

**2006 ALBERTA JUSTICES OF THE PEACE  
COMPENSATION COMMISSION  
FOR THE PERIOD APRIL 1, 2003 TO MARCH 31, 2008**

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THE ALBERTA ASSOCIATION OF PRESIDING JUSTICES OF THE PEACE

-and-

THE ALBERTA ASSOCIATION OF SITTING JUSTICES OF THE PEACE

-and-

THE MINISTER OF JUSTICE AND ATTORNEY GENERAL IN AND FOR  
THE PROVINCE OF ALBERTA

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**SUBMISSIONS OF THE  
ASSOCIATION OF PRESIDING JUSTICES OF THE PEACE AND THE  
ASSOCIATION OF THE SITTING JUSTICES OF THE PEACE**

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## I. INTRODUCTION

1. The Associations submits that the Justice of the Peace Compensation Commission (“the Commission”) should recommend that (hereinafter collectively referred to as the “Recommendations”):
  - (a) The salaries for fulltime sitting and presiding Justices of the Peace be set as follows:
    - (i) For the year April 1, 2003 to March 31, 2004, the sum of \$100,000;
    - (ii) For the year April 1, 2004 to March 31, 2005, the sum of \$105,000; and
    - (iii) For the years April 1, 2005 to March 31, 2008, the sum of \$110,000;
  - (b) The per diem amount for part-time sitting and presiding Justices of the Peace be set in the following amounts:
    - (i) For the year April 1, 2003 to March 31, 2004, the sum of \$595;
    - (ii) For the year April 1, 2004 to March 31, 2005, the sum of \$620; and
    - (iii) For the years April 1, 2005 to March 31, 2008, the sum of \$645;
  - (c) A shift differential of \$2.50 per hour be paid to presiding Justices of Peace working evening or night shifts commencing April 1, 2006; and
  - (d) All other compensation (with the exception of long term disability and sick leave) including vacation entitlement, benefits, and allowance paid in lieu of pension to fulltime Justices of the Peace be maintained at the same level as in place at March 31, 2003, and as approved in the 2000 *Justices of the Peace Compensation Order* (the “Compensation Order”).

## II. THE COMMISSION PROCESS

2. The Supreme Court of Canada had the opportunity to consider the Commission process as provided for in the previous *Justice of the Peace Compensation Regulation* (AR 8/2000) in *Her Majesty the Queen in Right of Alberta v. Bodner* [2005] 2 S.C.R. 286 [Tab 4]. In terms of the judicial independence of the Justices of the Peace the Court stated as follows (see: paragraph 121)

It was submitted by Alberta that the judicial independence of Justices of the Peace does not warrant the same degree of constitutional protection that is provided by an independent, objective commission. We disagree. **As recognized in the Commission's report, at pp. 7-18, Justices of the Peace in Alberta exercise an important judicial role.** Their function has expanded over the years and requires constitutional protection. [emphasis added]

3. The Supreme Court of Canada in *Bodner (supra)* [Tab 4] also set out certain principles to guide commissions (at paragraph 15):

**Its focus is on identifying the appropriate level of remuneration for the judicial office in question.** All relevant issues must be considered. (see: paragraph 14)

The process is flexible and its purpose is not simply to “update” the previous commission's report. **However, in the absences of reasons to the contrary, the starting point should be the date of the previous commissions report.** (see: paragraph 12)

Each commission must make its assessment in its own context. However, this rule does not mean that each new compensation commission operates in a void, disregarding the work and recommendations of its predecessors. **The report of previous commission and their outcomes form part of the background and context that a new compensation committee should consider.** A new commission may very well decide that, in the circumstances, its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary. If on the other hand, it considers that previous reports failed to set compensation and benefits at the appropriate level due to particular circumstances, the new commission may legitimately go beyond the finding of the previous commission, and after a careful review, make its own recommendations on that basis. (see: paragraph 15)

[emphasis added]

4. Section 13 of the *Justice of the Peace Compensation Regulation* (AR222/2006) [Tab 1] (the “Regulation”) states as follows:

The Commission, in making its recommendations in its report, must consider the following criteria:

- (a) The constitutional law of Canada;
- (b) The need to maintain the independence of the Justices of the Peace;
- (c) The unique nature of the role of Justices of the Peace;
- (d) The need to attract qualified applicants;
- (e) The compensation other Justices of the Peace in Canada receive;
- (f) The growth and decline in real per capital income;
- (g) The need to provide fair and reasonable compensation for Justices of the Peace in light of prevailing economic conditions in Alberta and the overall state of the economy, including the financial position of the government;
- (h) The cost of living index and the position of Justices of the Peace relative to its increases;
- (i) The nature of the jurisdiction of Justices of the Peace;
- (j) The level of increases provided to other programs and persons funded by the government;
- (k) Any other factors relevant to the matters in issue.

### **III. THE REPORT OF THE 2000 COMMISSION**

5. The 2000 Commission recommended in its report (the “2002 Commission Report”) that the Government significantly increase the compensation payable to the Justices of the Peace for the period April 1, 1998 to March 31, 2003 [Tab 2].

6. Most of the 2000 Commission's recommendations were rejected by the Government pursuant to the *Justices of the Peace Compensation Order* (the "Compensation Order") [Tab 3].
7. The Supreme Court of Canada in *Bodner* [Tab 4] held that the Government was entitled to reject the recommendations of the 2000 Commission Report "as long as it justifies its decision with rational reasons" (see: paragraph 21). The Court determined that the reasons provided by the Government for rejecting the recommendations of the 2000 Commission met this test.
8. The 2000 Compensation Order provided that:
  - (a) Salaries for presiding and sitting Justices of the Peace should be determined on the same basis;
  - (b) Salaries for full time Justices of the Peace were increased from \$55,000 per annum to:
    - (i) \$75,000 for the year 1998/1999;
    - (ii) \$80,000 for the years 1999/2000 and 2000/2001; and
    - (iii) \$85,000 for the years 2001/2002 and 2002/2003
  - (c) Per diems for part time Justices of the Peace were increased to:
    - (i) \$460/day for the year 1998/1999;
    - (ii) \$490/day for the years 1999/2000 and 2000/2001; and
    - (iii) \$515/day for the years 2001/2002 and 2002/2003.

#### **IV. THE STARTING POINT FOR THIS COMMISSION'S ANALYSIS - THE 2000 COMMISSION REPORT**

9. As directed by the Supreme Court of Canada in *Bodner* [Tab 4] the starting point for this Commission's review is the 2000 Commission Report.
10. This is still the case even though the Government elected to reject most of the recommendations made by the 2000 Committee.
11. This is not to suggest that the Government's response to the 2000 Committee Report is not relevant. It clearly is. It is respectfully submitted however, that Compensation Order does not however, become the new starting point for this Commission. Nor is this Commission obliged to accept the reasons provided by the Government for rejecting the recommendations of the 2000 Committee (i.e., in the Compensation Order).
12. The 2000 Committee had a constitutionally mandated obligation to identify "the appropriate level of remuneration for the judicial office in question" (see: *Bodner* at paragraph 14).
13. It is submitted that the fact that the Supreme Court of Canada in *Bodner* [Tab 4] held that the Government was entitled to reject the recommendations of the 2000 Committee cannot be taken to be judicial approval of the reasons set out in the Compensation Order or judicial rejection of the 2000 Committee's Report. It is important to keep in mind that the Supreme Court of Canada only confirmed that Government justified its reasons for rejecting the recommendations of the 2000 Committee "with rational reasons".

#### **V. CONSIDERATION OF THE CRITERIA SET OUT IN SECTION 13 OF THE REGULATION**

##### **The Constitutional Law of Canada**

14. As mentioned above, the Supreme Court of Canada confirmed in *Bodner* [Tab 4], that the requirement for independent, objective and effective commissions for the review of the

compensation of Provincial Court Judges was equally applicable to the determination of the appropriate level of compensation for Justices of the Peace. As indicated above the Court also stated as follows:

The components of judicial independence are: security of tenure, administrative independence and **financial security**. [see paragraph 7] ...

The commission process is an “institutional sieve” ... a structural separation between the government and the judiciary. The process is neither adjudicative interest arbitration nor judicial decision making. **Its focus is on identifying the appropriate level of remuneration for the judicial office in question.** [see: paragraph 14]

15. The recommendations of the 2000 Commission and the Government’s response to the same were discussed above.

#### **The Need to Maintain the Independence of the Justices of the Peace**

16. What must be considered here is not the Commission process itself but rather the level of compensation that must be paid to Justices of the Peace to ensure their independence.

#### **The unique nature of the role of Justices of the Peace**

17. The historical role and present status of Justices of the Peace were set out by the 2000 Commission (see: pages 7 to 18 of their Report [Tab 2]).

#### **The need to attract qualified candidates**

18. All Justices of the Peace must be legally trained and must have at least five years of experience at the Bar in order to be eligible for appointment.
19. The 2000 Commission Report [Tab 2] stated as follows (at page 21):

Both counsel are cautious about using statistics regarding lawyers' salaries as a comparator although this Commission cannot ignore the fact that as an entrance requirement to the 10 year position of Justice of the Peace in Alberta at least five year experience as a practicing lawyer is necessary. Nor can the Commission ignore the evidence respecting salaries within the private bar and particularly the relatively sharp increase after approximately ten year in practice and finally the need to remain in or return to private practice after the appointment.

20. Obviously as lawyers salaries increase in the Province of Alberta it will become more difficult to find "qualified" candidates for the position of Justice of the Peace unless the compensation paid to the Justices of the Peace is also increased.

### **The compensation of other Justices of Peace in Canada**

21. The Associations agree with the following quote from the submissions of the Minister (see: paragraph 38, footnote 17):

The roles and responsibilities of Justices of the Peace vary across the country and the qualifications vary as not every jurisdiction requires legal training. Moreover as of the date of this submission several jurisdictions have not submitted compensation arrangements to an independent commission for review.

22. As a result of the above the level of compensation paid to Justices of the Peace in other jurisdiction is of extremely limited value within the context of this hearing.

### **The growth and decline in real per capital income**

23. Alberta's per capital income has been the highest in Canada for a number of years:
24. The percentage increase in real per capital income from 2003 to 2005 was 12.1%.

### **Overall state of the Alberta economy including the financial position of the Government**

25. Alberta has a large budgetary surplus.

26. The Government of Alberta is in an extremely strong financial position.

**The cost of living index and the position  
of the Justices of the Peace relative to its increases**

27. Alberta's consumer price index increased by 4.4% in 2003, 1.4% in 2004, and 2.1% in 2005 an average of 2.6% per annum [Tab 9]. Actual inflation for 2006 for the period ending August 2006 was 3.9%.

**The Nature of the jurisdiction of the Justices of the Peace**

28. See paragraph 13 above.

**The level of increases provided to other programs  
and persons funded by the Government.**

29. The chart at Tab 10 shows the percentage increases from 1998 to 2006/2007 received by some of the government funded persons in the legal system.
30. The Government's base operating spending increased 5.9% from 2003/2004, 6.1% from 2004/2005, and 9.6% from 2005/2006 for an average annual increase of 7.2% [Tabs 11, 12, and 13].
31. The Government's base operating spending is increasing by 8.3% this year [Tab 14].

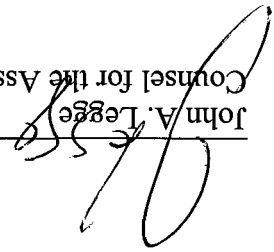
**Other factors relevant to the matters in issue**

32. The fact that this is a joint submission is relevant.

**IV. CONCLUSION**

33. The Associations submits that the Recommendations represent an appropriate level of compensation for the Justices of the Peace for the period April 1, 2003 to March 31, 2008.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 25TH DAY OF OCTOBER 2006.**

  
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John A. Legge  
Counsel for the Associations