



**THE CANADIAN
BAR ASSOCIATION**
Saskatchewan Branch

THE 2023 PROVINCIAL COURT COMMISSION

APPOINTED PURSUANT TO
The Provincial Court Act, 1988

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SUBMISSION ON BEHALF OF
THE CANADIAN BAR ASSOCIATION, SASKATCHEWAN BRANCH
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THE ROLE OF THE CBA

The CBA is a professional, voluntary organization which was formed in 1896, and incorporated by a Special Act of Parliament on April 15, 1921. Today, the Association represents over 38,000 lawyers, Judges, notaries, law teachers and students across Canada and the Saskatchewan Branch over 1,300 members.

Members of CBA Saskatchewan (CBA-SK) are dedicated to protecting the rule of law, the independence of the judiciary and the Bar, and improving laws, justice and legal systems and access to justice. We believe in equity, diversity, and inclusiveness in the profession and in justice and legal systems that are committed to the process of reconciliation with Indigenous peoples.

Our members have unique insight into the Saskatchewan justice system and the impact laws have on people. We are committed to the steady progress of our legal and justice systems and improved access for all Saskatchewanians.

Through a Board of Directors, CBA-SK Council, 21 Provincial sections, 12 committees, and member service programs, CBA-SK is an important and objective voice on issues of significance to both the legal profession and public and to protecting the Rule of Law and the independence of the judiciary and Bar.

SUBMISSIONS OF CBA-SK BEFORE THE 2023 PROVINCIAL COURT COMMISSION

The CBA-SK appreciates the opportunity to make submissions to assist the 2023 Provincial Court Commission (“Commission”), as it determines appropriate remuneration for Provincial Court Judges (“Judges”). The CBA-SK further appreciates the unique role fulfilled by the Commission, which serves to depoliticize the remuneration of Judges, and protects the interest of the public in an independent judiciary.

The CBA-SK is aware that the 2023 Commission will be making recommendations to the Minister of Justice concerning remuneration for Judges for the period of April 1, 2024 to March 31, 2028.

As the Commission meets to determine its recommendations, the CBA-SK respectfully highlights the below factors for the Commission to consider.

Independence:

Among the primary objectives of CBA-SK is our commitment to the independence of the judiciary, which is a prerequisite for the proper functioning of the administration of justice within the Province of Saskatchewan. A judiciary independent from the executive and legislative branches of government is the very cornerstone of our system of justice and our democracy itself.

CBA-SK is an independent voice in relation to the work of judicial compensation commissions. We therefore desire that any judicial remuneration fulfils a dual purpose:

- Promote the independence of the judiciary through the institution of appropriate financial safeguards for its members; and

- Strengthen judiciary through sufficient financial independence of its members and attract the most qualified candidates for appointment.

Public Perception

There can be no doubt that the majority of citizens who appear in, or use, our judicial system have their first experience, and often their only experience, with the Provincial Court. Not surprisingly, most citizens form their impression of the judicial system from the Provincial Court. The decisions of Provincial Court judges have an enormous impact on the everyday lives of citizens of Saskatchewan.

We suggest most members of the public do not differentiate between the levels of Courts and there must never be a “two-tiered” perception with respect to the level of competence or quality of the judiciary within the two Courts.

Financial Disparity

To attract the best candidates to seek appointment to the Provincial Court, and to ensure the highest levels of competence (and to keep the best Judges from leaving the Bench), the remuneration of Judges must be at a sufficiently high level to encourage experienced, knowledgeable and senior lawyers to become Judges.

To attract and keep these types of candidates, a Judge’s salary and benefits must be commensurate with the position which Judges enjoy in our society and must reflect the respect to which they are entitled.

It is well recognized that there are many sacrifices a lawyer must make to accept an appointment to the Bench. A practitioner must sever all ties with their practice, withdraw from political life and exercise care and discretion in the community, charitable and personal affairs. The very nature of becoming a Judge removes an individual from their business, friends and acquaintances.

Most Judges are appointed as they approach their prime earning years as lawyers. When appointed to the Court, a lawyer gives up the opportunity for further advancement in their career. It is also important to keep in mind that once appointed, Judges must refrain from other forms of compensable professional activity.

Attracting candidates from the Private Sector

Saskatchewan’s continued economic activity means more work and better paying work for lawyers.

As the financial benefits of practising law continue to improve, challenges may exist in attracting the best qualified candidates from the private bar to seek judicial appointment. Thus, an appropriate level of compensation for Judges is critical.

Recognition of the Front-Line Role of the Provincial Court:

The Provincial Court hears most cases which are brought through the judicial process, both criminal and civil. This trial role of the Provincial Court has dramatically increased over the years

and will continue to do so. In most cases, if an accused person has the choice between a trial in Provincial Court or a trial in the Court of King's bench, the accused elects the Provincial Court.

The Canadian *Charter of Rights and Freedoms* safeguards the freedom and liberty enjoyed by Canadian citizens. The Provincial Court is the forum in which the vast majority of cases where these *Charter* protections are initially tested, challenged, and ensured. The result is that Provincial Court Judges continue to hear lengthier and more complex motions and trials, requiring substantial work and deliberation.

The Workload of the Court:

As the Provincial Court hears most cases brought in the judicial process, the workload of Judges is a critical factor to be considered when determining the appropriate level of judicial remuneration.

In respect of criminal matters, the Provincial Court is the main trial court in Saskatchewan, as the Court of King's Bench hears only cases of murder and treason, and indictable cases where the accused elects to be tried before the Court of King's Bench.

The number of Summonses issued in the Civil Division of Provincial Court has steadily increased in recent years. Increased use of Case Management processes before the Provincial Court offers a tremendous benefit to litigants, but at the same time imposes additional workload on its Judges. The monetary limit for civil claims (Small Claims actions) before the Civil Division of the Provincial Court is \$30,000, which has increased the complexity and volume of the cases commenced in the Provincial Court.

The ever-increasing number of self-represented litigants before the Provincial Court presents additional challenges. Such reality means that Judges are burdened with the necessity of spending more time explaining the court process to self-represented litigants, who often find the process complex, confusing and frustrating. Providing decisions which are seen to be fair and impartial in these situations imposes additional demands on the time, energy and professionalism of Judges.

In addition to keeping up on new developments in a vast amount of legislation and case law, Provincial Court Judges need to be intimately familiar with issues relating to fetal alcohol syndrome, mental health, addictions, social and economic realities of the inner-cities and remote locations, Indigenous perspectives, domestic violence, and a variety of diversionary programs.

The past few years have seen an increase in the number of people facing mental health issues, or drug addiction. These realities result in more and complex matters which come before the Provincial Court. Moreover, the past years have seen an increase in the population of Saskatchewan. As there are more citizens interacting with the legal system, this underlying results in a greater number of court matters which require adjudication.

Moreover, in addition to their day-to-day work, Provincial Court Judges face the time burden of frequent travel. The Provincial Court has 13 permanent locations, but 59 circuit points. In contrast, the Court of King's Bench only sits in 12 locations. To a significantly higher degree than their

counterparts on the Court of King's Bench, Provincial Court Judges are required to travel and be away from home, often travelling by road or air. This travel obligation is yet another factor which must be considered in establishing the adequate remuneration to be paid to expect fulfillment of those obligations.

It is extremely important to note that while the number of Provincial Court Judges has remained stable for over four decades, the workload faced by these Judges has grown exponentially.

Financial Constraints

CBA-SK recognizes that Judges are paid from the government purse and that the competing demands on public monies can mitigate the amount that might otherwise be paid for judicial salaries. However, judicial independence is not just a government priority. It is a constitutional imperative. Before competing priorities are used as a rationale to reduce what the Commission concludes to be appropriate compensation for Judges, the Government must show conclusive evidence of other pressing government fiscal obligations of similar importance to judicial independence.

SUPPORT FOR SPECIFIC PROPOSALS SUBMITTED TO THE 2023 COMMISSION

Before concluding, the CBA-SK wishes to support the below specific requests which are being proposed to the Commission in 2023. It is understood that these requests include the below:

- 1. A salary increase, in accordance with the statutory presumption that each Judge's salary shall be 95% of the salary paid to Justices of the Court of King's Bench, as of March 31 of the previous annual period:**
 - (a) The CBA-SK adopts the submissions made by the Saskatchewan Provincial Court Judges' Association, on a proposed increase in salary;
 - (b) The CBA-SK views such proposed increase as being consistent with the presumption set out in s. 38.1 of *The Provincial Court Act, 1998*. Moreover, the proposal is consistent with such factors as:
 - (i) The necessity to ensure that salary remains competitive to attract and retain the most highly qualified members of the legal profession, some of whom will take a significant drop in salary if they accept an appointment;
 - (ii) The necessity to ensure that salary of Judges reflects the strong financial position of the Province of Saskatchewan; and
 - (iii) The necessity to ensure that salary keeps pace with persistent inflation in the cost of living. As noted in the submission made by the Association, there has been an increase in the consumer price index of 26.25% since 2014 to the present date. Saskatchewan has experienced inflation which is higher than the national average.

2. A staged increase to the Judge's Professional Allowance, to bring it in line with the equivalent allowance granted to federally-appointed Justices, and to offset persistent inflation:

- (a) As the Commission is aware, under s. 38(1)(d) of *The Provincial Court Act, 1998*, the Commission is empowered to consider recommendations with respect to professional allowances of Judges;
- (b) The CBA-SK supports the below proposal for the Judges' professional allowance:
 - (i) As of April 1, 2024, a total Professional Allowance of \$4,875;
 - (ii) As of April 1, 2025, a total Professional Allowance of \$5,750;
 - (iii) As of April 1, 2026, a total Professional Allowance of \$6,625; and
 - (iv) As of April 1, 2027, a total Professional Allowance of \$7,500.
- (c) The above upward adjustment is gradual, and extremely modest when compared to the overall budget of the Ministry of Justice;
- (d) At the same time, such an increased Professional Allowance would have significant benefits for individual Judges. Judges are required to remain up to date on a wide variety of legal issues to best discharge their duties. This process of continual education requires the expenditure of enrollment fees at various professional conferences, travel costs relating to various conferences, payment of organizational dues, as well as other related sums. An adequate Professional Allowance will better allow Judges to also obtain the technology needed to perform their functions, as well as other necessities such as hearing aids or prescription eyewear; and
- (e) CBA-SK fully supports any request which is designed to ensure that the Professional Allowance given to Judges remains realistic in light of inflation and cost increases, as well as comparable to the allowance given to their federally appointed counterparts.

3. A staged increase in vacation days, from 30 to 34:

- (a) Currently, Judges are entitled to 30 days of vacation per year. The CBA-SK supports the staged increase of one additional vacation day per year, over the next four years (to culminate in 34 vacation days, as of April 1, 2027);
- (b) The CBA-SK agrees with the submission of the Association, that the workload of the Judges has increased over the past decades, while the number of Judges has not increased. To ensure Judges can productively manage a steadily increasing workload, the Court needs refreshed Judges, who can function at their maximum capacity; and
- (c) For the above reasons, CBA-SK supports the request made by the Association in this regard.

CONCLUSION

Many members of the CBA-SK interact with the Provincial Court in their daily practice. As such, our members will benefit from a Provincial Court which is as productive, educated, and well-resourced as possible. Ensuring that the best candidates are motivated to apply to the Provincial Court is also an important concern for CBA-SK members.

The level of remuneration must reflect that Judges are faced with making difficult and controversial decisions, which are increasingly being scrutinized. Judges are for the most part unable to defend themselves as a consequence of their office. Provincial Court Judges make tough decisions on a daily basis, and the quality of those decisions will be maintained only if the quality of the Judges making them is maintained.

To conclude, CBA-SK urges the Commission to consider the following principles:

- The Legislature should be mindful that its consideration of the Commission's report involves special constitutional considerations, and does not include any links between Judges' remuneration and the decisions they make;
- To ensure that judicial salaries are adequate to the best candidates for judicial appointment, the Commission should ensure salaries are consistent with prevailing and predicted market conditions;
- Appropriate compensation levels should be such that Judges and their dependents do not experience significant economic disparity between pre-appointment and post-appointment, and that the best and most capable applicants for judicial appointments are not deterred; and
- Before competing priorities are used as a rationale to reduce what the Commission concludes to be appropriate compensation for Judges, the Government would need to show conclusive evidence of other pressing government fiscal obligations of similar importance to judicial independence.

We hope these submissions will assist the Commission in its deliberations, and we sincerely appreciate the opportunity to provide these comments.

Submitted October 30, 2023, by The Canadian Bar Association, Saskatchewan Branch.

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