



Secretariat Unit

# Bill Essentials

## THE JUDGES SALARIES AND PENSIONS (AMENDMENT) BILL, 2013

**An Act to amend the Judges Salaries and Pensions Act, Chap. 6:02.**

Bill no.: 18 of 2013

Introduced in: The House of Representatives

Introduced by: Senator the Honourable Anand Ramlogan, SC [Attorney General]

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## BACKGROUND

The legal framework providing for the remuneration of Judges is the Judges Salaries and Pension Act, Chap 6:02<sup>1</sup> The salaries and allowances of Judges contained in Chapter Five (5) of The Ninety-Eighth Report<sup>2</sup> of the Salaries Review Commission will be used for the purpose of approximating the pension payable to judges before and after the amendments in the Bill under consideration.

## PURPOSE OF THE BILL

The Bill seeks to amend Judges Salaries and Pension Act, Chap 6:02 to provide for:

1. the periodic revision of the pension paid to retired Judges of the Supreme Court; and
2. a more favorable computation of pensions payable to retired Judges of the Supreme Court or their widow.

## KEY FEATURES OF THE PROPOSED LEGISLATION

The Bill consists of eight (8) clauses. The following is a summary of its' provisions.

- ❖ The Bill amends Section 3 of the Judges Salaries and Pension Act, Chap 6:02 by inserting definitions for the following:
  1. amending Act;
  2. pensionable Allowances; and
  3. widow.
- ❖ The new definition of pensionable emoluments is substituted to mean the salary paid to a Judge in respect of his substantive office **and his pensionable allowances**.
- ❖ The Bill amends Section 8 of the Act by providing that the rate of pension payable to retired Judges other than the Chief Justice be an aggregate of one-third of his pensionable emoluments and **one three hundredths** of his pensionable emoluments in respect of each completed month of service.

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<sup>1</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/6.02.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/6.02.pdf)

<sup>2</sup> <http://www.ttparliament.org/documents/2225.pdf>

- ❖ The Bill creates a new section 8A (1) and (2) which provide for the following:
  1. where the salary or pensionable allowances of Judges increase, the pensionable emoluments of a retired Judge is deemed to be the same as that payable to a Judge occupying the office from which he retired. The pension of a retired Judge will be adjusted from the date such increases take effect;
  2. Judges who:
    - a. retired before the amending Act came into force; and
    - b. were alive on the date when the amending Act comes into force
 will be entitled to have their pensions computed and adjusted with effect from the date the amending Act comes into force by considering the following in determining their pensionable emoluments:
    - a. the adjusted definition of pensionable emoluments that takes into account pensionable allowances; and
    - b. any increase in the salary or pensionable allowances of Judges that took effect subsequent to their retirement.
- ❖ The Bill amends section 12(1) to provide for a pension at an annual rate equivalent to **eighty-five per cent (85%)** of a Chief Justice's pension to be payable to the widow of a retired Chief Justice or a monthly pension in the sum of three thousand dollars, whichever is the greater.
- ❖ The Bill amends Section 12 (2) (b) to provide for a pension at an annual rate equivalent to **eighty-five per cent (85%)** of a Chief Justice's pensionable emoluments to be payable to the widow of a sitting Chief Justice or a monthly pension in the sum of three thousand dollars, whichever is greater.
- ❖ The Bill amends Section 13 (1) to provide for a pension at an annual rate equivalent to **eighty-five per cent (85%)** of a Judge's pension to be payable to the widow of a retired Judge or a monthly pension in the sum of three thousand dollars, whichever is the greater.
- ❖ The Bill amends Section 13 (2) (b) to provide for a pension at an annual rate equivalent to **eighty-five per cent (85%)** of a Judge's pensionable emoluments to be payable to the widow of a sitting Judge or a monthly pension in the sum of three thousand dollars, whichever is the greater.

❖ The Bill provides for new subsections 14 A, 14B and 14C which provides that:

**14 A** whenever the salary or pensionable allowances of a Judge, (including the Chief Justice) increases, a widows' pension will be recomputed from the date the increase takes effect by treating the pensionable emoluments of the Judge (including the Chief Justice) the same as if he had still been in that office or retired from that office;

**14 B (1)** the widow of a retired Chief Justice who is alive and entitled to a pension when the amending Act came into force is entitled to have her pension adjusted from that date having regard to section 12(1) and any increase in pension the Chief Justice would have been entitled to if he were alive when the amending Act came into force;

**14 B (2)** the widow of a sitting Chief Justice who is alive and entitled to a pension when the amending Act came into force is entitled to have her pension adjusted from that date by treating the pensionable emoluments of the Chief Justice as though he were alive and receiving a pension when the amending Act came into force;

**14 C (1)** the widow of a retired Judge who is alive and entitled to a pension when the amending Act came into force is entitled to have her pension adjusted from that date having regard to section 13(1) and any increase in pension the Judge would have been entitled to if he were alive when the amending Act came into force;

**14 C (2)** the widow of a sitting Judge who is alive and entitled to a pension when the amending Act came into force is entitled to have her pension adjusted from that date by treating the pensionable emoluments of the Judge as though he were alive and receiving a pension when the amending Act came into force.

## KEY CHANGES TO THE EXISTING LEGISLATION

Judges Salaries and Pensions Act Chap 6:02	Judges Salaries and Pensions (Amendment) Bill, 2014
<p><u>Section 3</u></p>	<p><u>Clause 3</u>  <b>Inserts</b> in Section 3 the new definitions for “amending Act”, “pensionable allowances”, “widower”, “pensionable emoluments”.</p>
<p><u>Section 8</u>            8 A person who at any time retires from an office to which this Act applies, other than the office of Chief Justice, shall be granted in respect of his service as a Judge a pension which is the aggregate of one-third of his pensionable emoluments and one-three hundred and sixtieth of his pensionable emoluments in respect of each completed month of service as such.</p>	<p><u>Clause 4</u>  <b>New 8</b> A person who at any time retires from an office to which this Act applies, other than the office of Chief Justice, shall be granted in respect of his service as a Judge a pension which is the aggregate of one-third of his pensionable emoluments and <b>one three-hundredths</b> of his pensionable emoluments in respect of each completed month of service as such.</p>
	<p><u>Clause 5</u>  <b>Creation of Section 8A</b>            Notwithstanding section 6(1) and (2), whenever the salary or pensionable allowances of Judges are increased, the pensionable emoluments of a retired Judge, if he is still living on the date on which such an increase takes effect, is deemed as from that date to have been the same as those payable to a Judge occupying the office from which he retired and the pension of the retired Judge shall be adjusted accordingly as from that date.            (2) Notwithstanding section 6(1) and (2), Judges who retired before the amending Act came into force and who were still living on the date when the amending Act came into force, are entitled to have their pensions computed and adjusted as from that date by taking into account in determining their pensionable emoluments—</p>

	<p>(a) the definition of “pensionable emoluments” contained in the amending Act; and</p> <p>(b) any increase in the salary or pensionable allowances of Judges that took effect after their retirement.</p>
<p><u>Section 12</u></p> <p>12 (1) Where a person dies while he is entitled to receive a pension in respect of his service as Chief Justice and he leaves a widow, the widow shall be paid a pension at an annual rate equivalent to two-thirds of the pension payable to him at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.</p> <p>(2) Where a person dies while holding the office of Chief Justice and he leaves a widow, the widow shall be paid—</p> <p>(a) a gratuity of an amount equivalent to twelve and a half times one-quarter of his pensionable emoluments at the date of his death; and</p> <p>(b) a pension at an annual rate equivalent to one-half of his pensionable emoluments at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.</p> <p>(3) A widow shall not be entitled to receive and shall not be paid a pension under this section in respect of any period after her remarriage.</p> <p>(4) Where a person dies while holding the office of Chief Justice and he does not leave a widow, a gratuity equivalent to twelve and a half times one-quarter of his pensionable emoluments at the date of his death shall be paid to the legal personal representatives on account of the deceased person’s estate.</p> <p>(5) In this section a reference to “widow” includes a reference to “widower”.</p>	<p><u>Clause 6</u></p> <p><b>New 12</b></p> <p>(1) <b>Subject to sections 8A and 8B, where</b> a person dies while he is entitled to receive a pension in respect of his service as Chief Justice and he leaves a widow, the widow shall be paid a pension at an annual rate equivalent to <b>eighty-five per cent</b> of the pension payable to him at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.</p> <p>(2) Where a person dies while holding the office of Chief Justice and he leaves a widow, the widow shall be paid—</p> <p>(a) a gratuity of an amount equivalent to twelve and a half times one-quarter of his pensionable emoluments at the date of his death; and</p> <p>(b) a pension at an annual rate equivalent to <b>eighty-five per cent</b> of his pensionable emoluments at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.</p> <p>(3) A widow shall not be entitled to receive and shall not be paid a pension under this section in respect of any period after her remarriage.</p> <p>(4) Where a person dies while holding the office of Chief Justice and he does not leave a widow, a gratuity equivalent to twelve and a half times one-quarter of his pensionable emoluments at the date of his death shall be paid to the legal personal representatives on account of the deceased person’s estate.</p>

Section 13

13. (1) Where a person dies while he is entitled to a pension in respect of his service as a Judge and he leaves a widow, the widow shall be paid a pension at an annual rate equivalent to one-half of the pension payable to him at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.

(2) Where a person dies while holding the office of a Judge and he leaves a widow, the widow shall be paid—

(a) a gratuity of an amount equivalent to twelve and a half times one-sixth of his pensionable emoluments at the date of his death; and

(b) a pension at an annual rate equivalent to one-quarter of the pensionable emoluments payable to him at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.

(3) A widow shall not be entitled to receive and shall not be paid a pension under this section in respect of any period after her remarriage.

(4) Where a person dies while holding the office of a Judge and he does not leave a widow, a gratuity of an amount equivalent to

twelve and a half times one-sixth of the pensionable emoluments payable to him at the date of his death shall be paid to the legal personal representatives on account of the deceased person's estate.

(5) Nothing in this Act shall affect the rights of a widow of any Judge, including the Chief Justice under the Widows' and Orphans' Pensions Act or any other law.

(6) In this section—

“Judge” does not include the Chief Justice;

“widow” includes widower.

(7) This section shall be deemed to have come into force on the 31st August 1962.

Clause 7

13. (1) **Subject to section 8A, where** a person dies while he is entitled to a pension in respect of his service as a Judge and he leaves a widow, the widow shall be paid a pension at an annual rate equivalent to **eighty-five per cent** of the pension payable to him at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.

(2) Where a person dies while holding the office of a Judge and he leaves a widow, the widow shall be paid—

(a) a gratuity of an amount equivalent to twelve and a half times one-sixth of his pensionable emoluments at the date of his death; and

(b) a pension at an annual rate equivalent to **eighty-five per cent** of the pensionable emoluments payable to him at the date of his death or a monthly pension in the sum of three thousand dollars, whichever is the greater.

(3) A widow shall not be entitled to receive and shall not be paid a pension under this section in respect of any period after her remarriage.

(4) Where a person dies while holding the office of a Judge and he does not leave a widow, a gratuity of an amount equivalent to twelve and a half times one-sixth of the pensionable emoluments payable to him at the date of his death shall be paid to the legal personal representatives on account of the deceased person's estate.

(5) Nothing in this Act shall affect the rights of a widow of any Judge, including the Chief Justice under the Widows' and Orphans' Pensions Act or any other law.

(6) In this section, “Judge” does not include the Chief Justice.



Clause 8

**Creation of Section 14A, 14B, 14C**

14A. Notwithstanding sections 12(1) and (2) and 13(1) and (2), whenever the salary or pensionable allowances of Judges are increased, the pension payable to the widow of a Judge (including the Chief Justice) if the widow is still living and entitled to a pension on the date when such increase takes effect, shall be recomputed as from that date by treating the pensionable emoluments of the Judge as the same for the purpose of the re-computation as they would have been had he on that date been still in office from which he retired or in which he died, as the case may be.

14B. (1) If the widow of a Chief Justice was still living and entitled to a pension under section 12(1) on the date when the amending Act came into force, the widow is entitled to have her pension adjusted as from that date by taking into account for that purpose—

(a) the amendment of section 12(1) made by the amending Act; and

(b) any increase in his pension to which the Chief Justice would have been entitled if he had been still living on the date when the amending Act came into force.

(2) If the widow of a Chief Justice was still living and entitled to a pension under section 12(2)(b) on the date when the amending Act came into force, the widow is entitled to have her pension adjusted as from that date by treating the pensionable emoluments of the Chief Justice as the same for the purpose of the adjustment as they would have been had the Chief Justice been living and in receipt of a pension on the date when the amending Act came into force.

14C. (1) If the widow of a Judge was still living and entitled to a pension under section

	<p>13(1) on the date when the amending Act came into force, the widow is entitled to have her pension adjusted as from that date by taking into account for that purpose—</p> <p>(a) the amendment of section 13(1) made by the amending Act; and</p> <p>(b) any increase in his pension to which the Judge would have been entitled if he had been living on the date when the amending Act came into force.</p> <p>(2) If the widow of a Judge was still living and entitled to a pension under section 13(2) on the date when the amending Act came into force, the widow is entitled to have her pension adjusted as from that date by treating the pensionable emoluments of the Judge as the same for the purpose of the adjustment as they would have been had the Judge been living and in receipt of a pension on the date when the amending Act came into force.</p>
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## CONSIDERATIONS

- The Act and the amendment Act is silent on a qualifying period a judge must serve before he/she is entitled to a pension.
- The Act does not stipulate an age Judges must attain before becoming eligible to receive a pension.
- The salary, pension and allowances payable to Judges are exempt from the payment of income tax and any other tax.
- The Bill provides that pensionable emoluments for judges will now include Judges' pensionable allowances rather than a Judge's base salary only. These allowances refer to a Judge's judicial contact allowance, housing allowance, and transport allowance.
- The Bill provides that when the salary or pensionable emoluments of Judges are increased, the pensionable emoluments of retired Judges who are alive when such increases occur, will be deemed to be the same as Judges in office. The pensions of retired Judges will be adjusted from the date the increases took effect.

- Judges who've retired and are still alive before the amending Act comes into force will have their pensions adjusted from that date. The adjustment will take into account the new definition of pensionable emoluments and increases in Judges' salaries and pensionable allowances that occurred since the retired Judge left office.
- The Bill provides that when a sitting Judge is entitled to a pension and dies leaving a widow, the widow is paid the annual sum of 85% of his pensionable emoluments, (rather than one-quarter) or a monthly pension of \$3,000, whichever is greater.
- The Bill provides that when a retired Judge is entitled to a pension and dies leaving a widow, the widow is paid the annual sum of 85% of his pension, (rather than one-half) or a monthly pension of \$3,000, whichever is greater.
- The Bill provides that when a sitting Chief Justice leaves a widow, the widow is paid the annual sum of 85% of his pensionable emoluments, (rather than one-half) or a monthly pension of \$3,000, whichever is greater.
- The Bill provides that when a retired Chief Justice is entitled to a pension and dies leaving a widow, the widow is paid the annual sum of 85% of his pension, (rather than two-thirds) or a monthly pension of \$3,000, whichever is greater.
- The Bill provides that whenever Judges' (including the Chief Justice) salaries or pensionable allowances increase, widows alive and entitled to a pension when such increases take effect are entitled to have their pension recalculated as though the Judge (or the Chief Justice) was still in that office or retired from that office.

## COMPARATIVE LEGISLATION

### **Barbados: Judges Remuneration and Pensions Act Chapter 115A<sup>3</sup>**

- When the Chief Justice retires at any age, he is entitled to a pension payable at an annual rate equivalent to his pensionable emoluments at the date of his retirement.
- When a Justice of Appeal or a Judge of the High Court retires at any age having served in either office for at least 20 years, he is entitled to a pension payable at an annual rate equivalent to his pensionable emoluments at the date of his retirement.
- Where a judge does not fall into either category above, he is entitled to a pension payable at an annual rate equivalent to the sum of 1/3 of his pensionable emoluments at the date of his retirement and 1/360 of such pensionable emoluments in respect of each month of service as a Judge, but the rate of pension shall not exceed the annual rate of such pensionable emoluments.

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<sup>3</sup> <http://barbadosparliament-laws.com/en/ShowPdf/115A.pdf>

#### **Bermuda: Public Service Superannuation Act 1981<sup>4</sup>**

- A judicial officer is entitled to a pension if he held that office for at least 8 years and has contributed to the Public Service Superannuation Fund for at least that period:
  - a) On or after reaching 65 years or 70 years with the approval of the Governor; or
  - b) On medical evidence that he is unable by reason of any infirmity of body or mind to perform the functions of his office and that such infirmity is likely to be permanent
- The rate of pension in these circumstances shall be 1/600 of the salary payable to him immediately preceding the date of retirement for each completed month of pensionable service.
- Where a judicial officer retires with less than 8 years' service or before 65 years for medical reasons, each year in judicial office is deemed to be one and one-third years' service.

#### **Eastern Caribbean: Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act<sup>5</sup>**

The pension payable to a Judge on retirement is computed as follows:

- in the case of the Chief Justice, if he has had continuous service as a Judge for a period of not less than 10 years, at a rate equivalent to his full annual pensionable emoluments at the date of his retirement. In any other case, he shall receive a pension at a rate equivalent to 3/4 of his full annual pensionable emoluments;
- in the case of a Justice of Appeal, if he has had continuous service as a Judge for a period of not less than 12 years, at a rate equivalent to his full annual pensionable emoluments at the date of his retirement. In any other case, he shall receive a pension at a rate equivalent to 3/4 of his full annual pensionable emoluments;
- in the case of a Puisne Judge of the High Court, if he has had continuous service as a Judge for a period of not less than 15 years, at a rate equivalent to his full annual pensionable emoluments at the date of his retirement. In any other case, he shall receive a pension at a rate equivalent to 3/4 of his full annual pensionable emoluments.

#### **Jamaica: The Judiciary Act No. 42 of 1973<sup>6</sup>**

- Pensionable emoluments means salary, personal allowance and housing allowance but does not include duty allowance or any other allowance.

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<sup>4</sup><http://www.bermudalaws.bm/Laws/Consolidated%20Laws/Public%20Service%20Superannuation%20Act%201981.pdf>

<sup>5</sup> <http://agc.gov.ms/wp-content/uploads/2011/10/ECSC-Rate-of-Pension-of-Judges-Act.pdf>

<sup>6</sup> <http://moj.gov.jm/sites/default/files/laws/The%20Judiciary%20Act.pdf>

- When the Chief Justice or President of the Court of Appeal retires at any age, he is entitled to pension at an annual rate equivalent to his pensionable emoluments at the date of his retirement.
- A Judge of the Court of Appeal or the Supreme Court is entitled to be paid an annual rate equivalent to the sum of one third of his pensionable emoluments at the date of his retirement and 1/360 of such pensionable emoluments in respect of each month of service as a Judge if he retires:
  - (a) on or after 55 years; or
  - (b) on the ground of ill health; or
  - (c) at any age if appointed in circumstances where public service prior to appointment as a judge does not fall to be considered.

#### **New Zealand: Government Superannuation Fund Act<sup>7</sup>**

- Every Judge is entitled to a retiring allowance if he (a) retires after 68 years; (b) resigns office after 10 years' judicial service and having reached 60; (c) resigns after completing 20 years' judicial service; or (d) resigns for medical reasons and satisfies the Governor-General of such.
- When a Judge retires at 68, and has completed at least 18 years' judicial service immediately before retirement, his retiring allowance is 2/3 of his annual salary at the date of his retirement.
- When a Judge retires at 68, but was 52 – 54 years when first appointed, his retiring allowance will be at least 16/27 of his annual salary at the date of his retirement.
- When a Judge resigns for medical reasons, his retiring allowance will be at least 15% of his salary at the date of his resignation.

#### **United Kingdom: Judicial Pensions and Retirement Act 1993<sup>8</sup>**

- A judicial officer is entitled to a pension if he retires at 65 and has completed an aggregate of 5 years' service.
- A judicial officer who retires after 60 but before 65 and who has completed in an aggregate of 5 years' service is entitled to a reduced pension.
- A person who has completed at least 20 years' service is entitled to a pension at the annual rate of one-half of his pensionable pay. Persons not falling within the foregoing are entitled to an amount equal to one-fortieth of his pensionable pay, multiplied by the aggregate length of his service.

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<sup>7</sup> <http://www.legislation.govt.nz/act/public/1956/0047/latest/whole.html#DLM447294>

<sup>8</sup> <http://www.legislation.gov.uk/ukpga/1993/8>

**COMPARATIVE TABLE**  
**CURRENT PENSIONABLE EMOLUMENTS VS PROPOSED PENSIONABLE EMOLUMENTS**

Position	Current Pensionable Emoluments	Proposed Pensionable Emoluments	Existing Pensionable Entitlements	Proposed Pensionable Entitlements
Chief Justice	\$50,350	\$93,223	\$50,350	\$93,223
Justice of Appeal	\$42,020	\$80,413	\$18,699 - \$35,717	\$35,784 - \$68,351
Puisne Judge	\$37,300	\$75,693	\$16,599 - \$31,705	\$33,683 - \$64,339