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C.C.S.M. c. C275

The Provincial Court Act

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Regulations

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1 In this Act

"**Chief Judge**" means the judge appointed under this Act as the Chief Judge of the Provincial Court of Manitoba; (« juge en chef »)

"**court**" means the Provincial Court of Manitoba. (« tribunal »)

"**judge**" means a judge of the Provincial Court of Manitoba; (« juge »)

"**minister**" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"**Provincial Court**" means the Provincial Court of Manitoba continued under this Act; "**Provincial Court (Criminal Division)**" means the Provincial Court of Manitoba (Criminal Division) and "**Provincial Court (Family Division)**" means the Provincial Court of Manitoba (Family Division). (« Cour provinciale »)

S.M. 1989-90, c. 34, s. 2; S.M. 1994, c. 14, s. 2.

PART I

PROVINCIAL COURT

Continuation of Provincial Court

2(1) The Provincial Court of Manitoba is continued as a court of record.

References to Provincial Court

2(2) The Provincial Court of Manitoba may be referred to in Acts of the Legislature, regulations, orders, forms and other documents as: "The Provincial Court".

APPOINTMENT OF JUDGES

L.G. in C. may appoint judges

3(1) The Lieutenant Governor in Council may appoint such persons as he or she considers necessary as judges of the court, in accordance with the provisions of this Act.

Qualifications

3(2) No person shall be appointed a judge unless the person

- (a) is a member in good standing of the Law Society of Manitoba;
- (b) is entitled to practise as a barrister and solicitor in Manitoba; and
- (c) has practised as a barrister or solicitor in Manitoba for not less than five years, or has of equivalent experience.

Holding office during good behaviour

3(3) Except as otherwise provided in this Act, the Chief Judge and any other person who appointed as a full time judge under this Act shall

- (a) hold office during good behaviour; and
- (b) while the person serves as a judge, reside in the province.

S.M. 1989-90, c. 34, s. 3.

Appointment from list of candidates

3.1(1) An appointment under subsection 3(1) shall be made from a list of candidates that recommended by a nominating committee convened under subsection (2).

Convening of nominating committee

3.1(2) Where the minister advises the Chief Judge that an appointment is to be made under subsection 3(1), the Chief Judge shall convene a nominating committee, to be known as the Judicial Nominating Committee, composed of

- (a) the Chief Judge, who shall be chairperson of the committee;
- (b) three persons, who are not lawyers, judges or retired judges, appointed by the Lieutenant Governor in Council;
- (c) a judge designated by the judges of the Provincial Court;
- (d) a person designated by the president of The Law Society of Manitoba;
- (e) a person designated by the president of the Manitoba Branch of The Canadian Bar Association.

Criteria

3.1(2.1) In appointing persons under clauses (2)(b), (d) and (e), the importance of reflecting, in composition of the nominating committee as a whole, the diversity of Manitoba society shall be recognized.

Duties of nominating committee

3.1(3) A nominating committee shall

- (a) subject to subsection 3(2), establish criteria for the selection of candidates for appointment under subsection 3(1), which shall include criteria respecting
 - (i) the assessment of the professional excellence, community awareness and personal suitability of candidates, and
 - (ii) the diversity of Manitoba society;
- (b) advertise for applications and nominations of candidates, in such manner as it may decide;

(c) accept applications and nominations, in such form as it may decide, of candidates; and n invite persons to make application;

(d) evaluate, in such manner as it considers advisable, the application of a candidate, and nomination of a candidate who consents to his or her nomination;

(e) provide the minister with a list of not fewer than three and not more than six differ candidates, who shall not be ranked, for each available position, that the nominating commit recommend as qualified for appointment under subsection 3(1).

Minister may request additional name

3.1(4) Where a candidate named in a list provided to the minister under clause (3)(e) is not will or able to accept an appointment under subsection 3(1), the minister may ask the nominating commit to recommend another candidate, and the nominating committee may recommend a candidate tha considered in preparing the list, or may advertise for new candidates, or both.

Interviews and consultations

3.1(5) A nominating committee may interview candidates, and may consult such persons as considers necessary in respect of a candidate.

Confidentiality of information

3.1(6) A nominating committee shall conduct its proceedings in private, and the members sl maintain secrecy in respect of information obtained from or about a candidate.

Report to minister

3.1(7) Notwithstanding subsection (6), a nominating committee may report to the minister on process of selecting candidates for judicial appointment, and any such report shall not divu information that identifies a candidate or a person from whom the nominating committee obta information about a candidate.

S.M. 1989-90, c. 34, s. 3; [S.M. 2001, c. 40, s. 2.](#)

3.2 Repealed.

S.M. 1993, c. 37, s. 2; [S.M. 2001, c. 40, s. 3.](#)

Oaths or affirmation by judge

4(1) Every judge shall take and subscribe the oath or affirmation of allegiance as required un *The Civil Service Act* and the following oath or affirmation of office before the Chief Judge or a ju designated by the Chief Judge:

I, _____ of _____, in the Province of Manitoba, do solemnly swear (or affirm) that I v duly, faithfully and to the best of my knowledge and ability perform and fulfil the duties a requirements of the office of judge (Chief Judge) of the Provincial Court of Manitoba to whic have been appointed, and so long as I shall continue to hold office, without fear or favour. So h me God. (Omit last four words where person affirms.)

Forwarded to Executive Council

4(2) The oath or affirmation of office and oath or affirmation of allegiance shall be transmit forthwith to the Chief Judge who shall send them to the Clerk of the Executive Council together w such copies thereof as may be directed by the minister.

R.S.M. 1987 Supp., c. 4, s. 5.

Resignation

5 A judge may at any time resign his office in writing, signed by him and delivered to

minister.

Continuation of matters before resigning judges, etc.

6(1) A judge who resigns or retires remains seized of any cause, action or matter in respect which he has heard evidence or argument, for a period of 12 weeks after his resignation or retirement and may, within those 12 weeks, continue to hear further evidence or argument necessary to complete the proceedings in the cause, action or matter and give judgment thereon as if he had not resigned or retired.

Death, etc. of judge

6(2) Where a judge before whom the trial of any cause, action or matter has been begun

(a) dies or becomes incapacitated before giving judgment in the cause, action or matter; or

(b) resigns or retires and does not give judgment in the cause, action or matter within the time allowed under subsection (1);

any party to the cause, action or matter may set it down to be reheard and, upon the rehearing, the court shall deal with the cause, action or matter as on an original trial and shall give judgment accordingly.

Jurisdiction

7 Every judge has jurisdiction throughout Manitoba and

(a) shall exercise all the powers and perform all the duties conferred or imposed upon a judge or under any Act of the Legislature or of the Parliament of Canada;

(b) has all the power and authority now vested by or under any Act of the Legislature in a justice of the peace, a magistrate, two justices of the peace sitting together or a juvenile, youth or family court or a justice thereof;

(c) may exercise all the powers and perform all the duties conferred or imposed on a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada;

(d) may exercise the jurisdiction conferred upon a magistrate under Part XIX of the *Criminal Code* (Canada); and

(e) is ex officio a justice of the peace and commissioner for oaths.

S.M. 1991-92, c. 41, s. 6.

CHIEF JUDGE

Appointment of Chief Judge

8(1) The Lieutenant Governor in Council shall appoint a person as Chief Judge and, where a person is not a judge of the court, as a judge of the court, from a list of candidates that is recommended by a nominating committee convened under subsection 3.1(2).

Nominating committee

8(2) Where an appointment is to be made under subsection (1), the minister shall appoint a person to convene and be chairperson of a nominating committee, which shall be composed of the chairperson and persons named under clauses 3.1(2)(b) to (e); and the minister shall advise the chairperson whether the nominating committee is to recommend only judges, or any person qualified under subsection 3(2).

Procedure

8(3) A nominating committee convened under subsection (2) has the duties, and shall proceed in the manner, set out in section 3.1.

S.M. 1989-90, c. 34, s. 4; S.M. 1993, c. 48, s. 7.

Term for Chief Judge

8.0.1(1) The Chief Judge holds office for a non-renewable term of seven years from the time of his or her appointment.

Salary at end of term

8.0.1(2) A Chief Judge whose term expires continues to be a judge of the court and shall carry out the functions of a judge of the court. He or she is entitled to receive the greater of the current annual salary of a judge of the court and the annual salary he or she received immediately before the term expired.

Application

8.0.1(3) This section applies to a judge appointed as the Chief Judge after this section comes into force.

S.M. 2001, c. 40, s. 4.

Duties of Chief Judge

8.1 The Chief Judge

(a) has general supervisory powers in respect of judges, magistrates, justices of the peace and other staff in matters that are assigned by law to the court; and

(b) is responsible for the judicial functions of the court, including direction over sittings of the court and the assignment of judicial duties.

S.M. 1989-90, c. 34, s. 4; S.M. 1994, c. 14, s. 4.

Resignation as Chief Judge

8.2 A person who is appointed as Chief Judge may at any time resign from the appointment as Chief Judge and thereafter carry out the functions of a judge of the court.

S.M. 1989-90, c. 34, s. 4.

Designation of Acting Chief Judge by the Chief Judge

8.3(1) The Chief Judge may designate an Associate Chief Judge to act in his or her place during the absence or illness of the Chief Judge.

Designation of Acting Chief Judge by minister

8.3(2) If a designation under subsection (1) has not been made, or if the office of the Chief Judge is vacant, the minister may designate an Associate Chief Judge or a judge of the court to act in the place of the Chief Judge.

S.M. 2001, c. 40, s. 5.

Appointment of Associate Chief Judges

9 The Lieutenant Governor in Council may, on the recommendation of the minister, after consultation with the Chief Judge, appoint from among the judges such Associate Chief Judges as may be required for the proper administration of the court.

S.M. 1989-90, c. 34, s. 5.

ASSOCIATE CHIEF JUDGES

Term for Associate Chief Judges

9.1(1) An Associate Chief Judge holds office for a non-renewable term of seven years from the time of his or her appointment.

Salary at end of term

9.1(2) An Associate Chief Judge whose term expires continues to be a judge of the court and shall carry out the functions of a judge of the court. He or she is entitled to receive the greater of the current annual salary of a judge of the court and the annual salary he or she received immediately before his or her term expired.

Application

9.1(3) This section applies to a judge appointed as an Associate Chief Judge after this section comes into force.

[S.M. 2001, c. 40, s. 6.](#)

GENERAL PROVISIONS

Judge to devote full time to duties

10(1) Subject to subsections (4) and (5), no judge appointed on a full-time basis shall

- (a) carry on, engage in, practise or conduct a business, trade, profession or occupation; or
- (b) act as a commissioner, arbitrator, adjudicator, umpire or mediator on a matter or proceeding, except with the approval of the Chief Judge.

No extra remuneration

10(2) Except as provided in subsection (3), no judge appointed on a full-time basis shall accept a salary, fee or other remuneration for doing any of the things mentioned in clause (1)(a) or (b) or acting as adjudicator pursuant to an appointment and designation under *The Human Rights Code*.

Expenses excepted

10(3) A judge acting as commissioner, arbitrator, adjudicator, referee, umpire, conciliator or mediator in any matter or proceeding on the direction of the Lieutenant Governor in Council, a judge acting as adjudicator pursuant to an appointment and designation under *The Human Rights Code*, a judge acting as persona designata under *The Law Enforcement Review Act* or *The Provincial Police Act*, may receive reasonable travelling and other expenses incurred by him away from his ordinary place of residence while acting in that capacity or in the performance of the duties and services of his office in the same amount and under the same conditions as if he were performing a function or duty as a judge if the expenses are paid by the government in respect of a matter within the legislative authority of the Legislature.

Winding up practice, etc.

10(4) A judge newly appointed on a full-time basis may, with the approval of the Chief Judge, wind up his practice of law or any other business, commercial or professional activities in which he was engaged within a reasonable time of his appointment.

Acting as master or registrar of Q.B.

10(5) Nothing in this section prevents a judge from acting, with the approval of the Chief Judge, as a master or deputy registrar of the Court of Queen's Bench.

R.S.M. 1987 Supp., c. 31, s. 5; S.M. 1989-90, c. 34, s. 6; S.M. 1992, c. 44, s. 13.

11 Repealed.

[S.M. 2001, c. 40, s. 7.](#)

COMPENSATION COMMITTEE

Definitions

11.1(1) In this section,

"associate chief judge's designated average" means, for a year in which a compensation committee is appointed, the average of three annual salary rates, one for each of New Brunswick, Nova Scotia and Saskatchewan, being paid on April 1 of that year to the associate chief judges of the provincial courts of those provinces; (« traitement désigné du juge en chef adjoint »)

"chief judge's designated average" means, for a year in which a compensation committee is appointed, the average of three annual salary rates, one for each of New Brunswick, Nova Scotia and Saskatchewan, being paid on April 1 of that year to the chief judges of the provincial courts of those provinces; (« traitement désigné du juge en chef »)

"compensation committee" means a Judicial Compensation Committee appointed under subsection (2); (« comité chargé de la rémunération »)

"judge's designated average" means, for a year in which a compensation committee is appointed, the average of three annual salary rates, one for each of New Brunswick, Nova Scotia and Saskatchewan, being paid on April 1 of that year to the full-time judges of the provincial courts of those provinces, other than the chief judge or the associate chief judge. (« traitement désigné du juge »)

Compensation committee appointed

11.1(2) On or before April 1, 2002 and on or before April 1 in every third year after 2002 a compensation committee, to be known as the Judicial Compensation Committee, must be appointed by the Lieutenant Governor in Council in accordance with subsections (5) to (10).

Review by compensation committee

11.1(3) A compensation committee shall investigate, report and make recommendations with respect to the following:

- (a) the salaries to be paid to
 - (i) the Chief Judge,
 - (ii) an Associate Chief Judge, and
 - (iii) a judge of the court, other than the Chief Judge or an Associate Chief Judge; and
- (b) the benefits to be paid, including pensions, vacations, sick leave, disability benefits, travel expenses and allowances, to the Chief Judge, an Associate Chief Judge and a judge of the court.

Effective period of recommendations

11.1(4) The recommendations of a compensation committee must be made for the fiscal year of the government that begins on April 1 of the year in which the compensation committee is appointed, and for each of the next two fiscal years.

Composition of compensation committee

11.1(5) A compensation committee consists of the following three members appointed by the Lieutenant Governor in Council:

- (a) one person designated by the minister;
- (b) one person designated by the judges of the court;
- (c) one person, who shall act as chairperson, designated by the members who are designated under clauses (a) and (b).

Prohibition re members

11.1(6) No judge or retired judge of the court, or of any other court, and no person employed in civil service of the government or by a crown corporation, or retired from such employment, shall be appointed as a member of a compensation committee.

Minister designates a member

11.1(7) On or before January 15 of a year in which a compensation committee must be appointed, the minister must notify the judges of the court that a compensation committee will be appointed and designate a member under clause (5)(a).

Judges designate a member

11.1(8) On or before January 31 of a year in which a compensation committee must be appointed, the judges of the court must designate a member under clause (5)(b).

Designation of a chairperson

11.1(9) On or before March 1 of a year in which a compensation committee must be appointed, the persons referred to in clauses (5)(a) and (b) must designate a chairperson under clause (5)(c).

If no agreement re chairperson

11.1(10) If the persons referred to in clauses (5)(a) and (b) are unable to agree on a chairperson, the Dean of the Faculty of Law of the University of Manitoba, after consultation with the minister and the judges, shall designate the chairperson on or before March 31.

Term of committee member

11.1(11) The term of a member of a compensation committee ends when the compensation committee's report is submitted.

Member absent or incapable

11.1(12) In the event of the absence or incapacity of a member, the Lieutenant Governor in Council may, in accordance with subsections (5) and (6), appoint a substitute member for the unexpired portion of the term.

Conduct of review by compensation committee

11.1(13) To the greatest extent possible, a compensation committee must conduct its review in an inquisitorial manner, assessing evidence it determines is relevant and necessary to enable it to make recommendations referred to in subsection (3).

Powers of compensation committee

11.1(14) A compensation committee

- (a) may interview persons, examine records and documents and make inquiries as the compensation committee considers necessary;
- (b) may establish its own rules of practice and procedure for the inquiries, interviews and examinations referred to in clause (a) and for the conduct of hearings; and
- (c) has the powers, protection and privileges of commissioners under Part V of *The Manitoba*

*Evidence Act.***Remuneration and expenses**

11.1(15) A member of the compensation committee is entitled to receive remuneration and reimbursement for expenses, as determined by the Lieutenant Governor in Council.

Factors to be considered

11.1(16) In making its report and recommendations, the compensation committee must consider the following factors:

- (a) the nature of the judges' role and the independence of the judiciary;
- (b) the need to attract and retain excellent applicants to the judiciary and the statistics with respect to the recruitment, retention, resignation and retirement of judges;
- (c) the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions in Manitoba and the overall economic and financial state of the Manitoba economy;
- (d) the principle that public resources must be managed efficiently and effectively in the context of the government's current financial position;
- (e) the cost of living and the growth or decline in real per capita income in Manitoba;
- (f) the manner in which the compensation package paid to judges in Manitoba compares with judicial compensation packages in other jurisdictions in Canada, having regard to the differences between jurisdictions.

Salary information required in the report

11.1(17) The compensation committee's report must set out the following information as to salaries paid to judges on April 1 of the year in which the compensation committee is appointed:

- (a) with respect to the provincial courts of New Brunswick, Nova Scotia and Saskatchewan, the salary of the chief judge, the salary of an associate chief judge, and the salary of a full-time judge for each of those courts;
- (b) the chief judge's designated average;
- (c) the associate chief judge's designated average;
- (d) the judge's designated average.

Chairperson to certify salary comparisons for three year period

11.1(18) In the report of the compensation committee, the chairperson must certify, for the fiscal year in which the compensation committee is appointed and for each of the next two fiscal years,

- (a) the salary recommended for the Chief Judge for each year, and whether that salary is equal to or less than the chief judge's designated average, or whether it is more than the chief judge's designated average;
- (b) the salary recommended for an Associate Chief Judge for each year, and whether that salary is equal to or less than the associate chief judge's designated average, or whether it is more than the associate chief judge's designated average;

(c) the salary recommended for a judge of the court, other than the Chief Judge or an Associate Chief Judge, for each year, and whether that salary is equal to or less than the judge's designated average, or whether it is more than the judge's designated average.

Reasons for recommendations required

11.1(19) The compensation committee must give reasons for each of its recommendations.

Report given to minister and judges

11.1(20) Within 180 days after the compensation committee is appointed, it must give its report including recommendations, to the minister, the Chief Judge, the Associate Chief Judges and the judges of the court. Until the report is tabled in the Legislative Assembly, it is confidential and must not be made public or disclosed to a person outside the government or the provincial judiciary.

Request to clarify report

11.1(21) Within seven days after the report of the compensation committee is submitted, the chief judge, an associate chief judge, a judge of the court or the minister, may request the compensation committee to clarify the report or a part of it. The compensation committee must consider the request and provide any clarification to the persons who received the report under subsection (20) within seven days after the request is made. The report is not considered to be submitted until the clarification is provided.

Minister to table report

11.1(22) The minister shall table the report of the compensation committee in the Assembly within 15 days after it is submitted if the Assembly is sitting, or if it is not, within 15 days after the beginning of the next sitting.

When recommendations re salaries are binding

11.1(23) For each year for which the compensation committee makes recommendations, the following recommendations are binding on both the government and the judges:

- (a) the salary recommended for the Chief Judge for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the chief judge's designated average;
- (b) the salary recommended for an Associate Chief Judge for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the associate chief judge's designated average;
- (c) the salary recommended for a judge of the court other than the Chief Judge and an Associate Chief Judge, for the year, if the chairperson of the compensation committee certifies with respect to that year that the recommended salary is equal to or less than the judge's designated average.

Referral to standing committee

11.1(24) Within 20 days after the report of the compensation committee is tabled, recommendations of the compensation committee, except those that are binding on the government under subsection (23), must be referred to a standing committee.

Completing report

11.1(25) The standing committee must complete its report to the Assembly within 120 days after the date of referral.

Reporting to Assembly

11.1(26) The chairperson of the standing committee must present the report to the Assembly within five days after the report is completed if the Assembly is sitting, or if it is not, within five days after the next sitting.

beginning of the next sitting.

Report of standing committee re recommendations

11.1(27) With respect only to those recommendations of the compensation committee that have been referred to it, the standing committee may in its report

- (a) accept one or more of the recommendations;
- (b) reject one or more of the recommendations; or
- (c) reject one or more of the recommendations and set the salaries or benefits that are to be substituted for the salaries or benefits proposed by the rejected recommendations;

and if the standing committee rejects a recommendation, it must provide reasons for each recommendation rejected.

Implementing recommendations if vote in Assembly

11.1(28) If a vote of concurrence takes place in the Assembly within 21 days after the standing committee's report is presented, the recommendations respecting salaries and benefits that are contained in the report of the standing committee and concurred in by the Assembly must be implemented in accordance with the vote.

Implementing recommendations if no vote in Assembly

11.1(29) If no motion of concurrence is voted on in the Assembly within 21 days after the standing committee's report is presented, the recommendations of the compensation committee respecting salaries and benefits must be implemented.

Adjusting time periods

11.1(30) Any time period within which the standing committee or the Assembly must act under this section

- (a) shall, if the Assembly is dissolved, be suspended until 15 days after the beginning of the first session of the next Assembly; and
- (b) may be extended, by resolution of the Assembly, for a period of time that is reasonable and necessary to respond to dire and exceptional circumstances confronting the Assembly or the government.

Implementation by government

11.1(31) The government must, with due diligence and reasonable dispatch, take whatever steps are necessary to implement the recommendations referred to in subsections (23), (28) and (29).

Costs of compensation committee process

11.1(32) The judges of the court are entitled to the costs prescribed in the regulations with respect to their participation in the compensation committee process. The Lieutenant Governor in Council may make regulations prescribing costs under this subsection and may set a total limit on the costs.

S.M. 1989-90, c. 34, s. 7; S.M. 2001, c. 40, s. 8.

ANNUAL REPORT

Annual report re administrative accountability to the public

11.2(1) Within three months after the end of each fiscal year of the government, beginning with the fiscal year ending on March 31, 2003, the Chief Judge must prepare an annual report about

activities and functioning of the court during the year.

Information to be included in annual report

11.2(2) The annual report must contain the following information:

- (a) the number and type of cases and proceedings according to categories of accused;
- (b) the number and type of cases and proceedings, including final dispositions, reviews and inquests;
- (c) the availability of trial dates;
- (d) the contingent liability of the government for public funds that results from unused vacant leave or retirement allowances of the judges;
- (e) the effective utilization of the court, including the average daily use of courtrooms by Provincial Court in Winnipeg and in locations outside Winnipeg;
- (e.1) the number of inquests conducted under *The Fatality Inquiries Act*;
- (e.2) with respect to each inquest report under *The Fatality Inquiries Act* completed that year, length of time from the completion of the inquest until the report was completed;
- (f) any other information that, in the opinion of the Chief Judge, should be made available to public to promote public understanding of the courts and the role of the judiciary;
- (g) any other information that may be required by the regulations concerning the operation, functioning and administration of the court, including statistical information.

Annual report submitted to minister by Chief Judge

11.2(3) The Chief Judge must submit the annual report to the minister who must table it in Assembly within 15 days after receiving it if the Assembly is sitting, or if it is not, within 15 days after the beginning of the next sitting.

Annual report made available to the public

11.2(4) The minister shall ensure that the report is made available to the public after it has been tabled in the Assembly. If the Assembly is not sitting when the minister receives the report, the minister must make it available to the public within 15 days after receiving it.

Regulations

11.2(5) The Lieutenant Governor in Council may make regulations

- (a) respecting information that is required to be included in an annual report under clause (2)(g);
- (b) respecting the form and manner in which the information required to be included in an annual report is presented.

S.M. 2001, c. 40, s. 8; S.M. 2002, c. 22, s. 8.

Meetings of judges

11.3 The Chief Judge shall, whenever necessary and at least once in each year, convene a meeting of the judges for the purpose of dealing with matters relating to the administration of and practice in courts or for any purpose relating to the administration of justice.

S.M. 2001, c. 40, s. 8.

Court sittings and judge's residence

12(1) The minister may, after consultation with the Chief Judge, designate

- (a) places in the province where the court shall sit; and
- (b) the place where a judge appointed on a full-time basis shall establish residence.

Change of residence

12(2) Where a judge establishes residence in accordance with clause (1)(b), or before the coming into force of this subsection had established residence in the designated place, the judge shall afterwards

- (a) be required to move the residence to another place, unless the judge consents to the move; or
- (b) move the residence outside the designated place unless the Chief Judge, after consultation with the minister approves the move.

S.M. 1994, c. 14, s. 5.

PART II**PROVINCIAL COURT (CRIMINAL DIVISION)****Establishment of Criminal Division**

13(1) There shall be a criminal division of the Provincial Court known as: "The Provincial Court of Manitoba (Criminal Division)".

References to Criminal Division

13(2) The Provincial Court of Manitoba (Criminal Division) may be referred to in Acts of the Legislature, regulations, orders, forms and other documents as: "The Provincial Court (Criminal Division)".

Sittings of Criminal Division

14 The Provincial Court (Criminal Division) shall hold sittings at any place designated by the minister.

Clerks, etc.

15(1) Subject to subsection (2), the Lieutenant Governor in Council shall appoint such clerks, deputy clerks and assistants for the Provincial Court (Criminal Division) as he deems advisable.

Appointment under Civil Service Act

15(2) Where a clerk, deputy clerk or assistant for the Provincial Court (Criminal Division) is a member of the civil service of the province as defined in the Civil Service Act, the appointment shall be made as provided in that Act.

PART III**PROVINCIAL COURT (FAMILY DIVISION)****Establishment of Family Division**

16(1) There shall be a family division of the Provincial Court known as: "The Provincial Court of Manitoba (Family Division)".

References to Family Division

16(2) The Provincial Court of Manitoba (Family Division) may be referred to in Acts of

Legislature, regulations, orders, forms and other documents as: "The Provincial Court (Family Division)".

Sittings of Family Division

17 The Provincial Court (Family Division) shall hold sittings at any place designated by minister.

Clerks and bailiffs

18(1) Subject to subsection (2), the Lieutenant Governor in Council shall appoint such clerks, bailiffs, deputy clerks, deputy bailiffs, and assistants for the Provincial Court (Family Division) as he deems advisable.

Appointment under Civil Service Act

18(2) Where a clerk, bailiff, deputy clerk or deputy bailiff or assistant for the Provincial Court (Family Division) is a member of the civil service of the province as defined in *The Civil Service Act*, the appointment shall be made as provided in that Act.

Jurisdiction

19(1) The Provincial Court (Family Division)

- (a) is a youth justice court for the purpose of dealing with young persons and has all the powers vested in a youth justice court under the *Youth Criminal Justice Act* (Canada);
- (b) has power to try any child charged with an offence against the laws of Manitoba; and
- (c) has power to deal with all causes and matters where a jurisdiction is conferred by any Act upon a family court or a judge thereof or upon the Provincial Court (Family Division) or a judge thereof or upon a youth court or a judge thereof.

Jurisdiction respecting enforcement

19(2) For the purpose of enforcement of judgments or orders made under any Act of Legislature, The Provincial Court (Family Division)

- (a) has the like powers as are possessed by the Court of Queen's Bench of enforcing its judgments and orders in any part of the province, and may issue the like writs and processes as may be issued by that court, and such writs and processes have like force and effect as though issued out of the Court of Queen's Bench; and
- (b) may examine or cause to be examined, a judgment debtor touching his estate and effects and his property or means and any disposition thereof, and may, upon the examination or on default of appearance thereat by the debtor or in the case of default of payment, order that during the continuance of the default the debtor, as against the judgment creditor, be deprived of exemptions to which he is entitled under *The Executions Act* or *The Garnishment Act*.

[S.M. 2004, c. 42, s. 90.](#)

Filing of maintenance orders in Family Division

20 A person entitled to alimony or maintenance payments under a judgment or order of the Court of Queen's Bench may file a copy of the judgment or order in the Provincial Court (Family Division) and when so filed the judgment or order may be enforced in the manner as if the judgment or order had been made by a judge of the Provincial Court (Family Division) under *The Family Maintenance Act*.

Removal of action from one place to another

21(1) A judge in the Provincial Court (Family Division) may order that an action or proceeding brought or taken in one place be removed to or heard in another place at which the Provincial Court (Family Division) holds sittings.

Consequence of removal

21(2) Where an action or proceeding is removed from one place to another under this section shall be in the same plight and condition as it was at the time of the removal and thereafter it may proceed with as if it had been commenced in the place to which it has been removed.

Transfer of action to Queen's Bench

22(1) Where an action or proceeding in the Provincial Court (Family Division) could have been brought in the Court of Queen's Bench, any party to the action or proceeding may, with the consent of all parties to the action or proceeding, apply to the Provincial Court (Family Division) at any time before the date for hearing is fixed, to have the action or proceeding referred to the Court of Queen's Bench, and the Provincial Court (Family Division) shall refer the action or proceeding and transfer pleadings and documents filed in the action or proceeding in the Provincial Court (Family Division) to the Court of Queen's Bench, and the Court of Queen's Bench shall receive the action or proceeding including any counterclaims, and all pleadings and documents filed in connection therewith, and the pleadings and documents shall be deemed to be pleadings and documents filed in the Court of Queen's Bench.

Consequence of transfer

22(2) Where an action or proceeding is transferred to the Court of Queen's Bench under this section, it shall be in the same plight and condition as that in which it was at the time of the transfer and thereafter it may be proceeded with as if it had been commenced in the Court of Queen's Bench.

Amendment of pleadings

22(3) Where an action or proceeding is transferred to the Court of Queen's Bench under this section, the parties to the action or proceeding are responsible for amending and may amend the pleadings in the Court of Queen's Bench to comply with the rules and practice of the Court of Queen's Bench.

No appeal from consent judgment

23 No judgment or order of the Provincial Court (Family Division), by the consent of parties, is subject to an appeal, except by leave of the Provincial Court (Family Division).

Provision for appeal generally

24(1) Subject to section 23, and except in an action or proceeding where an Act applicable thereto provides for an appeal in another manner, a person directly affected by a judgment or order of the Provincial Court (Family Division) may appeal therefrom to the Court of Appeal.

Stay of proceedings

24(2) An appeal to the Court of Appeal does not operate as a stay of execution or of proceedings under the judgment or order appealed from, but a judge of the Provincial Court (Family Division) or a judge of the Court of Appeal, may order a stay either unconditionally or upon terms.

Papers transmitted

24(3) Where a judgment or order of the Provincial Court (Family Division) is appealed under this section, the clerk of the Provincial Court (Family Division) upon request in writing of the appellant shall transmit to the Registrar of the Court of Appeal all pleadings, papers and documents filed in the Provincial Court (Family Division) in the action.

Proceedings not invalid for lack of form

25 No judgment or order or proceeding had or made in the Provincial Court (Family Division)

Division) concerning any matter or thing arising under an Act of the Legislature shall be quashed, aside or vacated for any lack of formality or form.

Rules

26(1) The judges of the Provincial Court (Family Division), or a majority of them, meet together, may make rules

- (a) regulating the pleading, practice and procedure in the Provincial Court (Family Division);
- (b) allowing and regulating service out of Manitoba;
- (c) respecting the venue of any action or proceeding brought or taken in the Provincial Court (Family Division);
- (d) prescribing a tariff of fees to be allowed to barristers, attorneys and appraisers in actions proceedings brought or taken in the Provincial Court (Family Division);
- (e) prescribing forms for use in the Provincial Court (Family Division);
- (f) respecting any other matter or thing in the Provincial Court (Family Division).

Effect of rules

26(2) Subject to *The Regulations Act*, all rules and amendments thereto made under subsection (1) have the same force and effect as if they were embodied in and formed part of this Act.

Continuation of old rules

26(3) The rules in force immediately before the coming into force of this Act, remain in force at the coming into force of this Act as though they had been made under this section, until they are repealed or amended by rules made under this section.

PART IV

COMPLAINTS ABOUT JUDICIAL CONDUCT

Definitions

27 In this Part,

"administrator" means the person appointed as administrator under section 32(1); (« administrateur »)

"board" means the Judicial Inquiry Board established under subsection 32(1); (« Commission »)

"council" means the Judicial Council established under subsection 37(1); (« Conseil »)

"incapacity" means the inability of a judge to perform his or her duties as a result of a physical or mental condition or disorder; (« incapacité »)

"misconduct" includes

- (a) conduct unbecoming a judge, and
- (b) neglect of duty by a judge. (« inconduite »)

S.M. 1993, c. 48, s. 51; S.M. 1994, c. 14, s. 6; [S.M. 1997, c. 42, s. 7](#).

COMPLAINTS

Complaints

28(1) Any person may make a complaint to the Chief Judge alleging misconduct by a judge or incapacity of a judge, and the complaint shall be dealt with in accordance with this Part.

Complaints about Chief Judge

28(2) Despite subsection (1), if the Chief Judge is the subject of a complaint, the complaint shall be made to the Chief Justice of the Queen's Bench.

Form of complaint

28(3) A complaint shall be in writing and signed by the complainant.

Assistance to public

28(4) Upon request, the administrator shall arrange for the provision of assistance to any person for the preparation of a complaint.

Notification to judge

28(5) On receiving a complaint, the Chief Judge shall give a copy of the complaint to the judge who is the subject of the complaint.

S.M. 1994, c. 14, s. 6; S.M. 1997, c. 42, s. 8.

Reassignment of judge during investigation

29 The Chief Judge may reassign a judge who is the subject of a complaint to administrative duties or to a different place until the complaint is finally disposed of.

S.M. 1994, c. 14, s. 6.

Chief Judge may investigate on own initiative

30 In addition to investigating a complaint received under subsection 28(1), the Chief Judge may on his or her own initiative, investigate any matter respecting misconduct by a judge or the incapacity of a judge that comes to his or her attention, and the matter shall be dealt with in the same manner as a complaint is dealt with under this Part.

S.M. 1994, c. 14, s. 6; S.M. 1997, c. 42, s. 9.

Powers of Chief Judge

31(1) After receiving a complaint the Chief Judge may

- (a) resolve the complaint if the Chief Judge obtains the agreement of the complainant and judge;
- (b) if the Chief Judge is of the opinion that there is no basis for the complaint or that a more appropriate avenue should be pursued by the complainant, advise the complainant of that fact; or
- (c) refer the complaint in writing to the board for investigation.

Complaints referred directly to board

31(2) Despite subsection (1), the Chief Judge shall refer a complaint to the board if

- (a) the complaint alleges that a judge has committed an indictable offence; or
- (b) in the opinion of the Chief Judge, the alleged misconduct by the judge may amount to conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Notification of decision

31(3) The Chief Judge shall give the complainant and the judge who is the subject of the complaint notice in writing of his or her decision under subsection (1) within 60 days after the date the complaint was received, and the notice to the complainant shall include information about referring the complaint to the board under subsection (4).

Referral to board by complainant

31(4) A complainant who is dissatisfied with a decision of the Chief Judge under clause (1)(b) who has not been notified within the time period referred to in subsection (3) may, in writing, refer complaint to the board within 30 days of receiving a copy of the decision, or of the expiry of the time period, as the case may be.

S.M. 1994, c. 14, s. 6.

JUDICIAL INQUIRY BOARD ESTABLISHED

Establishment of board

32(1) The Judicial Inquiry Board is established to investigate complaints alleging misconduct of judges or incapacity of judges and to conduct proceedings before the council when charges are laid.

Composition

32(2) The board shall be composed of the following three members:

- (a) a lawyer appointed by the Lieutenant Governor in Council on the recommendation of the President of the Manitoba Branch of The Canadian Bar Association;
- (b) a person who is not a lawyer, judge or retired judge, appointed by the Lieutenant Governor in Council on the recommendation of the minister;
- (c) a judge of the Court of Queen's Bench designated by the Chief Justice of the Queen's Bench.

Ineligible persons

32(3) No person who is

- (a) a member of the council; or
- (b) an employee in the civil service as defined in *The Civil Service Act*;

may be a member of the board.

Term and reappointment

32(4) A member of the board shall hold office for a three-year term and may be reappointed for a further three-year term.

Member continues

32(5) If a member of the board designated under clause (2)(c) ceases to be a judge while a complaint is being investigated, the person remains a member of the board until the board completes its matters with respect to the complaint.

Appointment of successor

32(6) A member of the board continues to hold office after the expiry of his or her term until the member is reappointed or a successor is appointed.

Queen's Bench judge as chairperson

32(7) The member designated under clause (2)(c) shall be the chairperson of the board.

Quorum

32(8) Three members of the board constitute a quorum and a majority of the members may make a decision.

Expert assistance

32(9) The board may engage persons, including counsel, to assist it in its investigation and represent it before the council, and they are entitled to receive remuneration at a rate approved by the minister.

Powers and protection under Evidence Act

32(10) The board has all the powers of commissioners appointed under Part V of *The Manitoba Evidence Act*, and the board and persons engaged by it have all the protection of commissioners appointed under Part V of that Act.

Remuneration and expenses

32(11) A member of the board, other than a member designated under clause (2)(c), is entitled to receive remuneration, and all members are entitled to reimbursement for expenses, as determined by the Lieutenant Governor in Council.

S.M. 1994, c. 14, s. 6; S.M. 1997, c. 42, s. 10.

INVESTIGATION BY JUDICIAL INQUIRY BOARD

Preliminary investigation

33(1) On referral of a complaint under this Part, the board shall consider the matter and conduct such investigation as it considers appropriate.

Notification by board

33(2) On referral of a complaint, the board shall give notice to the judge who is the subject of the complaint and the Chief Judge.

Investigation private

33(3) An investigation shall be conducted in private.

Information re complaint

33(4) At any person's request, the administrator may confirm or deny that a particular complaint has been referred to the board.

S.M. 1994, c. 14, s. 6.

Investigation of other matters

34 The board may investigate any other matter arising in respect of the judge's misconduct or incapacity in the course of an investigation and, if it does so,

(a) it shall give notice to the judge and the Chief Judge; and

(b) the matter shall be dealt with in the same manner as a complaint is dealt with under this Part

S.M. 1994, c. 14, s. 6; S.M. 1997, c. 42, s. 11.

Decision of board

35(1) After considering the complaint, the board may

(a) resolve the complaint, if it obtains the written agreement of the complainant and the judge;

- (b) decide that no further action is required with respect to the complaint; or
- (c) formulate a charge of misconduct or incapacity against the judge, stating the grounds for charge.

Charge laid before council

35(2) If a charge is formulated under clause (1)(c), the board shall lay the charge before the council.

Charge public, subject to exception

35(3) The administrator shall make a copy of the charge available for public inspection, but if the charge involves an allegation of sexual misconduct or sexual harassment by the judge, the board may direct that the copy of the charge that is made available to the public not disclose the identity of the complainant or any information that could disclose the identity of the complainant.

Notice of decision

35(4) The board shall give the judge who is the subject of the complaint, the complainant and the Chief Judge

- (a) a copy of its decision and reasons, if the board makes a decision under clause (1)(a) or (b); or
- (b) a copy of the charge laid before the council, if the board makes a decision under clause (1)(c).

Board's decision final

35(5) The decision of the board under subsection (1) is final and no appeal lies from the decision.

S.M. 1994, c. 14, s. 6; [S.M. 1997, c. 42, s. 12.](#)

Reassignment or suspension of judge

36(1) On receiving a copy of a charge formulated against a judge, the Chief Judge may

- (a) reassign the judge under section 29;
- (b) suspend the judge with pay until the council makes a decision with respect to the charge; or
- (c) suspend the judge without pay until the council makes a decision with respect to the charge in the opinion of the Chief Judge the alleged misconduct or incapacity may amount to conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Appeal of suspension without pay

36(2) A judge who is suspended without pay under clause (1)(c) may appeal the suspension to the Court of Appeal.

Stay pending appeal

36(3) The suspension remains in effect pending an appeal to the Court of Appeal unless the Court, on application, stays the suspension pending the appeal.

Powers of Court on appeal

36(4) The Court of Appeal, on hearing the appeal, may

- (a) confirm the suspension; or
- (b) quash the suspension and order that all or part of any pay not paid to the judge be paid to the judge.

S.M. 1994, c. 14, s. 6; [S.M. 1997, c. 42, s. 13.](#)

JUDICIAL COUNCIL ESTABLISHED

Establishment of council

37(1) The Judicial Council is established to adjudicate charges that are laid against judges under subsection 35(2).

Composition

37(2) The council shall be composed of the following six members:

(a) three persons, each of whom is a judge of the Provincial Court of Alberta, British Columbia, Saskatchewan, or the Territorial Court of Yukon or the Northwest Territories, or another jurisdiction specified by regulation, as designated by the Chief Judge of the person's court;

(b) the President of The Law Society of Manitoba, or another member of the Law Society designated by the President;

(c) two persons who are not lawyers, judges or retired judges, appointed by the Lieutenant Governor in Council on the recommendation of the minister.

Judicial members

37(3) The request for members to be designated under clause (2)(a) shall be made on a rotational basis to the jurisdictions referred to in that clause.

Ineligible persons

37(4) No person who is

(a) a member or former member of the board; or

(b) an employee in the civil service as defined in *The Civil Service Act*;

may be a member of the council.

Substitute judicial members

37(5) If three persons are not designated under clause (2)(a), the Lieutenant Governor in Council may, on the recommendation of the minister after the minister consults with the Chief Justice of the Court of Queen's Bench or the Chief Judge, appoint

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

(b) a judge of the Provincial Court, other than the Chief Judge;

to be a substitute member of the council in place of a member referred to in clause (2)(a) and in that case, the substitute member is deemed to be a member appointed under clause (2)(a).

Member continues

37(6) A member of the council under clause (2)(a) or (b) holds office until the council completes matters with respect to a particular charge or set of charges against a judge.

Term of office

37(7) A member of the council appointed under clause (2)(c) shall hold office for a three-year term and may be reappointed for one further three-year term.

Appointment of successor

37(8) A member of the council appointed under clause (2)(c) continues to hold office after expiry of his or her term until the member is reappointed or a successor is appointed.

Judicial member to be chairperson

37(9) The members of the council shall choose a member designated under clause (2)(a) to be chairperson of the council.

Chairperson may vote

37(10) The chairperson is entitled to vote, and may cast a second deciding vote if there is a tie.

Quorum

37(11) Six members of the council constitute a quorum and a decision of the council may be made by a majority of the votes cast.

Participation by telephone

37(12) If the members of the council agree, a member may participate in a meeting of the council other than a hearing of the council, by telephone or other means of communication that permits persons participating in the meeting to hear each other, and a member so participating is deemed to be present at that meeting.

Engagement of counsel

37(13) The council may engage counsel to assist it, and the counsel is entitled to receive remuneration at a rate approved by the minister.

Powers and protection under Evidence Act

37(14) The council has all the powers of commissioners appointed under Part V of *The Manitoba Evidence Act*, and the council and persons engaged by it have all the protection of commissioners appointed under Part V of that Act.

Remuneration and expenses

37(15) A member of the council, other than a member appointed under clause (2)(a), is entitled to receive remuneration, and all members are entitled to reimbursement for expenses, as determined by the Lieutenant Governor in Council.

S.M. 1994, c. 14, s. 6.

Administrator

38 The minister may appoint an employee of the civil service as administrator for the purpose of performing the duties of the administrator under this Part, including

- (a) providing administrative services for the council, the board and the Chief Judge with regard to the complaint process set out in this Part;
- (b) providing information to the public about the complaint process;
- (c) receiving and giving notices and other documents on behalf of the Chief Judge, the board or the council under this Part;
- (d) making the administrative arrangements necessary for convening the council for the purpose of holding a hearing;
- (e) assisting in the preparation of the annual reports under section 39.9; and

(f) performing such other duties relating to the complaint process set out in this Part as the council, the board or the Chief Judge may require.

S.M. 1994, c. 14, s. 6.

ADJUDICATION BY JUDICIAL COUNCIL

Adjudication by council

39(1) When a charge against a judge is laid before the council under subsection 35(2), the council shall hold a hearing to adjudicate the charge in accordance with this Part.

Administrator convenes council

39(2) On receiving a copy of the charge, the administrator shall

(a) ensure that the Chief Judge of each jurisdiction that is to designate a member of the council under clause 37(2)(a) is promptly notified that the council is being convened; and

(b) promptly notify all other members of the council that the council is being convened.

Notice of hearing

39(3) At least 30 days before the date of the hearing, the council shall give the judge against whom the charge is laid and the chairperson of the board a notice of hearing stating the date, time and place at which the council will hold a hearing, and the notice shall state the particulars of the charge against the judge.

Board has conduct

39(4) The board has conduct of the proceedings and shall present the case before the council.

Right to counsel

39(5) The judge against whom the charge is laid is entitled to be present at the hearing before the council and to be represented by counsel.

Evidence

39(6) At a hearing of the council, the oral evidence of witnesses shall be taken on oath and the judge shall be a full right to cross-examine witnesses and adduce evidence.

Hearing in absence of judge

39(7) The council may, on proof that it has given notice of the hearing to the judge against whom the charge is laid, proceed with the hearing in the absence of the judge and decide on the charge in the same manner as if the judge were in attendance.

Hearing to be public, subject to exception

39(8) Except as otherwise provided in subsection (9), a hearing shall be held in public.

Exclusion of public

39(9) At the request of the judge, the complainant or another witness, the council may, by order, exclude the public from a hearing or part of a hearing or may direct that the complainant or another witness be identified only by initials, if it is satisfied that

(a) matters involving public security may be disclosed;

(b) personal or other matters may be disclosed at the hearing that are of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected outweighs the desirability of adhering to the principle that hearings be open to the public;

- (c) a person involved in a criminal proceeding or in a civil suit or proceeding may be prejudiced or
- (d) the safety of a person may be jeopardized.

Reasons required

39(10) If the council excludes the public or directs that the complainant or another witness identified only by initials, it shall provide reasons for doing so.

Order prohibiting publication

39(11) If the council excludes the public or directs that the complainant or another witness identified only by initials, it may make any orders it considers necessary to prevent the public disclosure of matters disclosed at the hearing, including banning the publication or broadcasting those matters.

S.M. 1994, c. 14, s. 6.

Dispositions

39.1(1) After completing the hearing, the council may dismiss the complaint or, if it finds that there has been misconduct by the judge or that the judge is incapacitated the council may,

- (a) warn the judge;
- (b) reprimand the judge;
- (c) order that, as a condition of continuing to sit as a judge, the judge apologize to the complainant or to any other person;
- (d) order that, as a condition of continuing to sit as a judge, the judge take specified measures such as receiving education or treatment with or without requiring the judge to take a leave of absence, with or without pay;
- (e) suspend the judge with pay for any period;
- (f) suspend the judge without pay for a period up to 30 days;
- (g) repealed, S.M. 1997, c. 42, s. 14;
- (h) recommend to the minister that the judge be removed from office and, in that case, suspend the judge without pay until the judge is removed from office under section 39.4.

Combination of dispositions

39.1(2) The council may make any combination of the dispositions set out in clauses (1)(a) to (f).

Disposition re incapacitated judge

39.1(2.1) If the council finds that a judge is incapacitated, it may recommend to the minister that the judge be retired from office.

Effect of retirement recommendation

39.1(3) Where under subsection (2.1) the council recommends that a judge be retired from office and the judge is receiving pay, the judge shall cease to receive pay from the date of the council's decision.

Pay

39.1(4) The council may order that all or part of any pay not paid to a judge because of a suspension

without pay imposed under clause 36(1)(c) be paid to the judge, provided that the council does make a disposition under clause (1)(f) or (h) or subsection (2.1).

S.M. 1989-90, c. 34, s. 8; S.M. 1994, c. 14, s. 6; S.M. 1997, c. 42, s. 14.

Costs

39.2(1) The costs of, or incidental to, the investigation of a complaint and the hearing of a charge in the discretion of the council, and the council may order costs in favour of or against the judge against whom the charge is laid.

Considerations re costs

39.2(2) In determining whether costs should be awarded and the amount of the costs, the court may consider the following factors:

- (a) the conduct of any party which tended to shorten or lengthen the duration of the investigation or hearing;
- (b) whether any step in the proceeding was improper, vexatious or unnecessary;
- (c) whether a party denied or refused to admit anything which should have been admitted;
- (d) any other matter relevant to the question of costs.

Payment of costs

39.2(3) Costs ordered in favour of a judge under subsection (1) shall be paid by the government.

Filing order to pay costs

39.2(4) The council may file an order of costs made against a judge under subsection (1) in the Court of Queen's Bench, and when filed, the order may be enforced in the same manner as a judgment of that Court.

S.M. 1994, c. 14, s. 6.

Reasons for decision

39.3(1) The council shall give its decision under section 39.1, or subsection 39.2(1), 39.5(1) or 39.3(4), and the reasons for it, in writing.

Notice of decision

39.3(2) The council shall give a copy of the decision and reasons to

- (a) the judge against whom the charge was laid;
- (b) the complainant;
- (c) the chairperson of the board;
- (d) the Chief Judge; and
- (e) the minister;

and shall make a copy of the decision available for public inspection.

S.M. 1994, c. 14, s. 6.

Retirement or removal of judge from office

39.4 If the council made a recommendation under clause 39.1(1)(h) or subsection 39.1(2.1) and

appeal under section 39.6 has been dismissed or the time allowed for an appeal has expired, Lieutenant Governor in Council shall make an order to remove or retire the judge from office, as case may be, and to revoke the judge's appointment.

S.M. 1994, c. 14, s. 6; S.M. 1997, c. 42, s. 15.

Costs against judge who resigns or retires

39.5(1) If a judge against whom a charge has been laid before the council resigns or retires from office before the council has made a decision about the charge, the council may continue with hearing despite the resignation or retirement to determine whether the costs of or incidental to investigation of the complaint and any hearing of the charge should be paid by the judge.

Considerations re costs

39.5(2) In determining the amount of any costs ordered against a judge under subsection (1), council may consider the following factors:

- (a) the timeliness of the judge's resignation or retirement and the length of notice given;
- (b) whether any step in the proceeding taken by the judge since the complaint was made was improper, vexatious or unnecessary;
- (c) whether since the complaint was made the judge denied or refused to admit anything which should have been admitted;
- (d) any other matter relevant to the question of costs.

Hearing continued if in public interest

39.5(3) If

- (a) a judge against whom a charge has been laid before the council resigns or retires from office before the council has made a decision about the charge; and
- (b) the council is of the opinion that it is in the public interest or will aid in the administration of justice to continue the hearing;

the council may continue the hearing and, without making a finding that there was misconduct by the judge or that the judge is incapacitated, may make recommendations to the minister that could aid the administration of justice in the province.

S.M. 1994, c. 14, s. 6; S.M. 1997, c. 42, s. 16.

APPEAL TO COURT OF APPEAL

Appeal to Court of Appeal

39.6(1) The judge against whom a decision was made or the board may, on a question of law, appeal a decision of the council under section 39.1, or subsection 39.2(1), 39.5(1) or 39.7(4) to The Court of Appeal.

Stay pending appeal

39.6(2) The decision of the council remains in effect pending an appeal to The Court of Appeal unless the Court, on application, stays the decision pending the appeal.

Powers of Court on appeal

39.6(3) The Court of Appeal on hearing the appeal may

- (a) make any decision that in its opinion ought to have been made; and
- (b) order that all or any part of any pay not paid to a judge because of a suspension or retirement be paid to the judge.

S.M. 1994, c. 14, s. 6.

COMPLAINTS RE CHIEF JUDGE

Complaints to Chief Justice

39.7(1) If a complaint is made

- (a) about the Chief Judge; or
- (b) about another judge while a complaint about the Chief Judge is outstanding;

the Chief Justice of the Queen's Bench shall deal with the complaint and shall perform the duties and exercise the powers that the Chief Judge would otherwise perform and exercise with respect to the complaint under this Part.

Suspension of Chief Judge during investigation

39.7(2) If the board lays a charge against the Chief Judge before the council, the Chief Justice of the Queen's Bench may, in addition to exercising the powers under subsection 36(1), suspend the Chief Judge as Chief Judge

- (a) with pay; or
- (b) without pay, if in the opinion of the Chief Justice, the alleged misconduct may amount to conduct prejudicial to the administration of justice that brings the judicial office into disrepute;

until the council makes a decision with respect to the charge.

Appeal of suspension

39.7(3) If the Chief Judge is suspended under clause (2)(b), he or she may appeal the suspension to the Court of Appeal and subsections 36(3) and (4) apply, with necessary modifications.

Suspension of Chief Judge after hearing

39.7(4) In addition to making a disposition under section 39.1 or 39.2 with respect to the Chief Judge as a judge, the council may also

- (a) suspend the Chief Judge as Chief Judge with pay for any period, or without pay for a period of 30 days; and
- (b) recommend to the minister that the appointment of the Chief Judge as Chief Judge be revoked and, in that case, suspend the Chief Judge until his or her appointment as Chief Judge is revoked under subsection (5).

Revocation of appointment as Chief Judge

39.7(5) If the council makes a decision under clause (4)(b) and an appeal from the suspension has been dismissed, or the time allowed for an appeal has expired, the Lieutenant Governor in Council shall revoke the appointment of the Chief Judge as Chief Judge.

S.M. 1994, c. 14, s. 6.

INFORMATION TO PUBLIC

Information provided

39.8 The minister shall provide, in courthouses and elsewhere, information about how a complaint about a judge is made and about the process for dealing with a complaint as set out in this Part.

S.M. 1994, c. 14, s. 6.

Annual reports by Chief Judge, board and council

39.9(1) The Chief Judge, the board and the council shall each report annually to the minister matters under this Part and

- (a) the report from the Chief Judge shall include
 - (i) a summary of the complaints received or dealt with during the year and the decision of Chief Judge with respect to each complaint,
 - (ii) a summary of the investigations made under section 30 during the year and the decision of the Chief Judge as a result of each investigation, and
 - (iii) any other matter respecting the conduct of judges that the Chief Judge considers relevant
- (b) the report from the board shall include a summary of each complaint referred to the board during the year and the decision of the board with respect to the complaint; and
- (c) the report from the council shall include a summary of each charge laid by the board during the year and the disposition of the charge by the council and the results of any appeal.

Identifying information not disclosed

39.9(2) The annual reports referred to in subsection (1) shall not include information that might

- (a) identify the judge or the complainant if no charge has been laid before the council; or
- (b) identify the complainant if a direction was made by the board under subsection 35(3) or an order was made by the council under subsection 39(9) or (11).

Annual reports to minister

39.9(3) The Chief Judge, the board and the council shall provide the minister with the reports referred to in subsection (1) within three months after the end of the year.

Annual reports tabled

39.9(4) The minister shall lay the reports of the Chief Judge, the board and the council before Legislative Assembly if it is in session within 15 days after receiving them, and if it is not in session within 15 days after the beginning of the next session.

S.M. 1994, c. 14, s. 6; S.M. 1997, c. 42, s. 17.

NOTICE**Giving notice**

39.10(1) A notice or other document to be given under this Part, shall be in writing and may be given by

- (a) leaving a copy of the notice or other document with the person; or
- (b) sending a copy of the notice or other document, together with an acknowledgement of receipt card, by mail to the person.

Effective notice under clause (1)(b)

39.10(2) Notice given by mail under clause (1)(b) is effective

(a) only if the acknowledgement of receipt card or a post office receipt, bearing a signature that purports to be the signature of the person to be given the notice or document, is received by the person giving the notice or document; and

(b) on the date on which the person to be given the notice or document, receives it.

S.M. 1994, c. 14, s. 6.

PART V**MAGISTRATES AND JUSTICES OF THE PEACE****Appointment of magistrates and justices of the peace**

40 The Lieutenant Governor in Council may appoint on a full-time or part-time basis such magistrates and justices of the peace as he considers necessary who shall have jurisdiction throughout the province.

Salaries and remuneration

41 Every person appointed under section 40, may subject to this Act

(a) be paid such salary, fee and other remuneration as may be prescribed by the Lieutenant Governor in Council; or

(b) be appointed as provided in *The Civil Service Act* and paid remuneration and expenses provided for members of the civil service of the province.

Powers of magistrate

42(1) Subject to subsection (2), every magistrate has all the powers and authority vested in a magistrate or two or more justices of the peace sitting and acting together under any law or statute in force in Manitoba.

Powers under *Criminal Code*

42(2) A magistrate shall not exercise jurisdiction in matters arising under Part XIX of the *Criminal Code* (Canada).

Exercise of jurisdiction

42(3) Every magistrate may act as and in the capacity of, a judge of the Provincial Court for such purposes as the Chief Judge may determine.

S.M. 1991-92, c. 41, s. 6.

Jurisdiction of justices of the peace

43 Notwithstanding any law or statute to the contrary, a justice of the peace whose appointment has been duly made and is in force may hear, try and determine prosecutions, charges, matters and proceedings in the following cases only:

(a) In cases under municipal by-laws.

(b) In cases under any Act of the Legislature or of the Parliament of Canada in connection with which it is specifically provided that a justice of the peace may hear, try, determine and adjudge prosecutions, charges, matters and proceedings in cases that arise under that Act.

Security

44 A magistrate or justice of the peace before entering upon the duties of his office shall furnish such security for due performance of his duties as the Lieutenant Governor in Council may prescribe.

Oath or affirmation of office

45 Every magistrate and every justice of the peace before entering upon the duties of office shall take and subscribe an oath or affirmation of allegiance as required under *The Civil Service Act* and an oath or affirmation of office similar in form to that set out in section 4, with such modifications as circumstances require, and the oaths or affirmations shall be sent forthwith by the magistrate or justice of the peace to the Chief Judge who shall send them to the Clerk of the Executive Council together with such copies thereof as may be directed by the minister.

R.S.M. 1987 Supp., c. 4, s. 5.

Penalty

46 Any person who acts as a magistrate or justice of the peace without first complying with sections 44 and 45, or after the termination of his appointment as a magistrate or justice of the peace, is guilty of an offence and liable on summary conviction to a fine not exceeding \$200.

PART VI**GENERAL****Order in court**

47 Every judge and every magistrate has the same power and authority to preserve order in court for which he presides as may be exercised by a judge of the Court of Queen's Bench.

Travelling expenses and allowances

48 Every magistrate is entitled to such travelling and other expenses and allowances as may be established from time to time with respect to employees under *The Civil Service Act*.

S.M. 2001, c. 40, s. 9.

Exemption from liability

49 Except as provided in this Act, no action shall lie or be instituted against a judge, magistrate or justice of the peace for any act done by him in the execution of his duty as such unless the act was done maliciously and without reasonable and probable cause.

Partisan political activities forbidden

50 No judge or magistrate shall engage in any manner whatever in partisan political activities.

Extension of time for translations

51 Notwithstanding this or any other Act of the Legislature, for the purpose of allowing time for obtaining a translation from French into English or English into French of any document filed in the Provincial Court or served on a party in an action or proceeding in the Provincial Court, a judge may extend the time within which, or postpone the day before or by which, any further document is required to be filed in response or any proceeding is required to be taken under any Act of the Legislature.

Remitting of fines and fees

52 All fines and justices' fees collected by a judge, magistrate or justice of the peace shall be remitted forthwith to the Minister of Finance or to whomever the same are lawfully payable.

Fees and expenses payable by municipality

53(1) Where a justice of the peace hears an information or complaint upon an offence or matter in respect of which he may impose a fine and costs, or either, that, under the law or practice, are payable to a municipality, the fees and expenses of the justice shall be paid by the municipality to the justice.

Fees and expenses payable by province

[53\(2\)](#) In all cases and proceedings that do not come within subsection (1) and that arise under or virtue of laws enacted by the Legislature or administered by the government of Manitoba, the fees and expenses of the justice shall, when they are not collected from the person charged or from the informant, be paid from and out of the Consolidated Fund with moneys authorized to be so paid and applied.

Offence and penalty

[54](#) Any judge, magistrate or justice of the peace who

(a) whether he made the conviction or not, collects a fine and costs or either of them and neglects or refuses to remit it or them as required under section 52; or

(b) wilfully makes a false, partial or incorrect return or wilfully fails, refuses or neglects to make any return as required under the regulations;

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$500.

Regulations

[55\(1\)](#) For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make regulations ancillary thereto and not inconsistent therewith and every regulation made under, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations,

(a) respecting the returns and records to be made or kept by judges, magistrates and justices of the peace;

(b) providing for the safekeeping, inspection and maintenance of books, documents and papers;

(c) prescribing seals for use by the Provincial Court, the Provincial Court (Criminal Division) and the Provincial Court (Family Division);

(d) repealed, S.M. 2001, c. 40, s. 10;

(d.1) specifying jurisdictions for the purpose of clause 37(2)(a);

(e) respecting such other matters as may be necessary to carry out the intent and purpose of this Act.

[55\(2\)](#) Repealed, S.M. 2001, c. 40, s. 10.

S.M. 1994, c. 14, s. 7; [S.M. 2001, c. 40, s. 10](#).

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