall receive an annuity pursuant to that Act as it existed on September 30, 1978.

1998, c.P-30.11, s.22.

**Pension to spouse**

**23** Where a judge or a former judge dies leaving a spouse, the spouse shall be paid a pension in accordance with this Act and the commission regulations.

1998, c.P-30.11, s.23.

**Pension to children**

**24(1)** Where a judge or a former judge dies leaving no spouse or a spouse who subsequently dies, a pension may be paid to each child of the judge or former judge in accordance with this Act and the commission regulations.

(2) A pension payable to a child of a judge shall be paid to the child until the child attains the age of 18 years and for a further period of up to five years if, during that period, he or she remains in full-time attendance at a secondary or post-secondary institution.

1998, c.P-30.11, s.24.

**Payment of pensions**

**25** A pension granted pursuant to this Act and the commission regulations shall be paid monthly in arrears in approximately equal instalments.

1998, c.P-30.11, s.25.

**Lump sum payment on death**

**26** Where a judge or former judge dies leaving no spouse and no children eligible to receive a pension pursuant to section 24, a benefit shall be paid to the named beneficiary of the judge or former judge, or to the estate of the judge or former judge if no beneficiary is named, in accordance with this Act and the commission regulations.

1998, c.P-30.11, s.26.

**Supplementary allowance**

**27(1)** Subject to subsection (2), if the Lieutenant Governor in Council provides for an increase in superannuation allowances pursuant to subsection 36.1(3) of *The Superannuation (Supplementary Provisions) Act*, a person described in subsection (1.1) shall be paid a supplementary allowance that is equal to the increase that would be provided to the person pursuant to subsection 36.1(3) of *The Superannuation (Supplementary Provisions) Act* if the person were entitled to a superannuation allowance pursuant to that Act.

(1.01) Subject to subsection (2), a person described in subsection (1.1) shall be paid a supplementary allowance that is equal to the increase that would be provided to the person pursuant to section 36.2 of *The Superannuation (Supplementary Provisions) Act* if the person were entitled to a superannuation allowance pursuant to that Act.

(1.1) Subsections (1) and (1.01) apply to:

- (a) recipients of an annuity pursuant to *The Magistrates' Courts Act*; and
- (b) recipients of a pension pursuant to this Act with respect to the service of a judge who retires before April 1, 2003.

(2) A supplementary allowance provided for pursuant to subsection (1) or (1.01) is not to exceed the maximum allowance permitted pursuant to the *Income Tax Act* (Canada).

1998, c.P-30.11, s.27; 2004, c.22, s.3; 2007, c.11, s.5.

#### **Contributions**

**28(1)** Subject to this section, every judge shall, by reservation from his or her salary, contribute to the fund an amount equal to 5% of the judge's annual salary.

(2) Subsection (1) does not apply to a judge who elected to receive the annuity benefits to which the judge was entitled pursuant to *The Magistrates' Courts Act*.

(2.1) A judge is not required to make contributions to the fund in a year that exceed the maximum contributions for the year permitted pursuant to the *Income Tax Act* (Canada).

(3) No judge shall make contributions for more than 23 1/3 years.

(4) Subject to subsection (4.1), a judge who is granted a leave of absence may continue to make contributions to the fund in accordance with subsection (1), as if the judge were receiving the salary the judge would have been entitled to receive if he or she were not on a leave of absence.

(4.1) A judge who makes contributions to the fund pursuant to subsection (4) shall not make contributions for a longer period than is permitted pursuant to the *Income Tax Act* (Canada).

(5) A judge who is receiving a disability allowance pursuant to section 20 shall, by reservation from the allowance, continue to make contributions to the fund in accordance with subsection (1), as if the judge were receiving the salary the judge would have been entitled to receive if he or she were not incapacitated.

(6) Where a judge makes contributions pursuant to subsection (4) or (5), the judge is deemed to have served continuously as a judge for that period of contributory service.

(7) Where a judge has, in a year, made contributions to the fund that exceed, in the aggregate, the maximum contributions for the year permitted pursuant to the *Income Tax Act* (Canada), the amount of the excess contributions required to be refunded to avoid revocation of the registration of the pension plan constituted by this Part and the commission regulations made for the purposes of this Part shall be refunded to the judge.

1998, c.P-30.11, s.28; 2004, c.22, s.4.

#### **Refund of contributions**

**29(1)** Subject to subsection (2) and except where otherwise specifically provided for in this Act or the commission regulations, the contributions made by a judge to the fund are not refundable.

(2) A judge who is not entitled to a pension at the time of retirement, resignation or removal from office shall receive a refund of his or her contributions together with accrued interest compounded annually at the rate prescribed pursuant to section 30 of *The Pension Benefits Act, 1992*.

(3) A judge who is not entitled to immediately receive a pension at the time of retirement, resignation or removal from office may elect to receive a refund of his or her contributions together with accrued interest compounded annually at the rate prescribed pursuant to section 30 of *The Pension Benefits Act, 1992*.

1998, c.P-30.11, s.29.

**Previous service**

**30** Where a judge has served continuously in any of the following capacities, that service is deemed to be service for which the judge contributed, and the judge is deemed to have served continuously as a judge for that period of contributory service:

- (a) as a judge of the magistrates' courts;
- (b) as a provincial magistrate and a judge of the magistrates' courts; or
- (c) as a police magistrate, a provincial magistrate and a judge of the magistrates' courts.

1998, c.P-30.11, s.30.

**Attachment, etc., of allowances and other amounts**

**31(1)** In this section and in sections 31.2 to 31.6, "**commuted value**" means the value of benefits as of a certain date, determined on the basis of actuarial assumptions and methods that are adequate and appropriate and in accordance with generally accepted actuarial principles.

(2) Notwithstanding any other Act, no payment, allowance or entitlement to any payment or allowance pursuant to this Part is to be assigned, charged, anticipated, attached, given as security or surrendered except as provided in this section.

(3) Notwithstanding any other provision of this Act and notwithstanding any other Act or the commission regulations, for the purpose of enforcing a maintenance order as defined in *The Enforcement of Maintenance Orders Act, 1997*:

- (a) a pension, allowance, annuity or retirement benefit that is payable to a judge is subject to seizure pursuant to that Act; and
- (b) a pension, annuity or retirement benefit to which a judge is entitled pursuant to this Act and the commission regulations is subject to attachment pursuant to that Act.

- (4) Where an amount has been attached pursuant to subsection (3), the commuted value of the pension, annuity and retirement benefits to which the judge is entitled is reduced by:
- (a) the cost of complying with the attachment calculated in the manner prescribed in the regulations;
  - (b) the total amount of taxes, if any, that are required to be deducted or withheld as a result of the attachment; and
  - (c) the lesser of:
    - (i) the amount attached; and
    - (ii) the remainder of the commuted value of the judge's pension, annuity and retirement benefits.
- (5) Where an amount has been attached pursuant to subsection (3):
- (a) the judge has no further claim or entitlement to any pension, annuity or retirement benefit pursuant to this Act or the commission regulations respecting the amount attached;
  - (b) the judge's pension, annuity and retirement benefits are to be calculated on the basis of the commuted value of his or her pension, annuity and retirement benefits after the attachment; and
  - (c) neither the Minister of Finance nor the fund is liable to any person by reason of having made payment pursuant to an attachment mentioned in subsection (3).
- (6) **Repealed.** 2009, c.25, s.3.
- (7) **Repealed.** 2009, c.25, s.3.
- (8) **Repealed.** 2009, c.25, s.3.

1998, c.P-30.11, s.31; 2001, c.51, s.11; 2009, c.25, s.3.; 2012, c.14, s.7.

**Interpretation of sections 31.2 to 31.6**

**31.1** In this section and in sections 31.2 to 31.6:

- (a) **“judge”** includes a retired judge and a former judge;
- (b) **“retirement benefit entitlement”** means the total of a judge's entitlements:
  - (i) to a pension, supplementary allowance and additional retirement benefit pursuant to this Act; or
  - (ii) to an annuity pursuant to *The Magistrates' Court Act*, as that Act existed on September 30, 1978, and a supplementary allowance pursuant to this Act;
- (c) **“spouse”** includes a former spouse.

2009, c.25, s.4.



**Division on spousal breakdown**

**31.2(1)** Notwithstanding any other provision of this Act, on the breakdown of the spousal relationship of a judge, the Minister of Finance shall divide the judge's retirement benefit entitlement in accordance with this section.

(2) Subject to subsections (3) and (4), a judge's retirement benefit entitlement shall be divided in accordance with:

(a) an order for the division of family property made pursuant to *The Family Property Act* and filed with the Minister of Finance; or

(b) an interspousal contract that meets the requirements of section 38 of *The Family Property Act* and that is filed with the Minister of Finance.

(3) If a judge's retirement benefit entitlement is the total of the judge's entitlements to a pension, supplementary allowance and additional retirement benefit, a division of the judge's retirement benefit entitlement must not reduce the commuted value of the judge's retirement benefit entitlement to less than the lesser of:

(a) 50% of the commuted value of the total of the pension, supplementary allowance and additional retirement benefit before the division; and

(b) 100% of the commuted value of the pension before the division.

(4) If a judge's retirement benefit entitlement is the total of the judge's entitlements to an annuity and supplementary allowance, a division of the judge's retirement benefit entitlement must not reduce the amount of the annuity and supplementary allowance to less than 50% of the amount of the annuity and supplementary allowance before the division.

2009, c.25, s.4.

**Value of amounts to be divided**

**31.3(1)** The value of a judge's retirement benefit entitlement is to be determined by the Minister of Finance in accordance with this section.

(2) If a judge is not eligible to receive a pension without reduction, the value of the retirement benefit entitlement is the commuted value of the portion of the retirement benefit entitlement that accrued during the period commencing on the date of commencement of the spousal relationship and ending on the date mentioned in the order or interspousal contract, calculated as if the judge had ceased to be a judge on the date mentioned in the order or interspousal contract.

(3) If a judge is eligible to receive a pension without reduction, the value of the retirement benefit entitlement is either:

(a) the commuted value of the portion of the retirement benefit entitlement described in subsection (2); or

(b) a division, in accordance with the order or interspousal contract, of the retirement benefit entitlement when the pension becomes payable.

(4) If a judge is eligible to receive an annuity and supplementary allowance, the value of the retirement benefit entitlement is a division of the annuity and supplementary allowance, in accordance with the order or interspousal contract, when the annuity becomes payable.

(5) If a judge has commenced receiving a pension or an annuity, the value of the retirement benefit entitlement is:

- (a) in the case of a judge receiving a pension, a division, in accordance with the order or interspousal contract, of the amounts of the pension, supplementary allowance and additional retirement benefit being received by the judge; and
- (b) in the case of a judge receiving an annuity, a division, in accordance with the order or interspousal contract, of the amount of the annuity and supplementary allowance being received by the judge.

2009, c.25, s.4.

**Division of commuted value**

**31.4(1)** This section applies to the division of the commuted value of a judge's retirement benefit entitlement if the judge's retirement benefit entitlement is equal to the total of the judge's entitlements to a pension, supplementary allowance and additional retirement benefit.

(2) The portion of the commuted value to which the judge's spouse is entitled is a charge on, and payable out of, the fund.

(3) The Minister of Finance shall recalculate the amount of a judge's entitlement to a pension, supplementary allowance and additional retirement benefit so that the amount of the entitlement is reduced by the proportion that the commuted value was reduced as a result of the division.

2009, c.25, s.4.

**Spouse's portion of divided retirement benefit entitlement**

**31.5(1)** If a spouse is entitled to a division of the commuted value of a judge's retirement benefit entitlement, the portion of the commuted value to which the spouse is entitled must be transferred to a prescribed RRSP within the meaning of *The Pension Benefits Act, 1992*.

(2) When an amount has been transferred to a spouse's prescribed RRSP pursuant to subsection (1):

- (a) the spouse has no further claim or entitlement to any pension or benefit pursuant to this Act or the regulations; and
- (b) neither the Minister of Finance nor the fund is liable to any person by reason of having complied with an order or interspousal contract mentioned in subsection 31.2(2).

2009, c.25, s.4.

**Objection to division**

**31.6(1)** Except where an order or interspousal contract mentioned in subsection 31.2(2) has been filed with the Minister of Finance by the judge and the spouse jointly, the Minister of Finance shall give a notice in writing to the judge that an order or interspousal contract has been filed.

- (2) Unless the Minister of Finance receives a notice in writing within 30 days after providing the notice mentioned in subsection (1) that the judge objects to the division on one of the grounds set out in subsection (3), the Minister of Finance shall comply with the order or interspousal contract.
- (3) The grounds for an objection pursuant to subsection (2) are:
- (a) that the order or interspousal contract has been varied or is of no force or effect;
  - (b) that the terms of the order or interspousal contract have been or are being satisfied by other means;
  - (c) that proceedings have been commenced in a court of competent jurisdiction in Canada to appeal or review the order or to challenge the terms of the interspousal contract.
- (4) Within 30 days after submitting a notice of objection pursuant to subsection (2), a judge shall forward to the Minister of Finance documentary evidence to establish the grounds for objection.
- (5) Where a notice of objection pursuant to subsection (2) is received by the Minister of Finance, the Minister of Finance may apply to the Court of Queen's Bench for directions and, subject to subsection (6), the court may make any order that it considers appropriate in the circumstances.
- (6) No order as to costs shall be made against the Minister of Finance or the fund.

2009, c.25, s.4.

**Fund continued**

- 32(1)** The Judges of the Provincial Court Superannuation Fund is continued.
- (2) The Minister of Finance shall administer the fund.
- (3) The following amounts shall be credited to the fund:
- (a) any contributions or interest paid by judges; and
  - (b) any interest earned and any other revenue accruing from the investment of money in the fund.
- (4) Pensions, annuities, supplementary allowances, death benefits, refunds and interest shall be paid out of and be charged to the fund.
- (5) Any amount that is required to meet the obligations of the fund from time to time is a charge on and shall be paid out of the general revenue fund.
- (6) Sums required for the purposes of administering the fund, including costs incurred pursuant to section 33, are a charge on and shall be paid out of the fund.

1998, c.P-30.11, s.32.

**Investment of money in fund**

**33(1)** The Minister of Finance may invest all or any part of the money standing to the credit of the fund in any securities authorized for investment of money pursuant to *The Pension Benefits Act, 1992*.

(2) The Minister of Finance may dispose of any securities in which any part of the fund has been invested pursuant to subsection (1) in any manner and on any terms that the Minister of Finance considers expedient.

(3) For the purpose of managing, investing or disposing of all or any part of the assets of the fund, the Minister of Finance may do anything that the Minister of Finance considers necessary, including:

- (a) entering into agreements; or
- (b) engaging the services of or retaining technical, professional or other advisers, specialists or consultants.

1998, c.P-30.11, s.33.

**Fiscal year, audit, and annual report**

**34(1)** The fiscal year of the fund is the period commencing on April 1 in one year and ending on March 31 of the following year.

(2) The Provincial Auditor or any other auditor or firm of auditors that the Lieutenant Governor in Council may appoint shall audit the accounts and financial statements of the fund:

- (a) annually; and
- (b) at any other time that the Lieutenant Governor in Council may require.

(3) The Minister of Finance shall, in each fiscal year, in accordance with section 13 of *The Executive Government Administration Act*, submit to the Lieutenant Governor in Council:

- (a) a report on the business of the fund for the preceding fiscal year; and
- (b) a financial statement showing the business of the fund, in any form that may be required by Treasury Board.

(4) The Minister of Finance shall, in accordance with section 13 of *The Executive Government Administration Act*, lay before the Legislative Assembly each report and statement submitted by the minister to the Lieutenant Governor in Council.

1998, c.P-30.11, s.34; 2014, c.E-13.1, s.62.

PART IV  
Provincial Court Commissions

**Interpretation of Part**

**35** In this Part:

- (a) “**first commission**” means the commission established within 30 days after the coming into force of this Act;
- (b) “**national average**” means the average of the salaries paid to judges of the provincial courts or territorial courts of the other provinces and territories of Canada, calculated as of the most recent occurrence of the date January 1;
- (c) “**subsequent commission**” means a commission established pursuant to clause 36(1)(b) or (c).

1998, c.P-30.11, s.35.

**Establishment of commissions**

**36(1)** A Provincial Court Commission must be established:

- (a) within 30 days after the coming into force of this Act;
  - (b) on or before July 1, 2002; and
  - (c) on or before July 1 of every third year after 2002.
- (2) A commission is to be composed of the following members:
- (a) one member appointed by the minister;
  - (b) one member appointed by the association;
  - (c) one member appointed by the members appointed pursuant to clauses (a) and (b).
- (3) No judge or retired judge of the court or any other court and no person employed in the public service of the Government of Saskatchewan or by a Crown corporation shall be appointed as a member of a commission.
- (4) If the members appointed pursuant to clauses (2)(a) and (b) cannot agree on a member to be appointed pursuant to clause (2)(c), the Dean of the College of Law of the University of Saskatchewan, after consultation with the minister and the association, shall appoint the third member.
- (5) The member appointed pursuant to clause (2)(c) or subsection (4) is the chairperson of the commission.
- (6) Subject to subsections (7) and (9):
- (a) a member of the first commission holds office for a term that expires on June 30, 2002; and
  - (b) a member of a subsequent commission holds office for a term that expires on June 30 of the third year after the year of the member’s appointment.

- (7) Where there is a vacancy on the commission, the person or persons who appointed the member whose position is vacant may appoint a replacement member for the unexpired portion of the member's term.
- (8) A member of a commission appointed pursuant to clause (2)(a) or (b) shall not be reappointed pursuant to either of those clauses.
- (9) If the term of the members of a commission expires before the members have completed a report pursuant to section 51, the members may complete the report as though the term had not expired.
- (10) The minister shall:
- (a) determine the remuneration and rate of reimbursement for expenses to which members of commissions are entitled; and
  - (b) pay the amounts described in clause (a) and the expenses incurred in the proper conduct of the business of the commissions.

1998, c.P-30.11, s.36.

**Procedures of commissions**

**37** A commission may determine its procedures, the procedures to be followed by persons making submissions to the commission and the manner in which its hearings are to be conducted.

1998, c.P-30.11, s.37.

**Functions of commissions**

**38(1)** A commission shall inquire into and make recommendations with respect to the following:

- (a) the salaries to be paid to:
    - (i) the chief judge;
    - (ii) an associate chief judge;
    - (iii) judges other than the chief judge, associate chief judges and temporary judges; and
    - (iv) temporary judges;
  - (b) the remuneration to be paid to judges who perform administrative duties assigned to them pursuant to clause 8(f);
  - (c) the allowances to be paid to judges who reside in the Northern Saskatchewan Administration District;
  - (d) professional allowances;
  - (e) vacation leave;
  - (f) pension benefits and additional retirement benefits.
- (2) A commission may inquire into and make recommendations with respect to the following:
- (a) the support staff, facilities, equipment and security of the court;

- (b) the benefits to be provided to judges pursuant to regulations made pursuant to clause 65(d).
- (3) The salary recommended by a commission cannot be less than the salary being received by the judges on the day on which the report containing the recommendation is submitted to the minister.
- (4) No commission regulation respecting pension benefits or additional retirement benefits shall reduce a person's benefits that accrued before the coming into force of the regulation.

1998, c.P-30.11, s.38.

**Initial report of first commission**

**39(1)** Within six months after the day on which the first commission is established, the first commission shall prepare and submit a report to the minister and the association containing:

- (a) its recommendations with respect to the matters mentioned in subsection 38(1) for the period commencing on April 1, 1997 and ending on March 31, 2000; and
  - (b) proposed regulations to implement those recommendations.
- (2) The report mentioned in subsection (1) may be accompanied by a report containing any recommendations of the first commission with respect to the matters mentioned in subsection 38(2).

1998, c.P-30.11, s.39.

**Second report of first commission**

**40(1)** The first commission shall reconvene on July 1, 1999 and, on or before December 31, 1999, shall prepare and submit a report to the minister and the association containing:

- (a) its recommendations with respect to the matters mentioned in subsection 38(1) for the period commencing on April 1, 2000 and ending on March 31, 2003; and
  - (b) proposed regulations to implement those recommendations.
- (2) The report mentioned in subsection (1) may be accompanied by a report containing any recommendations of the first commission with respect to the matters mentioned in subsection 38(2).

1998, c.P-30.11, s.40.

**Reports of subsequent commissions**

**41(1)** On or before December 31 of the year in which a subsequent commission is established, the commission shall prepare and submit a report to the minister and the association containing:

- (a) its recommendations with respect to the matters mentioned in subsection 38(1) for the three-year period commencing on April 1 of the year following the year in which the commission is established; and
- (b) proposed regulations to implement those recommendations.

(2) The report mentioned in subsection (1) may be accompanied by a report containing any recommendations of the commission with respect to the matters mentioned in subsection 38(2).

1998, c.P-30.11, s.41.

**Review of proposed regulations**

**42** Where a report of a commission will include proposed regulations to implement recommendations with respect to the matters mentioned in subsection 38(1), the commission shall provide copies to the minister and the association in sufficient time before submitting the report to allow the minister and the association an opportunity to comment on technical and drafting issues with respect to the proposed regulations.

1998, c.P-30.11, s.42.

**Minister's response to report**

**43** Within 30 days after the minister receives a report pursuant to subsection 39(1), 40(1) or 41(1), the minister shall consider the recommendations of the commission and give notice to the association and the commission that the minister:

- (a) accepts all of the recommendations of the commission; or
- (b) does not accept all of the recommendations of the commission and will move a resolution pursuant to section 45 that will make recommendations in substitution for the recommendations of the commission that the minister does not accept.

1998, c.P-30.11, s.43.

**Commission regulations – recommendations accepted**

**44(1)** Where the minister accepts all of the recommendations of a commission, the proposed regulations set out in the report:

- (a) are regulations made by the commission; and
- (b) subject to section 48, come into force on the day on which the minister gives notice to the association pursuant to clause 43(a).

(2) Where the minister accepts some but not all of the recommendations of a commission:

- (a) the commission shall revise its proposed regulations to incorporate only the recommendations that will not be referred to the Legislative Assembly by a resolution pursuant to section 45; and
- (b) subject to section 48, the proposed regulations as revised pursuant to clause (a):
  - (i) are regulations made by the commission; and
  - (ii) are deemed to have come into force on the day on which the minister gave notice to the association pursuant to clause 43(b).

1998, c.P-30.11, s.44.



**Procedure where minister refers report to Assembly**

**45(1)** After giving notice to the association and the commission pursuant to clause 43(b), the minister shall:

- (a) lay before the Legislative Assembly the report of the commission; and
  - (b) move a resolution that the Legislative Assembly:
    - (i) reject one or more of the recommendations in the report;
    - (ii) where the report recommends a salary that is higher than the national average, fix a salary, in a manner that meets constitutional tests of judicial independence and in an amount that is not less than the national average, that is to be substituted for the salary recommended in the report; and
    - (iii) determine any benefit mentioned in clauses 38(1)(b) to (f), in a manner that meets constitutional tests of judicial independence, that is to be substituted for a benefit of the same type as proposed by a rejected recommendation.
- (2) The minister shall move a resolution pursuant to clause (1)(b):
- (a) within five sitting days after the day on which the minister gives notice to the association pursuant to clause 43(b) if the Legislative Assembly is sitting on that day; or
  - (b) within five sitting days after the commencement of the next sitting if the Legislative Assembly is not sitting on the day on which the minister gives notice to the association pursuant to clause 43(b) or ceases to sit within five sitting days after that day.

1998, c.P-30.11, s.45.

**Commission regulations – resolution passed**

**46** Where the Legislative Assembly passes a resolution pursuant to clause 45(1)(b):

- (a) the commission shall revise its proposed regulations in accordance with the resolution; and
- (b) subject to section 48, the proposed regulations as revised pursuant to clause (a):
  - (i) are regulations made by the commission; and
  - (ii) are deemed to have come into force on the day on which the resolution is passed.

1998, c.P-30.11, s.46.

**Commission regulations – no response or resolution**

**47(1)** Where the minister does not give notice to the association within the period specified in section 43, the proposed regulations:

- (a) are regulations made by the commission; and
- (b) subject to section 48, come into force on the day following the last day of the period specified in section 43.

(2) Where the minister does not move a resolution within the period specified in subsection 45(2), the proposed regulations:

- (a) are regulations made by the commission; and
- (b) subject to section 48, come into force on the day following the last day of the period specified in subsection 45(2).

(3) Where the Legislative Assembly does not pass a resolution within 30 sitting days after the day on which the resolution is moved, the proposed regulations:

- (a) are regulations made by the commission; and
- (b) subject to section 48, come into force on the day following the last day of that period.

1998, c.P-30.11, s.47.

**Commission regulations retroactive**

48(1) In this section, “**benefit period**” means:

- (a) the period commencing on April 1, 1997 and ending on March 31, 2000;
- (b) the period commencing on April 1, 2000 and ending on March 31, 2003; and
- (c) any three-year period commencing on April 1 of the year following the year in which a subsequent commission is established.

(2) Subject to subsection (3), where commission regulations for a benefit period come into force on a day that is later than the first day of the benefit period, the commission regulations are retroactive and are deemed to have been in force on and from the first day of the benefit period.

(3) Commission regulations respecting pension benefits or additional retirement benefits may be made retroactive to January 1, 1991 for the purpose of ensuring compliance with the *Income Tax Act* (Canada).

1998, c.P-30.11, s.48.

**Amendment of commission regulations**

49(1) At any time during the term of the members of a commission:

- (a) the minister and the association may make a joint request to the commission to amend a commission regulation; and
- (b) the commission may amend the commission regulation in accordance with that joint request or in any other manner that it considers appropriate.

(2) An amending regulation made pursuant to subsection (1) may be made retroactive to a day not earlier than the day on which the regulation being amended came into force or was deemed to have come into force.

1998, c.P-30.11, s.49.

**Application of *The Regulations Act, 1995***

50(1) Subject to this section, *The Regulations Act, 1995* applies to commission regulations.

(2) Subsection 4(1) of *The Regulations Act, 1995* does not apply to commission regulations but, as soon as possible after commission regulations come into force, the chairperson of the commission shall file the regulations with the Registrar of Regulations.

(3) Section 17 of *The Regulations Act, 1995* does not apply to commission regulations.

1998, c.P-30.11, s.50.

#### Other issues

**51(1)** At the request of the minister or the association made at any time during the term of the members of a commission, the commission may inquire into and make recommendations with respect to any matter of significance to the court.

(2) Within six months after the day on which a matter is referred to a commission pursuant to subsection (1), the commission shall submit a report to the minister and the association containing any recommendations of the commission with respect to the matter.

1998, c.P-30.11, s.51.

## PART V

### Judicial Council and Complaints against Judges

#### Interpretation of Part

**52** In this Part, other than in clause 53(2)(f) or where otherwise provided, “**judge**” includes a person whose name is on the list mentioned in section 18.

1998, c.P-30.11, s.52.

#### Proceedings against former judges

**52.1(1)** Proceedings may be commenced pursuant to this Part against a former judge not later than two years after the day on which he or she became a former judge where the Judicial Council:

- (a) receives a complaint respecting the former judge alleging misconduct; or
- (b) otherwise becomes aware of possible misconduct by the former judge.

(2) In applying any provision of this Part to a former judge, the provision is to be read without reference to any portion that refers or relates to incapacity.

2009, c.25, s.5.

#### Judicial Council continued

**53(1)** The Judicial Council is continued.

(2) The council is composed of the following members:

- (a) the Chief Justice of Saskatchewan, or a judge of the Court of Appeal designated by the Chief Justice of Saskatchewan, who shall be chairperson;

- (b) the Chief Justice of the Queen's Bench, or a judge of the Court of Queen's Bench designated by the Chief Justice of the Queen's Bench;
  - (c) the chief judge, or a judge designated by the chief judge;
  - (d) the president of the Law Society of Saskatchewan or a bencher or former bencher of the Law Society appointed by a resolution of the benchers;
  - (e) not more than two other persons appointed by the Lieutenant Governor in Council after consultation by the minister with the chairperson of the council and the chief judge;
  - (f) two judges elected by the judges at a meeting of the court *en banc*.
- (3) A member of the council appointed pursuant to clause (2)(e) or elected pursuant to clause (2)(f):
- (a) holds office for a term not exceeding three years; and
  - (b) is eligible for reappointment or re-election, but is not eligible to hold office for more than two consecutive terms.
- (4) A majority of the members of the council constitutes a quorum.
- (5) All members of the council are entitled to vote, and, in the case of an equality of votes, the chairperson has the casting vote.
- (6) The proceedings of the council shall not be public unless the council directs otherwise.
- (7) The council may make bylaws respecting its procedure and the procedure of hearing committees.
- (8) The Lieutenant Governor in Council shall determine the remuneration payable to members of the council and members of any committee of the council, other than members who are employees of the Government of Saskatchewan or who are judges of any court, and the rate of reimbursement of expenses payable to any members of the council and of any committee of the council.
- (9) The council may engage the services of legal counsel to assist the council in the conduct of any investigation or hearing pursuant to this Part.

1998, c.P-30.11, s.53; 2011, c.13, s.8.

#### **Responsibilities of council**

**54** The council shall:

- (a) consider and make recommendations to the minister regarding the proposed appointment of a judge;
- (b) consider the criteria developed by the chief judge for the purposes of subsection 13(5), and:
  - (i) approve the criteria; or
  - (ii) make recommendations to the chief judge for changes in the criteria;
- (c) receive and, where necessary, investigate complaints against a judge alleging misconduct or incapacity;

- (d) review and report on any matter referred to it by the minister, the chief judge or, with leave of the council, the association; and
- (e) consider and make recommendations with respect to any other matter that the council considers appropriate.

1998, c.P-30.11, s.54.

**Review and investigation of complaint**

**55(1)** The council shall review and, where necessary, investigate the conduct of a judge where the council:

- (a) receives a complaint respecting the judge alleging misconduct or incapacity; or
- (b) otherwise becomes aware of possible misconduct by the judge or possible incapacity of the judge.

(1.1) For the purposes of conducting a review and any necessary investigation of a matter mentioned in subsection (1), the council may ask the chairperson, or another member of the council designated by the chairperson, to conduct a review and investigation.

(1.2) The chairperson or member of the council designated by the chairperson pursuant to subsection (1.1) may:

- (a) dismiss the complaint without further consideration by the council if the complaint is found to be frivolous, vexatious or wholly without merit; or
- (b) refer the matter to the council for further review and investigation.

(1.3) Subject to any restrictions set out by the council, the decision of the chairperson or member of the council pursuant to subsection (1.2) is deemed to be the decision of the council.

(2) On completion of a review and any investigation, the council may:

- (a) take no further action if the council is of the opinion that the matter does not constitute misconduct by the judge or establish incapacity of the judge;
- (b) if it is of the opinion that the matter may be appropriately resolved without the appointment of a hearing committee and the judge consents, make a finding of misconduct or incapacity and:
  - (i) make an order pursuant to clause 62(2)(b), (c), (d), (e) or (f) or clause 62(3)(a), (b), (c) or (d); or
  - (ii) make any other remedial order that the council considers appropriate; or
- (c) appoint a hearing committee pursuant to section 57 to hear the matter or any aspect of the matter.

(3) The chairperson of the council shall notify the minister, the complainant, if any, and the judge whose conduct is the subject of the review of the council's decision on the review and any investigation.

1998, c.P-30.11, s.55; 2016, c24, s.4.

#### **Interim suspension**

**56(1)** Where the council receives a complaint respecting a judge alleging misconduct or incapacity or otherwise becomes aware of possible misconduct by a judge or possible incapacity of a judge, the council may suspend the judge from the performance of his or her duties.

(2) A suspension pursuant to subsection (1) terminates:

(a) on a determination by the council after completing its review and investigation that no further action will be taken;

(b) on a determination by the council that the conduct of the judge does not constitute misconduct or establish incapacity;

(c) on the removal or retirement of the judge from office, or the removal of the person from the list mentioned in section 18, by an order of the Lieutenant Governor in Council pursuant to subsection 62(7);

(d) on the making of an order pursuant to clause 62(2)(b), (c), (d), (e) or (f) or 62(3)(a), (b), (c) or (d); or

(e) on a direction by the council that the suspension be terminated.

(3) A judge, other than a person whose name is on the list mentioned in section 18, who is suspended pursuant to subsection (1) is entitled to receive his or her salary, subject to any conditions that the council may impose.

1998, c.P-30.11, s.56.

#### **Hearing committee**

**57(1)** The council may:

(a) appoint a hearing committee composed of the following members:

(i) a judge of the Court of Queen's Bench;

(ii) a judge; and

(iii) a lawyer who is a member in good standing of the Law Society of Saskatchewan and has been a member in good standing for at least 10 years; and

(b) designate one of the members of the hearing committee to be the chairperson.

(2) A hearing committee may engage the services of legal counsel to assist the committee in performing its duties pursuant to this Part.

1998, c.P-30.11, s.57.

**Hearing**

- 58(1)** In this section and in sections 59 to 62, “**judge**” means the judge, as defined in section 52, whose conduct is the subject of a hearing.
- (2) A hearing committee appointed pursuant to section 57 shall conduct a hearing and consider whether or not the conduct of the judge constitutes misconduct or establishes incapacity.
- (3) At least 14 days before the date of a hearing, the hearing committee shall cause a notice of the date, time and place of the hearing to be served on the judge and shall provide the judge with full particulars of the complaint, if any, or of the conduct that is the subject of the hearing.
- (4) The hearing committee shall cause the complainant, if any, to be advised orally or in writing of the date, time and place of the hearing.
- (5) Subject to subsection (9), the complainant is entitled to attend the hearing.
- (6) At a hearing pursuant to this section, the judge is entitled, by himself or herself or by his or her counsel:
- (a) to examine, cross-examine and re-examine all witnesses called; and
  - (b) to present evidence in defence and reply.
- (7) For the purposes of a hearing pursuant to this section, the hearing committee has all the powers conferred on a commission by sections 11, 15 and 25 of *The Public Inquiries Act, 2013*.
- (8) On application to the hearing committee by the judge, any member of the hearing committee may issue a writ of *subpoena ad testificandum* or *subpoena duces tecum*.
- (9) A hearing pursuant to this section is to be held in public unless the hearing committee orders that all or part of the hearing be held in private.

1998, c.P-30.11, s.58; 2013, c.27, s.30.

**Procedure generally**

- 59(1)** The council shall direct the prosecution of a complaint before the hearing committee.
- (2) In any proceeding before the hearing committee, the testimony of witnesses is to be under oath or affirmation.
- (3) Where a judge fails to attend a hearing, the hearing committee may proceed with the hearing in the absence of the judge on proof that the judge was served with notice of the hearing.
- (4) A judge who appears in person or by counsel before the hearing committee is deemed to have received proper notice of the hearing unless the appearance is for the purpose of challenging the notice.

1998, c.P-30.11, s.59.

**Report of hearing committee**

**60(1)** After conducting a hearing pursuant to section 58, a hearing committee shall provide a report to the council, the minister and the judge setting out:

- (a) the committee's findings of fact and credibility;
- (b) the opinion of the committee with respect to whether the conduct of the judge constitutes misconduct or establishes incapacity; and
- (c) the recommendation of the committee with respect to an appropriate order pursuant to subsection 62(2) or (3) if the committee is of the opinion that misconduct or incapacity has been established.

(2) A report mentioned in subsection (1) shall not be made public except in accordance with section 62.

1998, c.P-30.11, s.60.

**Review of report**

**61(1)** On receipt of a report from a hearing committee, the chairperson of the council shall:

- (a) set a day for a meeting of the council to review the report; and
- (b) cause a notice of the date, time and place of the meeting to be served on the judge.

(2) The chairperson of the council shall cause the complainant, if any, to be advised orally or in writing of the date, time and place of the meeting.

(3) The council shall review the report and, after giving the judge an opportunity to be heard, shall determine whether the conduct of the judge constitutes misconduct or establishes incapacity.

1998, c.P-30.11, s.61.

**Order**

**62(1)** Where the council determines that the conduct of a judge does not constitute misconduct or establish incapacity, the council may make an order dismissing the complaint.

(2) Where the council determines that the conduct of a judge constitutes misconduct, the council may make any order that it considers appropriate, including an order:

- (a) recommending to the Lieutenant Governor in Council that the judge be removed from office or removed from the list mentioned in section 18;
- (b) suspending the judge with or without salary for a specified period or until specified requirements are met, including a requirement that the judge obtain medical treatment or counselling;
- (c) specifying conditions under which the judge may continue in office or remain on the list mentioned in section 18, including conditions that the judge:
  - (i) obtain medical treatment or counselling; or
  - (ii) apologize to the complainant or any other person;



- (d) reinstating the judge following a suspension pursuant to section 56;
  - (e) reprimanding the judge; or
  - (f) warning the judge.
- (3) Where the council determines that a judge is incapacitated, the council may make any order that it considers appropriate, including an order:
- (a) suspending the judge with or without salary for a specified period or until specified requirements are met, including a requirement that the judge obtain medical treatment or counselling;
  - (b) specifying conditions under which the judge may continue in office or remain on the list mentioned in section 18, including conditions that the judge obtain medical treatment or counselling;
  - (c) reinstating the judge following a suspension pursuant to section 56;
  - (d) determining that the judge, other than a person whose name is on the list mentioned in section 18, qualifies for a disability allowance pursuant to section 20;
  - (e) recommending to the Lieutenant Governor in Council that the judge, other than a person whose name is on the list mentioned in section 18, be retired from office; or
  - (f) recommending to the Lieutenant Governor in Council that the judge be removed from the list mentioned in section 18.
- (4) An order pursuant to clause (2)(a), (3)(e) or (3)(f) must set out the reasons for the council's recommendation.
- (5) After the council makes an order pursuant to subsection (1), (2) or (3), the chairperson of the council:
- (a) shall send a copy of the report received pursuant to section 60 and the order to the complainant, if any;
  - (b) shall send a copy of the order to the minister and the judge;
  - (c) may send a copy of the report received pursuant to section 60 and the order to any other person that the chairperson considers advisable; and
  - (d) shall make the order and any reasons public, except if:
    - (i) making the order and any reasons public would reveal:
      - (A) personal health information of the judge or the complainant; or
      - (B) the identity of the complainant, if the complaint was of the nature of sexual harassment or assault; or
    - (ii) in the opinion of the chairperson, there are other circumstances that render making the order and any reasons public contrary to the public interest.
- (6) Where the council makes an order recommending that a judge be removed or retired from office or removed from the list mentioned in section 18, the chairperson of the council shall forward a copy of the order to the Lieutenant Governor in Council.

(7) On the recommendation of the council, the Lieutenant Governor in Council may, by order, remove or retire the judge from office or remove the judge from the list mentioned in section 18.

(8) Where the Lieutenant Governor in Council makes an order pursuant to subsection (7), the judge who is removed or retired from office or removed from the list mentioned in section 18 shall cease to be paid or entitled to receive any salary on and after the day specified in the order.

(9) A judge who is retired from office pursuant to subsection (7) is entitled to receive a pension, annuity or retirement benefits in accordance with Part III and the commission regulations.

(10) Where the council recommends the removal or retirement of a judge, the minister shall, in accordance with section 13 of *The Executive Government Administration Act*, lay a copy of the council's order and the hearing committee's report before the Legislative Assembly.

1998, c.P-30.11, s.62; 2011, c.13, s.9; 2014,  
c.E-13.1, s.62.

## PART VI General

### **Immunity from liability**

**63(1)** No action lies or shall be commenced against a judge or a justice of the peace with respect to anything done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by the judge or the justice of the peace in the execution of his or her duties or with respect to any matter in which he or she lacked or exceeded jurisdiction, unless it is proved that the act or omission was done maliciously and without reasonable cause.

(2) No action lies or shall be commenced against the council, a hearing committee or any member or officer of the council or a hearing committee for any loss or damage suffered by any person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done, by any of them, pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the performance of any duty imposed by this Act or the regulations or with respect to any matter in which he, she or it lacked or exceeded jurisdiction, unless it is proved that the act or omission was done maliciously and without reasonable cause.

1998, c.P-30.11, s.63.

### **Application of Summary Offences Procedure Act**

**64(1)** *The Summary Offences Procedure Act, 1990* applies to:

- (a) summary conviction proceedings before a judge pursuant to any law in force in Saskatchewan or any municipal bylaw; and
- (b) appeals from convictions or orders made pursuant to any law in force in Saskatchewan or any municipal bylaw.

(2) An appeal lies to the Court of Appeal from a conviction for contempt and against the punishment imposed.

1998, c.P-30.11, s.64.

**Appointment of lawyer in protection hearing**

**64.1(1)** In this section, “**child**” and “**protection hearing**” have the same meaning as in section 2 of *The Child and Family Services Act*.

(2) If an application for a protection hearing is made, the court may direct that the child be represented by a lawyer if the court is satisfied that the interests or views of the child would not otherwise be adequately represented.

(3) If the court directs that a child be represented by a lawyer pursuant to subsection (2), the court shall refer the child to the public guardian and trustee in accordance with section 6.3 of *The Public Guardian and Trustee Act*, and the public guardian and trustee shall appoint a lawyer to represent the child.

(4) In making a direction pursuant to subsection (2), the court shall consider all relevant factors, including:

- (a) any difference between the interests or views of the child and the interests or views of the parties to the protection hearing;
- (b) the nature of the protection hearing, including the seriousness and complexity of the issues;
- (c) the ability of the child to express his or her interests or views; and
- (d) the views of the child regarding representation.

(5) Notwithstanding that a child is represented by a lawyer, the child is not a party to the protection hearing.

2014, c.25, s.5.

**Court-appointed counsel – application required**

**64.2** Subject to section 64.1, the court shall not appoint a lawyer to represent a person in any legal matter unless the court is satisfied that the application and notice requirements of Part III.1 of *The Constitutional Questions Act, 2012* have been met.

2016, c24, s.5.

**Regulations**

**65** The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing the seal of the court and governing its use;
- (c) governing the remittance and disposition of fines, penalties, forfeitures, unclaimed money and other sums of money;
- (d) providing for the benefits to which judges are entitled, including:
  - (i) leave of absence;
  - (ii) sick leave;
  - (ii.1) deferred salary leave;
  - (ii.2) leave for reasons of pressing necessity;

- (ii.3) special leave;
- (iii) travelling, sustenance and moving expenses;
- (iv) life insurance; and
- (v) disability, dental and health benefits;
- (e) governing disability allowances provided for in section 20, prescribing the manner of calculating disability allowances and prescribing terms and conditions applicable to disability allowances;
- (f) for the purposes of clause 31(4)(a), governing the manner of calculating the cost of complying with an attachment;
- (g) prescribing a rate or rates of interest for the purposes of this Act;
- (h) prescribing the duties of the officers and employees of the court or of any category of officers or employees;
- (i) prescribing the payment of any fees and charges connected with any action that is required or authorized to be taken pursuant to this Act or the regulations or any service provided pursuant to this Act or the regulations;
- (j) providing that regulations made pursuant to this section shall apply to the whole or any designated portion of Saskatchewan;
- (k) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (l) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

1998, c.P-30.11, s.65; 2004, c.22, s.5; 2016, c24, s.6.

**66 to 67 Dispensed.** These sections make consequential amendments to other Acts. The amendments have been incorporated into the corresponding Acts.

**Transitional**

**68(1)** The term of the person who holds office as chief judge of the court on the day on which subsection 66(2) comes into force is deemed to be seven years from the day on which the person was appointed as chief judge pursuant to *The Provincial Court Act*.

(2) A member of the council who was appointed pursuant to clause 15(1)(e) of *The Provincial Court Act*, as that clause existed on the day before the coming into force of this Act, holds office as a member of the council for a term of three years from the day on which this Act comes into force.

1998, c.P-30.11, s.68.

**69 Dispensed.** This section makes consequential amendments to another Act. The amendments have been incorporated into the corresponding Act.