

REPORT OF THE PROVINCIAL COURT COMMISSION
SUBMITTED TO
THE MINISTER OF JUSTICE AND ATTORNEY GENERAL FOR
SASKATCHEWAN
AND
THE SASKATCHEWAN PROVINCIAL COURT JUDGES' ASSOCIATION

December 16, 1998

BACKGROUND

Part IV of *The Provincial Court Act, 1998*, (hereinafter the '*Act*') governs the appointment of the Provincial Court Commission, its operations and the manner in which it conducts itself.

The first Commission was established within thirty (30) days of the *Act* coming into force. This Commission is required to report to the Minister within six (6) months of its establishment.

On July 6, 1998, the first Commission was established. The function of the Commission is to make recommendations with respect to the items outlined in s. 38 of the *Act*. The items include, *inter alia*, salary, allowances, vacations, and pensions. Mary Ellen Hodgins, MBA, of Saskatoon, was appointed by the Minister. E. Robert Stromberg, Q.C., of Saskatoon, was appointed by The Saskatchewan Provincial Court Judges' Association. Robert G. Bundon, FCA, of Prince Albert, was subsequently chosen by the two members and was appointed to act as Chair of the Commission.

The time frame specified for the Commission's review is April 1, 1997 to March 31, 2000. This time frame was designated in an agreement reached by the Provincial Court Judges and the Provincial Minister of Justice. The agreement, reached in June of 1997, outlined details of salaries, pensions, vacation leave, professional allowances, etc. to be paid during the above-noted time frame. This agreement was reviewed by the Commission.

In accordance with its mandate, the Commission gave public notice it was conducting an independent review of judicial remuneration and benefits for the period April 1, 1997 to March 31, 2000. The notice called for all interested parties to submit written comments by November 2, 1998.

The Commission received a joint submission on behalf of the Minister of Justice and The Saskatchewan Provincial Court Judges' Association. No other submissions were received.

The Commission then advertised and held a public hearing on Friday, November 20, 1998 at 10:00 a.m. in Saskatoon. At the hearing, John Whyte, Deputy Minister of Justice and Deputy Attorney General, and The Honourable Judge T.B. Bekolay, President of The Saskatchewan Provincial Judges' Association discussed the joint submission. The Honourable J.B.J. Nutting, Chief Judge of the Provincial Court of Saskatchewan also addressed the Commission. No other parties appeared to comment.

The joint submission explained the current process used to determine benefits for the Provincial Court Judges. Discussed were the recommendations of two previous commissions namely, The Schmeiser Commission and The Irwin Commission. Those recommendations of the Schmeiser and Irwin Commissions were rejected by the government. This resulted in the commencement of a law suit against the Provincial government by The Saskatchewan Provincial Court Judges' Association.

Discussions and negotiations were carried on between the Judges and the Minister in the spring of 1997. A final settlement was reached in June 1997. The Minutes of Settlement, draft *Regulations* pertaining to compensation and the pension plan were presented to the Commission.

Contained in the attached *Regulations* are all items pertaining to the recommendations of the Commission. These recommendations are made pursuant to s. 38(1) of the *Act*. Both The Saskatchewan Provincial Court Judges' Association and the Minister reached agreement on all matters covered under s. 38(1). Since no other interested parties commented on the arrangement in force, **the Commission hereby accepts the joint submission.** The recommendations, as outlined in the attached *Regulations*, are approved by the Commission. The Commission did not consider any of the matters under s. 38(2) of the *Act*.

The *Regulations* are attached and form an integral part of this report. The Commission wishes to thank John Whyte, Deputy Minister of Justice and Deputy Attorney General, The Honourable Judge T.B. Bekolay, President of The Saskatchewan Provincial Judges' Association and The Honourable J.B.J Nutting, Chief Judge of the Provincial Court of Saskatchewan.

DATED at the City of Saskatoon, this 16th day of December, 1998.

		
Robert G. Bundon, FCA, Chair	Mary Ellen Hodgins, MBA	E. Robert Stromberg, Q.C.

COMMISSION ORDER

The Provincial Court Commission, pursuant to Part IV of *The Provincial Court Act, 1998*, makes *The Provincial Court Compensation Regulations* in accordance with the attached Schedule.

Dated at the City of Saskatoon, this 16th day of December, 1998.


Chairperson
Provincial Court Commission

Certified True Copy


Chairperson
Provincial Court Commission

SCHEDULE

Title

- 1 These regulations may be cited as *The Provincial Court Compensation Regulations*.

Interpretation

- 2 In these regulations:

- (a) "Act" means *The Provincial Court Act, 1998*;
- (b) "judge" does not include a temporary judge unless otherwise provided;
- (c) "retired judge" means a person who has been a judge, on and from the day on which he or she ceases to be a judge.

Salaries

- 3(1) The chief judge is entitled to be paid an annual salary of \$119,961.20 for the period commencing on April 1, 1997.
- (2) An associate chief judge is entitled to be paid an annual salary of \$116,461.20 for the period commencing on April 1, 1997.
- (3) A judge other than the chief judge or an associate chief judge is entitled to be paid an annual salary of \$112,961.20 for the period commencing on April 1, 1997.
- (4) A temporary judge is entitled to be paid:
 - (a) for the period commencing on April 1, 1997 and ending on October 31, 1997, \$300 for each day and \$150 for each half day in which the temporary judge is engaged in his or her duties as a judge;
 - (b) for the period commencing on November 1, 1997 and ending on October 31, 1998, \$350 for each day and \$175 for each half day in which the temporary judge is engaged in his or her duties as a judge; and
 - (c) for the period commencing on November 1, 1998, \$400 for each day and \$200 for each half day in which the temporary judge is engaged in his or her duties as a judge.

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Administrative allowance

4(1) A judge who is assigned administrative duties pursuant to clause 8(f) of the Act is entitled to be paid remuneration in the amount of \$2,000 per year with respect to those duties in addition to the salary to which the judge is entitled.

(2) Where a judge performs administrative duties for a period of less than a year, the remuneration to which the judge is entitled pursuant to subsection (1) shall be prorated, based on the number of months in which the judge performs those duties.

Northern allowance

5(1) A judge who is required to perform judicial duties out of the Northern Saskatchewan Administration District is entitled to be paid an additional \$5,000 per year with respect to those duties in addition to the salary to which the judge is entitled.

(2) Where a judge performs judicial duties out of the Northern Saskatchewan Administration District for a period of less than a year, the remuneration to which the judge is entitled pursuant to subsection (1) shall be prorated, based on the number of months in which the judge performs those duties within that district.

Professional allowance

6 Commencing in the 1997-98 fiscal year, a judge is entitled to be paid an accountable professional allowance of \$3,000 per year.

Vacation leave

7(1) A judge is entitled to vacation leave equivalent to 30 working days for each year of service.

(2) For any period of service of less than one year, a judge is entitled to vacation leave of 2½ working days for each month of service.

(3) Subject to the prior approval of the chief judge, a judge may accumulate vacation leave from one year to the next but, subject to subsection (4), a judge shall not accumulate more than the equivalent of 30 working days without the written permission of the chief judge.

(4) A judge who, immediately prior to his or her appointment, was an employee of the Government of Saskatchewan is entitled to accumulate all unused vacation leave from his or her employment in the public service.

(5) A judge must obtain the prior approval of the chief judge for the time that the judge intends to take as his or her vacation leave.

Magistrates' early retirement

8(1) In this section, "normal date of retirement" means:

(a) where a judge has served continuously as a judge for less than 25 years, the first day of the month following the month in which he or she attains the age of 70 years; or

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(b) where a judge has served continuously as a judge for 25 years or more, the first day of the month following the month in which he or she attains the age of 65 years.

(2) This section applies to a judge who made an election to receive the annuity to which he or she was entitled pursuant to *The Magistrates' Courts Act*, and sections 10 to 13 do not apply to a judge to whom this section applies.

(3) Subject to subsection (6), on retirement, a judge is entitled to an annuity pursuant to *The Magistrates' Courts Act* calculated in accordance with subsection (4) or (5) where the judge:

(a) is 55 years of age or more; and

(b) has served as a judge for at least 10 years.

(4) In the case of a judge described in clause (1)(a), the annuity mentioned in subsection (3) is an annual amount P calculated in accordance with the following formula:

$$P = S \times \frac{Y}{T} \times F$$

where:

S is one half of the annual salary being paid to the judge on the day before the day the judge ceases to be a judge;

Y is the number of years the judge served as a judge;

T is total number of years the judge would have served as a judge if he or she had not retired until the normal date of retirement; and

F is the factor calculated by linear interpolation from Table 1 of the Appendix corresponding to the number of years, calculated to the nearest month, remaining until the normal date of retirement.

(5) In the case of a judge described in clause (1)(b), the annuity mentioned in subsection (3) is an annual amount P calculated in accordance with the following formula:

$$P = S \times F$$

where:

S is one half of the annual salary being paid to the judge on the day before the day the judge ceases to be a judge; and

F is the factor calculated by linear interpolation from Table 2 of the Appendix corresponding to the number of years, calculated to the nearest month, remaining until the normal date of retirement.

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(6) On retirement, a judge is entitled to receive an annuity pursuant to *The Magistrates' Courts Act* in an amount equal to one-half of the annual salary being paid to the judge on the day before the day on which the judge ceases to be a judge, where:

(a) the judge:

(i) has served for at least 18 years as a judge prior to the day on which he or she ceases to be a judge; and

(ii) ceases to be a judge on or after attaining the age of 58 years; and

(b) the total of the judge's age in years and years of service equals 80 or more.

Payment of certain annuities, etc., continued

9 Annuities and supplementary allowances being paid pursuant to *The Magistrates' Courts Act* on the day before the day on which this section comes into force shall be paid in the same amounts as they were being paid on that day and, notwithstanding the repeal of section 52 of *The Provincial Court Act* and sections 29 to 32 and 34 and 35 of *The Magistrates' Courts Act*, those sections continue to apply to the payment of those annuities and supplementary allowances.

Retirement benefits

10(1) Subject to section 11, a retired judge who receives a pension pursuant to section 4 of *The Provincial Court Pension Plan Regulations* is entitled to receive an additional retirement benefit for life, calculated in accordance with subsection (3), commencing on the first day of the month following the month in which he or she ceases to be a judge.

(2) The total of the pension and additional retirement benefit mentioned in subsection (1) is an annual amount P calculated in accordance with the following formula:

$$P = 0.03 \times (S \times Y)$$

where:

S is the average annual salary received by the retired judge during:

(a) the retired judge's three years of highest salary; or

(b) where the retired judge has less than three years of contributory service, the retired judge's total years of contributory service; and

Y is the lesser of:

(c) the retired judge's total number of years of contributory service; and

(d) 23 1/3 years.

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(3) The amount paid as an additional retirement benefit is the amount calculated pursuant to subsection (2) less the amount paid as a pension pursuant to section 4 of *The Provincial Court Pension Plan Regulations*.

Retirement benefits - certain judges

11(1) This section applies only to judges appointed after September 30, 1978 and before December 13, 1985.

(2) A retired judge is entitled to receive a pension and additional retirement benefits for life in an annual amount equal to 70% of the average annual salary received by the retired judge during the retired judge's three years of highest salary, commencing on the first day of the month following the month in which he or she ceases to be a judge, where the retired judge:

- (a) was 50 years of age or less on the day of his or her appointment;
- (b) in the opinion of the council, was engaged in the actual practice of law for 10 years prior to the day of his or her appointment;
- (c) on the day of his or her appointment, was a member in good standing of the bar of one of the provinces of Canada and had been a member for at least 10 years before the day of his or her appointment;
- (d) on or after attaining the age of 65 years, ceases to be a judge; and
- (e) immediately prior to the day on which he or she ceases to be a judge, has served continuously for at least 15 years as a judge.

(3) The amount paid as an additional retirement benefit is the amount calculated pursuant to subsection (2) less the amount paid as a pension pursuant to section 4 of *The Provincial Court Pension Plan Regulations*.

Early retirement

12(1) Subject to section 13, a retired judge who receives a pension pursuant to section 5 of *The Provincial Court Pension Plan Regulations* is entitled to receive an additional retirement benefit for life, calculated in accordance with subsection (3).

(2) The total of the pension and additional retirement benefit mentioned in subsection (1) is an annual amount ERP calculated in accordance with the following formula:

$$\text{ERP} = P - [N \times (0.05 \times P)]$$

where:

P is the amount P calculated in accordance with subsection 10(2); and

N is the number obtained by subtracting the retired judge's age from 60.

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(3) The amount paid as an additional retirement benefit is the amount calculated pursuant to subsection (2) less the amount paid as a pension pursuant to section 5 of *The Provincial Court Pension Plan Regulations*.

Early retirement - certain judges

13(1) A retired judge is entitled to receive a pension and additional retirement benefits for life in an annual amount equal to 70% of the average annual salary received by the retired judge during the retired judge's three years of highest salary, where:

(a) the retired judge:

(i) has served for at least 18 years as a judge prior to the day on which he or she ceases to be a judge; and

(ii) ceases to be a judge on or after attaining the age of 58 years; and

(b) the total of the retired judge's age in years and years of contributory service equals 80 or more.

(2) The amount paid as an additional retirement benefit is the amount calculated pursuant to subsection (1) less the amount paid as a pension pursuant to section 5 of *The Provincial Court Pension Plan Regulations*.

Payments to spouse

14(1) Where a judge dies while holding office leaving a spouse, the spouse is entitled to receive during the spouse's lifetime 35% of the average annual salary received by the judge during:

(a) the judge's three years of highest salary; or

(b) where the judge has less than three years of service, the judge's total years of service.

(2) Where the amount paid to a spouse pursuant to section 6 of *The Provincial Court Pension Plan Regulations* is less than the amount calculated pursuant to subsection (1), the spouse is entitled to receive an additional retirement benefit equal to the amount by which the amount calculated pursuant to subsection (1) exceeds the amount paid pursuant to section 6 of *The Provincial Court Pension Plan Regulations*.

(3) Where a judge dies while holding office leaving a spouse, the spouse is entitled to receive a lump sum payment equal to one-sixth of the judge's annual salary.

(4) Where a retired judge dies leaving a spouse and, at the time of death, is in receipt of additional retirement benefits or is entitled to additional retirement benefits pursuant to these regulations, the spouse is entitled to receive during the spouse's lifetime 60% of the additional retirement benefits that the retired judge was receiving or would have been entitled to receive.

(5) Additional retirement benefits payable pursuant to subsection (2) or (4) commence on the first day of the month following the month in which the death of the judge or retired judge occurs.

Payments to children

15(1) Subject to subsection (2), the amount payable to a child of a judge or retired judge pursuant to section 24 of the Act is 30% of the amount that would have been payable to a spouse in accordance with section 14

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of these regulations and section 6 of *The Provincial Court Pension Plan Regulations*.

(2) The total amount payable to all children of a judge or retired judge pursuant to section 24 of the Act must not exceed 120% of the amount calculated pursuant to subsection (1) and must be divided equally among them.

Additional retirement benefit entitlement at death

16 Where a retired judge who is receiving an additional retirement benefit dies, an amount equal to a one-month portion of the annual amount of the additional retirement benefit is payable to the retired judge's estate, notwithstanding that the amount payable in arrears is less than a one-month portion of the annual amount of the additional retirement benefit.

Coming into force

17 These regulations come into force on the day determined in accordance with Part IV of the Act.

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Appendix

TABLE 1
[Subsection 8(4)]

<u>Time (in years) remaining to normal date of retirement</u>	<u>Factor</u>
15	.303
14	.324
13	.346
12	.371
11	.398
10	.428
9	.461
8	.498
7	.538
6	.583
5	.633
4	.689
3	.752
2	.824
1	.906
0	1.000

TABLE 2
[Subsection 8(5)]

<u>Time (in years) remaining to normal date of retirement</u>	<u>Factor</u>
10	.453
9	.486
8	.523
7	.564
6	.608
5	.657
4	.712
3	.772
2	.839
1	.915
0	1.000