



**Report and Recommendations
of the 2020 Provincial Court
Commission of Saskatchewan**

**Presented to the Minister of Justice and
Attorney General and the Saskatchewan
Provincial Court Judges Association**

December, 2020

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SASKATCHEWAN PROVINCIAL COURT COMMISSION REPORT
DECEMBER 2020

I. INTRODUCTION

A. Provincial Legislation

1. The current Provincial Court Commission was appointed effective July 18, 2020 pursuant to section 36 of The Provincial Court Act, 1998, S.S. 1998, c. P-30.11 (the “Act”). This is the tenth Commission appointed under this legislation.

2. The mandate of the Commission is set out in subsections 38(1), (2), (3) and (4) of the Act as well as clause 65(d). These provisions read as follows:

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;

(d) professional allowances;

(e) vacation leave;

(f) pension benefits and additional retirement benefits.

38(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).

38(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.

38(4) No commission regulation respecting pension benefits or additional retirement benefits shall reduce a person's benefits that accrued before the coming into force of the regulation.

65(d) of the Act provides for the making of regulations regarding the benefits to which judges are entitled including:

- leave of absence;
- sick leave;
- deferred salary leave;
- leave for reasons of pressing necessity;
- special leave;
- travelling, sustenance and moving expenses;
- life insurance; and
- disability, dental and health benefits.

3. The Act authorizes the Commission to make two types of recommendations, compulsory and advisory. The compulsory recommendations are listed in subsection 38(1). They relate to various matters comprising the remuneration package for Provincial Court Judges. The type of recommendations which are advisory only are listed in subsection 38(2) of the Act allowing the Commission discretion about whether to make any such recommendation.

4. The mandate of this Commission does not end with this Report. Section 51 of the Act leaves open to this Commission the consideration of other issues and reads as follows:

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 subsection (1), the commission shall submit a report to the minister and the association containing any recommendations of the commission with respect to the matter.

The term of this Commission expires on June 30, 2023.

5. Membership of the Commission

The Commission is composed of three members. As required by section 36(2) of the Act:

- one is appointed by the Minister of Justice
- one is appointed by the Saskatchewan Provincial Court Judges' Association
- these two members appoint a chairperson

The Commission members are:

- Paul S. Jaspar, SVM FCPA FCA, Chairperson
- Art Postle, appointee of the Minister of Justice
- Deryk Kendall, BA LLB, appointee of the Saskatchewan Provincial Court Judges' Association

6. Process

Advertisements calling for submissions to the Commission were placed in the Regina *Leader Post* and the Saskatoon *Star Phoenix* on September 5, 2020. The advertisements indicated that the Commission would be receiving submissions from interested parties and that hearings were to be held in Regina and Saskatoon at the locations and dates indicated.

In addition, the Commission had a website which went active on September 5, 2020: <https://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/saskatchewan-provincial-court-commission>.

7. The Commission was assisted by written submissions received from:

- Saskatchewan Provincial Court Judges’ Association (“Association”)
- Deputy Minister of Justice, on behalf of the Government of Saskatchewan (“Government”)
- Saskatoon Criminal Defence Lawyers Association (“SCDLA”)

and replies from:

- Association
- Government

These documents and other material can be found at:
www.saskatchewan.ca/government/government-structure/boards-commission-and-agencies/saskatchewan-provincial-court-commission.

8. The Commission received oral submissions in Saskatoon on November 10, 2020 from:
 - Association
 - Government
 - SCDLA
9. The Commission, with agreement from the Association and the Government, decided not to hold hearings in Regina.

II. BACKGROUND

10. The report and recommendations from the previous nine Provincial Court Commissions can be found at www.saskatchewan.ca/government/government-structure/boards-commission-and-agencies/saskatchewan-provincial-court-commission.
11. The work of this and all previous commissions is founded on the principle of judicial independence.
12. The Supreme Court of Canada has endorsed the following principles in relation to the role of the Commission:
 - (a) It is a constitutional requirement that the Commission is independent, objective and effective.

- (b) The Commission's recommendations must result from a fair and objective hearing, and its report must explain and justify its position.
- (c) The role of the Commission is not simply to update the previous commission's report, and each commission must make its assessment in its own context. That said, the Commission does not operate in a void, and the reports of previous commissions and their outcomes are part of the background and context that the Commission must consider. Absent reasons to the contrary, the starting point for analysis should be the date of the previous commission's report; and
- (d) The Commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations (if any).

III. THE ISSUES

13. The current salary and benefits for members of the Provincial Court are as follows:

Salary – April 1, 2020 – March 31, 2021 - \$312,286

In addition to the above salary the Chief Judge (1) receives an additional 7.5%, Associate Chief Judge (1) 5%, Administrative Judges (5) 2.5% and Northern Judges (5) 5%.

Temporary Judges receive 1/220 of the salary paid to a full time Judge.

14. In addition to salary, the Judges are entitled to the following pension and retirement benefits:

- (a) Pension and Additional Retirement Benefit – A benefit rate of 3% per year of service (to a maximum of 23 1/3 years -70%), multiplied by average salary over best 3 years.
- (b) Survivor Pension – Surviving spouse is entitled to defined benefits pension for life.
- (c) Surviving Child Benefits – The benefit is paid to a surviving child of a Judge, if the Judge dies without a spouse or if the spouse later dies, payable up to age 18; can be extended up to 5 more years if the child is attending educational institutions.
- (d) Early Retirement Pensions – Full pensions of 70% times average salary over best 3 years, when a judge's age and years of service equal 80 and, is aged 58 or older with a minimum of 18 years' service. The pension is based on a reduced formula if a Judge retires between 55 and age 65, having served at least two years on the Court.
- (e) Indexing of Pension – Pensions are indexed to 75% of CPI up to a CPI of 5% and indexed at 50% of CPI for portion of CPI over 5%.
- (f) Judges Contributions – Judges contribute 5% of salary.
- (g) Government Contributions – Government contributes the amount necessary to make up the difference between the Judges' contributions and the amounts necessary to pay the pension and additional retirement benefits.

15. In addition, Judges are also eligible for the following additional benefits:

- (a) Disability Benefits – 100% of salary for temporary disability (up to 1 year); 70% for permanent disability. On recommendation of Judicial Council. No premiums.
- (b) Annual Vacation – 30 days
- (c) Annual Professional Allowance - \$4,000
- (d) Group Life Insurance – Minimum 2 times salary with optional coverage up to \$500,000, the first \$25,000 of coverage being paid for by the province.

- (e) Dental Plan – Same dental plan as public service employees; premiums are paid by the Government.
- (f) Extended Health Plan – The extended health plan provides comparable benefits to the plan provided to public service management. Premiums are paid by the Government.
16. Neither the Association nor the Government has requested any revision to the aforesaid benefits outlined in paragraphs above.
17. Based on the submissions received from the Association and the Government, the outstanding issues which require a recommendation from this Commission are:
- Judicial salaries
 - Parental leave
18. The Supreme Court of Canada confirmed, among other principles that:
- “Financial security embodies three requirements: judicial salaries can be maintained or changed only by recourse to an independent commission; no negotiations are permitted between the judiciary and the government; and, salaries may not fall below a minimum level (including *de facto* reductions through the erosion of judicial salaries by inflation).”

IV. SUBMISSIONS TO THE COMMISSION

19. Saskatoon Criminal Defence Lawyers Association (SCDLA)

Lisa J. Watson and Brian R. Pfefferle prepared a written submission on behalf of the SCDLA. Mark Brayford Q.C. presented an oral submission to the Commission.

The SCDLA was established in 1979 as a non-profit corporation and is made up primarily of criminal defence practitioners in the Saskatoon area, including legal aid lawyers and private defence counsel.

The focus of their submission related to the disparity between the salary of Provincial Court Judges and the salary of federally appointed Queen’s Bench judges.

The Association submitted that the qualifications and workloads do not justify a different treatment and identified the risk of a "two tier" justice system with different judges being paid different amounts based on the level of court. The Association urged the Commission to establish a salary schedule for the next three years that will further reduce or eliminate the disparity.

20. The Saskatchewan Provincial Court Judges Association and The Government of Saskatchewan

COMMON GROUND

A review of the submissions from the Association and the Government indicates there is some common ground.

Both submissions did not request the Commission review the following:

- (a) top up percentages of the salaries for Chief Judge, Associate Chief Judge, Administrative Judges, Northern Saskatchewan Judges;
- (b) calculation factor for amount paid to Temporary Judges;
- (c) professional allowances;
- (d) vacation leave;
- (e) pension benefits and additional retirement benefits;
- (f) leave of absence;
- (g) sick leave;
- (h) deferred salary leave;
- (i) travelling, sustenance and moving expenses;
- (j) life insurance;
- (k) disability, dental and health benefits.

The Commission reviewed the above items and will not be recommending any changes.

SALARIES

With respect to salary the following is a summary of the position of the Judges' Association and the Government.

	Judges' Submission	Government Submission
April 1, 2021 – March 31, 2022	\$2,798 (.9%) (93% of QB salary at March 31, 2021)	\$4,685 (1.5% increase)
April 1, 2022 – March 31, 2023	94% of QB salary at March 31, 2022	95% of QB salary at March 31, 2022
April 1, 2023 – March 31, 2024	95% of QB salary at March 31, 2023	95% of QB salary at March 31, 2023

The Judges' submission for April 1, 2021 to March 31, 2022 and April 1, 2022 to March 31, 2023 was subsequently revised to be identical to that of the Government.

21. Possible Proposed Legislation

Both the Association and the Government asked the Commission to consider a recommendation that the Government introduce legislation to amend *The Provincial Court Act* to provide a statutory basis for the presumption of the 95% rate (of Queen's Bench Judges salary) for subsequent years and that the legislation include that in extraordinary circumstances the Commission can review the 95% rate.

The salaries for Queen's Bench Judges is set by the Judicial Compensation and Benefits Commission which was established in 1999 to inquire every four years into the adequacy of the salaries and other amounts payable to federally appointed judges under *The Judges Act* and into the adequacy of judges' benefits generally. In 2014, the *Act* was amended to provide that for the purposes of the inquiry the prothonotaries of the Federal Court be considered as judges. Under the provisions of the *Act*, the Commission must submit a report containing its recommendations to the Federal Minister of Justice, who shall respond to the report within four months after receiving it.

In examining judicial compensation, section 26(1.1) of *The Judges Act* requires Quadrennial Commissions to consider the following factors:

- (a) the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;
- (b) the role of financial security of the judiciary in ensuring judicial independence;
- (c) the need to attract outstanding candidates to the judiciary; and
- (d) any other objective criteria that the Commission considers relevant.

The 2020 Quadrennial Commission's proceedings, which were originally scheduled to commence on June 1, 2020, have been deferred due to COVID-19.

22. Family Leave

Both the Association and the Government asked the Commission to issue an order, authorizing the two parties to discuss a proposal for family leave. Upon completion of the discussions, the parties would apply to the Commission under s.51 for review of the proposal, including written materials in support of the proposal, and explaining points of disagreement, if any. The Commission would review the proposed policy and the submissions, and then issue its report and recommendations under s.51, relating to the issue of a family leave policy.

23. Pensions

Queen's Bench Judges (QBJ) enjoy a tax advantage when they retire which is not available to Provincial Court Judges (PCJ). Under the *Income Tax Act*, the pension income earned by federally appointed judges may be split with their spouse or common-law partner, with the result that a retired QBJ pays lower taxes than they would otherwise be required to pay if it could not engage in income-splitting. Unlike federally appointed judges, there is no forum for PCJ's to achieve the same treatment relating to income tax on their pension earnings, as the provincial commissions do not have the jurisdiction to make recommendations on matters within the exclusive jurisdiction of Parliament which the federal Judicial Commission and Benefits Commission does.

The Canadian Association of Provincial Court Judges has requested that the *Income Tax Act* be amended so that PCJs enjoy the same income-splitting benefits as QBJs. On July 4,

2017, the Minister of Justice and Attorney General of Canada advised that the Federal Government was not prepared to accommodate such a request.

V. RECOMMENDATIONS

24. The Commission having reviewed the submissions, listened to oral presentations and noting the common ground presented independently by the Association and the Government is prepared to make the following recommendations:

1. Salary and Benefits

- (a) for the period April 1, 2021 to March 31, 2022 the base salary be adjusted to \$316,971;
- (b) for the period April 1, 2022 to March 31, 2023 the base salary be adjusted to .95 of the salary paid to the Justices of the Court of Queen's Bench at March 31, 2022;
- (c) for the period April 1, 2023 to March 31, 2024 the base salary be adjusted to .95 of the salary paid to the Justices of the Court of Queen's Bench at March 31, 2023. The administrative allowance for the Chief Judge, the Associate Chief Judge and Judges with administrative duties and Northern Judges allowance remain the same as is currently set out in the Provincial Court Compensation Regulations, namely:
 - Chief Judge, base salary plus 7.5%
 - Associate Chief Judge, base salary plus 5.0%
 - Administrative Judge, base salary plus 2.5%
 - Northern Judges Allowance, base salary plus 5.0%
- (d) the remuneration for Temporary Judges remain at a daily rate of 1/220 of the base salary of a Judge;
- (e) there be no change to the Professional Allowance or other benefits;
- (f) there be no changes to the pension benefits and additional retirement benefits; and
- (g) there be no increase to the number of Judges' vacation days.

2. That representatives of the Association, and officials from the Courts and Tribunals Division of the Ministry of Justice hold discussions on the issue of family leave, and to

draft a proposed Family Leave Policy. Upon completion of the discussions, either party, or both parties jointly, may apply to the Commission under s.51 of the Act to have the Commission review the proposed Family Leave Policy.

3. That representatives of the Association, and officials from the Courts and Tribunals Division of the Ministry of Justice hold discussions on the issue of providing guidance of extraordinary circumstances referred to above. Upon completion of the discussions, either party, or both parties jointly, may apply to the Commission under s.51 of the Act to have the Commission review the proposed guidance of extraordinary circumstances.
4. That the Government introduce amendments to *The Provincial Court Act*, in consultation with the Association, to implement the presumption of a salary based on 95% of the Queen's Bench salary for the future. The proposed amendment should provide that it would be open to either the Association or the Government to ask future commissions to review the 95% rate, but only if there are extraordinary circumstances.

VI. CLOSING REMARKS


This Commission wishes to express its sincere appreciation and gratitude to all parties who have made submissions to the Commission. In particular, we wish to acknowledge the exemplary work of legal counsel on behalf of the Association and the Government in relation to the quality and comprehensiveness of both their written submissions and oral presentations at the Commission Hearings.

This report contains the unanimous recommendations of this Commission.

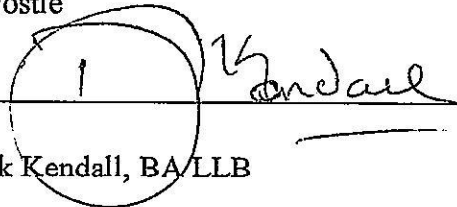
DATED at Saskatoon, Saskatchewan effective this 31st day of December, 2020.



Paul S. Jaspar, SVM FCPA FCA, Chairperson



Art Postle



Deryk Kendall, BA LLB

APPENDIX A

Province of Saskatchewan

Commission Order

The Provincial Court Commission, pursuant to Part IV of *The Provincial Court Act, 1998*, makes *The Provincial Court Compensation Amendment Regulations, 2020* in accordance with the attached Schedule.

Dated at the City of Saskatoon, Saskatchewan the 31 day of December, 2020.



Paul S. Jaspar, Chairperson
Provincial Court Commission

SCHEDULE

Title

1 These regulations may be cited as *The Provincial Court Compensation Amendment Regulations, 2021*.

RRS c P-30.11 Reg 2 amended

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

New section 3

3 Section 3 is repealed and the following substituted:

“Salaries

3(1) A judge is entitled to be paid an annual salary in the amount of:

(a) for the annual period commencing on April 1, 2021, \$316,971;

(b) subject to subsection (2), for each annual period commencing on or after April 1, 2022, the product of the following rounded up to the nearest dollar:

(i) the salary paid to the justices of the Court of Queen’s Bench as at March 31 of the previous annual period;

(ii) 0.95.

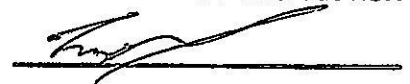
(2) If the calculation set out in clause (1)(b) results in a reduction in the salary of a judge, the judge is entitled to be paid the annual salary that was paid in the previous annual period.

(3) A temporary judge is entitled to be paid:

(a) for each day in which the temporary judge is engaged in the temporary judge’s duties as a judge, an amount equal to 1/220th of the annual salary of a judge determined by subsections (1) and (2) and rounded up to the nearest dollar; and

(b) for each half day in which the temporary judge is engaged in the temporary judge’s duties as a judge, an amount that is one-half of the amount determined by clause (a) and rounded up to the nearest dollar”.

APPROVED
LEGISLATIVE DRAFTING SECTION



December 15, 2020 - 1:23 p.m.

Section 4 amended

4(1) Subsection 4(1) is amended by striking out “subsection 3(3)” wherever it appears and in each case substituting “subsection 3(1)”.

(2) Subsection 4(2) is amended by striking out “subsection 3(3)” wherever it appears and in each case substituting “subsection 3(1)”.

(3) Subsection 4(3) is amended by striking out “subsection 3(3)” wherever it appears and in each case substituting “subsection 3(1)”.

Section 5 amended

5 Subsection 5(2) is amended by striking out “subsection 3(3)” wherever it appears and in each case substituting “subsection 3(1)”.

Coming into force

6 These regulations come into force on the day that is determined in accordance with Part IV of *The Provincial Court Act, 1998*.



APPENDIX B

PROVINCIAL COURT COMMISSION OF SASKATCHEWAN

ORDER

Whereas the Provincial Court Commission (“the Commission”) has been duly established under s.36 of *The Provincial Court Act, 1998* (“the Act”);

Whereas the Commission’s mandate extends to June 30, 2023;

Whereas the Saskatchewan Provincial Court Judges’ Association (“the Association”) has indicated that its members wish to have a Family Leave Policy established;

Whereas the Government of Saskatchewan (“the Government”) recognises that a Family Leave Policy is a standard component of workplace conditions and wishes to establish a Family Leave Policy for the Judges of the Provincial Court;

Whereas both the Association and the Government are conscious of the constitutional restrictions on direct negotiations for the remuneration of the Provincial Court Judges;

Whereas s.51 of the Act authorises either party to request that the Commission “inquire into and make recommendations with respect to any matter of significance to the court”;

Whereas the Association and the Government have jointly requested authorization from the Commission to hold discussions about a Family Leave Policy, under the supervision of the Commission;

Whereas the Commission finds it beneficial to have a discussion regarding guidance of extraordinary circumstances referred to in the Commission’s recommendations;

Whereas the Commission finds that this proposed approach is consistent with its constitutional and statutory mandates.

Therefore, the Commission **ORDERS** as follows:

Authorization for discussions

1. Representatives of the Association, and officials from the Courts and Tribunals Division of the Ministry of Justice (“the Division”), are authorized to:
 - (a) hold discussions on the issue of family leave;
 - (b) hold discussions on the issue of guidance of extraordinary circumstances, with a view to informing any legislative initiative the Government may undertake.

Application to the Commission

2. Upon completion of the discussions, either party, or both parties jointly, may apply to the Commission under s.51 of the Act to have the Commission review the proposed Family Leave Policy and guidance regarding extraordinary circumstances.

Written Submissions

3. In support of the applications, the parties shall file written submissions to the Commission, which shall include:
 - (a) a copy of the proposed Family Leave Policy;
 - (b) an outline of their positions on the proposed Policy;
 - (c) points of disagreement, if any, concerning the proposed Policy;
 - (d) each party's position on any points of disagreement; and
 - (e) guidance regarding extraordinary circumstances.

Commission Report

4. The Commission shall review the above proposal and the written submissions of the parties, and shall issue a Report under s.51 of the Act, setting out the Commission's recommendations.

Publication of Proceedings

5. The Division shall forthwith post this Order on the Commission website.
6. Upon the filing of the written submissions mentioned in paragraph 3 of this Order, the Division shall forthwith post the submissions on the Commission website.
7. Thirty days after the date of the Commission Report mentioned in paragraph 4 of this Order, the Division shall post the Report on the Commission website.

Commission to Set Dates

8. The Commission reserves the power to set or modify the dates for the completion of any of the steps outlined above.

Issued at Saskatoon, Saskatchewan this 31 day of December, 2020.



Paul S. Jaspar, Chairperson
Provincial Court Commission