

## IMPORTANT CONSIDERATIONS FOR THOSE CONSIDERING JUDICIAL APPOINTMENT

Those seeking appointment as a Judge of the Provincial Court of Newfoundland and Labrador should be aware of a number of considerations.

In carrying out judicial duties those charged with these most important responsibilities have a profound effect on the lives of citizens and the administration of justice. For constitutional reasons judges are not subject to the same supervision, sanctions and termination standards as other employees. This security of tenure means that misconduct sufficient to warrant removal is rare. The highest level of professional competence and dedication is necessary to achieve just results for all litigants and to avoid costly mistakes which could bring the administration of justice into disrepute. By virtue of the unique office and challenges particular to the role, a judge must have professional pride in carrying a fair share of the judicial work load and placing the administration of justice above personal convenience. All witnesses, litigants, lawyers, journalists and court personnel must be treated with courtesy, dignity and respect, often in extremely stressful situations.

It is important to bear in mind that anyone who accepts judicial appointment should have as much information as possible on what becoming a judge entails and should enter upon the responsibilities of judicial office only if he or she is fully prepared to accept the substantial changes which it will bring, not just to the judge's own life, but to the lives of the members of his or her family. These factors which must be considered include moving from one city or town to another, buying and selling a house, career disruption of a spouse, children changing schools, and other inconveniences. The decision to accept a judicial appointment should be taken only after full consideration and consultation with all those who will be immediately affected by the changes it will bring. Judges must make decisions on a daily basis in many complex areas of the law. Developing and maintaining a good knowledge of the law is critical to the judicial function.

A reasonably long term commitment is also required from each judge; generally, judges cannot retire with a full pension until they have served twenty years in office. Judges must remain on the Bench until the requirements for retirement are met or leave earlier only with a reduced pension based on certain penalties.

In addition to the above considerations there are others.

The independence of the judiciary both isolates the individual judge from former associations to avoid the possibilities of conflicts of interest and imposes upon a judge the highest standards in performing the duties and responsibilities of judicial office. It requires that each judge devote himself or herself exclusively to the duties of the judicial office and not engage in any outside business. The range of activities that are available to a practicing lawyer is therefore severely curtailed upon appointment to the Bench.

Once appointed, judges are expected to conduct themselves in a manner that attracts no criticism to their office. A judge is not permitted to engage in public debate on any of his or her decisions, and should avoid expressing personal opinions on major social issues which might lead to an apprehension of bias when such issues come to be adjudicated by the courts. When a judge performs his or her duties in a way that falls short of the standards expected of the Bench, or where the personal life of the judge intrudes upon his or her judicial duties, a complaint may be made to the Complaints Review Committee under the provisions of the *Provincial Court Act*. The review, investigation and adjudication process regarding complaints and allegations of misconduct on the part of judges of the Provincial Court of Newfoundland and Labrador may result in disciplinary measures which include removing the judge from the Court. All who accept appointment to judicial office should be aware that their responsibilities will include not only the fair and just application of the law but the maintenance of the high reputation of the judiciary itself. Candidates for appointment are required to make full disclosure of any matter that would reflect upon their ability to perform the functions of a judicial office or upon the credibility and repute of the judiciary as a whole.

The Judicial Council of the Provincial Court of Newfoundland and Labrador has approved a [Code of Ethics](#) for judges. It is publicly available on the court's website. The Canadian Judicial Council has also published guidelines called [Ethical Principles for Judges](#).

Notwithstanding the independence of the judiciary, many of the guidelines as regards financial accountability for certain expenses in the operation of the Court are established by Treasury Board and apply to judges of the Court as they do to regular employees of the provincial government. These guidelines apply when making claims for meals, accommodations, travel and other purposes requiring the expenditure of public funds.

#### DUTIES AND RESPONSIBILITIES

Puisne judges of the Court are required to sit and hear cases within the Court's jurisdiction. They are also required, in accordance with the Code of Ethics, to take direction from the Chief Judge either directly or through the administrative judges as regards administrative matters. Also available on this site is a description of the roles and responsibilities of administrative judges of the Court.

Judges are also expected to travel on circuit and where otherwise directed by the Chief Judge. At regular intervals a schedule is also prepared and circulated from the Chief Judge's Office establishing a schedule for judges to perform on-call or duty work for a twenty-four period and to sit on weekend and statutory holidays.

Candidates considering a judicial appointment may find relevant the following remarks of the Right Honourable Beverley McLachlin, PC, Chief Justice of Canada which were

delivered on the occasion of the 2<sup>nd</sup> International Conference on the Training of the Judiciary in Ottawa, Ontario on November 2, 2004 when she said as follows:

*Today, somewhere in Canada, a new judge is putting on the judicial robe for the first time. Soon she will step up to the Bench to hear a case for the first time. This is a moment of great pride for her. A few weeks ago, when her appointment was announced, she received letters and telephone calls from friends, family and colleagues. Everyone wanted to congratulate her, and to wish her well in this new phase of her life. But today, as she climbs the steps leading up to the Bench, she may feel a little overwhelmed. Suddenly, her many years as a lawyer, her expertise, all her legal skills may not seem sufficient to carry her through, for she is now called to be a judge, to pass judgment on others, and that, simply put, is the hardest thing to do.*

*To be sure, deciding the fate of others is not inherently difficult. Thousands live quite happily with decisions based on prejudice and untested beliefs, and decisions of whim and arbitrary will are quickly made. Decisions that take no account of rules, or principles, or the true condition of those whose fate is decided, can be made by any fool. But such decisions have nothing to do with judging. They are not judgments, as judges use the word. Judging, passing judgment on others, carries a special significance for us. It is not as easy as making a decision. Judging is a significant act that requires careful attention, and respect for legal rules and principles. It is an act that requires qualities of humanity and compassion. Judging requires an effort to shed prejudice and untested beliefs. Aware as she is of this awesome responsibility, the new judge cannot help but pause and wonder whether she can meet the expectations of others in this respect.*

There can be no question that the nature and importance of the work performed by Provincial Court Judges is unique and their responsibility is great in our society. In the Steele Tribunal on salary and benefits it was written that “the Tribunal recognizes therefore that remuneration of judges does reflect that they play a very special role in our society within this province”. With respect to this factor the Hoegg Tribunal concluded:

*The Tribunal accepts that the Provincial Court is an institution of fundamental and serious importance in our society. The majority of its work impacts on the liberty of citizens, and for many people, it is the only part of our justice system with which they have direct contact. The gravity and impact of the Provincial Court’s decisions is huge. It has the broadest criminal jurisdiction and adjudicates the vast majority of criminal trials in the province (it has jurisdiction over approximately 99% of all Criminal Code offences, having concurrent jurisdiction over many serious criminal offences*

with the Supreme Court). *This Court's role in the administration of justice in our province cannot be underestimated.*

The majority of the cases presided over by Provincial Court Judges involve criminal matters where the stakes are high for both accused persons and complainants. As a result, judges are often exposed to very tense and emotional circumstances. In some areas of the province, the Court exercises jurisdiction in the area of family law. The subject matter of some cases can often be quite disturbing and traumatic not only to the parties but also to the judge.

Judges of the Provincial Court are also subject to considerable scrutiny from the public and the media because of the types of criminal cases upon which they adjudicate. The outcomes of judicial interim release applications and sentencing of those convicted of crimes are often reported on by the media, and not all of this coverage is favourable. This is not to suggest that the courts, and by extension the judges of the Provincial Court, should not be subject to both public scrutiny and criticism. Rather, it is to note that the fact of this scrutiny can have a significant impact on judges both professionally and personally. Moreover, judges are not in a position to respond publicly to the media scrutiny.

Counsel who have appeared in Provincial Court understand the high stakes and stressful work that Provincial Court Judges handle. Provincial Courts deal with some of the most controversial types of hearings and come in contact with members of the public who are often at their most fragile and vulnerable. Cases are often complex, sometimes intractable, and always of profound importance to the litigants involved. Often, Provincial Court Judges deal directly with litigants attending without legal counsel. With the advent of the *Canadian Charter of Rights and Freedoms*, Provincial Court Judges are on the front lines dealing with complex Charter and disclosure issues; youth criminal matters; complex voir dices; criminal hearings which are often lengthy, complex and involve novel and evolving legal principles

In addition, Provincial Court Judges handle matters which require careful research, study, decision writing, and continuing professional development. As the Provincial Courts are the first level of court in criminal matters, judges are under tremendous pressure from the public and the Bar as they are requested to take the law in new directions, either because of evolving societal trends, or changing legislation. Often, Provincial Court Judges are called upon to make decisions without any guidance from previously decided cases in superior courts.

To comply with these challenges and the public expectations that drive them, Provincial Court Judges need to give extra time, energy and sensitivity to their duties before the public.

The public interest is best served by the appointment of judges of the highest caliber. Competent judges working fairly and efficiently enable lawyers to work more

effectively. Lawyers gain in being able to provide that service, clients gain in receiving it, and the administration of justice gains in terms of its credibility. Lawyers also appreciate the professional leadership that comes from the Provincial Court Bench.

Appointments to the Bench from among the most capable, conscientious and energetic members of the legal profession create the strongest possible Provincial Court. Lawyers expect judges of the Provincial Court to provide guidance and wise encouragement to help them do their best in providing access to justice for the public.

### SALARY AND BENEFITS

Since the judicial branch is constitutionally independent of the executive and legislative branches of government, a mechanism for determining the salary and benefits of judges has been established which respects these principles. The current salary for a Provincial Court Judge is \$247,545.88. Pension benefits are accrued at the rate of 3 1/3% per annum for a maximum of twenty years with mandatory retirement at age seventy. There is an annual judicial allowance of \$4000 which may be used for certain purposes associated with the judicial office and related functions set out in guidelines established by the Chief Judge's Office. Vacation leave is provided at the rate of thirty days per year and may be carried over from year to year to a maximum of sixty days.

### NLAPCJ and CAPCJ

As a Provincial Court Judge those appointed are entitled to become a member of the Newfoundland and Labrador Association of Provincial Court Judges. The Association, *inter alia*, carries out the functions assigned it under Section 28 of the *Provincial Court Act*.

By virtue of membership in the Newfoundland and Labrador Association of Provincial Court Judges you may also become a member of the Canadian Association of Provincial Court Judges (CAPCJ). The CAPCJ is committed to the achievement of several primary objectives which address the role of the provincial courts as integral players in the delivery of justice to the citizens of Canada. These include: monitoring the status of provincially-appointed judges; acting as an advisory and consultative body to governments and other agencies involved in reforming the system of justice; and being an educator and disseminator of information to judges across the country. CAPCJ supports and advocates for judicial independence, bilingualism, and respect for equality and diversity, concepts necessary to the proper administration of justice in Canada.

### JUDICIAL EDUCATION

Newly appointed judges of the Provincial Court are required to attend the New Judges Substantive Law Course as well as the week long seminar offered by the National Judicial Institute titled "Newly Appointed Provincial and Territorial Judges Skills Seminar". In addition to this, the National Judicial Institute (NJI) offers to both federal

and provincial judges an excellent program of judicial education on varying topics. The NJI also enables judges to enjoy the benefit of access to Judicom which is a national website linking all provincial, federal and territorial judges and offers a variety of communication, research and online resources. The importance of continuing judicial education cannot be over-emphasized.

#### MENTORING PROGRAM

New judges are assigned to a senior judge who will act as a mentor to assist the judge in getting oriented to the work environment and the many new duties and responsibilities. The mentoring program is a benefit to the new judges and also serves to promote collegiality among members of the bench. Relationships formed in this program are enjoyed by the participants for many years to come.