



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# JUDICATURE ACT

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to May 6, 2022. It is intended for information and reference purposes only.

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

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## JUDICATURE ACT

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## JUDICATURE ACT

### CHAPTER J-2.1

#### 1. Interpretation

In this Act

- (a) “**Auditor General**” means the Auditor General as defined in the *Audit Act* R.S.P.E.I. 1988, Cap. A-24;
- (b) “**Chief Justice of Prince Edward Island**” means the judge of the superior court of the province appointed by Order-in-Council of the Government of Canada’s Privy Council to the office and title of Chief Justice of the Province of Prince Edward Island;
- (c) “**Chief Justice of the Court of Appeal**” means the Chief Justice of the Court of Appeal referred to in clause 4(1)(a);
- (d) “**Chief Justice of the Supreme Court**” means the Chief Justice of the Supreme Court referred to in clause 9(1)(a);
- (d.1) “**Children’s Lawyer**” means the Children’s Lawyer appointed under subsection 33.1(1) and includes an interim Children’s Lawyer appointed under subsection 33.1(3);
- (e) “**court**” means the Court of Appeal or the Supreme Court;
- (f) “**Court of Appeal**” means the Prince Edward Island Court of Appeal and includes a judge thereof;
- (g) “**Estates Section**” means the Estates Section of the Supreme Court having the jurisdiction described in section 13;
- (h) “**Family Section**” means the Family Section of the Supreme Court having the jurisdiction described in section 14;
- (i) “**former Act**” means the *Supreme Court Act* R.S.P.E.I. 1988, Cap. S-10 repealed by this Act;
- (j) “**officer of the court**” or “**officer of the Court of Appeal and the Supreme Court**” means
  - (i) the Prothonotary,
  - (ii) the Registrar, and
  - (iii) the deputy registrar;
- (k) “**Official Guardian**” means the Official Guardian appointed, or deemed to be appointed, under subsection 33(1) and includes an interim Official Guardian appointed under subsection 33(3);
- (l) “**order**” includes a judgment or decree;
- (m) “**prescribed**” means, unless the context indicates otherwise, prescribed by the rules;

- (n) “**prescribed sum**” means the sum prescribed by the regulations as the maximum sum of a claim that may be brought in an action commenced in the Small Claims Section of the Supreme Court;
- (o) “**proceeding**” means any application, action, suit, cause or matter, including a proceeding formerly commenced by a writ of summons, third party notice, counterclaim, petition, originating summons, originating motion or in any other manner;
- (p) “**Prothonotary**” means the Prothonotary of the Court of Appeal and the Supreme Court appointed, or deemed to be appointed, under subsection 27(2), and includes an interim Prothonotary appointed under subsection 27(3);
- (q) “**Registrar**” means the Registrar of the Court of Appeal and the Supreme Court appointed, or deemed to be appointed, under subsection 28(1), and includes a deputy registrar appointed under section 29;
- (r) “**rules**” means, unless the context indicates otherwise, the rules of court made under subsection 35(1);
- (s) “**Small Claims Section**” means the Small Claims Section of the Supreme Court having the jurisdiction described in subsection 15(1);
- (t) “**supernumerary judge**” means a judge who has elected to hold office as a supernumerary judge under subsection 22(2);
- (u) “**Supreme Court**” means the Supreme Court of Prince Edward Island and includes a judge thereof. *2008,c.20,s.1; 2017,c.68,s.1.*

## CONTINUATION

### 2. Court continued as two courts

The Supreme Court of Prince Edward Island as constituted immediately before the day this Act comes into force, being a court of common law and equity possessing original and appellate jurisdiction in both civil and criminal cases, shall continue as the Court of Appeal of Prince Edward Island with appellate jurisdiction for the province and as the Supreme Court of Prince Edward Island with original jurisdiction for the province in accordance with this Act. *2008,c.20,s.2.*

## COURT OF APPEAL

### 3. Jurisdiction of Court of Appeal

- (1) The Court of Appeal shall have and exercise all the jurisdiction, powers and authority belonging to or exercised by the Appeal Division of the Supreme Court immediately before the day this Act comes into force.

#### Powers of judges of the Court of Appeal

- (2) The judges of the Court of Appeal shall have and exercise all the jurisdiction, powers and authority belonging to or exercised by a judge of the Appeal Division of the Supreme Court immediately before the day this Act comes into force. *2008,c.20,s.3.*

### 4. Court of Appeal

- (1) The Court of Appeal shall be composed of



- (a) the Chief Justice of Prince Edward Island who shall be the Chief Justice of the Court of Appeal; and
- (b) at least two other judges.

**Absence of Chief Justice of PEI**

- (2) In the absence or incapacity of the Chief Justice of Prince Edward Island or if such office is vacant, the next senior judge who is present and able to act, other than a supernumerary judge, of the Court of Appeal shall have and exercise the powers and perform the duties of the Chief Justice of Prince Edward Island.

**Responsibilities of Chief Justice of PEI**

- (3) The Chief Justice of Prince Edward Island is responsible for the administration of the judicial functions of the Court of Appeal, including the scheduling of the sittings of the Court of Appeal and the assignment of the judicial duties of the judges of the Court of Appeal.

**Assignment of judges**

- (4) The Chief Justice of Prince Edward Island, with the concurrence of the Chief Justice of the Supreme Court, may assign a judge of the Supreme Court to perform the work of a judge of the Court of Appeal.

***Ex officio* judge of Supreme Court**

- (5) A judge of the Court of Appeal is *ex officio* a judge of the Supreme Court. 2008,c.20,s.4.

**5. Appeal from Supreme Court**

- (1) Subject to subsection (3), an appeal lies to the Court of Appeal from any order of the Supreme Court.

**Documents to have name of court**

- (2) Every document related to a proceeding in the Court of Appeal shall be marked with the name of the Court of Appeal.

**Leave to appeal required**

- (3) No appeal lies to the Court of Appeal without leave granted by the Court of Appeal
  - (a) from an order of the Supreme Court made with the consent of the parties; or
  - (b) from an order of the Supreme Court for costs that are in the discretion of the Supreme Court,if the appeal is based on the ground that such discretion was wrongly exercised. 2008,c.20,s.5.

**6. Number of judges hearing proceedings**

- (1) Unless otherwise provided by an Act or the rules, every proceeding in the Court of Appeal shall be heard and determined by not fewer than three judges sitting together as a panel, and always by an uneven number of judges.

**Application or motion in Court of Appeal**

- (2) A single judge of the Court of Appeal may hear and decide an application or motion in the Court of Appeal, except where
  - (a) the rules provide otherwise; or
  - (b) the application or motion is one for leave to appeal.

**Referral to a panel**

- (3) A single judge of the Court of Appeal may, instead of hearing and deciding an application or motion in the Court of Appeal, refer the application or motion to a panel of the Court of Appeal.

**Decision of single judge may be appealed**

- (4) A decision made by a single judge of the Court of Appeal under subsection (2) may be appealed to a panel of the Court of Appeal who may dismiss the appeal or set aside or vary the decision of the single judge.

**Presiding judge**

- (5) Where the Chief Justice of Prince Edward Island is not on a panel of the Court of Appeal, the senior judge on the panel from the Court of Appeal who is present and able to act shall preside. *2008,c.20,s.6.*

**7. Reference to Court of Appeal**

- (1) The Lieutenant Governor in Council may refer any question to the Court of Appeal for hearing and consideration.

**Opinion of court**

- (2) The Court of Appeal shall certify its opinion on the question to the Lieutenant Governor in Council, accompanied by a statement of the reasons therefor, and any judge who differs from the opinion may in like manner certify his or her opinion and reasons.

**Submissions by Minister**

- (3) On the hearing of the question, the Minister of Justice and Public Safety and Attorney General of Prince Edward Island is entitled to make submissions to the Court of Appeal.

**Notification of Attorney General of Canada**

- (4) Where a question referred under this section relates to the constitutional validity or constitutional applicability of an Act of Parliament or the Legislative Assembly, or of a regulation or bylaw made thereunder, the Attorney General of Canada shall be notified and is entitled to make submissions to the Court of Appeal.

**Notice**

- (5) The Court of Appeal may direct that any person interested, or any one or more persons as representatives of a class of persons interested, in a question referred under this section be notified of the hearing to be held in respect of the question and be entitled to make submissions to the Court of Appeal on the question.

**Appointment of counsel**

- (6) Where any person interested in a question referred under this section, or a representative of a class of persons interested, is not represented by legal counsel, the Court of Appeal may request the Minister of Justice and Public Safety and Attorney General of Prince Edward Island to appoint legal counsel to argue on behalf of the person or class interested, and the reasonable expenses thereof shall be paid out of the Operating Fund.

**Appeal**

- (7) The opinion of the Court of Appeal upon a question is deemed to be an order of the Court of Appeal, and an appeal shall lie therefrom as from an order in an action. *2008,c.20,s.7; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

## SUPREME COURT

### 8. Jurisdiction of Supreme Court

- (1) The Supreme Court shall have and exercise all the jurisdiction, powers and authority belonging to or exercised by the Trial Division of the Supreme Court immediately before the day this Act comes into force and not assigned to the Court of Appeal by this or any other Act.

#### Powers of Supreme Court judges

- (2) The judges of the Supreme Court shall exercise all the jurisdiction, powers and authority belonging to or exercised by a judge of the Trial Division of the Supreme Court immediately before the day this Act comes into force and not assigned to the judges of the Court of Appeal by this or any other Act. *2008,c.20,s.8.*

### 9. Judges of the Supreme Court

- (1) The Supreme Court shall be composed of
  - (a) the Chief Justice of the Supreme Court; and
  - (b) at least four other judges.

#### Absence of Chief Justice of the Supreme Court

- (2) In the absence or incapacity of the Chief Justice of the Supreme Court or if such office is vacant, the next senior judge of the Supreme Court who is present and able to act, other than a supernumerary judge, shall have and exercise the powers and perform the duties of the Chief Justice of the Supreme Court.

#### Chief Justice of the Supreme Court

- (3) The Chief Justice of the Supreme Court is responsible for the administration of the judicial functions of the Supreme Court including the scheduling of the sittings of the Supreme Court and the assignment of judicial duties of the judges of the Supreme Court.

#### Assignment of judges

- (4) The Chief Justice of the Supreme Court, with the concurrence of the Chief Justice of Prince Edward Island, may assign a judge of the Court of Appeal to perform the work of a judge of the Supreme Court.

#### *Ex officio* judge of Court of Appeal

- (5) A judge of the Supreme Court is *ex officio* a judge of the Court of Appeal. *2008,c.20,s.9.*

### 10. Appeal to Supreme Court

An appeal lies to the Supreme Court from

- (a) an order of the Prothonotary; or
- (b) a certificate of assessment of costs issued by the Prothonotary in a proceeding in the courts. *2008,c.20,s.10.*

### 11. One judge

- (1) Unless otherwise provided by an Act or the rules, every proceeding in the Supreme Court shall be heard and determined by one judge of the Supreme Court.

**Reservation for Court of Appeal**

- (2) A judge sitting in the Supreme Court shall decide all questions coming properly before him or her, but may reserve any proceeding or any questions in any proceeding for consideration of the Court of Appeal. *2008,c.20,s.11.*

**12. Sections of Supreme Court**

- (1) The Supreme Court shall be composed of four Sections, to be known as the Estates Section, the Family Section, the Small Claims Section and the General Section.

**Documents marked with court name and section**

- (2) Every document relating to a proceeding in the Supreme Court shall be marked with the name of the Supreme Court and the Section of the Court in which the proceeding is heard.

**Assignment of judges**

- (3) The Chief Justice of the Supreme Court may assign one or more judges to ordinarily preside and exercise the jurisdiction of any Section of the Supreme Court, but notwithstanding that a judge has been assigned to ordinarily preside over a Section of the Supreme Court, any other judge may exercise the jurisdiction of that Section of the Supreme Court.

**Transfer of proceeding**

- (4) Where it appears to a judge before whom a proceeding is brought that the proceeding is one which ought to be heard and determined in a Section of the Supreme Court other than the one in which it was brought, the judge may order that the proceeding be transferred to another Section of the Supreme Court and the proceeding shall be heard and determined accordingly.

**Proceeding**

- (5) A proceeding transferred under subsection (4) may be heard by the judge who transferred the proceeding, or by such other judge as the Chief Justice of the Supreme Court may assign to hear the proceeding, and the judge hearing the proceeding may make such orders as to pleadings and evidence as the judge may consider advisable for the proper determination of the proceeding. *2008,c.20,s.12.*

**13. Estates Section**

The Estates Section shall exercise the jurisdiction vested in it by the *Probate Act R.S.P.E.I. 1988, Cap. P-21. 2008,c.20,s.13.*

**14. Family Section**

- (1) The Family Section shall exercise jurisdiction in respect of the following matters:
- (a) formation of marriage;
  - (b) dissolution of marriage;
  - (c) judicial separation and separation orders;
  - (d) actions and causes concerning matrimonial property including injunctions, partition and settlements;
  - (e) restitution of conjugal rights;
  - (f) jactitation of marriage;
  - (g) declarations of status including validity of marriage, legitimacy and legitimation;
  - (h) maintenance (interspousal) including protection orders;

- (i) maintenance of children including affiliation proceedings and agreements;
- (j) enforcement of support and maintenance orders including reciprocal enforcement of these orders;
- (k) property rights, support obligations and other family matters under any Act;
- (l) parenting time, decision-making responsibility and contact with children;
- (m) adoption;
- (n) proceedings under any statute of the province relating to non-support, school attendance and children in need of protection;
- (o) interspousal and familial torts.

**Additional jurisdiction**

- (2) The Chief Justice of the Supreme Court may, by order, vest such additional jurisdiction in the Family Section as he or she may consider necessary, either in a particular case or on a continuing basis, to enable the Family Section to effectively carry out its jurisdiction under subsection (1). *2008, c.20, s.14; 2020, c.59, s.99.*

**15. Small Claims Section**

- (1) The Small Claims Section shall have and exercise jurisdiction in respect of the following matters:
  - (a) in all personal actions of debt, covenant, assumpsit, and tort, where the debt or damages claimed do not exceed the prescribed sum;
  - (b) in any actions of replevin where the value of the property sought to be replevied does not exceed the prescribed sum;
  - (c) in any action for the recovery of the amount due upon a money bond where the real debt does not exceed the prescribed sum, notwithstanding that the amount of the penalty may exceed that sum;
  - (d) in any action on a bond the value of which does not exceed the prescribed sum given to the sheriff or otherwise in any proceeding in the Supreme Court, whatever may be the penalty;
  - (e) in any action on a bond given to secure the payment of money payable by instalments, although the amount remaining unpaid at the time the action was brought exceeds the prescribed sum, if the amount of the instalments due does not exceed that sum;
  - (f) where in any action the debt or demand claimed consists of a balance not exceeding the prescribed sum, after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, the Small Claims Section has jurisdiction to try the action;
  - (g) if the plaintiff's claim is above the amount of the prescribed sum, the plaintiff may abandon the excess of the claim over that amount and may recover judgment for the amount within the limit of the prescribed sum, and the judgment is in full discharge of all demands in respect of the claim, and entry of the judgment shall be made accordingly;
  - (h) the issues of fact or the assessment or inquiry of damages in every action in the Small Claims Section shall be tried, heard and determined, and judgment given by a judge without a jury.

**Leave to transfer**

- (2) All matters over which the Small Claims Section has jurisdiction under subsection (1) shall not be heard outside the Small Claims Section except by leave of a judge of the Supreme Court. *2008,c.20,s.15.*

**16. Summary hearings**

- (1) The judge presiding in the Small Claims Section shall hear and determine in a summary way all questions of law and fact and may make such order as the judge considers just and agreeable to good conscience.

**Evidence**

- (2) Subject to subsections (4) and (5), the judge presiding in the Small Claims Section may admit as evidence at a hearing and act upon any oral testimony and any document or other evidence so long as the evidence is relevant to the subject matter of the proceeding, but the judge may exclude anything that he or she determines to be unduly repetitious or unreliable.

**Idem**

- (3) Subsection (2) applies whether or not the evidence is given or proven under oath or affirmation or admissible as evidence in any other court.

**Idem**

- (4) Nothing is admissible in evidence at a proceeding in the Small Claims Section
- (a) that would be inadmissible by reason of any privilege under the law of evidence; or
  - (b) that is inadmissible by any Act.

**Conflicts**

- (5) Nothing in subsection (2) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

**Copies**

- (6) A copy of a document or any other thing may be admitted as evidence at a hearing in the Small Claims Section if the presiding judge is satisfied as to its authenticity. *2008,c.20,s.16.*

**17. General Section**

The General Section shall exercise jurisdiction in respect of all matters within the jurisdiction of the Supreme Court not referred to in sections 13, 14 and 15. *2008,c.20,s.17.*

## PROCEDURE, POWERS AND APPEALS

**18. Exercise of jurisdiction, general**

- (1) The jurisdiction of the courts shall be exercised in the manner provided in this Act and the rules and, where no special provisions are contained in this Act or the rules, it shall be exercised in accordance with the practice and procedure followed by the courts immediately before the day this Act comes into force.

**Proceedings in the courts**

- (2) All proceedings in the courts shall be distributed between the Court of Appeal and the Supreme Court in the manner provided by this Act and shall be governed by the rules.

**Sittings**

- (3) The courts have power to sit and act at any time and in any place for the transaction of the business of the courts.

**Power to issue subpoena**

- (4) A court may issue a subpoena in aid of an inferior court or tribunal. *2008,c.20,s.18.*

**19. Stay of proceedings**

A court, on its own initiative or on a motion made by any person, whether or not the person is a party to the proceeding, may stay any proceedings in the court on such terms as the court considers just. *2008,c.20,s.19.*

**20. Protection for acting under court order**

No person is liable for any act done in good faith in accordance with an order or process of a court. *2008,c.20,s.20.*

**21. Judge not to hear appeal from own decision**

- (1) A judge shall not sit as a member of a court hearing an appeal from his or her own order or on any matter that may be referred back to him or her for hearing.

**Powers on appeal**

- (2) Unless otherwise provided in the rules or an enactment, the court to which an appeal is made may
- (a) make any order that ought to or could have been made by the court or tribunal appealed from;
  - (b) order a new trial; or
  - (c) make any other order that is considered just.

**Interim orders**

- (3) On application, the court to which an appeal is made may make any interim order that is considered just to prevent prejudice to a party pending the appeal.

**Power to quash**

- (4) On application, the court to which an appeal is made may, in a proper case, quash the appeal.

**Determination of fact**

- (5) Unless otherwise provided in the rules or an enactment, the court to which an appeal is made may, in a proper case,
- (a) draw inferences of fact from the evidence, except that no inference shall be drawn that is inconsistent with a finding that has not been set aside;
  - (b) receive further evidence by affidavit, transcript of oral examination, oral examination before the court or in such other manner as the court directs; or
  - (c) direct a reference or the trial of an issue,

to enable the court to determine the appeal.

**Scope of decision on appeal**

- (6) The powers conferred by this section may be exercised by the court to which an appeal is made notwithstanding that the appeal is as to part only of an order or decision, and may be exercised in favour of a party to the proceeding even though the party did not make the appeal.

**New trial**

- (7) The court to which an appeal is made shall not direct a new trial unless some substantial wrong or miscarriage of justice has occurred.

**Idem**

- (8) Where some substantial wrong or miscarriage of justice has occurred but it affects only part of an order or decision or some of the parties, a new trial may be ordered in respect of only that part or those parties to a proceeding. *2008,c.20,s.21.*

**JUDGES**

**22. Additional judges**

- (1) For each of the offices of Chief Justice of Prince Edward Island and Chief Justice of the Supreme Court, there shall be such additional offices of judges of the Court of Appeal and the Supreme Court as are, from time to time required to be held by the Chief Justice of the Court of Appeal and the Chief Justice of the Supreme Court where they have, or either of them has, elected under the *Judges Act (Canada)* to perform only the duties of a judge of the Court of Appeal and or the Supreme Court, respectively.

**Supernumerary judges**

- (2) For each office of judge of the Court of Appeal or judge of the Supreme Court, there shall be the additional office of supernumerary judge held by a judge of the Court of Appeal or the Supreme Court who has elected under the *Judges Act (Canada)* to hold office only as a supernumerary judge of the Court of Appeal or the Supreme Court, respectively. *2008,c.20,s.22.*

**23. Oath**

Every judge of the Court of Appeal and the Supreme Court, before entering on the duties of office, shall take and sign the following oath or affirmation:

I solemnly swear (affirm) that I will faithfully, and to the best of my skill and knowledge, execute the duties of

.....

So help me God. (Omit this line in an affirmation.) *2008,c.20,s.23.*

**24. Rank and precedence among judges**

- (1) The judges of the courts have rank and precedence as follows:
  - (a) the Chief Justice of Prince Edward Island;
  - (b) the Chief Justice of the Supreme Court;
  - (c) the other sitting judges of the Court of Appeal and the Supreme Court, according to their seniority of appointment;



- (d) the supernumerary judges, according to their seniority of appointment.

#### **Jurisdiction of judges**

- (2) Except where otherwise provided in this Act, all judges of the Court of Appeal have in all respects equal power, authority and jurisdiction and all judges of the Supreme Court have in all respects equal power, authority and jurisdiction. *2008,c.20,s.24.*

#### **25. Meetings of judges**

The Chief Justice of Prince Edward Island or the Chief Justice of the Supreme Court may, at any time, call meetings of the judges of their respective courts, or joint meetings, for the purpose of considering the operation of this Act or any other matters relating to the administration of justice. *2008,c.20,s.25.*

#### **26. Definitions**

- (1) In this section,
- (a) “**Chief Justice**” means the Chief Justice of the Court of Appeal or of the Supreme Court as the case may be;
- (b) “**judge**” means a judge of the Court of Appeal or of the Supreme Court as the case may be.

#### **Retirement of judge**

- (2) A judge may, within ninety days after
- (a) reaching retirement age;
- (b) resigning; or
- (c) being appointed to another court,
- give a decision or participate in the giving of a decision in any matter previously tried or heard before the judge.

#### **Judge unable to give decision**

- (3) Where a judge has commenced a hearing of a matter together with other judges and the judge
- (a) dies before the decision is given;
- (b) is for any reason unable to participate in the giving of the decision of the court; or
- (c) does not participate in the giving of the decision under subsection (2),
- the remaining judges may complete the hearing and give the decision of the court, but, if the remaining judges are equally divided, a party may make an application to the Chief Justice of the same court as the judge for an order that the matter be reheard.

#### **Order signed by another judge**

- (4) Where a judge sitting alone has given a decision in a matter and dies or retires before signing an order, another judge of the same court may sign an order respecting the matter if the judge is satisfied that the order is in conformity with the former judge’s decision.

#### **Rehearing where no decision**

- (5) Where a judge sitting alone has commenced hearing a matter and
- (a) dies without giving a decision;
- (b) is for any reason unable to give a decision; or
- (c) does not give a decision under subsection (2),

a party may make a motion to the Chief Justice of the same court as the judge for an order that the matter be reheard.

**Failure to give a decision**

- (6) Where a judge has heard a matter and fails to give a decision within six months of the completion of the hearing, the Chief Justice of the same court as the judge may extend the time in which the decision may be given and, if necessary, relieve the judge of his or her other duties until the decision is given.

**Continued failure**

- (7) Where the time within which a judge is required to give a decision in a matter has been extended under subsection (6) by the Chief Justice of the same court as the judge, but the judge fails to give the decision within that extended time, unless the Chief Justice grants further extensions,
- (a) the Chief Justice shall report the failure and the surrounding circumstances to the Canadian Judicial Council; and
  - (b) a party to the proceeding may make an application to the Chief Justice for an order that the matter be reheard.

**Rehearing**

- (8) Where an order is made under subsection (3), (4), (5) or (7), the Chief Justice may
- (a) dispose of the costs of the original hearing or refer the question of those costs to the judge or judges presiding at the hearing;
  - (b) direct that a rehearing be conducted on the transcript of evidence taken at the original hearing, subject to the discretion of the court at the rehearing to recall a witness or require further evidence; or
  - (c) give such other directions as the Chief Justice considers just. *2008, c.20, s.26.*

## OFFICERS OF THE COURTS

**27. Prothonotary corporation sole**

- (1) The Prothonotary is continued as a corporation sole, under the name “Prothonotary of the Court of Appeal and the Supreme Court”, and has perpetual succession and the power to hold any lands and tenements and to grant and convey the same, and all other powers of a corporation necessary to enable him or her to carry out the purposes of this Act and the directions of the courts.

**Appointment of Prothonotary**

- (2) The Lieutenant Governor in Council, in consultation with the Chief Justice of Prince Edward Island and the Chief Justice of the Supreme Court, shall appoint as the Prothonotary a person who has been a member in good standing of the Law Society of Prince Edward Island for at least five years.

**Interim appointment**

- (3) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island, may, in the absence of the Prothonotary by reason of illness or any other cause, appoint an interim Prothonotary to carry out the functions of the Prothonotary.

**Qualifications**

- (4) A person appointed under subsection (3) shall have the qualifications set out in subsection (2).

**Jurisdiction**

- (5) The Prothonotary shall perform all such duties as may be imposed upon him or her under an Act or by a direction of the Court of Appeal or the Supreme Court, or as may be prescribed by the rules.

**Civil Service Act applies**

- (6) The *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8 applies to the person who is appointed as the Prothonotary or interim Prothonotary.

**Prothonotary's powers**

- (7) Subject to the direction of the courts, the powers of the Prothonotary include,
- (a) acting as an examiner in a court;
  - (b) taxing costs respecting proceedings in a court;
  - (c) registering orders for the sale, leasing or mortgaging of any lands in administration, partition, infant or mental incompetency proceedings;
  - (d) executing conveyances, transfers or mortgages ordered by a court;
  - (e) selling mortgaged premises under an order of a court;
  - (f) inquiring into the merits of an application to a court for an order for the sale or other disposition of real or personal property seized, possessed or otherwise held by or for a minor or a mentally incompetent person;
  - (g) issuing a subpoena in aid of an inferior court or tribunal; and
  - (h) acting in such matters as may be prescribed by the rules.

**Security held by Prothonotary**

- (8) All moneys, securities, effects and real or personal property vested in or held by the Prothonotary shall be deemed to be vested in him or her in trust for the Government, but may, nevertheless, be paid out, sold, disposed of, assigned, conveyed or dealt with in accordance with any Act, an order of a court, or an order of the Lieutenant Governor in Council. *2008, c.20, s.27; 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3; 2022, c.62, s.39.*

**28. Registrar**

- (1) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island, in consultation with the Chief Justice of Prince Edward Island and the Chief Justice of the Supreme Court, shall appoint a Registrar of the Court of Appeal and the Supreme Court.

**Functions**

- (2) The Registrar shall perform all such duties as may be imposed under an Act, by direction of the Court of Appeal or the Supreme Court, or as may be prescribed by the rules.

**Accounts**

- (3) The Registrar shall keep proper accounts of the cash deposits and investments and other effects being held or administered by the courts and the Auditor General shall conduct an annual audit of the accounts.

**Money paid into court**

- (4) Money paid into court shall be paid to the Registrar. *2008,c.20,s.28; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

**29. Deputy registrars**

- (1) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island, in consultation with the Chief Justice of Prince Edward Island and the Chief Justice of the Supreme Court, shall appoint deputy registrars.

*Idem*

- (2) There shall be at least one deputy registrar for
- (a) each Section of the Supreme Court, who may also act as a deputy registrar of the Court of Appeal or as a deputy registrar of any of the other Sections of the Supreme Court; and
  - (b) the Court of Appeal, who may also act as a deputy registrar of any of the Sections of the Supreme Court. *2008,c.20,s.29; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

**30. Finance committee**

- (1) The finance committee is continued and shall be composed of three members appointed by the Minister of Justice and Public Safety and Attorney General of Prince Edward Island, at least one of whom shall be entitled to practise as a chartered professional accountant under the *Chartered Professional Accountants and Public Accounting Act* R.S.P.E.I. 1988, Cap. C-4.2.

**Management of money paid into court**

- (2) The finance committee has the control and management of money paid into court, the investment of the money and the securities in which it is invested.

**Interest**

- (3) The finance committee may provide for the payment of interest upon any money paid into court and may fix the rate of interest so paid, which rate shall be published monthly in the Gazette.

**Reserve fund**

- (4) The finance committee may establish such reserve funds as it considers expedient in the management of money paid into court.

*Idem*

- (5) Money paid into court shall be invested in the name of the Registrar.

**Investment**

- (6) Any money paid into court that is available for investment shall be invested in investments authorized for trustee investment under section 2 of the *Trustee Act* R.S.P.E.I. 1988, Cap. T-8.

**Securities**

- (7) Unless a court otherwise orders, all mortgages and other securities taken by the court under an order of a court and all bonds and other investments required by the practice of the court for the purpose of security, except security for costs, shall be taken in the name of the Registrar and shall be deposited in his or her office.

**Employment of trust company**

- (8) The finance committee may employ a trust company to make the investments of money paid into court or as custodian of the securities representing investments of such money, on such terms and conditions as are agreed to by the committee.

**Liability**

- (9) No action or other proceeding for damages shall be instituted against a member of the finance committee for anything done or not done in good faith in the execution or intended execution of the member's powers and duties under this section. *2008,c.20,s.30; 2010,c.14,s.3; 2012,c.17,s.2; 2014,c.2,s.89; 2015,c.28,s.3.*

**31. Audit**

- (1) The Auditor General shall conduct an audit of the accounts, including trust accounts, and financial transactions of the Prothonotary and the Registrar.

**Powers of Auditor General**

- (2) For the purposes of an audit under subsection (1), the Auditor General has and may exercise all the relevant powers conferred upon him or her by the *Audit Act* R.S.P.E.I. 1988, Cap. A-24.

**Investments, examination of**

- (3) The Chief Justice of the Supreme Court or the Minister of Justice and Public Safety and Attorney General of Prince Edward Island may instruct the Auditor General to examine the security and value of any deposit or investment representing a portion of money paid into court, and the Auditor General shall thereupon conduct the examination. *2008,c.20,s.31; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

**32. Oath, affirmation**

Every officer of the Court of Appeal and the Supreme Court, before entering on the duties of office, shall take and sign the following oath or affirmation:

I solemnly swear (affirm) that I will faithfully, and to the best of my skill and knowledge, execute the duties of

.....

So help me God. (Omit this line in an affirmation.) *2008,c.20,s.32.*

**OFFICIAL GUARDIAN****33. Official Guardian**

- (1) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island may appoint an Official Guardian.

**Qualifications**

- (2) No person shall be appointed Official Guardian under subsection (1) unless the person has been a member in good standing of the Law Society of Prince Edward Island for at least five years.

**Interim appointment**

- (3) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island may, in the absence of the Official Guardian by reason of illness or any other cause, appoint an interim Official Guardian to carry out the functions of the Official Guardian.

**Qualifications**

- (4) A person appointed under subsection (3) shall have the qualifications set out in subsection (2).

**Duties**

- (5) The Official Guardian shall act as the litigation guardian of minors and other persons where required under an Act or the rules.

**Costs**

- (6) The same costs as are payable to litigation guardians under the rules are payable to the Official Guardian and costs recovered by the Official Guardian shall be paid into the Operating Fund.

**Security for costs**

- (7) The Official Guardian shall not be required to give security for costs in any proceeding.

**Transfer of assets or functions to Public Trustee**

- (8) Where the Official Guardian acts on behalf of any person, the Official Guardian may transfer any assets to the Public Trustee or request the Public Trustee to handle any financial transactions on behalf of that person and such matters shall be subject to audit by the Auditor General.

**Payment into court**

- (9) Money received by the Official Guardian on behalf of a person for whom the Official Guardian acts shall, unless the court orders otherwise, be paid into court to the credit of the person entitled.

**Assessment of costs**

- (10) Where the amount payable to the Official Guardian under subsection (9) is to be ascertained by the deduction of unassessed costs from a fund, the Prothonotary shall, on application by the Official Guardian assess such costs forthwith.

**Audit**

- (11) The Auditor General shall examine and report on the accounts and financial transactions, if any, of the Official Guardian. *2008,c.20,s.33; 2010,c.13,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

## CHILDREN'S LAWYER

### 33.1 Children's Lawyer

- (1) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island may appoint one or more qualified persons as a Children's Lawyer.

**Qualifications**

- (2) No person shall be appointed as a Children's Lawyer under subsection (1) unless the person has been a member in good standing of a law society in Canada for at least five years and is eligible to become or is a member of the Law Society of Prince Edward Island.

**Interim appointment**

- (3) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island may, in the absence of a Children's Lawyer by reason of illness or any other cause, appoint a person who has the qualifications set out in subsection (2) as an interim Children's Lawyer to carry out the functions of the absent Children's Lawyer.

**Duties**

- (4) At the request of a court, a Children's Lawyer may act as the legal representative of a minor in or in respect of a proceeding referred to in subsection (7).

**Costs**

- (5) Costs recovered by a Children's Lawyer shall be paid into the Consolidated Revenue Fund.

**Security for costs**

- (6) A Children's Lawyer shall not be required to give security for costs in any proceeding.

**Functions of Children's Lawyer**

- (7) In a proceeding under the *Divorce Act* (Canada) or the *Children's Law Act* R.S.P.E.I. 1988, Cap. C-6.1, in which a question concerning parenting time, decision-making responsibility or contact in respect of a child is before the court, a Children's Lawyer may, in respect of matters pertaining to parenting time, decision-making responsibility or contact with a child and the child's support and education,
- (a) conduct an inquiry;
  - (b) act as legal counsel or, despite subsection 33(5), litigation guardian on behalf of the child; and
  - (c) make recommendations to the court.

**Authority of Children's Lawyer**

- (8) A Children's Lawyer may, when conducting an inquiry and acting as litigation guardian or legal counsel on behalf of a child, and without consent,
- (a) meet with and examine the child;
  - (b) interview a parent of the child;
  - (c) interview persons who care for the child and persons who have opportunities to observe the child;
  - (d) interview persons who provide health, social, educational or other services to the child or to the parent of the child;
  - (e) require information, including personal information and personal health information, to be provided by a person, public body or custodian to the Children's Lawyer from medical, health, social, educational and other service records concerning the child and the parents of the child;
  - (f) cause an examination to be made of the physical, mental and emotional health and development of the child;
  - (g) request a parent of the child to undergo an examination of physical, mental and emotional health or other assessment related to parenting of the child;

- (h) require information to be provided by a parent of the child or other person about past parenting; and
- (i) request a report from a family counsellor or mediator;
- (j) request the parents to use the services of a parenting coordinator;
- (k) request that a clinician or person approved by the court under subsection 38(1) of the *Children's Law Act* prepare an assessment in accordance with that section or interview the child and prepare a report on the views of the child in accordance with subsection 33(4);
- (l) request that the Director of Child Protection appointed under the *Child Protection Act* R.S.P.E.I. 1988, Cap. C-5.1, assess whether the child may be in need of protection; and
- (m) consult other persons and gather other evidence necessary to complete the inquiry and represent the child in a proceeding specified in subsection (7).

**Time for provision of information**

- (9) A person or public body that is requested under clause (8)(e) to provide a Children's Lawyer with information shall provide the information within 14 days of receiving the request.

**Order of court**

- (10) If the court is satisfied, on an application by a Children's Lawyer, that the Children's Lawyer has not been provided with information pursuant to a request under clause (8)(e), the court may order any person or public body to provide information as specified in the order.

**Consequences - failure to comply**

- (10.1) In an application under subsection (10), the court may draw an adverse inference against a person who fails or refuses, without reasonable excuse, a reasonable request made by the Children's Lawyer, or who obstructs the Children's Lawyer in carrying out his or her functions under subsection (8).

**Costs of application**

- (11) Where a Children's Lawyer obtains an order under subsection (10), the court shall award costs of the application to the Children's Lawyer.

**Effect on confidentiality**

- (12) Subsections (8) to (10) apply notwithstanding any other Act, including the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01 and the *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41, or any rule of common law relating to confidentiality, other than the rule of solicitor-client privilege.

**Protection from liability**

- (13) Repealed by 2018,c.51,s.1(5).

**Discretion to act**

- (14) A Children's Lawyer may act under subsection (7) on his or her own initiative, at the request of a court or at the request of any person.

**Authority to protect child's legal rights**

- (15) If a Children's Lawyer, on receiving a request or on his or her own initiative, in a matter in respect of which there is no existing proceeding as set out in subsection (7), is of the opinion that the legal rights of a child in relation to parenting time, decision-making responsibility or



contact, are in jeopardy, the Children's Lawyer may initiate a proceeding on the child's behalf under the *Children's Law Act*.

**Identity of person making request**

- (16) No person shall reveal or be compelled to reveal the identity of a person who has made a request for a Children's Lawyer to act for a child.

**Protection from liability**

- (17) A person who in good faith
- (a) makes a request for a Children's Lawyer to conduct an inquiry or act as litigation guardian or legal counsel on behalf of a child;
  - (b) provides information pursuant to subsection (8); or
  - (c) does anything to assist in an inquiry carried out by a Children's Lawyer,
- is not liable to any civil action in respect of making the request or providing the information or assistance.

**Confidentiality**

- (18) The inquiry resulting from a request for a Children's Lawyer to act on behalf of a child is confidential and no person shall reveal or be compelled to reveal the information obtained during the inquiry.

**Report under clause (8)(i) as evidence**

- (19) A Children's Lawyer shall serve a report obtained under clause (8)(i) on the parties and file it with the court, and on being filed the report shall form part of the evidence at the hearing of the proceeding.

**Attendance on report**

- (20) Where a party to the proceeding disputes the facts set out in the report referred to in subsection (19), the family counsellor or mediator who prepared the report shall, if directed by the court, and may, when not so directed, attend the hearing. *2017,c.68,s.2; 2018,c.51,s.1; 2020,c.59,s.99.*

## RULES OF COURT

### 34. Rules Committee

- (1) The Rules Committee is continued and shall be composed of
- (a) the Chief Justice of Prince Edward Island;
  - (b) the Chief Justice of the Supreme Court;
  - (c) one other judge of the Court of Appeal appointed by the Chief Justice of Prince Edward Island;
  - (d) two other judges of the Supreme Court appointed by the Chief Justice of the Supreme Court;
  - (e) the Prothonotary;
  - (f) the Minister of Justice and Public Safety and Attorney General of Prince Edward Island or such law officer of the Crown, who is a member in good standing of the Law Society of Prince Edward Island, as the Minister may appoint; and

- (g) two members in good standing of the Law Society of Prince Edward Island appointed by the Council of the Law Society of Prince Edward Island.

**Secretary of Rules Committee**

- (2) The Chief Justice of Prince Edward Island, in consultation with the Chief Justice of the Supreme Court, shall appoint one member of the Rules Committee to act as secretary of the Rules Committee.

**Chairperson**

- (3) The Chief Justice of Prince Edward Island shall be the chairperson of the Rules Committee, but, in his or her absence or at his or her request, the Chief Justice of the Supreme Court may act as chairperson.

**Tenure of office**

- (4) A member of the Rules Committee appointed under clause (1)(c), (d), (f) or (g) shall hold office for a period of three years and is eligible for reappointment.

**Vacancies**

- (5) In case of the resignation, death or inability to act of any member appointed under clause (1)(c), (d), (f) or (g), the appropriate Chief Justice, the Minister of Justice and Public Safety and Attorney General of Prince Edward Island or the Council of the Law Society of Prince Edward Island, as the case may be, may appoint another member similarly qualified to hold office for the unexpired portion of the term of the member who resigned, died or is unable to act.

**Quorum**

- (6) A majority of the members of the Rules Committee constitute a quorum.

**Meetings**

- (7) The Rules Committee shall hold meetings at such time and place as the chairperson may direct.

**Idem**

- (8) On receipt of a written request for a meeting that is signed by two or more members of the Rules Committee, the chairperson shall direct the secretary to call a meeting of the Rules Committee. *2008, c.20, s.34; 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

**35. Rules of court**

- (1) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make rules of court in relation to the practice and procedure of the Court of Appeal and the Supreme Court, and may make rules, even though they alter, or conform to, the substantive law,
- (a) respecting the sittings of the Court of Appeal or the Supreme Court and any matter related thereto;
  - (b) respecting the conduct of the proceedings in the courts;
  - (c) respecting the joinder of claims and parties, the settlement of claims by or against persons under disability, whether or not a proceeding has been commenced in respect of the claim, the binding effect of orders and the representation of parties;
  - (d) respecting the commencement of proceedings, representation of parties by solicitors and service of process in or outside Prince Edward Island;

- (e) respecting the disposition of proceedings without a hearing and the effect thereof;
- (f) authorizing the Court of Appeal to determine in the first instance a special case arising in a proceeding commenced in the Supreme Court;
- (g) respecting pleadings and practice in the courts;
- (h) respecting discovery and other forms of disclosure before hearing, including the scope thereof and the admissibility and use of such discovery and disclosure in a proceeding;
- (i) respecting the examination of witnesses in or out of court;
- (j) respecting the jurisdiction of the Prothonotary or interim Prothonotary, including the conferral of any jurisdiction of the Supreme Court, including jurisdiction under an Act, but not including the trial of actions or jurisdiction conferred by an Act on a judge;
- (j.1) respecting the jurisdiction of the Prothonotary to assess lawyers' accounts in relation to the practice of law under the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1 in matters not involving court proceedings, including the process to be followed and the factors to be considered by the Prothonotary;
- (k) respecting the jurisdiction and duties of officers working in the courts and hours of business for court offices;
- (l) respecting applications, including the hearing of applications in the absence of the public and prohibiting a party from making applications without leave;
- (m) respecting the preservation of the rights of parties pending the outcome of litigation, including the sale, recovery of possession or preservation of property;
- (n) respecting interpleaders;
- (o) respecting preparation for trial and offers to settle and their legal consequences;
- (p) respecting the mode and conduct of trials and hearings;
- (q) respecting the appointment by the courts of independent experts, their remuneration and the admissibility and use of their reports;
- (r) respecting the discount rate in determining the amount of an award in respect of future pecuniary damages;
- (s) respecting references of proceedings or issues in a proceeding and the powers of a person conducting a reference;
- (t) respecting the costs of proceedings, including security for costs and a solicitor's liability for or disentitlement to costs;
- (u) respecting the enforcement of orders and process or obligations under the rules;
- (v) respecting the time for and procedure on appeals and stays of proceedings pending an appeal;
- (w) respecting payment into and out of court;
- (x) ordering a party to undergo a physical or mental examination by a medical practitioner;
- (y) respecting any matter that is referred to in an Act as being provided for by rules of court;
- (z) the issuance, service, filing and storage of documents by electronic means, including methods of completing and signing documents for those purposes; and
- (aa) respecting access to court documents and proceedings.

**Approval of rule affecting practice and procedure in Court of Appeal**

- (2) A rule affecting the practice and procedure in the Court of Appeal may not be made by the Rules Committee under subsection (1) unless the rule is approved by the Court of Appeal.

**Approval of rule affecting practice and procedure in Supreme Court**

- (3) A rule affecting the practice and procedure in the Supreme Court may not be made by the Rules Committee under subsection (1) unless the rule is approved by the majority of the members of the Rules Committee referred to in clauses 34(1)(b) and (d).

**Supplementary rules**

- (4) Nothing in subsection (1) authorizes the making of rules that conflict with an Act, but rules may be made under subsection (1) supplementing the provisions of an Act in respect of practice and procedure before the courts.

**Publication**

- (5) The rules of court shall be published in the Gazette by the Rules Committee in such manner as the Lieutenant Governor in Council may determine, and after such publication the rules shall regulate all matters to which they extend.

**Rules published by the Rules Committee**

- (6) Printed copies of the rules purporting to be published by the Rules Committee are evidence of those rules.

**Third party claims, counterclaims**

- (7) Rules permitting a defendant to make a third party claim or counterclaim apply notwithstanding any agreement that provides that no action may be brought until after judgment against the defendant. *2008,c.20,s.35; 2012(2nd),c.14,s.1; 2013,c.38,s.1.*

## ADMINISTRATION OF THE COURTS

**36. Minister of Justice and Public Safety and Attorney General**

The Minister of Justice and Public Safety and Attorney General of Prince Edward Island shall superintend all matters connected with the administration of the courts, other than the following:

- (a) matters that are assigned by law to the judges of the courts, including the authority to direct and supervise the sittings of the Court of Appeal and the Supreme Court and the assignment of the duties of the judges of both courts;
- (b) matters related to the education, conduct and discipline of the judges of the courts that are governed by this Act or any other enactment of the Parliament or the Legislative Assembly;
- (c) matters assigned to the judges of the courts by a memorandum of understanding entered into under section 37. *2008,c.20,s.36; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

**37. Memorandum of understanding**

- (1) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island and the Chief Justice of Prince Edward Island may enter into a memorandum of understanding governing any matter relating to the administration of the Court of Appeal.

**Idem**

- (2) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island and the Chief Justice of the Supreme Court may enter into a memorandum of understanding governing any matter relating to the administration of the Supreme Court.

**Roles and responsibilities**

- (3) A memorandum of understanding entered into under this section may deal with the respective roles and responsibilities of the Minister of Justice and Public Safety and Attorney General of Prince Edward Island and the judges of the courts in the administration of justice, but such memorandum of understanding shall not deal with any matter assigned by law to the judges.

**Available to public**

- (4) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island shall ensure that each memorandum of understanding entered into under this section is made available to the public. *2008,c.20,s.37; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

**38. Court staff and facilities**

- (1) The Minister of Justice and Public Safety and Attorney General of Prince Edward Island shall provide such staff and facilities for the courts as the Minister considers necessary for the administration of the courts.

**Idem**

- (2) Court administrators, court reporters, interpreters, translators and such other employees as are necessary for the administration of the courts may be appointed under the *Civil Service Act*.

**Direction of court staff**

- (3) In matters that are assigned by law to the judges of a court, the personnel of that court, including court clerks, court reporters, interpreters, translators, the Prothonotary, the Registrar and their deputies and other court staff shall act at the direction of the Chief Justice of the court in which they work.

**Idem**

- (4) Court personnel referred to in subsection (3) who are present in a courtroom shall act at the direction of the presiding judge or the Prothonotary while the court is in session.

**Temporary appointments**

- (5) Notwithstanding subsections (1) and (2), a judge of a court may, by order, direct the temporary appointment of a court reporter, interpreter, translator or other court official, where the judge is of the opinion that such appointment is required in the circumstances for the proper administration of the court.

**Administration of oaths**

- (6) Every court reporter or court clerk, for the purposes of any matter in which he or she performs official duties, has the power to administer oaths and affirmations to persons in respect of such matters. *2008,c.20,s.38; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

## COMMON LAW AND EQUITY

### 39. Rules of law and equity

- (1) The courts shall administer concurrently all rules of equity and the common law.

#### Rules of equity to prevail

- (2) Where a rule of equity conflicts with a rule of common law, the rule of equity shall prevail. *2008, c.20, s.39.*

### 40. Declaratory orders

The courts may make binding declarations of right whether or not any consequential relief is or could be claimed. *2008, c.20, s.40.*

### 41. Relief against penalties

The courts may grant relief against penalties and forfeitures on such terms as to compensation or otherwise as are considered just. *2008, c.20, s.41.*

### 42. Damages in lieu of injunction or specific performance

The courts have jurisdiction to grant injunctions or order specific performance and may award damages in addition to, or in substitution for, such remedies. *2008, c.20, s.42.*

### 43. Vesting order

The courts may, by order, vest in any person an interest in real or personal property that the courts have authority to order be disposed of, encumbered or conveyed. *2008, c.20, s.43.*

## INTERLOCUTORY ORDERS

### 44. Injunctions and receivers

- (1) A court may
- (a) by interlocutory order,
    - (i) grant an injunction, or
    - (ii) appoint a receiver or receiver and manager; and
  - (b) make a mandatory interlocutory order,
- where it appears to the court to be just or convenient to do so.

#### Terms

- (2) An interlocutory order made under subsection (1) may include such terms as the court considers to be just. *2008, c.20, s.44.*

### 45. "labour dispute" defined

- (1) In this section, "**labour dispute**" means a dispute or difference concerning
- (a) the terms, tenure or conditions of employment; or

(b) the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

**Notice**

(2) Subject to subsection (8), no injunction to restrain a person from any act in connection with a labour dispute shall be granted without notice.

**Steps before injunction proceeding**

(3) In an application for an injunction to restrain a person from any act in connection with a labour dispute, a court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry upon or exit from the premises in question, or breach of the peace have been unsuccessful.

**Evidence**

(4) Subject to subsection (8), evidence in support of an application for an injunction to restrain a person from any act in connection with a labour dispute shall be provided by way of affidavits confined to statement of facts within the knowledge of the deponent, but any party may by notice to the party filing such affidavit require the attendance of the deponent to be cross-examined at the hearing.

**Interim injunction**

(5) A court may grant an interim injunction to restrain a person from any act in connection with a labour dispute for a period of not longer than four days.

**Notice**

(6) Subject to subsection (8), at least two days notice of the application for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the responding party and to any other person affected thereby but not named in the application.

**Idem**

(7) The notice required by subsection (6) to persons other than the responding party may be given,

(a) where such persons are members of a labour organization, by personal service upon an officer or agent of the labour organization; and

(b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected, and

such service and posting of the notice under this subsection shall be deemed to be sufficient notice to all such persons and to have been given as of the day that the notice is served or posted.

**Interim injunction without notice**

(8) Where notice as required by subsection (6) is not given, a court may grant an interim injunction where

(a) the case is otherwise a proper one for the granting of an interim injunction;

(b) notice as required by subsection (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service;

- (c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or where any of such persons are members of a labour organization, to an officer of that labour organization or to a person authorized to accept service of process on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and
- (d) proof of all material facts for the purposes of clauses (a), (b) and (c) is established by oral evidence.

**Misrepresentation, withholding are contempt of court**

- (9) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly provided by or on behalf of the applicant for an injunction under this section, constitutes a contempt of court. *2008, c.20, s.45.*

## INTEREST IN LAND

**46. Certificate of pending litigation**

- (1) The commencement of a proceeding in which an interest in land is in question is not notice of the proceeding to a person who is not a party to the proceeding until a certificate of pending litigation is issued by a court and the certificate is registered in the proper land registry office under subsection (2).

**Registration**

- (2) Where a certificate of pending litigation is issued under subsection (1), the certificate may be registered under the *Registry Act* R.S.P.E.I. 1988, Cap. R-10.

**Exception**

- (3) Subsections (1) and (2) do not apply to a proceeding for foreclosure or sale on a registered mortgage or to enforce a lien under the *Mechanics' Lien Act* R.S.P.E.I. 1988, Cap. M-4.

**Liability where no reasonable claim**

- (4) A party who registers a certificate of pending litigation under subsection (2) without a reasonable claim to an interest in the land is liable for any damages sustained by any person as a result of the registration of such certificate.

**Determination of damages**

- (5) The liability for damages referred to in subsection (4) and the amount thereof may be determined in the proceeding in respect of which the certificate of pending litigation was registered or in a separate proceeding.

**Order discharging certificate**

- (6) A court may make an order discharging a certificate of pending litigation
  - (a) where the party at whose instance it was issued
    - (i) claims a sum of money in place of or as an alternative to the interest in the land claimed,
    - (ii) does not have a reasonable claim to the interest in the land claimed, or
    - (iii) does not prosecute the proceeding with reasonable diligence;
  - (b) where the interests of the party at whose instance it was issued can be adequately protected by another form of security; or
  - (c) on any other ground that is considered just,



and the court may, in making the order, impose such terms as to the giving of security or otherwise as the court considers just.

**Effect**

- (7) Where a certificate of pending litigation is discharged by an order of a court, any person may deal with the land as fully as if the certificate had not been registered. *2008, c.20, s.46.*

## RECOVERY OF POSSESSION OF PERSONAL PROPERTY

**47. Interim order for recovery**

- (1) In an action in which the recovery of possession of personal property is claimed and it is alleged that the property
- (a) was unlawfully taken from the possession of the plaintiff; or
  - (b) is unlawfully detained by the defendant,
- a court, on application, may make an interim order for the recovery of possession of the property.

**Damages**

- (2) A person who obtains possession of personal property by obtaining or setting aside an interim order made under subsection (1) is liable for any loss suffered by the person ultimately found to be entitled to possession of the property. *2008, c.20, s.47.*

## MENTAL HEALTH EXAMINATION

**48. “health practitioner” defined**

- (1) In this section, “health practitioner” means a person licensed to practise medicine or dentistry in Prince Edward Island or any other jurisdiction, a psychologist registered under the *Psychologists Act* R.S.P.E.I. 1988, Cap. P-27.1 or a person certified or registered as a psychologist by another jurisdiction.

**Order for physical or mental examination**

- (2) Where the physical or mental condition of a party to a proceeding is in question, a court, on application, may order the party to undergo a physical or mental examination by one or more health practitioners.

**Idem**

- (3) Where the physical or mental condition of a party to a proceeding is first questioned in the proceeding by another party, an order shall not be made under this section unless the allegation is relevant to a material issue in the proceeding, and there is good reason to believe that there is substance to the allegation.

**Further examinations**

- (4) The court may, on application, order further physical or mental examinations.

**Examiner may ask questions**

- (5) Where an order is made under this section, the party examined shall answer the questions of the examining health practitioner relevant to the examination and the answers given are admissible in evidence. *2008, c.20, s.48.*

## CONSTITUTIONAL QUESTIONS

### 49. Constitutional questions

- (1) Where a constitutional question is raised in a proceeding in a court as to the constitutional validity or constitutional applicability of an Act of Parliament or the Legislative Assembly or of a regulation or bylaw made thereunder, the Act, regulation or bylaw shall not be adjudged to be invalid or inapplicable unless notice of the constitutional question has been served, in accordance with subsection (2), on the Attorney General of Canada and the Minister of Justice and Public Safety and Attorney General of Prince Edward Island.

#### Notice of constitutional question

- (2) Unless the court otherwise orders, the party who raises a constitutional question shall give the notice of the question to the Attorney General of Canada and the Minister of Justice and Public Safety and Attorney General of Prince Edward Island in accordance with subsection (1),
- (a) as soon as practicable after the constitutional question is raised; and
- (b) not later than 30 days before the date set by the court for argument of the constitutional question.

#### Notice of appeal

- (3) Where the Attorney General of Canada and the Minister of Justice and Public Safety and Attorney General of Prince Edward Island are entitled to notice of a constitutional question under subsection (1), they are entitled to notice of any appeal in respect of the constitutional question.

#### Right of Attorneys General, to be heard

- (4) Where the Attorney General of Canada or the Minister of Justice and Public Safety and Attorney General of Prince Edward Island is entitled to notice of a constitutional question under subsection (1), each Attorney General is entitled to adduce evidence and make submissions to the court in respect of the constitutional question.

#### Attorneys General, party

- (5) An Attorney General who makes submissions under subsection (4) in respect of a constitutional question shall be deemed to be a party to the proceeding for the purpose of any appeal in respect of the constitutional question. *2008,c.20,s.49; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

## CRIMINAL, QUASI-CRIMINAL PROCEEDINGS

### 50. Criminal proceedings

- (1) Sections 21, 26 and 49 apply to proceedings under the *Criminal Code* (Canada), where those sections are not inconsistent with that Act.

#### Provincial offences

- (2) Section 49 applies to proceedings under the *Summary Proceedings Act* R.S.P.E.I. 1988, Cap. S-9. *2008,c.20,s.50.*

## CHANGE OF VENUE

### 51. Agreement as to place of hearing

Where a party applies to a court to change the place of hearing in a proceeding, an agreement between the parties as to the place of hearing is not binding on a court, but the court may take the agreement into account. *2008,c.20,s.51.*

## DAMAGES

### 52. Periodic payment and review of damages

In a proceeding in a court where damages are claimed for personal injuries, the court may, with the consent of all affected parties,

- (a) order the defendant in the proceeding to pay all or part of the award for damages periodically on such terms as the court considers just; and
- (b) order that the award for damages be subject to future review and revision in such circumstances and on such terms as the court considers just. *2008,c.20,s.52.*

### 53. Assessment of damages

- (1) Where damages are to be assessed by a court in respect of

- (a) a continuing cause of action;
- (b) repeated breaches of a recurring obligation; or
- (c) intermittent breaches of a continuing obligation,

the damages, including damages for breaches occurring after the commencement of the proceeding, shall be assessed down to the time of the assessment.

#### Guidance to jury, amount of damages

- (2) In an action for damages for personal injury, the Supreme Court may give guidance to the jury on the amount of damages and the parties may make submissions to the jury on the amount of damages.

#### Appeal, damages for personal injuries

- (3) On an appeal from an award for damages for personal injury, the Court of Appeal may, if it considers it just, substitute its own assessment of the damages. *2008,c.20,s.53.*

## FOREIGN CURRENCY

### 54. Foreign money obligations

- (1) Subject to subsections (3) and (4), where a person obtains an order to enforce an obligation in a foreign currency, the order shall require payment of an amount in Canadian currency sufficient to purchase the amount of the obligation in the foreign currency at a chartered bank in Prince Edward Island at the close of business on the first day on which the bank quotes a Canadian dollar rate for purchase of the foreign currency before the day payment of the obligation is received by the creditor.

**Multiple payments**

- (2) Where more than one payment is made under an order referred to in subsection (1), the rate of conversion shall be the rate determined as provided in subsection (1) for each payment.

**Foreign currency**

- (3) Subject to subsection (4), where, in a proceeding to enforce an obligation in a foreign currency, a court is satisfied that conversion of the amount of the obligation to Canadian currency as provided in subsection (1) would be inequitable to any party, the order may require payment of an amount in Canadian currency sufficient to purchase the amount of the obligation in the foreign currency at a chartered bank in Prince Edward Island on such other day as the court considers equitable in the circumstances.

**Conversion to Canadian currency**

- (4) Where an obligation enforceable in Prince Edward Island provides for a manner of conversion to Canadian currency of an amount in a foreign currency, a court shall give effect to the manner of conversion to Canadian currency set out in the obligation.

**Seizure, garnishment**

- (5) Where a writ of seizure and sale or notice of garnishment is issued under an order of a court to enforce an obligation in a foreign currency, the day the sheriff, bailiff or clerk of the court receives money under the writ or notice shall be deemed, for the purposes of this section and any obligation referred to in subsection (4), to be the day payment is received by the creditor.  
*2008, c.20, s.54.*

## ACTION FOR AN ACCOUNTING

**55. Action for accounting**

- (1) Where an action for an accounting could have been brought against a person, the action may be brought against his or her personal representative.

***Idem***

- (2) An action for an accounting may be brought by a joint tenant or tenant in common, or his or her personal representative, against a co-tenant for receiving more than the co-tenant's just share. *2008, c.20, s.55.*

## INTEREST AND COSTS

**56. Interpretation**

- (1) In this section and in sections 57 and 58,
- (a) “**bank rate**” means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short-term advances to the banks listed in Schedule I to the *Bank Act* (Canada);
- (b) “**date of the order**” means the date the order is made, notwithstanding that the order is not entered or enforceable on that date, or that the order is varied on appeal, and in the case of an order directing a reference, the date the report on the reference is confirmed;

- (c) “**post-judgment interest rate**” means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the date of the order falls, rounded to the next higher whole number where the bank rate includes a fraction, plus 1 per cent;
- (d) “**prejudgment interest rate**” means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced, rounded to the nearest tenth of a percentage point;
- (e) “**quarter**” means the three month period ending with March 31, June 30, September 30 or December 31.

#### **Calculation and publication of interest rate**

- (2) After the first day of the last month of each quarter, the Registrar shall forthwith
  - (a) determine the prejudgment and post-judgment interest rate for the next quarter; and
  - (b) publish in the Gazette a table showing the rate determined under clause (a) for the next quarter and for all the previous quarters during the preceding ten years.  
*2008, c.20, s.56.*

#### **57. Prejudgment interest**

- (1) A person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest thereon at the prejudgment interest rate, calculated from the date the cause of action arose to the date of the order.

#### **Exception for non-pecuniary loss on personal injury**

- (2) Notwithstanding subsection (1), the rate of interest on damages for non-pecuniary loss in an action for personal injury shall be the discount rate determined by the rules.

#### **Past pecuniary loss**

- (3) If the order includes an amount for past pecuniary loss, the interest calculated under subsection (1) shall be calculated on the total past pecuniary loss at the end of each six-month period and at the date of the order.

#### **Exclusion**

- (4) Interest shall not be awarded under subsection (1),
  - (a) on exemplary or punitive damages;
  - (b) on interest accruing under this section;
  - (c) on an award of costs in the proceeding;
  - (d) on that part of the order that represents pecuniary loss arising after the date of the order and that is identified by a finding of the court;
  - (e) with respect to the amount of any advance payment that has been made towards settlement of the claim, for the period after the advance payment has been made;
  - (f) where the order is made on consent, except by consent of the debtor; or
  - (g) where interest is payable by a right other than under this section.

#### **Default judgment**

- (5) Where a judgment is obtained by default, the Prothonotary may exercise the functions of the Supreme Court under this section.

**Interest deemed part of order**

- (6) For the purposes of enforcing an order, interest awarded under this section shall be deemed to be included in the order. *2008, c.20, s.57.*

**58. Post-judgment interest**

- (1) Money owing under an order, including costs to be assessed or costs fixed by a court, bears interest at the post-judgment interest rate, calculated from the date of the order.

**Interest on periodic payments**

- (2) Where an order provides for periodic payments, each payment in default shall bear interest only from the date of default.

**Interest on order originating outside province**

- (3) Where an order made by a court is based on an order made outside Prince Edward Island or an order made outside Prince Edward Island is filed with the Supreme Court for the purpose of enforcement, money owing under the order bears interest at the rate, if any, applicable to the order made outside Prince Edward Island by the law of the place where the order was made.

**Costs assessed without order**

- (4) Where costs are assessed without an order, the costs bear interest at the post-judgment interest rate in the same manner as if an order were made for the payment of costs on the date the person to whom the costs are payable became entitled to the costs.

**Other provision for interest**

- (5) Interest shall not be awarded under this section where interest is payable by a right other than under this section.

**Post-judgement interest**

- (6) Where post-judgment interest is payable by a right other than under this section, the rate of such interest shall not exceed the post-judgment interest rate. *2008, c.20, s.58.*

**59. Direction of the court**

- (1) A court may, where it considers it just to do so, in respect of the whole or any part of the amount on which interest is payable under section 57 or 58,
- (a) disallow interest under either section;
  - (b) allow interest at a rate higher or lower than that provided in either section; or
  - (c) allow interest for a period other than that provided in either section.

***Idem***

- (2) For the purpose of subsection (1), the court shall take into account
- (a) changes in the market interest rate;
  - (b) the circumstances of the case;
  - (c) the fact that an advance payment was made;
  - (d) the circumstances of medical disclosure by the plaintiff;
  - (e) the amount claimed and the amount recovered in the proceeding;
  - (f) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding; and

(g) any other relevant consideration. *2008,c.20,s.59.*

**60. Costs**

(1) Unless otherwise provided by any Act, the costs of and incidental to a proceeding authorized to be taken in a court are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

**Trustees, etc.**

(2) Nothing herein deprives a trustee, mortgagee or other person of any right to costs out of a particular estate or fund.

**Government costs**

(3) In a proceeding to which the Government is a party, costs awarded to the Government shall not be disallowed or reduced on assessment merely because they relate to a barrister or solicitor who is a salaried agent or employee of the Government, and costs recovered on behalf of the Government shall be paid into the Operating Fund. *2008,c.20,s.60.*

## PUBLIC ACCESS

**61. Hearings open to public**

(1) Unless otherwise provided by any other Act, the rules or a court order, all court hearings shall be open to the public.

**Exception**

(2) A court may order the public to be excluded from a hearing where the possibility of serious harm or injustice to any person justifies a departure from the general principle that court hearings should be open to the public.

**Disclosure of information**

(3) Where a proceeding is heard in the absence of the public, disclosure of information relating to the proceeding is not contempt of court unless the court has expressly prohibited the disclosure of the information. *2008,c.20,s.61.*

**62. Documents are public**

(1) Unless otherwise provided by any other Act, the rules or a court order, any person is entitled, on payment of the fee prescribed under the *Court Fees Act* R.S.P.E.I. 1988, Cap. C-27.001, to see any document filed in a civil proceeding in a court.

**Sealing documents**

(2) For purpose of confidentiality, a court may order that any document filed in a civil proceeding in the court be sealed and not form part of the public record. *2008,c.20,s.62; 2012,c.10,s.5.*

## MISCELLANEOUS

### 63 Multiplicity of proceedings

As far as possible, a multiplicity of legal proceedings shall be avoided. *2008,c.20,s.63.*

### 64. Joint liability

- (1) Where two or more persons are jointly liable in respect of the same cause of action, an order against, or the release of, one of them does not preclude an order being made against any other in the same or a separate proceeding.

#### Two proceedings in respect of same damage

- (2) Where a person who has suffered damages brings two or more proceedings in respect of the damages, the person is not entitled to costs in any of the proceedings, except the first proceeding in which an order is obtained, unless a court is of the opinion that there were reasonable grounds for bringing more than one proceeding. *2008,c.20,s.64.*

### 65. Vexatious proceedings

- (1) Where a court is satisfied, on application, that a person has persistently and without reasonable grounds
- (a) instituted vexatious proceedings in any court; or
  - (b) conducted a proceeding in any court in a vexatious manner,
- the court may order that, except by leave of a court,
- (c) no further proceeding may be instituted by the person in any court; or
  - (d) a proceeding previously instituted by the person in any court shall not be continued.

#### Application for leave to proceed

- (2) Where a person against whom an order under subsection (1) has been made seeks leave to institute or continue a proceeding, the person shall do so by way of an application in the court.

#### Leave to proceed

- (3) Where an application for leave is made under subsection (2),
- (a) leave shall be granted only if the court is satisfied that the proceeding sought to be instituted or continued is not an abuse of process and that there are reasonable grounds for the proceeding;
  - (b) the person making the application for leave may seek the rescission of the order made under subsection (1) but may not seek any other relief on the application;
  - (c) the court may rescind the order made under subsection (1);
  - (d) the Minister of Justice and Public Safety and Attorney General of Prince Edward Island is entitled to be heard on the application; and
  - (e) no appeal lies from refusal to grant relief to the applicant.

#### Abuse of process

- (4) Nothing in this section limits the authority of a court to stay or dismiss a proceeding as an abuse of process or on any other ground. *2008,c.20,s.65; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*



**66. Enforcement of bonds and recognizances**

- (1) A bond or recognizance arising out of a civil proceeding may be enforced in the same manner as an order for the payment of money by leave of a court on application by the Minister of Justice and Public Safety and Attorney General of Prince Edward Island or any other person entitled to enforcement.

**Enforcement of fines for contempt**

- (2) A fine for contempt of court may be enforced by the Minister of Justice and Public Safety and Attorney General of Prince Edward Island in the same manner as an order for the payment of money or in any other manner permitted by law.

**Enforcement by sheriff**

- (3) The sheriff to whom an execution order obtained under subsections (1) and (2) is directed shall proceed immediately to carry out the order without a direction to enforce. *2008,c.20,s.66; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

**67. Consul as official representative**

Where a person who is ordinarily resident in a foreign country is entitled to money or property that is in the possession of a court or an executor or administrator, and if the foreign country has a consul in Canada who is authorized to act as the person's official representative, the money or property may be paid or delivered to the consul. *2008,c.20,s.67.*

**68. Absolute assignment of debt or other legal chose in action**

- (1) Any absolute assignment by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim the debt or chose in action, is and shall be deemed to have been effectual in law, subject to all equities which would have been entitled to priority over the right of the assignee if this subsection had not been enacted, to pass and transfer the legal right to the debt or chose in action from the date of the notice, and all legal and other remedies for it and the power to give a good discharge for it, without the concurrence of the assignor.

**Debtor may call upon persons making claims to interplead**

- (2) In case of an assignment of a debt or other chose in action, if the debtor, trustee, or other person liable in respect to such debt or chose in action has had notice that such assignment is disputed by the assignor or anyone claiming under the assignor or of any other opposing or conflicting claims to such debt or chose in action, he or she may, if he or she thinks fit, call upon the several persons making claim thereto to interplead concerning the same, or he or she may, if he or she thinks fit, pay the same into the court upon obtaining a judge's order therefore to abide the determination of the court in respect thereto. *2008,c.20,s.68.*

**69. Court seals**

The courts shall have such seals as are approved by the Lieutenant Governor in Council and the seals shall be impressed on such documents as may be specified in the rules. *2008,c.20,s.69.*

**70. Regulations**

The Lieutenant Governor in Council may make regulations not inconsistent with the rules

- (a) prescribing the maximum sum of a claim that may be brought in an action commenced in the Small Claims Section of the Supreme Court for the purposes of section 15;
- (a.1) respecting the fees, if any, to be paid for the Prothonotary's services pursuant to clause 35(1)(j.1); and
- (b) generally for the better carrying out of the purposes and provisions of this Act.  
*2008, c.20, s.70; 2012(2nd), c.14, s.2.*

## TRANSITIONAL PROVISIONS

### 71. Chief Justice of Prince Edward Island

- (1) The person who is the Chief Justice of Prince Edward Island immediately before the day this Act comes into force is the Chief Justice of Prince Edward Island and the Chief Justice of the Court of Appeal under this Act.

#### Chief Justice of the Trial Division of the Supreme Court

- (2) The person who is the Chief Justice of the Trial Division of the Supreme Court immediately before the day this Act comes into force is the Chief Justice of the Supreme Court under this Act.

#### Judges of the Appeal Division

- (3) The judges who are judges of the Appeal Division of the Supreme Court immediately before the day this Act comes into force are judges of the Court of Appeal under this Act.

#### Judges of the Trial Division

- (4) The judges who are judges of the Trial Division of the Supreme Court immediately before the day this Act comes into force are judges of the Supreme Court under this Act.

#### Supernumerary judges of the Appeal or Trial Division

- (5) The judges who are supernumerary judges of the Appeal Division or Trial Division of the Supreme Court immediately before the day this Act comes into force are supernumerary judges of the Court of Appeal or the Supreme Court, respectively, under this Act.

#### Prothonotary deemed to be appointed under this Act

- (6) The person who has an appointment under the former Act as the Prothonotary immediately before the day this Act comes into force is deemed to have been appointed as the Prothonotary under subsection 27(2) of this Act.

#### Registrar deemed to be appointed under this Act

- (7) The person who has an appointment under the former Act as the Registrar of the Supreme Court of Prince Edward Island that is in effect immediately before the day this Act comes into force is deemed to have been appointed as the Registrar of the Court of Appeal and the Supreme Court under subsection 28(1) of this Act.

#### Deputy registrar of Section of Supreme Court deemed to be appointed under this Act

- (8) Any person who has an appointment under the former Act as a deputy registrar for a Section of the Trial Division of the Supreme Court of Prince Edward Island that is in effect immediately before the day this Act comes into force is deemed to have been appointed as a deputy Registrar for that Section of the Supreme Court under section 29 of this Act.

**Deputy registrar of Court of Appeal deemed to be appointed under this Act**

- (9) Any person who has an appointment under the former Act as a deputy registrar for the Appeal Division of the Supreme Court of Prince Edward Island that is in effect immediately before the day this Act comes into force is deemed to have been appointed as a deputy Registrar for the Court of Appeal under section 29 of this Act.

**Official Guardian deemed to be appointed under this Act**

- (10) The person who has an appointment under the former Act as the Official Guardian that is in effect immediately before the day this Act comes into force is deemed to have been appointed as the Official Guardian under subsection 33(1) of this Act.

**Finance Committee, members**

- (11) Any person who has an appointment under the former Act as a member of the finance committee continued under that Act that is in effect immediately before the day this Act comes into force is deemed to have been appointed under subsection 30(1) of this Act as a member of the finance committee continued under that subsection.

**Rules Committee, members**

- (12) The persons who have appointments under clauses 24(1)(d) and (e) of the former Act as members of the Rules Committee continued under that Act that are in effect immediately before the day this Act comes into force are deemed to have been appointed under clauses 34(1)(f) and (g) respectively as members of the Rules Committee until such time as their appointments under the former Act would otherwise have expired if that Act had not been repealed, unless their appointments are sooner revoked under this Act.

***Idem***

- (13) The persons who have appointments under clause 24(1)(c) and (f) of the former Act as members of the Rules Committee continued under that Act that are in effect immediately before the day this Act comes into force cease to hold such office on the day this Act come into force.

**Rules continued**

- (14) The Rules of Court made under the former Act that are in effect immediately before the day this Act comes into force continue in force under, and are deemed to have been made in compliance with, this Act until they are amended, revoked or replaced under this Act.

**Proceedings before Trial Division continued**

- (15) Where a proceeding is before the Trial Division of the Supreme Court immediately before the day this Act comes into force,
- (a) the proceeding shall
    - (i) be continued before the Supreme Court under and in conformity with this Act, and
    - (ii) the judge dealing with the proceeding shall continue to deal with it in his or her capacity as a judge of the Supreme Court; and
  - (b) all documents that have been filed in the Trial Division of the Supreme Court in respect of the proceeding shall be deemed to comply with subsection 12(2).

**Cases referred back on appeal**

- (16) Where a proceeding
- (a) that was before the Trial Division of the Supreme Court immediately before the day this Act comes into force; and

- (b) as a result of an appeal
    - (i) has, before or after the day this Act comes into force, been referred back to that court to be further dealt with, or
    - (ii) after the day this Act comes into force would, except for this section, have been referred back to that court to be further dealt with,
- the proceeding shall be dealt with by the Supreme Court as though the proceeding had instead been before that court.

**Records**

- (17) On the day this Act comes into force, the records and files of the Trial Division of the Supreme Court, whether concluded or not, are deemed to be the records and files of the Supreme Court.

**Documents under former style of cause**

- (18) Where a proceeding before the Trial Division of the Supreme Court or a judge of that court is continued in the Supreme Court under subsection (15), an affidavit styled in the Trial Division of the Supreme Court
- (a) shall be accepted for filing in the Supreme Court after the day this Act comes into force if it was sworn or affirmed before that day; or
  - (b) may be accepted for filing in the Supreme Court where it was sworn or affirmed after the day this Act comes into force if the Registrar is satisfied that it is impossible or that it would result in undue delay or hardship to have an affidavit sworn or affirmed that is properly styled.

**Filing of documents**

- (19) The Supreme Court may, upon the application of a person interested in a proceeding before the Supreme Court, give directions
- (a) as to the filing of documents or matters of procedure in cases for which no provision is made by subsections (15) or (18); and
  - (b) for the purpose of removing or minimizing a procedural difficulty arising, on or after the day this Act comes into force, in respect of a proceeding that is continued in the Supreme Court.

**Proceedings before Appeal Division continued**

- (20) Where a proceeding is before the Appeal Division of the Supreme Court immediately before the day this Act comes into force,
- (a) the proceeding shall
    - (i) be continued before the Court of Appeal under and in conformity with this Act, and
    - (ii) the judges dealing with the proceeding shall continue to deal with it in their capacity as judges of the Court of Appeal; and
  - (b) all documents that have been filed in the Appeal Division of the Supreme Court in respect of the proceeding shall be deemed to comply with subsection 5(2).

**Records**

- (21) On the day this Act comes into force, the records and files of the Appeal Division of the Supreme Court, whether concluded or not, are deemed to be the records and files of the Court of Appeal.

**Orders deemed to be order of Supreme Court**

- (22) Every order of the Trial Division of the Supreme Court that is in effect immediately before the day this Act comes into force is deemed to be an order of the Supreme Court.

**Orders deemed to be order of Court of Appeal**

- (23) Every order of the Appeal Division of the Supreme Court that is in force immediately before the day this Act comes into force is deemed to be an order of the Court of Appeal.

**Application of Act to proceedings**

- (24) This Act applies in respect of any proceeding commenced in the Supreme Court or the Court of Appeal after this Act comes into force, even though the matters or things giving rise to the proceeding occurred before this Act comes into force.

**References to Trial Division**

- (25) Where in any Act, regulation, rule, order, by-law, agreement or other instrument or document reference is made to the Trial Division of the Supreme Court, or to a judge, Chief Judge or Chief Justice thereof, the reference shall be read as a reference to the Supreme Court, or to a judge or the Chief Justice thereof.

**References to Appeal Division**

- (26) Where in any Act, regulation, rule, order, by-law, agreement or other instrument or document reference is made to the Appeal Division of the Supreme Court, or to a judge or Chief Justice thereof, the reference shall be read as a reference to the Court of Appeal, or to a judge or the Chief Justice thereof.

**Honourable Charles St. Clair Trainor Judges' Library Trust**

- (27) The Honourable Charles St. Clair Trainor Judges' Library Trust continued by the former Act is dissolved. 2008,c.20,s.71.

## CONSEQUENTIAL AMENDMENTS

72. (1) to (95) (This section makes consequential amendments to other Acts. The amendments have been incorporated into those Acts.) 2008,c.20,s.72.

## REPEAL AND COMMENCEMENT

**73. Repeal**

The *Supreme Court Act* R.S.P.E.I. 1988, Cap. S-10 is repealed.

**74. Commencement**

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.