

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

The Minister of Justice and Attorney General
in and for the Province of Alberta

-and-

The Alberta Association of Presiding
Justices of the Peace

-and-

The Alberta Association of Sitting
Justices of the Peace

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

Phyllis A. Smith Q.C.
Emery Jamieson LLP
Counsel for the Minister of
Justice and Attorney General
In and for the Province of Alberta

John Legge
Heenan Blaikie LLP
Counsel for the Associations

October 2006

I. INTRODUCTION

The Parties

1. The Minister of Justice and Attorney General in and for the Province of Alberta (“the Minister”) has the responsibility for superintending 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*, and section 13 of the *Designation and Transfer of Responsibility Regulation*¹.
2. 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 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.
3. Justices of the peace are appointed by the Lieutenant Governor in Council pursuant to section 4 (1) of the *Justice of the Peace Act*² and are designated as either sitting or presiding justices of the peace and either full or part time. There are 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.

The Commission

4. Part 7, section 42, of the *Judicature Act*³ requires that commissions must be established in accordance with the 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 changes in remuneration and benefits.

¹ Respectively RSA 2000 c. G-10 and AR 256/2005 as amended.

² RSA 2000, c. J-4.

³ RSA 2000, c. J-2

5. Pursuant to section 42, the *Justices of the Peace Compensation Commission Regulation*⁴ (“the Regulation”) (**Tab 1**) has been enacted which establishes the Commission and defines its roles and responsibilities in the process.
6. The Regulation contemplates the appointment of a single commissioner and David Tettensor, Q.C. was appointed Commissioner on September 13, 2006.

Summary of Recommendations

7. The Minister submits that the Justice of the Peace Compensation Commission (“the Commission”) should recommend that:
 - a. The salaries for fulltime sitting and presiding justices of the peace be set as follows:
 - For the year April 1, 2003 to March 31, 2004, the sum of \$100,000
 - For the year April 1, 2004 to March 31, 2005, the sum of \$105,000
 - 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:
 - For the year April 1, 2003 to March 31, 2004, the sum of \$595
 - For the year April 1, 2004 to March 31, 2005, the sum of \$620
 - For the years April 1, 2005 to March 31, 2008, the sum of \$645

⁴ AR 222/06

⁵ The 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 fulltime shifts) = THE PER DIEM AMOUNT

- 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.
 - d. All other compensation 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*⁶. An inquiry has been made with respect to the availability of long term disability benefits for full time justices of the peace, and that remains under consideration.
8. The Minister understands that the Associations join with the Government in submitting the Recommendations to this Commission.

II. THE PROCESS

The Role of the Commission

9. Section 2 of Regulation 222/06 defines obligations of the Commission and provides that the Commission must:
 - Make recommendations respecting the compensation of justices of the peace
 - Determine issues relating to compensation independently, effectively and objectively
 - Contribute to maintaining and enhancing the independence of the justices of the peace through the inquiry process and its report.

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

10. In carrying out its roles and responsibilities, the Commission is obliged to conduct an inquiry into the appropriate level of compensation for justices of the peace and present a report to the Minister and the Associations.

Relevant Criteria

11. In conducting its inquiry, the Commission must consider the criteria set out in Section 13 of the Regulation, namely:

- The constitutional law of Canada
- The need to maintain the independence of the justices of the peace
- The unique nature of the role of justices of the peace
- The need to attract qualified applicants
- The compensation other justices of the peace in Canada receive
- The growth and decline in real per capital income
- 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
- The cost of living index and the position of justices of the peace relative to its increases;
- The nature of the jurisdiction of justices of the peace
- The level of increases provided to other programs and persons funded by the government
- Any other factors relevant to the matters in issue.

Procedure

12. Subject to the provisions of sections 11 and 12 of the Regulation, the Commission may determine its own inquiry procedure.

13. The Regulation requires that:

- the Minister and the Associations meet with the Commission prior to the commencement of the inquiry to address any preliminary matters
- the Minister and the Associations provide the Commission with an agreed statement of facts and an agreed list of exhibits to the extent they have been able to agree.

14. The Minister and the Associations have prepared a separate agreed statement of facts and agreed list of exhibits, the latter of which include all of the tabs to this submission.

15. With respect to procedure at the inquiry, section 12 provides that the Commission may:

- record any inquiry proceeding
- accept such evidence as is relevant to the issues and is not bound by the rules of evidence
- choose to limit to written submissions any submission from an individual justice of the peace
- grant leave to any member of the public to make oral submissions
- require the attendance of any person who has filed a written submission and require that person to respond to any questions from the Minister, the Associations and the Commission
- ignore the submissions of any person who fails to appear or to respond to a question
- direct the Minister and the Association to produce documents not subject to privilege
- may award the reasonable travel, accommodation and meal expenses of anyone required by the Commission to attend the inquiry

16. Section 12 further provides that:

- Any member of the public is entitled to attend the inquiry and to make written submissions to the Commission
- If the inquiry proceedings are recorded the Commission must provide copies of transcripts to those who request and pay for them
- Anyone requesting copies of submissions to the Commission is entitled to receive such copies upon paying a reasonable fee
- Testimony before the Commission must be under oath or affirmation
- Recommendations in a commission report must be based solely on the evidence submitted to the Commission.

III. THE HISTORICAL CONTEXT

17. The 2006 Alberta Commission is the second justices of the peace compensation commission appointed to review the compensation of justices of the peace.

18. The first Commission was appointed pursuant to the 2000 *Justices of the Peace Compensation Commission Regulation*⁷ which established a three person Commission to review the compensation of justices of the peace for the time period 1998-2003. The members of the 2000 Commission were Harry Schaefer, Linda Steinmann and Larry Anderson Q.C.

19. The 2000 Commission recommended significant increases in compensation for the period April 1, 1998 to March 31, 2003 for justices of the peace in the Province of Alberta in its lengthy report issued February 29, 2000 (**Tab 2**).

20. Many of the 2000 Commission's recommendations were accepted by the Government but the level of increases was rejected by the government and

⁷ Order in Council 2/2000; AR 8/2000

increases were implemented pursuant to the *Justices of the Peace Compensation Order*⁸ (Tab 3).

21. The Government's response to the 2000 Commission Report was ultimately upheld by the Supreme Court of Canada⁹ (Tab 4).

22. The 2000 Compensation Order provided that:

- Salaries for presiding and sitting justices of the peace should be determined on the same basis
- Salaries for full time justices of the peace were increased from \$55,000 per annum to \$75,000 for the year 1998/1999, \$80,000 for the years 1999/2000 and 2000/2001, and \$85,000 for the years 2001/2002 and 2002/2003
- In addition to the salaries approved the government accepted the recommendations of the commission to add a 10% allowance in lieu of pension to the full time salaries, to increase vacation entitlement to 4 weeks, and to continue benefits at the then current level
- Per diems for part time justices of the peace were increased to \$460/day for the year 1998/1999 and \$490/day for the years 1999/2000 and 2000/2001, and \$515/day for the years 2001/2002 and 2002/2003
- The formula recommended by the Commission for the calculation of per diem rates was accepted, which formula utilized as a base the full time justice of the peace salaries, but added an allowance to reflect overhead

⁸ *Supra*, fn 6

⁹ *Provincial Court Judges' Assn. of New Brunswick (Minister of Justice); Ontario Judges' Assn. v. Ontario (Management Board); Bodner v. Alberta; Conference des juges du Quebec v. Quebec (Attorney General); Mink v. Quebec (Attorney General)* [2005] 2 S.C.R. 286; 2005 SCC 44 ("the *Bodner* case")

costs of part time justices of the peace and a \$15,000 allowance for benefits and pension, with the per diems determined by dividing the gross figure by the number of annual shifts

IV. CRITERIA TO BE CONSIDERED BY THE COMMISSION

The Constitutional Law of Canada

23. The Supreme Court of Canada in *Re Provincial Court Judges*¹⁰ fixed the constitutional standards for the involvement of an independent, objective judicial compensation commission to advise the Government with respect to the appropriate level of judicial compensation, so that public confidence in the independence of the judiciary would not be undermined. These standards were further refined by the Supreme Court of Canada in the *Bodner* case¹¹, which also found 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.

24. The applicable principles which are a matter of over-riding importance in determining compensation for judicial officers, are summarized as follows (paragraph numbers are from the *Bodner* case):

- Judicial independence must be maintained “*both in fact and in public perception*” (1)
- “*There are two dimensions to judicial independence, one individual and the other institutional. The individual dimension relates to the*

¹⁰ [1997] 3 S.C.R. 3

¹¹ *Supra*, fn 8

independence of a particular judge. The institutional dimension relates to the independence of the court the judge sits on.” (5)

- *“The concept of judicial independence has evolved over time: and this is evident in the context of judicial remuneration.” (2,3)*
- *“The components of judicial independence are: security of tenure, administrative independence and financial security.” (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. (8)
- Initially, the Supreme Court *“held that what was essential was not that judges’ remuneration be established by an independent committee, but that a provincial court judge’s right to a salary be established by law.” (3)*
- By 1997, this statement had proved to be inadequate, and the Supreme Court held that independent commissions were required to improve the process designed to ensure judicial independence. It further held that the commissions’ recommendations need not be binding. (3)
- The intention of interposing an independent commission was to ‘depoliticize’ the relationship between judges and government by changing the methodology for determining judicial remuneration, and to avoid confrontations (*“the often spirited wage negotiations”*), which might negatively affect the public perception of judicial independence. The danger of the old system was that the public might think that the judiciary

could be influenced either for or against the government because of issues arising from salary negotiations. (10)

- It was hoped that the recommendations of compensation commissions would lead to an effective resolution of compensation issues wherein courts would avoid setting the amount of judicial compensation, and provincial governments would avoid being accused of manipulating the courts for their own purposes. (11)
- These hopes remain unfulfilled. In some jurisdictions judicial commissions appear to be working satisfactorily. In others, however, “*a pattern of routine dismissal of commission reports has resulted in litigation.*” Instead of diminishing friction between judges and governments, the commission process has exacerbated it; litigation has replaced direct negotiations. To avoid future conflicts the principles of the compensation commission process must be clarified. (12)
- 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. The process is flexible and its purpose is more than simply updating the previous commission’s report. Typically, however, the starting point should be the date of the previous commission’s report. (14)
- Each commission must make its assessment in its own context. In doing so, the commission should refer to the reports of previous commissions and their outcomes, as they form part of the background and context that a new compensation committee should consider. A new commission may decide that its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrate change, only minor

adjustments are necessary. On the other hand, it may consider that previous reports failed to set compensation at the appropriate level, and after careful review, make its own recommendations on that basis. (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.*” (17)

25. In the *Reference* decision¹² the Supreme Court noted that there is a constitutional range of judicial compensation. If salaries are too low, it may be perceived that judges are tempted to adjudicate in a particular way in order to secure a higher salary, and if salaries are too high, reasonable and informed observers might plausibly conclude that the political branches were using compensation to reward the judicial branch for past judgements or to influence the outcome of future cases.

26. It is submitted that the Recommendations are within the range required to maintain and enhance the independence of the justices of the peace, and comply with the constitutional standards applicable to the determination of compensation for judicial officers.

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

27. Both the *Reference* and *Bodner* are based on the principle that the design and level of compensation arrangements are one of the key elements in securing and maintaining the independence of justices of the peace. While the Associations and the Minister cannot negotiate, they can discuss matters of common interest and, where they find common ground, can make the same Recommendations

¹² *Supra*, fn 9

(as to compensation) to this commission. The joint support for the Recommendations avoids the potential of litigation.

28. Review of the Recommendations by an independent commission preserves the independence of the justices of the peace as the Recommendations and the basis for the Recommendations as set out in this submission are disclosed through an open public process and reviewed by an independent and objective Commission.

The unique nature of the role of justices of the peace

29. Powers and duties of justices of the peace are set out in the Justice of the Peace Act¹³ and regulations. Pursuant to the Act and regulations, justices of the peace carry out a variety of functions in the judicial system, which functions are essential to the system.

30. Sitting justices of the peace preside over trials of less serious offences. These offences are set out in section 3(1) of the *Justice of the Peace Regulation*. Section 3(2) of the Regulation provides that a sitting justice of the peace will not be assigned to hear, try or determine complaints involving the death of a person, complaints involving a breach of the *Charter*, issues relating to the constitutional validity of any law or involving a determination of any aboriginal or treaty rights.

31. 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 telewarrants. They also deal with initial appearances under the *Protection Against Domestic Violence Act*.

¹³ RSA 2000, c. J-4; *Justice of the Peace Regulation* AR 6/99

32. These important duties led to a requirement that all sitting and presiding justices of the peace are required to be lawyers with at least 5 years of practising experience.

33. The Minister notes that the roles and responsibilities of justices of the peace have not changed since the 2000 Commission and the only significant changes since 1991 were the addition of certain duties for presiding justices of the peace relating to family violence under the *Protection Against Family Violence Act*¹⁴, apprehension orders under the *Protection of Children Involved in Prostitution Act*¹⁵ and the restriction of the jurisdiction of sitting justices of the peace arising from the *Constitutional Notice Regulation*¹⁶.

34. The Minister further notes that although justices of the peace are given broad jurisdiction under the Act and Regulation, in practice justices of the peace exercise a narrower jurisdiction. A review of the activities of justices of the peace indicates that the bulk of the matters determined by sitting justices of the peace are traffic matters. The primary activities of presiding justices of the peace include dealing with judicial interim release applications and issuing warrants.

35. The Minister submits that the Recommendations recognize the important role of justices of the peace in the judicial system.

The need to attract qualified candidates

36. The Minister submits that the proposed salary range will preserve the Government's ability to attract qualified candidates.

¹⁴ R.S.A. 2000, c. P-27

¹⁵ R.S.A. 2000, c. P-28

¹⁶ AR 102/99

37. In the past the Minister has had no difficulty in finding qualified candidates to fill vacant positions. There have only been two positions filled since 1999, and in neither case was there a shortage of candidates for consideration.

The compensation of other justices of peace in Canada

38. While the Minister acknowledges that the comparability of compensation of justices of the peace in other jurisdictions suffers from some limitations¹⁷, the Minister also notes that the recommended salaries for Alberta justices of the peace would result in Alberta justices of the peace receiving the highest compensation in Canada.

39. The table attached as **Tab 5** sets out the results of a cross Canada survey of justices of the peace compensation and other relevant information.

40. **Tab 5** indicates that the Recommendations as to salary compare favourably with compensation paid in other jurisdictions, for legally trained justices of the peace with similar duties to those of Alberta justices of the peace.

The growth and decline in real per capital income

41. In 2003 Alberta's per capita income was \$33,297, the highest in Canada (**Tab 6**). In 2004 Alberta's per capita income was \$35,005, the highest in Canada (**Tab 7**). In 2005 Alberta's per capita income was \$37,327 (**Tab 6**).

42. The percentage increase between 2003 and 2005 is 12.1%. Acceptance of the Recommendations will result in an increase of 17.65% from 2002/2003 salaries

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.

to 2003/2004, 5% from 2003/2004 to 2004/2005 salaries and 4.76% from 2004/2005 to 2005/2006.

43. The Minister submits that the increase in justices of the peace salaries proposed by the Recommendations places them well ahead of the growth in real per capita income in Alberta.

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

44. Alberta has a budgetary surplus. While the Canadian economy as a whole is forecast to show average growth of 3% per year for the period April 1, 2006 through March 31, 2009, Alberta's economy is expected to grow by 3.5% per annum over the same period (**Tab 8**)

45. However the robustness of the Alberta economy does not by itself justify more compensation for justices of the peace than is appropriate in light of other criteria.

The cost of living index and the position of the justices of the peace relative to its increases

46. 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**)). The 2006 Alberta Economic Outlook forecasts that Alberta's consumer price index and the rate of inflation will average 2.2% over the next three years (**Tab 8**). While actual inflation for 2006 for the period ending August 2006 was 3.9% ¹⁸(% driven by higher gasoline and energy costs), the longer term inflation forecast remains unchanged.

¹⁸ Statistics Canada Consumer Price Index

47. The increases proposed in the Recommendations for justices of the peace exceed by a considerable margin the level of increase in the cost of living index. The increases average 5.88% over 5 years. That increase is well above the average rise in the consumer price index over the past three years and the forecast rise in that index.

The Nature of the jurisdiction of the justices of the peace

48. This matter was addressed in paragraphs 28-30.

49. The Minister submits that the Recommendations recognize the importance of justices of peace in the judicial system while reflecting the nature of their duties and responsibilities in the system.

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

50. **Tab 10** shows the percentage increases from 1998 to 2006/2007 received by government funded persons in the legal system. Except for 2005-2006, when non-legal managers received a 3% increase, directors received a 6% increase and Assistant Deputy Ministers an 11% increase, managers received the same increases as bargaining unit staff. **Tab 10** also sets out the increases provided in the period April 1999 to April 2006 for Legal Officers funded by Alberta.

51. Increases in the government's base operating spending as set out 2003/2004, 2004/2005, and 2005/2006 Alberta Provincial Budgets were 5.9 %, 6.1% and 9.6% respectively for an average increase of 7.2%. (**Tab 11, 12, and 13**)

52. The 2006/2007 Provincial Budget was presented in the House on March 22, 2006. Alberta's base operating spending is increasing by 8.3% this year and is

forecast to increase 3% per year for the next two fiscal years, an average of 4.8% over the next three years (**Tab 14**)

53. The Minister submits that the increases proposed for the justices of the peace in the Recommendations is appropriate given the level of actual and anticipated increases to other programs over the period 2003/04 to 2007/08.

Other Factors relevant to the matters in issue

54. Although not determinative, the fact that the Minister and the Associations support the Recommendations is relevant.

Conclusion

55. The Minister submits that having regard to the criteria to be taken into account and the evidence contained in this submission, 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 17th day of October 2006.

Emery Jamieson LLP

Per: "Phyllis Smith"

Phyllis Smith Q.C.

Counsel for the Minister