

September 12, 2019



Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* [Our File #: PRE/60/2019]

On August 14, 2019 the Premier's Office received your request for access to the following records/information:

"Information note received 6/20/2019 with a title that begins with "JPS - Provincial Court Judges' Salary and Benefits Tribunal's Report ..."

I am pleased to inform you that a decision has been made by the Chief of Staff of the Premier's Office to provide access to some of the information requested. Access to the remaining information has been refused in accordance with the following exceptions to disclosure, as specified in the *Access to Information and Protection of Privacy Act* (the *Act*):

29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister.

30. (1) The head of a public body may refuse to disclose to an applicant information

(b) that would disclose legal opinions provided to a public body by a law officer of the Crown.

35. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

(c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public.

You may appeal this decision by asking the Information and Privacy Commissioner to review this response, as set out in section 42 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the response and why you are

submitting the appeal. The appeal may be addressed to the Information and Privacy Commissioner as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act*.

This response will be published as outlined on the Completed Access to Information Requests website (<http://atipp-search.gov.nl.ca/>). If you have any further questions, please feel free to contact me by telephone at (709)729-3570 or by e-mail at matthewworthman@gov.nl.ca.

Sincerely,

A handwritten signature in cursive script that reads "M. Worthman".

Matthew Worthman
ATIPP Coordinator
Enclosure

Access or correction complaint

42.(1) A person who makes a request under this *Act* for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, Act or failure to Act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the Act or failure to Act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, Act or failure to Act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the Act or failure to Act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, Act or failure to Act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

Information Note
Department of Justice and Public Safety

Title: Provincial Court Judges' Salary and Benefits Tribunal's Report released on June 6, 2019

Issue: The Province will need to table and respond to the report within the specified timelines.

Background and Current Status:

- There are currently 30 judges appointed to the Provincial Court of Newfoundland and Labrador. Of these 30 judges, 7 are *per diem*, (part time). The appointment of judges and the continuation of this Court are pursuant to the *Provincial Court Act, 1991* (the Act).
- Section 28 of the Act requires the Lieutenant Governor in Council to appoint a tribunal every four years, to review and report on the salaries and benefits of Provincial Court Judges, and present its recommendations, and reasons, to the Minister.
- On June 21, 2018 Justice Faour released a decision ordering the Province to raise the salaries of Provincial Court Judges by 4 per cent for each of the four fiscal years 2013-14 through 2016-17.
- On June 26, 2018 the Auditor General requested that the Wicks Tribunal, consisting of Brad Wicks Q.C., David Eaton Q.C. and John Whelan, prepare recommendations on salary and benefits for the four year period 2017-18 to 2020-21.
- On December 13, 2018 the Lieutenant Governor in Council, with the approval of the Chief Provincial Court Judge and the Newfoundland and Labrador Provincial Court Judges' Association reappointed the Wicks Tribunal for a further four years. The new term will expire on December 3, 2022.
- The Tribunal conducted public hearings at the end of January 2019. At the hearing the Province argued for zero per cent salary increases for the four years 2017-21. The Newfoundland and Labrador Provincial Court Judges Association argued for three per cent increases during each year. Submissions were also made on other issues.
- The Tribunal's Report, released on June 6, 2019 made the following recommendations:
 - i) **Severance:** Although judges no longer get severance a few judges accumulated severance under earlier schemes. They are obliged to wait until they retire to collect severance unless the scheme is changed. As severance for provincial employees has recently been paid, judges should have their severance paid out forthwith.
 - ii) **Long Term Disability:** Judges benefits were initially structured around a mandatory retirement age of 65. Now that the age of mandatory retirement has changed to 70 this benefit should extend to 70 not 65.
 - iii) **Per Diem travel:** Part time, semi-retired judges who are paid a daily rate for sitting (1/248 of annual salary) are to be provided compensation for travel time as follows:
 - a) One way travel between 150 and 400 KMs: ½ day of compensation.
 - b) One way travel over 400 KMs: 1 full day of compensation.
 - c) One way air travel: ½ day of compensation.

iv) Salary: The following annual increases were recommended;

Year	% increase	Salary in \$	Calculation
2017-18	0%	\$247,546	
2018-19	0%	\$247,546	
2019-20	1.6%	\$251,506.74	Based on 2018 CPI = 1.6%
2020-21	Approx 6%	Approx \$266,500	Based on the sum of CPI for 2017 + 2019 + 2020

v) Interest: The Tribunal has recommended that interest be paid to the judges on any increases not paid within 6 months of the date of the report. Clarification may be required on this point if the increase for 2020-21 is implemented as the increase would have to be paid retroactively once the CPI for 2020 became known.

vi) The Province will pay 2/3 of the judges' legal fees and 100 per cent of the judges' disbursements. [29\(1\)\(a\), 35\(1\)\(c\)](#)

- [REDACTED]
- The Act at s. 28.2 requires that:
 - (2) The minister shall, within 15 days of receiving a report under subsection (1) present the report to the House of Assembly if the House of Assembly is in session and if the House of Assembly is not, within 15 days of the commencement of the next session.
 - (3) The House of Assembly shall consider a report submitted under subsection (2) within 30 days of its being tabled, and shall approve, vary or reject the report.
 - (4) Where a session is prorogued before a report is dealt with by the House of Assembly under subsection (3), the minister shall re-submit the report within 15 days of the beginning of the next session and the House of Assembly shall consider the report within 30 days of its re-submission and shall approve, vary or reject it. [30\(1\)\(b\)](#)
- For the purposes of section 28.2 "days" means calendar days not sitting days, therefore, as the House of Assembly (House) opened on June 10, 2019 the Report will have to be tabled in the House on or before June 25, 2019. The Act further requires that the Report must be dealt with by the House within a further 30 days, [30\(1\)\(b\)](#)
 [REDACTED] Note that s. 28.2(4) provides the procedure where the House is prorogued before a report is dealt with. [REDACTED] 30 days starts to run once the Report is presented. If the House rises, it would remain on the Order Paper until the House sits again. Once the House sits again, the Report would have to be considered within the outstanding portion of the 30 day period. [30\(1\)\(b\)](#)

- When the Act refers to approving, varying or rejecting the Report, the process involves a Resolution of the House either adopting, varying, or rejecting the Tribunal’s recommendations. In the event of varying or rejecting the recommendations the Resolution must in broad terms explain the rationale of the Province. The Resolution can be subject to judicial review if the Provincial Court Judges seek to challenge it. The standard of review articulated in the jurisprudence is unique to this area of the law, it is called “simple rationality.”

Prepared/Approved by: P. Osborne/J. Mercer QC
Reviewed by: C. Osmond/C. Blundon, Cabinet Secretariat
Ministerial Approval: Received from the Hon. Andrew Parsons QC

June 20, 2019

Cabinet Secretariat Comment:

- JPS advises that the Minister would like to table the Report on Tuesday, June 25, 2019. This date will be within the legislated 15 day timeline to table the Report from date of receipt as set out in the *Provincial Court Act, 1991*.

30(1)(b)

- Once tabled, the House has a further 30 days to approve, vary or reject the Report.

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29(1)(a), 35(1)(c)