

**PROVINCIAL COURT COMMISSION**

**PROVINCE OF SASKATCHEWAN**

**1999 REPORT**

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# I. INTRODUCTION

## 1.1 THE COMMISSION'S HISTORY AND JURISDICTION

In June, 1998, in response to the *Judges Reference*<sup>1</sup> and discussions between the Provincial Government and the Saskatchewan Provincial Court Judges' Association (hereinafter the "SPCJA"), *The Provincial Court Act, 1998* (hereinafter the "Act"), came into force. Under the *Act*, this Commission is known as the "first commission", and was established on July 6, 1998. Pursuant to section 39 of the *Act*, the Commission was required to report six months after being established. Accordingly, the Commission's first report was issued on December 16, 1998 which covered the period April 1, 1997 to March 31, 2000.

This is the second report of the Commission. This report details recommendations relating to remuneration spanning the period from April 1, 2000 to March 31, 2003.

The Commission's jurisdiction is provided for in sections 38 and 51 of the *Act*, which read:

38(1) A commission shall inquire into and make recommendations with respect to the following:

(a) the salaries to be paid to:

- (i) the chief judge;
- (ii) an associate chief judge;
- (iii) judges other than the chief judge, associate chief judges and temporary judges; and
- (iv) temporary judges;

(b) the remuneration to be paid to judges who perform administrative duties assigned to them pursuant to clause 8(f);

(c) the allowances to be paid to judges who reside in the Northern Saskatchewan Administration District;

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<sup>1</sup> *Reference re Remuneration of the Judges of the Provincial Court of Prince Edward Island; R. v. Campbell; R. v. Wickman; Manitoba Provincial Judges Association v. Manitoba (Minister of Justice)*, [1997] 3 S.C.R. 3.

- (d) professional allowances;
- (e) vacation leave;
- (f) pension benefits and additional retirement benefits;

(2) A commission may inquire into and make recommendations with respect to the following:

(a) the support staff, facilities, equipment and security of the court;

(b) the benefits to be provided to judges pursuant to regulations made pursuant to clause 65(d).

(3) The salary recommended by a commission cannot be less than the salary being received by the judges on the day on which the report containing the recommendation is submitted to the minister.

(4) No commission regulation respecting pension benefits or additional retirement benefits shall reduce a person's benefit that accrued before the coming into force of the regulation.

51(1) At the request of the minister or the association made at any time during the term of the members of a commission, the commission may inquire into and make recommendations with respect to any matter of significance to the court.

(2) Within six months after the day on which a matter is referred to a commission pursuant to section (1), the commission shall submit a report to the minister and the association containing any recommendations of the commission with respect to the matter.

This Commission's term expires on June 30, 2002.

## 1.2 THE COMMISSION'S MEMBERSHIP

The Commission has 3 members. As required by section 36(2) of the *Act*:

- i) 1 is appointed by the Minister of Justice
- ii) 1 is appointed by The Saskatchewan Provincial Court Judges' Association
- iii) These 2 members appoint a chairperson

The Commission members are:

- i) Robert G. Bundon, FCA, Chairperson
- ii) Mary Ellen Hodgins, MBA, appointee of the Minister of Justice
- iii) E. Robert Stromberg, Q.C., appointee of The Saskatchewan Provincial Court Judges' Association

### 1.3 THE METHODOLOGY

Advertisements were placed August 28th and September 3rd, 1999 in the four major daily Saskatchewan newspapers, namely: Regina LeaderPost, Saskatoon StarPhoenix, Prince Albert Daily Herald and Moose Jaw Times Herald, advising of the opportunity to present written and oral submissions to the Commission. Advertisements were again placed in the four major daily newspapers on October 1st, 2nd, 23rd and 30th, 1999 notifying of the date and location of the Commission Hearings.

Members of the Commission visited the Provincial Court at La Loche and Saskatoon. The Members toured the facilities, observed court proceedings, saw a demonstration of trial scheduling, and met informally with most of the judges sitting at each of these locations.

The Commission was greatly assisted by the written submissions received from:

- i) Saskatchewan Provincial Court Judges' Association
- ii) The Minister of Justice
- iii) Honourable Chief Judge J.B.J. Nutting
- iv) Honourable Judge Wilfrid K. Tucker
- v) Silas E. Halyk, on behalf of Honourable Judge Robert G. Finley
- vi) Canadian Bar Association, Saskatchewan Branch
- vii) Saskatoon Criminal Defence Lawyers Association
- viii) Calvin Loth

The Commission also heard oral submissions on November 1, 1999 and November 2, 1999.

## II. FACTORS CONSIDERED

This Commission has been asked by the Saskatchewan Provincial Court Judges' Association<sup>2</sup> to consider six factors:

- a) The unique role and responsibility of the Provincial Court Judge in our society;
- b) A proper comparison with national standards of judiciary remuneration;
- c) Judicial independence and the public interest in the administration of justice;
- d) Need to attract, motivate and retain the most highly qualified candidates;
- e) Fiscal capacity of government;
- f) Increases in cost of living.

### 2.1 THE UNIQUE ROLE AND RESPONSIBILITY OF THE PROVINCIAL COURT JUDGE IN OUR SOCIETY

There is no dispute that the Provincial Court is "busy and getting busier all the time"<sup>3</sup>. The Commission heard evidence from the SPCJA that the Provincial Court has extensive jurisdiction, handling approximately 99% of all criminal cases in Saskatchewan. Indeed, the Provincial Court caseload in 1998 consisted of 457,000 cases<sup>4</sup>.

As a result of legislative amendments, there has been greater responsibility shifted to the Provincial Court. With recent amendments, and proposed amendments, to the *Criminal Code*, the Provincial Court's role is certain to broaden. At page 20 of the SPCJA's submission, the most recent expansion of the Provincial Court's role is explained:

As a result of the amendments in Bill C-42, Bill C-17, Bill C-8 and the "third phase" proposals, virtually every offence in the Criminal Code has been, or soon will be, brought within the absolute jurisdiction of the Provincial Court (under s.553) or will be brought within the absolute jurisdiction of the Provincial Court by a Crown election to proceed summarily (in the case of most hybrid offences). The few remaining straight indictable offences

<sup>2</sup> Page 253-254 of the Transcript.

<sup>3</sup> Page 351 of the Transcript.

<sup>4</sup> Page 38 of the SPCJA's written submission.

punishable by 14 years imprisonment or by life imprisonment can still be tried in Provincial Court at the accused's election (under s.536). For all practical purposes, only the offences of murder and conspiracy to commit murder are outside the Provincial Court's jurisdiction (under s. 469). This is not the case with young offenders. The Youth Court, which is a division of the Provincial Court, has the jurisdiction to conduct murder trials.

At page 17 of the SPCJA's written submissions, the increasing jurisdiction of the Provincial Court is explained:

During the past 30 years, the re-classification of offences, within the above three sub-classes of indictable offences, has increasingly and consistently transferred jurisdiction to the Provincial Court. The consistent pattern of these re-classifications has been to move offences out of the s.469 sub-class and into the s.536 sub-class and to move offences out of the s.536 sub-class and into the s.553 sub-class, thus increasing the jurisdiction of the Provincial Court.

...

As a result, the Provincial Court's criminal jurisdiction came to include many more serious indictable offences, including those for which there is a maximum penalty of life imprisonment. In general, fewer and fewer offences came within the exclusive jurisdiction of the Court of Queen's Bench and more and more offences came either within the exclusive jurisdiction of the Provincial Court or were permitted an election for trial in the Provincial Court.

It should be noted that, even in cases that proceed to the Court of Queen's Bench, the Provincial Court conducts the preliminary inquiry.

The Charter of Rights and Freedoms, in addition to legislative changes, also impacts on the Provincial Court. Charter applications arise much more frequently in Provincial Court than in the Court of Queen's Bench and are just as complex.

The Provincial Court heard 1,967 small claims trials in 1998 (leaving aside settlements and appearances)<sup>5</sup>. Small claims trials can be time-consuming by virtue of the fact that the parties are often unrepresented, and unfamiliar with the process. Under *The Small Claims Act, 1997*, there is a monetary limit of \$5,000. However, the *Act* provides for the monetary limit to be raised by regulation. This has the potential of further increasing the Provincial Court's jurisdiction and case-load.

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<sup>5</sup> Page 41 of SPCJA's written submission.

## 2.2 PROPER COMPARISON WITH NATIONAL STANDARDS OF JUDICIARY REMUNERATION

The SPCJA pointed out that the Saskatchewan judges are among the lowest paid in comparison to other jurisdictions<sup>6</sup>. At page 91 of their written submissions, the SPCJA wrote, "While the SPCJA believes it is important for the Court Commission to consider the compensation situation of other Provincial Court Judges across Canada, we do not believe it is determinative of the compensation issue."

The Minister of Justice argues that the salary is but one component, and the total compensation package must be considered<sup>7</sup>.

The Commission heard evidence that the national average of remuneration for provincial court judges is \$138,776. Recommendations from other Provincial Commissions for salaries at April 1, 2000 are also included. The salaries are<sup>8</sup>:

	Actual as of April 1, 2000	Salaries as of April 1, 2000 Including Provincial Commissions' Recommendations
Alberta	\$152,000	\$152,000
British Columbia	144,000	144,000
Manitoba	112,000	112,000 (in litigation)
New Brunswick	125,800	137,500 (in litigation)
Newfoundland	102,000	102,000 (in litigation)
Nova Scotia	137,000	137,000
Nunavut	178,100	178,100
Ontario	170,000	170,000
Prince Edward Island	131,167	131,167
Quebec	122,800	137,333 (in litigation)
Yukon	<u>136,350</u>	<u>136,350</u>
NATIONAL AVERAGE	<u>\$138,776</u>	<u>\$140,963</u>

It should be noted that the court in Nunavut is a territorial court which remunerates judges based on the same rate as federal judges<sup>9</sup>.

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<sup>6</sup> Page 91 of SPCJA's written submission.

<sup>7</sup> Page 21 of Minister of Justice's written submission

<sup>8</sup> Page 13 of the SPCJA overheads

<sup>9</sup> Page 92 of SPCJA written submissions

## 2.3 JUDICIAL INDEPENDENCE AND THE ADMINISTRATION OF JUSTICE

In the *Judges Reference*, the Supreme Court of Canada laid down the principle that judicial independence is constitutionally protected. The compensation provided to the Provincial Court Judges must be sufficient to protect that judicial independence. The Supreme Court also stated that the government cannot negotiate directly with the judges, and that an independent advisory body must be interposed between the government and the judiciary.

The point was made in the *Judges Reference* that judges are not civil servants, but rather a branch of the government. The constitutional entitlement to judicial independence is a characteristic to which civil servants are not entitled. Judicial independence consists of three core characteristics, being: security of tenure, financial security, and administrative independence.

The importance of financial security, a component of judicial independence, is to achieve the societal goal of having a judiciary that cannot be pressured or influenced to make certain decisions. The benefit that the judiciary receives from being constitutionally entitled to financial security, is purely secondary to the benefit to society of having an independent judiciary. Indeed, the Constitution protects judicial salaries from falling below an acceptable minimum level. At paragraph 193 of the *Judges Reference*, Chief Justice Lamer wrote:

I want to make it very clear that the guarantee of a minimum salary is not meant for the benefit of the judiciary. Rather, financial security is a means to the end of judicial independence, and is therefore for the benefit of the public. As Professor Friedland has put it, speaking as a concerned citizen, it is "for our sake, not for theirs" (p.56).

In the *Judges Reference*, the court pointed out that it is not only the individual judges that are entitled to judicial independence, but judges, as a group, that are entitled. This concept is known as the institutional or collective dimension of financial security. The first component of institutional financial security is the idea that any changes to or freezes in judicial remuneration be conducted through an independent body, such as this Commission. The possibility, or the mere appearance, of political interference through

economic manipulation is to be avoided. The second component dictates that negotiations between the judiciary and the government is to be avoided. As the Crown is almost always a party to criminal prosecutions before the provincial court, the appearance of judicial independence stands to be compromised. The third component is that judicial salaries cannot fall below a basic minimum level of remuneration which is required for the office of a judge.

Finally, and this point deserves much emphasis, the guarantee that judicial remuneration must meet a minimum level is not a device to shield judges from tough economic circumstances. At paragraph 196 of the Judges Reference, Chief Justice Lamer explained this as follows:

Finally, I want to emphasize that the guarantee of a minimum acceptable level of judicial remuneration is not a device to shield the courts from the effects of deficit reduction. Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times. Rather, as I said above, financial security is one of the means whereby the independence of an organ of the Constitution is ensured. Judges are officers of the Constitution, and hence their remuneration must have some constitutional status.

## **2.4 NEED TO ATTRACT, MOTIVATE AND RETAIN THE MOST HIGHLY QUALIFIED CANDIDATES**

The SPCJA urged that the compensation provided to the judges be sufficient to attract, motivate and retain the most highly qualified candidates. The Canadian Bar Association also put forward the view that remuneration must be sufficient to attract the "best" candidates.<sup>10</sup> The Minister of Justice asserted that terms (e.g., "ablest and best") that modify the word "qualified" do not add any meaning to the principle. The Minister of Justice argued that it is not possible to determine who will be the ablest and best for the position<sup>11</sup>.

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<sup>10</sup> Page 13 of the Canadian Bar Association's written submissions.

<sup>11</sup> Page 367 of the Transcript.

The Provincial Court is the first-line court, and the court to which citizens are most likely to be exposed. There is no dispute that the judges' role is burdensome, and the responsibility of judging fellow citizens is challenging and stressful.

Another contributing factor to the stress that judges face is the isolation that is often accompanied by a position on the bench. As Daryl E. Labach, President of the Saskatoon Criminal Defence Lawyers Association, explained in his written submissions, "A lawyer must sever all former ties with their clients, withdraw from political life and exercise care and discretion in their community, charitable and personal affairs."<sup>12</sup> The Honourable Judge S.C. Carter explained the isolation as follows:<sup>13</sup>

It came as a real shock to me when I realized how absolutely careful I must be in what I say and do. Being intellectually aware of this is nothing compared to the reality. I have lost my freedom of speech, my freedom of association and my right to vote. I can no longer lobby for the oppressed and underprivileged people in our society. My opinions about people, laws, governments and politics must be kept to myself.

The loss of these freedoms is essential if we are to actually be impartial and if we are to be seen as being impartial. It is one of the reasons why our system of justice works so well, but it is not easy. I would love to call CBC Radio in the morning to tell the province what I think. I would love to accept an invitation to speak to a group or association. I would dearly like to associate with my old colleagues at Legal Aid. I can't do these things and I will not. It gets lonely sometimes.

The Provincial Court judges have chosen to accept the inevitable isolation, and bear the resulting stress.

Perhaps the judges' lot is best summarized by The Honourable Willard Z. Estey, a former justice of the Supreme Court of Canada. The following is an excerpt of Mr. Estey's testimony, which was presented before the Commission:

All the time I practised as counsel in all the courts all over the place, including the United States, I always had the highest regard for these Provincial Court judges, Provincial Court magistrates we called them, because first of all they didn't start the long trials and the endless cross-examinations and the hopelessly unending examinations for discovery. They didn't cause any of that. They lived outside of that and they did the hard work right on the bench.<sup>14</sup>

<sup>12</sup> Page 10 of Saskatoon Criminal Defence Lawyers Association written submissions.

<sup>13</sup> Page 68 of the SPCJA's written submissions

<sup>14</sup> Page 417 of Transcript

The compensation package must be appropriate in order to attract qualified individuals. A mediocre judiciary would be unacceptable to the people of Saskatchewan. Having stated this, the Commission wants to make it clear that it is of the view that the current judges on the Provincial Court are not mediocre, and are serving admirably. What the Commission is attempting to prevent is the risk to the Saskatchewan people of being subjected to a mediocre judiciary in the future, as a result of an unattractive compensation package.

The Commission is convinced that it is imperative that the compensation provided to judges of the Provincial Court be sufficient to attract, motivate and retain the most qualified candidates.

## 2.5 FISCAL CAPACITY OF GOVERNMENT

The fiscal state of the government was considered in the Commission's deliberations. Although there are many people in the Province who are enduring through very difficult times, the economic picture for the Province cannot be said to be in a state of crisis. Indeed, even the Minister of Justice agrees that the Saskatchewan economy will see "modest" growth during the period from April 1, 2000 to March 31, 2003:

During the period April 1, 2000 to March 31, 2003, all indicators are for modest growth in the Saskatchewan economy and in the revenue available to pay for services provided by the Government of Saskatchewan.<sup>15</sup>

In the Budget Address by the Honourable Eric Cline, Minister of Finance, a forecast is presented with respect to the period from 1999 to 2003:

Saskatchewan's economy advanced in each of the last six years and is expected to continue growing in 1999 through the year 2003. Real economic growth is currently anticipated to be 2.0 per cent for 1999 and the prospects are good for a return to a sustainable growth path at higher rates in the remainder of the forecast period. Lasting 11 years, the economic expansion will be the longest ever in the history of the Province.

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<sup>15</sup> Page 9 of written submission on behalf of the Minister of Justice

Evidence presented to the Commission indicates that the Province's budget will continue to remain balanced<sup>16</sup>. The province intends to reduce taxes, invest in priority programs, and reduce the debt. These are indicators of a competently managed economy. Under these circumstances, the Commission is of the view that the additional expenditure to secure the goal of judicial independence can be adequately provided.

The Commission wishes to make it very clear that it was not blinded to the fact that there are individuals in our society who are suffering great hardship. The Commission does not intend to minimize the difficulties that many of our citizens are facing. However, the general economic projection for our Province is one of growth.

With the political push toward a balanced budget, and the demand for increased services, the fiscal environment is challenging. However, the fiscal abilities of government cannot play an overriding role. The Constitution requires that fiscal matters take a secondary role to the high ideal and constitutional requirement of judicial independence.

## 2.6 INCREASES IN COST OF LIVING

The Commission took into account the cost of living but found that the statistics presented in this area were simply inadequate. The Commission is of the view that the cost of living would be a relatively minor factor to be taken into account, even if adequate statistics were available. The Commission is of the opinion that, once an individual earns a salary at a certain level, the influence of a cost of living increase is less significant. Provincial Court judges earn a relatively high income already (compared to most citizens in the Province) and will be subject to an increase in compensation that is sufficient to provide for any increase in cost of living.

In short, the Commission is of the view that an increase in cost of living is not a factor to justify extensive deliberation.

### **III. COMMISSION DECISIONS**

#### **3.1 SALARY**

The Commission has relied on a combination of factors that makes its decision "right for Saskatchewan". Although the Commission looked at the circumstances unique to Saskatchewan, it also strongly considered the national averages for judicial remuneration.

Parity with federally-appointed judges, although a factor, was not a dominant factor. The Commission does not have control of the salaries of the judges of the Court of Queen's Bench. The Commission is setting compensation for the next three years, and if parity was the ultimate goal, the Commission's recommendations would soon be out of date, given the expected increase in the Queen's Bench judges' salaries in 2000.

The Commission is of the opinion that the comparison to the national average of provincial court judges may be a more appropriate indicator. The Commission recognizes that its recommendations may be below the national average in three years. Currently, compensation for provincial court judges across Canada is in a state of change as provincial commissions in other jurisdictions are preparing reports for their governments.

The Commission is of the unanimous view that Provincial Court judges' salaries should be as follows:

##### **3.1.1 Judges other than the Chief Judge, Associate Chief Judges and Temporary Judges**

The Commission recommends that the base salary for judges other than the chief judge, associate chief judge, and temporary judges shall be \$143,000 for the period April 1, 2000 to March 31, 2003.

Both the Minister of Justice and the SPCJA agreed on the proposal that administrative allowance be set for the chief judge at 8% of salary, for the associate chief judge at 5% of salary, and 3% of salary for the administrative judges. The Minister of Justice proposed that a maximum of 4 administrative judges be set in the regulations<sup>17</sup>. Chief Judge Nutting agreed with this maximum<sup>18</sup>.

However, the Commission is of the view that a formula consisting of a percentage of salary is not the ideal method of calculating the administrative allowance. Rather, a flat monetary sum better addresses the compensation for the services provided.

### **3.1.2 Chief Judge**

The Commission recommends that the Chief Judge receive a salary of \$153,000 for the period April 1, 2000 to March 31, 2003.

### **3.1.3 Associate Chief Judge**

The Commission recommends that the Associate Chief Judge shall receive a salary of \$148,000 for the period April 1, 2000 to March 31, 2003.

### **3.1.4 Administrative Judges**

The Commission recommends that Administrative Judges receive remuneration in the amount of \$3,000.00 as compensation for administrative duties assigned to them. The Commission also recommends that the number of Administrative Judges be limited to four.

### **3.1.5 Temporary Judges**

Chief Judge Nutting proposed that the Commission adopt a per diem payment for temporary judges in the amount of 1/248 of the annual salary of the Judges of the Provincial Court of Saskatchewan<sup>19</sup>. The Minister of Justice agreed to this proposal<sup>20</sup>.

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<sup>17</sup> Page 14 of Reply on Behalf of the Minister of Justice

<sup>18</sup> Page 14 of Chief Judge Nutting's written submission

<sup>19</sup> Page 6 of Chief Judge Nutting's written submissions

The Commission recognized that this rate could have been based on a percentage of salary. However, the Commission is of the view that the flat monetary rate is more straight forward and better reflects the services provided than does a rate tied simply to salary.

The Commission recommends that the per diem rate for the period April 1, 2000 to March 31, 2003 should be as follows:

\$600 per day  
\$300.00 per one-half day

## **3.2 ALLOWANCES**

### **3.2.1 Northern Allowance**

The SPCJA was of the view that the Northern Allowance, reflected as a percentage of salary, should be extended to those judges serving out of the judicial centre of Meadow Lake. The Minister agreed to an increase to 5.5% of salary for the northern allowance, but not to the 8% proposed by Chief Judge Nutting. However, the Minister of Justice disagreed with the inclusion of the judicial centre of Meadow Lake in the Northern Allowance.

The Commission rejects the proposal that the Northern Allowance be reflected as a percentage of salary in the regulations. Rather, the Commission recommends an allowance of \$7,000.00.

Furthermore, the Commission is of the view that the judges located in the judicial centre of Meadow Lake receive the Northern Allowance as do the judges located in La Ronge. The Meadow Lake judicial centre services circuit points within the Northern area. The Commission is of the opinion that the judges serving in the Meadow Lake judicial centre are entitled to the Northern Allowance due to the circuit points they serve.

### 3.2.2 Professional Allowances

As the parties did not address a change in professional allowances, the Commission is of the view that the professional allowance should remain at \$3,000.00. This amount is reflected in section 6 of *The Provincial Court Compensation Regulations*.

## 3.3 ANNUAL LEAVE AND EDUCATION

### 3.3.1 Annual Leave

The SPCJA proposed that annual leave be extended from 30 days to 40 days per year<sup>21</sup>. The Minister of Justice was of the view that the current 30 day vacation leave provision was adequate<sup>22</sup>.

Chief Judge Nutting suggested that Northern judges be given an additional week of annual leave.<sup>23</sup> Judge Tucker was also of the view that northern judges should receive an additional five days of annual leave<sup>24</sup>. The Minister of Justice agreed with this proposal<sup>25</sup>.

The Commission rejects the proposal by the SPCJA to increase the annual leave from 30 days to 40 days. As well, the Commission rejects the proposal that Northern judges receive an additional one week of annual leave. The Commission believes the existing annual leave provisions are satisfactory.

### 3.3.2 Education Leave

The SPCJA asked the Commission to recommend the allotment of education days be increased from 5 days per year to 10 days per year per judge.

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<sup>21</sup> Page 103 of the SPCJA's written submissions

<sup>22</sup> Page 18 of Minister of Justice's reply

<sup>23</sup> Page 324 of Transcript

<sup>24</sup> Page 9 of Judge Tucker's written submissions

<sup>25</sup> Page 400 of Transcript

The Commission rejects an increase in the allotment of education days. The Commission is of the view that five days is a standard that most professions are working toward, yet having difficulty achieving.

### **3.3.3 Sabbaticals**

The SPCJA asked the Commission to recommend that the Government and the Association, along with the Chief Judge, explore the issue of judicial sabbaticals.

The Commission also rejects the proposal for sabbaticals. The Commission agrees with the Minister of Justice that sabbaticals are intended to be research-related, not stress-related.

## **3.4 PENSIONS AND RETIREMENT**

### **3.4.1 Pension Plan**

The Commission is also of the view that the current pension plan should be adjusted. Under the current plan, a lifetime annual pension of 70% of a judge's best three years' average earnings is provided if all of the following provisions are met:

1. The member is at least 58 years of age when he/she ceases to be a judge;
2. The member has at least 18 years contributory service; and
3. The member meets the rule of 80 at the time the member ceases to be a judge, i.e., the sum of the judge's age and years of contributory service is at least equal to 80.

If one of the above provisions is not met, then the member is entitled to an annual pension equal to the product of 3% of the best 3-years' average earnings times the years of contributory service.

Some of the judges currently sitting in the Provincial Court were appointed relatively late in life. They could be in the position at retirement where they meet the rule

of 80 (i.e., age and years of service equal 80) yet have not completed 18 years of service. Under the current pension plan, the pension for these judges will be significantly lower than if based on a pure rule of 80.

The Commission recommends that *The Provincial Court Act, 1998* and the *Provincial Court Compensation Regulations* be amended to allow for the annual pension of 70% to be accrued evenly over 18 years for those judges retiring at the age of 65 and over. An accrual of 3.89% per year (i.e., 70% divided by 18 years) would be more beneficial than the accrual of 3.0% per year that is currently provided. This would mean that a Judge who retired at age 70 with 17 years of service, would receive an annual pension of 66.1% instead of 51% of his or her best 3-year average salary.

The Commission recognizes that such an amendment would increase the pension liabilities for which the government is responsible. In order to manage prudently such an increase in pension liabilities, an accrual of the 70% annual pension evenly over 18 years can be provided **only** to those judges who cease to be a judge on or after reaching their 65th birthday. Judges who retire before 65 years of age are still entitled to the early retirement benefits pursuant to the *Act* and the regulations. Retention of judges is an important issue, and the proposed amendment would likely assist in retaining some judges to the age of 65 and over.

### 3.4.2 Surviving Spouse Benefits

Both the Minister of Justice and the SPCJA agreed that an anomaly existed with respect to the provisions for pension benefits for surviving spouses of judges who die prior to retirement<sup>26</sup>. The anomaly is explained at page 101 of the SPCJA's written submissions:

Under the present regime, there are two scenarios in which surviving spouses of judges would receive benefits. The first involves the situation where a judge dies prior to retirement. This scenario is governed by section 14(1) of the Provincial Court Compensation Regulations. The surviving spouse is entitled to receive a lifetime pension of 35% of the average of the judge's three years of highest salary. In the second scenario, the judge dies after retirement with a full pension. This situation is governed by section 14(4) of the Provincial Court Compensation Regulations. According to this scenario, the surviving spouse is entitled to receive a lifetime pension of 60% of the pension which the deceased

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<sup>26</sup> Page 28 of Minister of Justice's written reply, and page 102 of SPCJA's written submissions

judge was receiving. The mathematical calculation of 60% of a retired judge's pension (presuming it was full) is 42% of the average of the judge's three years of highest salary.

The Commission is of the opinion that the *Provincial Court Compensation Regulations* should be amended so there is no unfairness to the surviving spouse of a judge who dies prior to retirement. Under the current plan, the surviving spouse of a judge who dies prior to retirement receives 35% of the pension, rather than the 42% of the pension a surviving spouse of a judge who is retired is entitled to receive. The Commission is of the view that a surviving spouse of a judge who dies prior to retirement should be entitled to the greater of: i) the amount the spouse would have received if the judge had been retired on the day on which the judge died, and ii) 35% of the judge's best three-years' average salary (or where the judge has less than three years service, 35% of the judges total years of service).

### 3.5 FACILITIES AND SECURITY

All the submissions dealt with the issue of the facilities and security provided for the judges. The Commission recognizes the concern and undertakes to conduct a review of the situation and report its recommendations in year 2000.

### 3.6 COSTS

The SPCJA proposed that this Commission has jurisdiction to award costs<sup>27</sup>. The SPCJA has suggested that the court, being the third arm of government, is entitled to receive the same compensation as the other two arms of government.<sup>28</sup>

The Minister of Justice argues that the provision for awarding costs was not included in the Act<sup>29</sup>. The Minister of Justice did agree to compensate the SPCJA in the amount of \$25,000 per commission<sup>30</sup>.

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<sup>27</sup> Page 123 of SPCJA's written submissions

<sup>28</sup> Page 437 of Transcript

<sup>29</sup> Page 403 of Transcript

<sup>30</sup> Appendix E to Minister of Justice's reply

The British Columbia Commission 1998 Report to the Attorney General ordered that the BC Provincial Court Judges Association be reimbursed for the expense of the consultants' report on pensions. The Manitoba Judicial Compensation Committee gave an allowance of up to \$15,000 for the cost of having submissions prepared for the Committee, supportable by receipts. One member of the Manitoba Committee dissented stating that the cost of preparation was outside the Committee's mandate. The Ontario Commission ruled that it also had the jurisdiction and agreed that the representation costs of the Judges should be paid.


The Commission is of the view that it does have the jurisdiction to award costs. However, the Commission orders that the counsel for the Government and Judges attempt to reach agreement on the appropriate costs. If counsel cannot reach an agreement on costs, or if counsel is of the view that such negotiation would violate the principles of the Judges Reference (i.e., to avoid direct negotiation), then this Commission shall remain seized of the matter and will hear submissions as to costs.

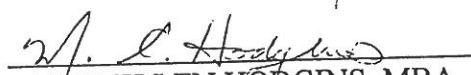
#### IV. UNANIMOUS DECISION

The foregoing is the unanimous decision of the Commission.

#### ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 21st day of December, 1999.

  
ROBERT G. BUNDON, FCA  
Chairperson

  
MARY ELLEN HODGINS, MBA  
Minister's Nominee

  
E. ROBERT STROMBERG, Q.C.  
Judges' Nominee

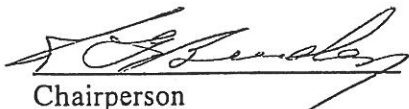
## COMMISSION ORDER

The Provincial Court Commission, pursuant to Part IV of *The Provincial Court Act, 1998*, makes *The Provincial Court Compensation Amendment Regulations, 2000* in accordance with the attached Schedule.

Dated at the City of Saskatoon, this 21st day of December, 1999.

  
Chairperson  
Provincial Court Commission

Certified True Copy

  
Chairperson  
Provincial Court Commission

## SCHEDULE

### Title

1 These regulations may be cited as *The Provincial Court Compensation Amendment Regulations, 2000*.

### R.R.S. c.P-30.11 Reg 2 amended

2 *The Provincial Court Compensation Regulations* are amended in the manner set forth in these regulations.

### Section 3 amended

3(1) Subsections 3(1) to (3) are repealed and the following substituted:

“(1) The chief judge is entitled to be paid an annual salary:

(a) in the amount of \$119,961.20 for the period commencing on April 1, 1997 and ending on March 31, 2000; and

(b) in the amount of \$153,000.00 for the period commencing on April 1, 2000.

“(2) An associate chief judge is entitled to be paid an annual salary:

(a) in the amount of \$116,461.20 for the period commencing on April 1, 1997 and ending on March 31, 2000; and

(b) in the amount of \$148,000.00 for the period commencing on April 1, 2000.

“(3) A judge other than the chief judge or an associate chief judge is entitled to be paid an annual salary:

(a) in the amount of \$112,961.20 for the period commencing on April 1, 1997 and ending on March 31, 2000; and

(b) in the amount of \$143,000.00 for the period commencing on April 1, 2000”.

PROVINCIAL COURT COMPENSATION

(2) Subsection 3(4) is amended:

(a) by striking out "and" after clause (b); and

(b) by repealing clause (c) and substituting the following:

"(c) for the period commencing on November 1, 1998 and ending on March 31, 2000, \$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; and

"(d) for the period commencing on April 1, 2000, \$600 for each day and \$300 for each half day in which the temporary judge is engaged in his or her duties as a judge".

**Section 4 amended**

4 Subsection 4(1) is repealed and the following substituted:

"(1) A judge who is assigned administrative duties pursuant to clause 8(f) of the Act is entitled to be paid with respect to those duties, in addition to the salary to which the judge is entitled, remuneration:

(a) in the amount of \$2,000 per year for the period ending on March 31, 2000; and

(b) in the amount of \$3,000 per year for the period commencing on April 1, 2000".

**Section 5 amended**

5(1) Subsection 5(1) is amended by striking out "A judge" and substituting "With respect to the period ending on March 31, 2000, a judge".

(2) The following subsection is added after subsection 5(1):

"(1.1) With respect to the period commencing on April 1, 2000, a judge who is designated pursuant to section 9 of the Act to reside in the Town of Meadow Lake or the Northern Town of La Ronge is entitled to be paid with respect to those duties, in addition to the salary to which the judge is entitled, remuneration in the amount of \$7,000 per year".

(3) Subsection 5(2) is amended by striking out "Where a judge" and substituting "With respect to the period ending on March 31, 2000, where a judge".

(4) The following subsection is added after subsection 5(2):

"(3) With respect to the period commencing on April 1, 2000, where a judge is designated pursuant to section 9 of the Act to reside in the Town of Meadow Lake or the Northern Town of La Ronge, the remuneration to which the judge is entitled pursuant to subsection (1.1) shall be prorated, based on the number of months in which the judge is so designated".

## PROVINCIAL COURT COMPENSATION

3

### Section 10 amended

6(1) Subsection 10(2) is amended by striking out "The total" and substituting "Subject to subsection (2.1), the total".

(2) The following subsection is added after subsection 10(2):

"(2.1) With respect to a judge who is 65 years of age or more on the day on which he or she ceases to be a judge and who has less than 18 years of contributory service, 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:

$$P = 1/18 \times (70\% \times S \times Y)$$

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 number of years of contributory service; and

Y is the retired judge's total number of years of contributory service".

(3) Subsection 10(3) is amended by striking out "subsection (2)" and substituting "subsection (2) or (2.1)".

### Section 14 amended

7 Subsection 14(1) is repealed and the following substituted:

"(1) Where a judge dies while holding office leaving a spouse, the spouse is entitled to receive during the spouse's lifetime the greater of:

(a) the amount the spouse would have received pursuant to subsection (4) if the judge had retired on the day on which the judge died; and

(b) 35% of the average annual salary received by the judge during:

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

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

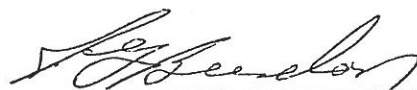
### Coming into force

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

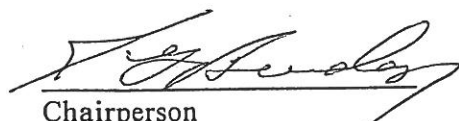
## COMMISSION ORDER

The Provincial Court Commission, pursuant to Part IV of *The Provincial Court Act, 1998*, makes *The Provincial Court Pension Plan Amendment Regulations, 2000* in accordance with the attached Schedule.

Dated at the City of Saskatoon, this 21<sup>st</sup> day of December, 1999.

  
\_\_\_\_\_  
Chairperson  
Provincial Court Commission

Certified True Copy

  
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Chairperson  
Provincial Court Commission

## SCHEDULE

### Title

- 1 These regulations may be cited as *The Provincial Court Pension Plan Amendment Regulations, 2000*.

### R.R.S. c.P-30.11 Reg 1, section 6 amended

- 2 Section 6 of *The Provincial Court Pension Plan Regulations* is amended in the portion preceding clause (a) by striking out "35%" and substituting "42%".

### Coming into force

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