

**REPORT AND RECOMMENDATIONS OF THE
2006 ALBERTA JUSTICES OF THE PEACE COMPENSATION COMMISSION**

Presented to
the Minister of Justice and Attorney General
and to
the Association of Presiding Justices of the Peace
and to
the Association of the Sitting Justices of the Peace

(January 15, 2007)

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COMPENSATION COMMISSION

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- A. *Justices of the Peace Compensation Commission Regulation.*

I. APPOINTMENT OF THE COMMISSION

Section 42 of the *Judicature Act*¹ requires commissions to be established in accordance with regulations to review the remuneration and benefits to be paid to Judges, Justices of the Peace and Masters, and to make recommendations with respect to any changes in remuneration and benefits. Pursuant to Section 42, the *Justices of the Peace Compensation Commission Regulation*² (“the Regulation”), Appendix “A”, was enacted, which established the Commission. On September 13, 2006, pursuant to Section 3 of the Regulation, the Honourable Ron Stevens, Q.C., Minister of Justice and Attorney General for the Province of Alberta, appointed David Tettensor, Q.C., as the Commissioner of the 2006 Alberta Justices of the Peace Compensation Commission.

Counsel for the Minister of Justice and Attorney General (“the Minister”) in these proceedings was Phyllis A. Smith, Q.C.. Counsel for the Alberta Association of Presiding Justices of the Peace and the Alberta Association of Sitting Justices of the Peace was John A. Legge.

II. THE PARTIES

The Minister of Justice and Attorney General for the Province of Alberta has responsibility for all matters relating to the administration of justice in Alberta that are within the powers or jurisdiction of the Legislature, pursuant to Schedule 9 of the *Government Organization Act*³, and Section 13 of the *Designation and Transfer of Responsibility Regulation*⁴.

¹*Judicature Act*, R.S.A. 2000, c.J-2.

²*Justices of the Peace Compensation Commission Regulation*, AR 222/06.

³*Government Organization Act*, RSA 2000, c.G-10.

⁴*Designation and Transfer of Responsibility Regulation*, AR 256/2005 as amended.

The Alberta Association of Presiding Justices of the Peace and the Alberta Association of Sitting Justices of the Peace are incorporated under the *Societies Act*. All sitting Justices of the Peace are members of the Association of Sitting Justices of the Peace, and all but two presiding Justices of the Peace are members of the Association of Presiding Justices of the Peace.

III. AGREED STATEMENT OF FACTS

- “1. Justices of the Peace are appointed by the Lieutenant Governor in Council pursuant to section 4(1) of the *Justices of the Peace Act*, R.S.A. 2000 c.J-4 and are designated as full time or part time sitting or presiding Justices of the Peace.
2. There are currently 3 full time sitting justices of the peace, 28 part time presiding justices of the peace and 18 part time sitting justices of the peace.
3. This is the second Justices of the Peace compensation commission process. The first Commission (the “2000 Commission”) issued its report February 29, 2000 (Agreed Exhibit 2).
4. The 2000 Commission made numerous recommendations, many of which were accepted by Alberta, but the level of increases recommended by the 2000 Commission was rejected by Alberta.
5. Compensation and other benefits for sitting and presiding Justices of the Peace were set by Order in Council 174/2000 (AR 90/2000) (“the 2000 Compensation Order” (Agreed Exhibit 3).
6. Order in Council 174/2000 was upheld by the Supreme Court of Canada in *Bodner v. Alberta* 2005 SCC 44 (Agreed Exhibit 4).
7. The historical role and present status of Justices of the Peace were set out by the 2000 Commission at pages 7-18 of its report (Agreed Exhibit 2). For the sake of clarification the parties note that the historical summary quoted in the Commission report at pages 7-10 is from a report prepared by Howard Irving Q.C. for the Canadian Bar Association in 1984. The Minister however does not accept the first sentence of the first complete paragraph on page 9 quoting from that report as a fact.
8. The powers and duties of Justices of the Peace are set out in:
 - the *Justices of the Peace Act*
 - the *Justice of the Peace Regulation*, AR 6/1999
 - the *Protection Against Family Violence Act* R.S.A. c.P-27
 - the *Protection of Children Involved in Prostitution Act* R.S.A. 2000, c.P-28
 - the *Constitutional Notice Regulation*, AR 102/99

- the *Child Youth and Family Enhancement Act* R.S.A. 2000, c.C-12
9. Sitting Justices are authorized to preside over trials respecting those offences set out in section 3(1) of the *Justices of the Peace Regulation*, subject to the restriction set out in section 3(2) of the *Regulation* and the *Constitutional Notice Regulation*.
 10. Presiding Justices of the Peace deal with matters preliminary to criminal trial, pursuant to powers given under the *Criminal Code* including but not restricted to judicial interim release and issuance of arrest warrants and search warrants, including telephone warrants. They also deal with initial appearances under the *Protection Against Family Violence Act* and apprehension orders under the *Protection of Children Involved in Prostitution Act*.
 11. The bulk of matters determined by sitting Justices of the Peace are traffic matters. The primary activities of presiding Justices of the Peace are dealing with judicial interim release applications and issuing warrants.
 12. The Minister's recommendations for increases in compensation for Alberta justices of the peace will result in a 17.65% increase from 2002/2003 to 2003/2004, 5% from 2003/2004 to 2004/2005 and 4.76% from 2004/2005 to 2005/2006. The average annual increase over five years is 5.88%.
 13. The increase in per capita income in Alberta from 2003 to 2005 is 12.1%.
 14. Alberta's economy is expected to grow by 3.5% per annum from April 1, 2006 to March 31, 2009.
 15. The consumer price index increase an average of 2.6% per annum from 2003 to 2005 and the rate of inflation is forecast to average 2.2% over the next three years.
 16. The average increase in Alberta's base operating spending from 2003/2004 to 2005/2006 is 7.2% and is forecast to average 4.8% over the period 2006/2007 to 2008/2009."

IV. PROCESS

A. ROLE

The role of the Commission is set out in Section 2 of the Regulation:

“Role of the Commission

2(1) The Commission must make recommendations respecting the compensation of justices of the peace.

(2) The Commission must determine issues relating to compensation of justices of the peace independently, effectively and objectively.

(3) The Commission is to contribute to maintaining and enhancing the independence of the justices of the peace through the inquiry process and its report.”

B. SCOPE

Section 6 of the Regulations:

“Scope of the Inquiry

6 The Commission must conduct an inquiry respecting the appropriate level of compensation for justices of the peace who serve on a full time, part time or ad hoc basis.”

C. PROCEDURE

Sections 11 and 12 of the Regulation prescribe the Pre-inquiry and Inquiry procedure. Pursuant to Section 11, the Commissioner met, by conference call, with Ms. Smith, Q.C., on behalf of the Minister, and Mr. Legge on behalf of the Associations, and confirmed the date for a public hearing as Tuesday, October 31, 2006, and set the deadline for written submissions as October 26, 2006. Public notice of the hearing containing the deadline for submissions was published in leading daily Edmonton and Calgary newspapers on October 13, 2006 and October 20, 2006.

Written briefs with an Agreed Statement of Facts and an Agreed List of Exhibits were submitted by the Minister and the Associations. Written submissions were received from Johnathan Moss and J.R. Shaw, sitting Justices of the Peace, and from Lana G. Lien, Q.C. and Peter Bowal, presiding Justices of the Peace in the Province of Alberta. All of the submissions

were submitted to the Commission by October 26, 2006 and are available on the Government of Alberta website.

Oral submissions were made to the 2006 Commission as scheduled on October 31, 2006, at Calgary Provincial Court Traffic (courtroom 115), Rocky Mountain Plaza, 230 - 7 Avenue, S.E., Calgary, by Ms. Smith, Mr. Legge, as well as from Mr. Shaw and Mr. Moss.

D. CRITERIA

Section 13 of the Regulation sets out the criteria that must be considered by the Commission:

“Criteria

13 The Commission, in making the 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 capita 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 the 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.”

V. SUMMARY OF SUBMISSIONS

A. The Minister and the Associations submit that the Commission should recommend:

- (a) The salaries for full time 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 amounts⁵:
 - (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 the Peace working evening or night shifts commencing April 1, 2006;

⁵The formula used to calculate the per diem amounts was as follows (which is generally in accord with the recommendations of the 2000 Commission): BASE SALARY RECOMMENDED FOR FULL TIME JPS + 20% overhead allowance + \$15,000 in lieu of benefits and pension / 228 shifts (being the number of full time shifts) = THE PER DIEM AMOUNT.

- (d) All other compensation including vacation entitlement, benefits, and allowance paid in lieu of pension to full time Justices of the Peace be maintained at the same level as in place at March 31, 2003, and as approved in the 2000 Compensation Order⁶;
- (e) The establishment of a long term disability benefit for full time Justices of the Peace.

B. The Minister

The Minister 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, having regard to the relevant criteria and the evidence contained in the submissions, because:

- The proposed increases exceed the actual and forecast rate of inflation over the relevant time.
- The increases exceed the rate of growth in per capita income in Alberta.
- The proposed increases equal or exceed increases received between 1998 and 2006/2007 by government funded persons in the legal system.
- The proposed increases would result in Alberta Justices of the Peace receiving the highest compensation in Canada.
- The proposed increases would maintain a reasonable relationship to the compensation of Provincial Court Judges.
- The proposed increases would exceed increases to other government programs.
- The compensation resulting from the increases properly reflects the important roles and responsibilities, which the Minister recognizes, of Justices of the Peace in the Province.

⁶Order in Council 174/2000, AR 90/2000.

C. The Associations

While the Associations agree with the recommendations, they depart from the Minister as to the process.

The Associations say the Supreme Court of Canada in the *Bodner* decision did not conclude whether the compensation contained in the 2000 Compensation Order was appropriate. In accordance with the principles in *Bodner*, this Commission should start by looking at the report of the 2000 Commission, then the Government's reasons in the 2000 Compensation Order, which this Commission can either accept or reject, and then consider the criteria set out under Section 13 of the Regulation.

The Associations submit that some of the reasons of the Government for rejecting the 2000 Commission Report are irrelevant and some should receive little weight. They say the status of the Alberta economy is a neutral factor; a budgetary surplus would not justify the Government paying everyone more, but there is enough money to pay whatever is determined to be a reasonable amount. It is submitted that cost of living and growth of per capita income are also minor factors. Inflation has to be considered to ensure that earning power is not reduced, but it is not a factor by which the amount of increase should be determined. It is argued that Crown counsel and other senior government employees are not proper comparators because their jobs are quite different. Proper comparators would be other judicial officers and in particular, Provincial Court Judges. One of the reasons the Government gave for rejecting the 2000 Commission Report recommendations was that it had to make decisions about how to spend money in the Province. While the Associations agree the Government must do that, they argue this is not a relevant factor. The Government also referred to the overall increase. The Supreme Court of Canada in *Bodner* said the comparison to 1991 rates was not reasonable; they had been frozen for some time and were not the product of an independent commission process. Comparison to other government funded programs is admittedly a factor, but should be given minimal weight. That the increases recommended by the 2000 Commission were

contrary to fiscal policy adopted by the legislature was not accepted by the Supreme Court of Canada as a factor.

A very important factor, say the Associations, is the need to attract properly qualified candidates to the position. While five years experience is a specified qualification, appointees in general have at least ten years at the Bar. Salary levels must be sufficient to entice experienced, capable people from practice and to accept a fixed term appointment of ten years. It also has to be recognized that part time Justices of the Peace have responsibility for overhead.

Consideration of all of these factors and the application of the process outlined above, should, it is submitted, result in acceptance of the recommendations.

D. Individual Submissions

In addition to the written submissions described above, Mr. Moss and Mr. Shaw made oral submissions at the hearing.

The focus of the individual submissions is that given the duties and responsibilities of Justices of the Peace, the significant difference in remuneration resulting from the 2000 Compensation Order between the compensation of Justices of the Peace and Provincial Court Judges, is not justified; that the recommendations of the 2000 Commission more properly reflect the criteria set out in the Regulation.

Johnathan Moss went further. He said he had not had an opportunity to review the final submission of the Minister nor that of the Associations. However, he sought no relief for this. In any event, the deadline for written submissions of October 26, 2006, was met. He could have taken steps to obtain copies, but apparently did not.

Mr. Moss also argued that this process was tainted because there are indicia of negotiations, contrary to the principle from the *Reference* case, affirmed in *Bodner*, that there should not be negotiations. He asked the Commission to require the Minister and the Associations to produce any documents that may exist which relate to discussions relative to the joint submission. Firstly, I do not agree that the joint submission indicates there must have been negotiations contrary to the principle in the *Reference* case. I concur with the submissions of the Minister and the Associations that there is no evidence of negotiations before me and that in any event, if Mr. Moss believes this process is tainted, the forum in which he should seek a remedy lies elsewhere; that includes any remedy for his complaint that his Association has failed to represent his interests.

The other submissions of Mr. Moss are consistent with those of the Associations, particularly his argument that this Commission should be guided by the analysis contained in the 2000 Commission Report.

VI. ANALYSIS

A. THE 2000 COMMISSION REPORT

As set out in *Bodner*, the starting point for this Commission should be the date of the previous Commission's report, and that report forms part of the background and context this Commission should consider. The 2000 Commission Report described the historical role of Justices of the Peace. At p.7, the Commission referred to what it described as an apt historical summary of Justices of the Peace in Alberta from *Ell v. Alberta*⁷, where Justice T.F. McMahon wrote as follows:

⁷*Ell v. Alberta* (21 January 1999) Calgary 9801 13713 (Alta.Q.B.).

“To fully understand the nature and importance of the position, a brief review of the history of Justices of the Peace is useful. I have been provided with much material on that subject. Included is this summary from a 1984 report prepared by Howard Irving, Q.C. (now Irving, J.A.) for the Canadian Bar Association, Alberta Branch, following a review of certain policies and practices of the Alberta Attorney General’s Department:

The Justices of the Peace have been playing an important role in our criminal justice system since ancient times. In the English legal system this office was created to perform local government functions, including that of ex officio magistrate. English justices of the peace, although customarily untrained in law and unpaid, were vested with wide powers to commence criminal proceedings, conduct trials and mete punishment in the form of substantial fines or imprisonment up to six months. The office was considered vital to the criminal Justice system partly because of the rural nature of the population and the impracticality of placing judges at each location, and thus ensuring that an accused would not face undue delay, and additionally, the local justice could bring to bear upon a case his knowledge of local affairs and of the accused himself. In England, the justice of the peace was appointed by the Lord Chancellor, and thus the office was separated from the arm of the government.

In Canada, the office of Justice of the Peace was preserved when in 1892 the Criminal Code of Canada was adopted. Pursuant to the Criminal Code, Justices of the Peace are empowered to receive and swear informations, issue warrants for arrest and issue search warrants. As the Canadian Justice system does not have a Lord Chancellor, appointments as a Justice of the Peace, by custom are conferred by the Attorney General.

Initially in Canada such appointments followed the English example in that justices of the peace were not salaried, but paid on a case by case basis. Usually they were untrained local citizens who were not full time government employees. Furthermore, their appointments restricted the nature of the powers they could exercise. As the volume of cases increased, and as the provincial courts were expanded to cover rural areas, it became customary to appoint a senior Court clerk as a justice of the peace to receive informations, as well as grant adjournments and hear bail applications when a provincial judge was not available to do so.

In recent years, in Alberta particularly, the judicial functions of justices of the peace have been enlarged greatly. By virtue of the Provincial Court Judges Amendment Act, justices of the peace have been granted all the powers with respect to judicial interim release as are exercisable by Provincial Court Judges. They also have the power to receive and swear Informations, issue process, grant search warrants, receive pleas with respect to certain provincial offences, impose fines or time in gaol for default of payment of fine, grant or withhold time for payment of a fine, or extensions of time for payment of a fine.

As a practical development, Justices of the peace in urban centres often are engaged as Hearing Officers and thus exercise their function on a full time basis. While as hearing officers, or Court clerks, they were considered as

employees of the Attorney General's Department, particularly as in early years, their functions as Justices of the peace occupied only a small percentage of time, in comparison to their overall clerk or administrative duties.

Because of the dramatic change in the role of the justice of the peace, especially as found in major urban centres, there requires a greater recognition of the judicial functions of justices of the peace. Due to these developments, we recommend that the supervision of their judicial function be transferred from the Attorney General's Department to the Office of the Chief Judge of the Provincial Court. Such a transfer will emphasize the need for the independence and impartiality of the Justices of the Peace.

The recommendation made in the final paragraph above was in fact implemented not long after, with the acknowledged objective of enhancing the real and perceived independence of Justices.”

Further, at p.10, the Commission noted:

“In recent years the role of the Justice of the Peace in Alberta has continued to shift its emphasis away from the administrative toward the judicial. Justices must now be legally trained with significant experience; their conduct is subject to review by the Judicial Council and more judicial functions have been given, particularly to presiding Justices of the Peace with the enactment of the *Protection Against Family Violence Act* and the advent of tele-bail whereby arrestees across the province have the option of speaking to judicial interim release before a Justice of the Peace prior to appearing in Provincial Court.”

As set out in the Agreed Statement of Facts, the Minister does not accept the statement that in recent years, judicial functions of Justices of the Peace have been enlarged greatly.

In its recommendations, the 2000 Commission drew no distinction between sitting and presiding Justices of the Peace for the purposes of compensation. Its recommendations recognized that a pension benefit was not feasible and accordingly, it recommended a fixed sum for full time Justices of the Peace and an equivalence built into the part time rate. The terms of other benefits were continued with an equivalent value taken into account in the per diem recommended for part time Justices of the Peace. Based on its analysis of all relevant factors, the 2000 Commission Report recommended compensation to be set at approximately two-thirds of the Provincial Court Judges' compensation. The recommended per diem rates for

part time sitting and presiding Justices of the Peace reflected consideration of overhead of mature legal practices.

B. 2000 COMPENSATION ORDER

While Alberta accepted some of the recommendations made by the 2000 Commission, it rejected the level of increases. Its reasons were set out in detail in Schedule 6 to the Order. Those reasons included the fact that the executive and legislative branches of the Government have the constitutional and political responsibility to properly manage fiscal affairs. Alberta said the overall level of increase recommended was greater than that of other publicly funded programs and significantly exceeded those of individuals in comparator groups. Alberta said comparable groups included Crown Counsel, lawyers paid according to the Legal Aid Tariff, ad hoc Crown Counsel, senior government employees and Justices of the Peace in other jurisdictions. It said lawyer compensation generally was not a proper comparator, nor did it agree that it was appropriate to set the compensation of Justices of the Peace at two-thirds the compensation of Provincial Court Judges.

The 2000 Compensation Order provided:

- (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 \$75,000 for 1998/1999; \$80,000 for the years 1999/2000 and 2000/2001; and \$85,000 for the years 2001/2002 and 2002/2003;
- (c) A 10% allowance in lieu of pension was added to full time salaries, vacation entitlement was increased to 4 weeks and benefits were continued at the current level;

- (d) Per diems for part time Justices of the Peace were increased to \$460 per day for 1998/1999; \$490 for 1999/2000 and 2000/2001; and \$515 for the years 2001/2002 and 2002/2003;
- (e) The formula recommended by the 2000 Commission for calculation of per diem rates was accepted, which added an allowance to reflect overhead costs of part time Justices of the Peace and a \$15,000 allowance for benefits and pension.

The Supreme Court of Canada, in *Bodner*, held that Alberta's reasons satisfied the rationality test, although it did conclude that the use of 1991 compensation levels as a basis for comparison lacked a reasonable factual foundation. While I agree with the submission of Counsel for the Associations, that the Court did not address whether the compensation contained in the Order was appropriate, it did say that Alberta's reasons recognized the role and responsibilities of Justices of the Peace and revealed a genuine attempt to identify appropriate comparators (para.126).

C. CRITERIA

As set out above, Section 13 of the Regulation sets out the criteria to be considered:

(a) Constitutional Law of Canada

The Supreme Court of Canada, in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*⁸, ("*Reference*"), held that independent commissions were required to improve the process designed to ensure judicial independence and set out principles to be applied, but also held that the commissions' recommendations need not be binding. These principles were refined by the Court in the *Bodner* case, in which the Court also concluded that the judicial independence of Justices of the Peace warranted the same

⁸*Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3.

degree of constitutional protection as Provincial Court Judges. The Court clarified the principles applicable to the compensation commission process.

The applicable principles of particular importance from *Bodner* are (paragraph numbers are from *Bodner*):

- Judicial independence must be maintained both in fact and in public perception. (para.1)
- The concept of judicial independence has evolved over time. (para.2)
- This evolution is evident in the context of judicial remuneration. (para.3)
- There are two dimensions to judicial independence, one individual and the other institutional. The individual dimension relates to the independence of a particular judge. The institutional dimension relates to the independence of the court the judge sits on. (para.5)
- The components of judicial independence are: security of tenure, administrative independence and financial security; (para.7)
- Financial security embodies three requirements. First, judicial salaries can be maintained or changed only by recourse to an independent commission. Second, no negotiations are permitted between the judiciary and the government. Third, salaries may not fall below a minimum level. (para.8)
- The commission process is an “institutional sieve” - 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. The process is flexible. In the absence of reasons to the contrary, the starting point should be the date of the previous commission’s report. (para.14)
- Each commission must make its assessment in its own context - the reports of previous commissions and their outcomes form part of the background and context that a new commission should consider. (para.15)
- The commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations. Its recommendations

must result from a fair and objective hearing. Its report must explain and justify its position. (para.17)

(b) Need to Maintain the Independence of the Justices of the Peace

The nature and level of compensation are key; Justices of the Peace must receive fair remuneration for their independence to be maintained.

(c) Unique Nature of the Role of Justices of the Peace

As the 2000 Commission Report described, Justices of the Peace play an important role, discharging functions essential to the judicial system. Powers and duties are set out in the *Justice of the Peace Act* and regulations, and the legislation described in paragraph 8 of the Agreed Statement of Facts.

Sitting Justices of the Peace preside over trials under a number of provincial statutes specified in the Regulation. The Regulation sets out things they will not be assigned. Under the statutes, sitting Justices of the Peace may impose fines of varying amounts or imprisonment. The most common type of offences heard are traffic offences.

The duties of presiding Justices of the Peace are primarily in relation to preliminary matters pursuant to the *Criminal Code*, as described in para.10 of the Agreed Statement of Facts. They also have jurisdiction under the *Protection Against Family Violence Act* to deal with initial appearances and with apprehension orders under the *Protection of Children Involved in Prostitution Act*.

(d) Need to Attract Qualified Candidates

The Associations point out that Justices of the Peace must be legally trained, with at least five years of experience at the Bar. However, most appointments have much more

experience. While the Minister says there has been no difficulty finding qualified candidates to fill vacant positions, compensation must be reasonable to ensure that qualified people continue to be attracted to the position, in a province where the incomes of lawyers, like other professionals, are rising.

(e) Compensation of Other Justices of the Peace in Canada

The Minister acknowledges, and the Associations concur, that comparability to other jurisdictions suffers from limitations. Roles and responsibilities vary across Canada, as do qualifications. Only two other provinces shown in the chart comparing the appointment, duties, salary and benefits of Justices of the Peace in other Canadian jurisdictions require legal training - Quebec and Nova Scotia. The Minister points out that the salaries recommended by the Minister and the Associations would result in Alberta justices of the peace receiving the highest compensation in Canada.

(f) Growth and Decline in Real Per Capita Income

Materials provided by the Minister and the Associations from Statistics Canada and the Alberta 2006 Budget, show that in 2003, Alberta's per capita income was \$33,297 and in 2004 \$35,005, both the highest in Canada. In 2005, Alberta's per capita income was \$37,327. The percentage increase in real per capita income from 2003 to 2005 was 12.1%. The recommendations of the Associations and the Minister would result in increases well ahead of the growth in real per capita income in the Province.

(g) Overall State of the Alberta Economy, including the Financial Position of the Government

The materials provided by the parties establish the Province has a large budgetary surplus. Alberta's economy is expected to grow by 3.5% per annum from April 1, 2006 to March 31, 2009. The Government of Alberta is in a strong financial position. While this should not result in a windfall to Justices of the Peace, nor should fiscal responsibility justify anything

less than fair compensation. I accept the submission on behalf of the Associations that the status of the Alberta economy is a neutral factor here.

(h) Cost of Living Index and Position of the Justices of the Peace Relative to its Increases

The material provided by the parties shows 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. Actual inflation for 2006 for the period ending in August was 3.9%. The Minister points out that the increases contained in the recommendations would exceed the level of increase in the cost of living index by a considerable margin. I do not agree with the submission of the Associations that cost of living is a minor factor. Not only is it one of the mandated criteria, but it is always an important consideration when pay rates are at issue, particularly in a booming province.

(i) Nature of the Jurisdiction of the Justices of the Peace

This was addressed above under the Unique Nature of the Role of Justices of the Peace.

(j) Level of Increases Provided to Other Programs and Persons Funded by the Government

The Agreed Exhibits contained charts setting out percentage increases received by Government funded persons in the legal system from 1998 to 2006/2007. Increases ranged between 2.25% and 5.0% between 1998-1999 and 2004-2005 for a number of positions. In 2005, directors received a 6% increase and assistant deputy ministers an 11% increase. Provincial Court Judges received the same increases as recommended here. The top classification of Legal Officers (LO4 - the classification of a majority of Chief Crown Prosecutors), were paid in the range of \$105,828 to \$116,400 as of April 1, 2003; \$109,956 to \$120,936 as of April 1, 2004; \$113,256 to \$124,560 as of April 1, 2005; \$116,652 to \$128,292 as of April 1, 2006.

The material shows that the Government's base operating spending as set out in provincial budgets for 2003/2004 was 5.9%, 2004/2005 6.1%, and 2005/2006 9.6%, for an average increase of 7.2%. The 2006/2007 budget shows spending increasing by 8.3% in 2006.

(k) Other Factors Relevant to the Matters at Issue

The Minister and the Associations say the fact they make a joint submission is relevant. I agree.

D. FURTHER CONCLUSIONS

The Associations take issue with some of the reasons advanced by Alberta for failing to accept some of the recommendations of the 2000 Commission.

In *Bodner*, the Supreme Court of Canada reviewed Alberta's reasons for rejecting the increases recommended by the 2000 Commission. It noted that Alberta had considered the overall level of increase, the Government's responsibility to properly manage fiscal affairs, and examined various comparator groups, including Crown counsel, directors, lawyers paid by the

Legal Aid tariff, senior government employees, Justices of the Peace in other jurisdictions, and Provincial Court Judges. Aside from the comparison to 1991 compensation levels, it concluded that Alberta's reasons were legitimate, that they explained why Alberta chose the level of compensation it did, recognizing the roles and responsibilities of Justices of the Peace; reasons held to be in good faith, related to the public interest, with a reasonable factual foundation. These factors considered in the 2000 Compensation Order are all relevant and important considerations here.

The submissions for increases of the Minister and the Associations are set out at p.6 above. Over the five year term, they total 29.4%, an average of 5.88% per annum. The growth in real per capita income in Alberta for 2003 to 2005 inclusive was an average of 4.03% per annum. Alberta's consumer price index increased in 2003, 2004 and 2005, by an average of 2.6% per annum.

The Associations submit that Crown counsel and other senior government employees are not proper comparators. While there are certainly significant differences in their duties and responsibilities compared to those of Justices of the Peace, reference to the compensation payable to these positions was considered legitimate by the Supreme Court of Canada. While rates paid to other judicial officers should be accorded more weight, compensation paid to other senior government employees are relevant and important considerations too. Increases to other government funded persons in the legal system are contained in the materials. Increases to legal officers with more than 10 years experience averaged 3.35% per annum between 2003/2004 and 2006/2007; to non-legal senior managers an average of 4.1% per annum; to directors 4.1% per annum; executive managers (ADMs) 5.35% per annum; and Chief Crown prosecutors falling within the LO4 - A Classification, 3.35%. Increases to the Legal Aid tariff for the years 2003/2004 to 2005/2006 averaged 2.7% annually.

The recommendations here match increases to the salary levels of Alberta Provincial Court Judges for the same five year term.

While it is acknowledged there are limitations to comparing the compensation of Justices of the Peace in other jurisdictions, this is another of the mandatory criteria. A review of the summary of duties of Justices of the Peace in the various Canadian jurisdictions (Exhibit 5), reveals many similarities. In my view, these are the closest comparators relative to roles and responsibilities. It is significant that the increases recommended here would put the compensation of Alberta Justices of the Peace ahead of all of the other jurisdictions, including Quebec and Nova Scotia, the only two other jurisdictions that require Justices of the Peace to be legally trained.

As set out earlier, I take as the central argument of the individual submissions of Justices of the Peace, that the recommendations of the 2000 Commission more properly reflect the criteria set out in the Regulation than the terms of the 2000 Compensation Order. In the Order, Alberta gave reasons for disagreeing with the two-thirds ratio of comparison which the 2000 Commission gave to the salaries of Provincial Court Judges. This was addressed in *Bodner* at p.36:

“These reasons included the differing nature of the judicial offices and the fact that many Justices of the Peace are not full time and carry on their law practices while continuing to hold office.”

Again, the Court held that Alberta’s reasons were legitimate, that they recognized the role and responsibilities of Justices of the Peace. It held the reasons to be in good faith, related to the public interest and based upon a reasonable factual foundation. I have reviewed and considered the 2000 Commission analysis resulting in the recommendation that Justices of the Peace should receive two-thirds of the salary of Provincial Court Judges, and I have considered the reasons contained in the 2000 Compensation Order for rejecting this recommendation. In my view, the reasons, considered legitimate by the Supreme Court of Canada, are sound and support the level of compensation set out in Schedule 7 of the Order. There is nothing in the submissions here that would support the conclusion that the relationship between the levels of

salaries of Justices of the Peace to that of Provincial Court Judges, reviewed by the Supreme Court of Canada, is not appropriate.

VII. RECOMMENDATIONS

This Commission, having considered all of the materials submitted, including the 2000 Commission Report, the 2000 Compensation Order, and its review by the Supreme Court of Canada in the *Bodner* decision, and the criteria set out in Section 13 of the Regulation, agrees with the joint submission of the Minister and the Associations. Implementation of the joint submission would result in an appropriate level of compensation, reflecting the important role and responsibilities of Justices of the Peace in Alberta. Accordingly, the 2006 Commission recommends the following:

- (a) The salaries for full time 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 the Peace working evening or night shifts commencing April 1, 2006;

- (d) All other compensation including vacation entitlement, benefits, and allowance paid in lieu of pension to full time 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;
- (e) The establishment of a long term disability benefit for full time Justices of the Peace.

I wish to extend my appreciation to Counsel for their excellent submissions and supporting material, and to the Justices of the Peace who took the time to assist me with their thoughtful written and oral submissions.

All of which is respectfully submitted the 15th day of January, A.D. 2007.

DAVID G. TETTENSOR, Q.C.

SEP 13 2006



Province of Alberta
Order in Council

ORDER IN COUNCIL

Approved and ordered:

Lieutenant Governor

The Lieutenant Governor in Council makes the Justices of the Peace
Compensation Commission Regulation set out in the attached Appendix.

September 14, 2006

T. MacKett.
B. Hookenson.
K. Kereluk.
L. Sherman
O.C. file
Central filing

CHAIR

celter. Reg. 222106
filed Sept. 13, 2006



For Information only

Recommended by: Minister of Justice and Attorney General

Authority: Judicature Act
(section 42)

APPENDIX

Judicature Act

JUSTICES OF THE PEACE COMPENSATION COMMISSION REGULATION

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Definitions

1 In this Regulation,

- (a) "Association" means the Association of Sitting Justices of the Peace or the Association of Presiding Justices of the Peace, or both;
- (b) "Commission" means the 2006 Alberta Justices of the Peace Compensation Commission appointed under section 3;
- (c) "justices of the peace" means
 - (i) sitting justices of the peace as defined in the *Justice of the Peace Act*, and
 - (ii) presiding justices of the peace as defined in the *Justice of the Peace Act*;

- (d) "minister" means any minister of the Crown;
- (e) "Minister" means the Minister of Justice and Attorney General;
- (f) "reasons" means an explanation in writing that meets the justification standard under the Constitution of Canada used to evaluate decisions of a government to depart from a recommendation of an independent body regarding judicial compensation;
- (g) "report" means the report of the Commission presented to the Minister and the Association under section 7 and any amended report presented to the Minister and the Association under section 14.

Role of the Commission

- 2(1) The Commission must make recommendations respecting the compensation of justices of the peace.
- (2) The Commission must determine issues relating to compensation of justices of the peace independently, effectively and objectively.
- (3) The Commission is to contribute to maintaining and enhancing the independence of the justices of the peace through the inquiry process and its report.

Establishment of the Commission

- 3(1) The 2006 Alberta Justices of the Peace Compensation Commission consists of one commissioner appointed by the Minister and agreed to by the Association.
- (2) If the commissioner resigns or is unable for any reason to discharge his or her responsibilities, the Minister must appoint a replacement after receiving the agreement of the Association in accordance with subsection (1).
- (3) The Commission is authorized to make recommendations respecting the compensation of justices of the peace for the period April 1, 2003 to March 31, 2008.

Commission membership

- 4 Active judges, justices of the peace, members of the Legislative Assembly, members of other boards and commissions appointed by

the Lieutenant Governor in Council or by a minister, persons who hold office by way of an appointment by the Lieutenant Governor in Council or by a minister and employees, as defined in the *Public Service Act*, may not be members of the Commission.

Commission expenses

5(1) The Crown must pay the Commission all reasonable expenses incurred by the Commission in conducting an inquiry and preparing a report.

(2) The commissioner is entitled to compensation and reimbursement for expenses as determined by the Minister.

Scope of the inquiry

6 The Commission must conduct an inquiry respecting the appropriate level of compensation for justices of the peace who serve on a full time, part time or ad hoc basis.

Presentation of the report

7 The Commission must present a report to the Minister and the Association at a time determined by the Minister.

Presentation of the report to the Lieutenant Governor in Council

8 Within 120 days of the presentation of a report under section 7 or an amended report under section 14, whichever is the later, the Minister must place the report before the Lieutenant Governor in Council, obtain the Lieutenant Governor in Council's decision and, if any of the recommendations in the report are not accepted, ensure that reasons are provided.

Effect of recommendations

9(1) Subject to subsection (2), a recommendation in a report is binding on the Crown.

(2) A recommendation that is not accepted in whole or in part in reasons issued by the Lieutenant Governor in Council and delivered to the Association within 120 days of the date of the report under section 7 or an amended report under section 14, whichever is later, is not binding on the Crown.

Public notice of inquiry

10 The Commission must give public notice of the commencement of its inquiry as it considers necessary and the notice must advise of the closing date for written submissions.

Pre-inquiry procedure

11 At the earliest opportunity, prior to the commencement of the inquiry, the Minister and the Association must meet with the Commission to address any preliminary matters that may arise and any other matters that the Commission considers advisable.

Inquiry procedure

12(1) Subject to this section, the Commission may determine its own inquiry procedure.

(2) The Minister and the Association must provide the Commission with an agreed statement of facts and an agreed list of exhibits to be filed, to the extent that they have been able to agree on them.

(3) The Commission may record any inquiry proceedings and must provide transcripts to those who request them and pay the required fee.

(4) The Commission may accept such evidence as is relevant to the determination of the issues and is not required to adhere to the rules of evidence applicable to courts of civil or criminal jurisdiction.

(5) Any member of the public is entitled to attend the inquiry and to make written submissions to the Commission.

(6) The Commission may, after hearing from the Minister and the Association, choose to limit to written submissions any submission from an individual justice of the peace.

(7) The Commission may, after hearing from either the Minister or the Association, grant leave to any member of the public to make oral submissions.

(8) The Commission may require the attendance of any person who has filed a written submission and may require that person to respond to any questions from either the Minister or the Association, as well as from the Commission.

- (9) If any person fails to appear when required to do so or to respond to questions as directed, the Commission may ignore the written submissions of the person who fails to appear or respond to a question as directed.
- (10) The Commission may on application direct the Minister and the Association to produce documents not subject to privilege.
- (11) The testimony of witnesses must be under oath or affirmation.
- (12) The Commission may not award costs for written submissions but may award the reasonable travel, accommodation and meal expenses of anyone required by the Commission to attend.
- (13) Anyone requesting copies of any written submissions to the Commission is entitled to receive a copy of the submissions on payment of a reasonable fee.
- (14) The recommendations in a report must be based solely on the evidence submitted to the Commission.

Criteria

13 The Commission, in making the 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 capita 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 the 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.

Amended report

14(1) The Commission may amend its report presented under section 7 after reviewing the submissions of the Minister and the Association if

- (a) the Commission is satisfied that its report
 - (i) failed to deal with an issue raised during the inquiry, or
 - (ii) contains an obvious error,

and

- (b) the Minister or the Association requests that the Commission amend its report within 30 days of receipt of the report under section 7.

(2) Within 30 days of receipt of a request under subsection (1), the Commission must either present an amended report to the Minister and the Association or inform the Minister and the Association that no amended report will be presented.

(3) An amended report under subsection (2) may differ from the report presented under section 7 only so far as is necessary to deal with the matters under subsection (1).

Minister not required to request amendment

15 Nothing requires the Minister, either before or after the report is placed before the Lieutenant Governor in Council, to request that the Commission amend its report under section 14(1).

Review

16 The Minister and the Association may meet at any time to discuss improvements to the Commission inquiry process.

Communication

17(1) The Minister must advise the Association of any changes made to the compensation of justices of the peace after the presentation of a report under section 7 or an amended report under section 14 within 14 days of the Lieutenant Governor in Council's decision to change the compensation of the justices of the peace and the Association must inform the justices of the peace of any change.

(2) The Minister must provide the Association with one updated copy of the legislation, regulations or schedules related to changes described in subsection (1).

(3) The Association must provide the justices of the peace with updated copies of legislation, regulations or schedules as necessary.

Costs

18 The Crown must pay, up to a maximum of \$75 000, the reasonable costs incurred by the Association in making its submissions to the Commission.

Judicial review

19(1) If

- (a) the Lieutenant Governor in Council makes a decision not to accept one or more of the recommendations in whole or in part contained in the report, and
- (b) the Association or any justice of the peace brings an application for judicial review of that decision and the application is successful,

the Lieutenant Governor in Council has 120 days from the day that the application is granted to reconsider the report's recommendations in accordance with the directions, if any, of the Court.

(2) If an application for judicial review is successful, the Court may not make the report binding on the Crown, but may refer the report back to the Lieutenant Governor in Council or to the Commission for reconsideration, and where the Court does so, the Lieutenant Governor in Council or the Commission, as the case may be, has 120 days from the day that the application was granted

to reconsider the report's recommendations in accordance with the directions, if any, of the Court.

Notice

20(1) If

- (a) notice is required to be given to the Crown or the Minister, it must be given by leaving a written copy of the notice at the legislative office of the Minister, or
 - (b) the Crown or the Minister gives notice in writing of the appointment of counsel, it may be given by service on counsel as provided for in the *Alberta Rules of Court*.
- (2) If notice is required to be given to the Association, it must be given by service on counsel as provided for in the *Alberta Rules of Court*.
- (3) Within 7 days of the date this Regulation comes into force, the Association must give the Minister notice of the appointment of counsel.

Effect of regulation

21 This Regulation only has effect for the Commission appointed in 2006.

Expiry

22 This Regulation expires on March 31, 2010.