



Report and Recommendations
of the
**1998 JUDICIAL COMPENSATION
COMMISSION**

**PRESENTED TO THE
MINISTER OF JUSTICE AND
ATTORNEY GENERAL**

JUNE 19, 1998



*1998 Alberta Judicial
Compensation Commission*

June 19, 1998

*The Honourable Jon Havelock, Q. C.
The Minister of Justice and Attorney General
for the Province of Alberta
Room 320, Legislative Building
Edmonton, Alberta T5K 2B6*

Dear Mr. Havelock:

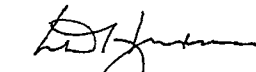
The 1998 Judicial Compensation Commission has the honour of presenting its unanimous conclusions and recommendations with respect to the compensation, pensions and other benefits of the Provincial Court judges in Alberta.

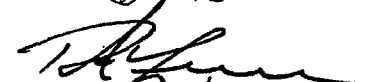
In reaching its conclusions, the Commission proceeded in accordance with the Framework Agreement dated March 3, 1998 among Her Majesty the Queen in Right of the Province of Alberta as represented by the Minister of Justice and Attorney General, the Chief Judge and the Judges of the Provincial Court of Alberta as represented by the Alberta Provincial Judges' Association.

In accordance with the Framework Agreement, our Report and Recommendations are also being presented to the Chief Judge and the Judges of the Provincial Court of Alberta.

Respectfully yours,


E. Susan Evans, Q. C.


Louis D. Hyndman, Q. C.


Roderick A. McLennan, Q. C.



*1998 Alberta Judicial
Compensation Commission*

June 19, 1998

*The Honourable E.R. Wachowich
The Chief Judge of the Province of Alberta
Law Courts Building
6th Floor, North
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2*

Dear Chief Judge Wachowich:

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Louis D. Hyndman, Q.C.

Roderick A. McLennan, Q.C.



*1998 Alberta Judicial
Compensation Commission*

June 19, 1998

*The Honourable Judge Harry Gaede, President
The Alberta Provincial Judges Association
The Provincial Court of Alberta
Court House
5210 - 49th Avenue
Camrose, Alberta T4V 3Y2*

Dear Judge Gaede:

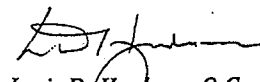
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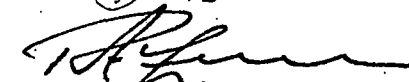
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In accordance with the Framework Agreement, our Report and Recommendations are also being presented to the Minister of Justice and Attorney General and the Chief Judge of the Province of Alberta.

Respectfully yours,


E. Susan Evans, Q.C.


Louis D. Hyndman, Q.C.


Roderick A. McLennan, Q.C.

ACKNOWLEDGEMENTS

We are indebted to many individuals and organizations, without whose support we could not have accomplished our mandate.

The contribution of counsel to the principal parties was outstanding. In particular, we express our sincere thanks to Donald Sabey, Q.C. and Bradley Nemetz, representing the Provincial Court Judges' Association, and Phyllis Smith, Q.C., counsel to the Province of Alberta. In a very short period of time, they produced volumes of material, presented evidence with the utmost skill and professionalism and responded to our every request.

We wish to acknowledge the organizations and individuals who made submissions to the Commission. In each and every case, our understanding is deeper because of the insights gained from their participation.

We thank, in particular, Peter Bruce Gunn and Judge Manfred Delong for their contribution to our deliberations and the process as a whole.

Judge Allan Fradsham, Judge Margaret Donnelly, Judge Raymond Bradley and Judge Lynn Cook-Stanhope, as witnesses in the course of the public hearings, provided us with a rare opportunity to share a day in the life of a judge.

The support provided by Ken Hawrelechko of Court Services and the staff at the Edmonton Law Courts Building, the Calgary Court House and Alberta Justice Communications stands as a testament to the quality of administrative services in the system.

Finally, a special thanks goes to Karen Bader for her secretarial services. Her commitment, diligence, optimism and good humour were second to none.

To all of you and many more behind the scenes, we could not have done this without you.

E. Susan Evans, Q.C.

Louis D. Hyndman, Q.C.

Roderick A. McLennan, Q.C.

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I. THE ALBERTA JUDICIAL COMPENSATION COMMISSION

A. Appointment and Terms of Reference

1. The Framework Agreement

The Judicial Compensation Commission was established by the Framework Agreement¹ dated March 3, 1998 among Her Majesty the Queen in Right of the Province of Alberta, as represented by the Minister of Justice and Attorney General (the "Crown"), the Chief Judge and the Judges of the Provincial Court of Alberta as represented by the Alberta Provincial Judges' Association (the "Judges' Association").² As stated therein, the purpose of the Agreement is:

... to establish a framework for the regulation of certain aspects of the relationship between the Parties, including an Inquiry process by way of the establishment of a Commission as **an independent, effective and objective body** for the determination of issues relating to judicial remuneration, including judges' compensation, pensions, allowances, and benefits. It is intended that both the Inquiry process and the decisions made by the Commission shall contribute to **entrenching, maintaining and enhancing the judicial independence** of the Court and the judges thereof. [Emphasis added.]

In accordance with the terms of the Agreement, three members were appointed to the Commission: one by the Alberta Provincial Court Judges' Association, one by the Minister of Justice and Attorney General and a chairperson appointed jointly by the two appointees. The Commission members are:

| | |
|------------------|---------------------------------------|
| Chair: | E. Susan Evans, Q.C. (Calgary) |
| Judges' Nominee: | Roderick A. McLennan, Q.C. (Edmonton) |
| Crown's Nominee: | Louis D. Hyndman, Q.C. (Edmonton) |

The Framework Agreement defines the scope of the inquiry process to include:

- the appropriate level of compensation for judges sitting full- or part-time or on a supernumerary basis;
- the appropriate design and level of judges' pension benefits of all kinds;
- the appropriate level of and kinds of benefits and allowances of judges; and
- such other issues relevant to the financial security of the Court and the judges thereof as are raised by the Parties and which the Commission agrees to resolve.

The Agreement further prescribes the operations of the Commission by providing for public notices regarding the inquiry, the right of any member of the public or interested

¹ The text of the Agreement is reproduced in Appendix "A."

² Subsequently, on April 30, 1998, Bill 25, the Justice Statutes Amendment Act, 1998, received royal assent. Section 4(10), which came into force on that date, provides: "As soon as possible after the coming into force of this section, a review of the remuneration and benefits of judges shall be conducted in accordance with an agreement entered into between the Minister, the Chief Judge and the Alberta Provincial Judges' Association."

group to attend the inquiry, to make written submissions and, with leave of the Commission, to make oral submissions. Representatives of the Judges' Association and the Crown are entitled to make written and oral submissions to the Commission, to present witnesses and to respond to each other's submissions.

The Commission is required to present a written report and recommendations (the "Report" and "Recommendations") to the Minister of Justice and Attorney General, the Chief Judge and the Judges' Association on or before June 19, 1998. The Recommendations will be for the period April 1, 1998 to March 31, 2000³ and are binding on the Crown unless the Lieutenant Governor in Council decides otherwise, with written reasons justifying the rejection of the Recommendations in whole or in part delivered to the other parties within 90 days of the delivery of the Report.⁴

2. Masters of the Court of Queen's Bench

We were advised by counsel for the Judges' Association, acting on behalf of the Masters of the Court of Queen's Bench, that the Masters had agreed that their compensation and benefits should be determined on the same basis as that of the Provincial Court judges. With the concurrence of the Crown, the Commission declared that its Report and Recommendations would apply with the same force and effect to the Masters as to the Provincial Court judges.

B. Conduct of the Present Inquiry

Public notice announcing the commencement of the inquiry and inviting written submissions was placed in the Calgary Herald, Edmonton Journal, Fort McMurray Today, Grande Prairie Daily Herald Tribune, Lethbridge Herald, Medicine Hat News and Red Deer Advocate on March 20, 1998; the Calgary Sun and Edmonton Sun on March 22, 1998; and the Drumheller Mail, Peace River Record Gazette, St. Paul Journal and Wetaskiwin Times Advocate on March 23, 1998.⁵ Notice of the hearing dates was published in a second advertisement published in the Calgary Herald, Calgary Sun, Edmonton Journal and Edmonton Sun on April 20, 1998.⁶

Public hearings were held, in the presence of counsel for the Crown and for the Judges' Association, at the Edmonton Law Courts Building and the Calgary Court House as follows:

| | |
|----------|-------------------------|
| Edmonton | May 4, 1998 |
| Calgary | May 20, 21 and 22, 1998 |
| Edmonton | May 25 and 26, 1998 |

In addition to the more detailed material presented by the principal parties, there were nine written submissions and two oral presentations, made by a total of 10 individuals

³ Bill 25, the Justice Statutes Amendment Act, 1998 provides that the subsequent commission or commissions shall be established on or before April 1, 2000 and every three years thereafter.

⁴ The Commission may amend its Report in prescribed circumstances within 15 days of delivery, in which case the 90 days would start from the date of variation.

⁵ A copy of the advertisement appears as Appendix "B."

⁶ A copy of the advertisement appears as Appendix "C."

and organizations.⁷ Copies of the written submissions and transcripts of the oral hearings were provided routinely to counsel for the parties.

Counsel for the Crown and the Judges' Association provided us with detailed written briefs, supported by volumes of other documents. In addition, the Judges' Association chose to call oral evidence. On May 20th, we heard from Judge Allan A. Fradsham of the Criminal Division, Calgary. On May 21st, Judge Margaret Donnelly of the Civil Division appeared as a witness, followed by Mr. Allan R. Tough, F.S.A., F.C.I.A., a principal with William M. Mercer Limited. On May 22nd, we heard from Mr. Ronald P. Caputo, also a principal with William M. Mercer Limited. Mr. Tough and Mr. Caputo appeared as expert witnesses on pensions and salary compensation respectively. Finally, on May 25th, we heard from Judge Raymond Bradley of the Circuit Court and Judge Lynn Cook-Stanhope of the Family and Youth Division, Edmonton.

Counsel for the principal parties presented their final oral arguments on May 26th.

C. Context of the Present Inquiry

This commission process is unique in that it is the first of its kind in the province of Alberta.⁸ By way of contrast, the federal and all other provincial governments in Canada have a previous history of independent judicial compensation commissions, some of which date back two decades. That is not to say that the existence of commissions in other jurisdictions has invariably lead to a better process than that which has existed in Alberta. It has not been unheard of, indeed quite common, in some jurisdictions for the government of the day to delay or even ignore the recommendations of commissions.

The timing of this commission process is also significant in that it follows the landmark decision of the Supreme Court of Canada regarding judicial independence rendered on September 18, 1997⁹ (the "Provincial Court Judges' Case"). This is not, however, the first report since that time as both Nova Scotia and British Columbia have recently issued reports.

As this is a first for Alberta, we believe that an understanding of the historical compensation practices and process in this province is not only useful, but also fundamental to our Report and Recommendations.

⁷ A list of the persons who made written or oral submissions to the Commission is set out in Appendix "D."

⁸ The 1975 Kirby report, "Report to the Board of Inquiry Under the Public Inquiries Act, Review of the Administration of Justice in the Provincial Courts of Alberta," dealt, in part, with judicial compensation but was not established as a judicial compensation commission per se.

⁹ Reference re: Public Sector Pay Reduction (P.E.I.), s. 10; Reference re: Provincial Court Act (P.E.I.); R. v. Campbell; R. v. Ekmecic; R. v. Wickman; Manitoba Provincial Judges' Association v. Manitoba (Minister of Justice), (1997), 206 A.R. 1: 156 W.A.C. 1.

1. Historical Background

a. Salaries

During the period 1970 through 1977, salaries of the Provincial Court judges were determined on an ad hoc basis through negotiations between representatives of the judges and representatives of the government. In 1973, the government established a Board of Review chaired by Mr. Justice W.J.C. Kirby of the Trial Division of the Supreme Court of Alberta to review and report to the Lieutenant Governor in Council on the administration of justice in our Provincial Courts. The Kirby Board of Review issued a report dated August 6, 1975 (Report No. 2) containing wide-ranging recommendations for needed reforms to the system, including the following recommendations regarding salaries of the Provincial Court judges:

- The salaries of Provincial Court judges should be substantially increased and, if possible, these salaries should be protected against inflation.
- Salaries should be high enough to induce qualified lawyers between the ages of 30 and 45 to consider seriously accepting positions as judges.
- Salaries should be adjusted annually in such a way as to ensure that the real income of judges increases from year to year, as long as the Canadian per capita gross national product is increasing.

Many of the recommendations of the Kirby Board of Review were accepted. Thereafter, salary levels were substantially increased. Periodic negotiations were conducted between the Attorney General and committees of the provincial judges. In December 1977, the executive branch of the government decided to set Provincial Court judges' salaries as a percentage of District Court judges' as follows:

| | |
|------------------------|------|
| Chief Judge | 100% |
| Assistant Chief Judges | 95% |
| Judges | 90% |

The salary increases for the Chief Judge and Assistant Chief Judges were to be effective April 1, 1978. The increase for other full-time judges was to be phased in gradually, reaching the 90 per cent level on April 1, 1980.

On June 30, 1979, the District Court was amalgamated with the Supreme Court, Trial Division to form the Court of Queen's Bench. The salaries of the former District Court judges were increased to the level of the salaries of the former Supreme Court judges. The executive branch then decided that effective April 1, 1980, the salaries of Provincial Court judges would be set at a specified percentage of the salary of a Court of Queen's Bench judge in accordance with the following formula:

| | |
|------------------------|-----|
| Chief Judge | 90% |
| Assistant Chief Judges | 85% |
| Judges | 80% |

This formula, whereby the salaries of Provincial Court judges were tied to the federal system of salary increases, subject to retroactive increases not being backdated past April 1, 1980, remained in effect up to and including fiscal year 1988. By all accounts, this period would appear to represent one of relative calm for both parties, from the

perspective not only of remuneration but also process. As the Honourable Neil Crawford, Q.C., the Attorney General, is quoted as saying in Alberta Hansard in 1980:

... we have recently arrived at a very satisfactory solution to the continuing concern over whether Provincial Court judges are adequately or satisfactorily paid. The solution has been to tie it, by way of a percentage, to the tracking of federal judges' remuneration. The federal people occasionally make their payments retroactive, and we wanted the same capacity on behalf of the Provincial Court judges in order to keep that arrangement functioning smoothly. It will mean that it doesn't have to come to the Legislature each time, but will be an automatic and smooth transition when a change in remuneration is to be given effect.¹⁰

In 1988, the executive branch of the government decided that the formula would no longer be applied in setting Provincial Court judges' salaries. In a letter addressed to the Honourable James D. Horsman, Q.C., Attorney General, the Honourable J.H. Laycraft, Chief Justice of Alberta, stated:

A large number of the present Provincial judges were appointed on the basis of this arrangement. Quite frankly, they regard the termination as a breach of contract. But the termination has also meant the end of the smoothly operating system which replaced the cumbersome and divisive annual negotiation.¹¹

In 1989, the Alberta Provincial Judges' Association retained counsel to represent the judges in respect of compensation. Over the course of time, requests were made on behalf of the Association to reinstate some fixed percentage formula or alternatively, establish an independent commission to determine compensation.

No change to salaries occurred from April 1, 1989 to April 1, 1991, at which time an increase of 9 per cent was approved.

On March 2, 1994, the salaries of Provincial Court judges were reduced by 5 per cent, by means of a 3.1 per cent direct salary reduction and a 1.9 per cent reduction realized by five days unpaid leave of absence.¹² Similar reductions were applied to various categories of government employees. Subsequently, the 5 per cent rollback in judges' salaries was declared invalid and no wage reduction was applied to the salaries of Provincial Court judges. In effect, salaries have remained unchanged at \$113,964 since 1991.

¹⁰ Alberta Hansard, March 31, 1980, pp. 152-3.

¹¹ Letter dated June 27, 1988 from The Honourable J.H. Laycraft, Chief Justice of Alberta to the Honourable James D. Horsman, Q.C., Attorney General of Alberta.

¹² Two of the five days were unpaid statutory holidays: Easter and Christmas.

¹³ Judges who were over 65 years of age at the time they became eligible to participate in that plan remained under The Public Service Pension Act.

Following is a comparison of superior and provincial judicial salaries for the years 1976 through 1998.

| Year | Salary of Provincial Court Judge | Percentage Change | (Rounded) Salary of Superior Court Judge* | % Provincial Court Judges/ Superior Court Judges |
|---------|--|----------------------|--|---|
| 1976 | \$37,050 | | N/A | |
| 1977 | 39,336 | 6.2% | N/A | |
| 1978 | 42,200 | 7.3% | \$60,000 | 70% |
| 1979 | 46,400 | 9.9% | 66,500 | 70% |
| 1980 | 58,400 | 25.8% | 73,000 | 80% |
| 1981 | 62,320 | 6.7% | 77,900 | 80% |
| 1982 | 66,480 | 6.7% | 83,100 | 80% |
| 1983 | 70,320 | 5.8% | 87,900 | 80% |
| 1984 | 73,716 | 4.8% | 92,100 | 80% |
| 1985 | 86,400 | 17.2% | 108,000 | 80% |
| 1986 | 94,404 | 9.3% | 118,000 | 80% |
| 1987 | 99,444 | 5.3% | 124,300 | 80% |
| 1988 | 104,556 | 5.1% | 130,700 | 80% |
| 1989 | 104,556 | 0.0% | 136,800 | 76% |
| 1990 | 104,556 | 0.0% | 143,400 | 73% |
| 1991 | 113,964 | 9.0% | 150,800 | 76% |
| 1992 | 113,964 | 0.0% | 158,800 | 72% |
| 1993 | 113,964 | 0.0% | 158,800 | 72% |
| 1994** | 108,266 | -5.0% | 158,800 | 68% |
| 1994 | 113,964 | 0.0% | 158,800 | 72% |
| 1995 | 113,964 | 0.0% | 158,800 | 72% |
| 1996 | 113,964 | 0.0% | 158,800 | 72% |
| 1997 | 113,964 | 0.0% | 162,000 | 70% |
| 1997*** | 113,964 | 0.0% | 168,500 | 68% |
| 1998 | 113,964 | 0.0% | 162,000 | 70% |
| 1998*** | 113,964 | 0.0% | 175,300 | 65% |

* Includes \$3,000 Surrogate Court Allowance

** Roll-back declared invalid

*** As set out in Bill C-37

b. Pensions

Beginning in 1972, full-time Provincial Court judges under 65 years of age were provided with a pension under the *Public Service Management Pension Act*.¹³ In its 1975 report, the Kirby Board of Review expressed the view that:

With the number of alternatives that are offered, this is an excellent plan, and certainly ranks among the better pension plans in Canada. Nevertheless, it does not meet the particular needs of Provincial Court judges.

In other branches of the Civil Service, it would not be exceptional for a person to enter the service at the age of 25, or younger, and fulfil the maximum allowable years of pensionable service by the age of 60, five years before the conventional age of retirement. But it would indeed be exceptional for a person to attain the qualifications required of a Provincial Court judge by the age of 25.

For a person accepting a position as a Provincial Court judge at the age of 45, the maximum number of pensionable years of service would be 20, and the Public Service Pension Plan would yield a pension of 40 per cent of the average of the five highest years of salary.¹⁴

The Kirby Board of Review went on to suggest the following guidelines be used in formulating a separate pension plan for judges, after consultation with the judges:

- The pensions of Provincial Court judges should be removed from *The Public Service Pension Act* and placed under *The Provincial Court Act*.
- Judges should make an annual contribution to the pension funds.
- For those who retire at the age of 65, after 10 years of service, the pension should be 50 per cent of the salary of the last working year.
- For those who retire at the age of 65, after 20 or more years of service, the pension should be 70 per cent of the salary of the last working years.
- For those who retire at the age of 65, after at least 10 but less than 20 years of service, the pension should be calculated on a pro-rated basis.
- Other alternatives, say for example early retirement, should be calculated on an actuarial or some other basis.¹⁵

The significant features of the Public Service Management Pension Act Plan were as follows:

- The Plan was a contributory pension plan at the gross rate of 5 per cent of the participant's salary (including the value of non-cash employment benefits approved by the Provincial Treasurer).
- No contributions were required after the participant accumulated 35 years of pensionable earnings.
- The government contributed at the rate of 9 per cent of the participant's salary.
- A minimum of five years pensionable service was required to a maximum of 35 years.

¹⁴ The Kirby report, note 8 above, at pp. 61-62.

¹⁵ Ibid, at p. 62.

- Normal pensionable age was 65, with provision for retirement after the age of 55 without reduction in the amount of pension benefits paid.
- The normal pension payable on retirement was an amount equal to 2 per cent of a retiree's average salary over five consecutive years during which salary was highest multiplied by the number of years of pensionable service.
- Pension benefits were paid for life.
- The Plan provided a spousal survival benefit of 75 per cent of the normal pension.

During the period 1976 to 1983, the creation of a Provincial Court Judges' Plan was the subject of periodic communication between the Judges' Association and the Attorney General, but no concrete steps were taken to establish a separate plan. Following rejection by the members of the Association of a plan negotiated by representatives of the government and the Judges' Association in 1984, both parties agreed to a modified plan in 1985. The significant features of the proposed Provincial Court Judges' Plan were:

- The participant's contribution rose to 9 per cent.
- No contributions were required after the participant accumulated 23.5 years of pensionable service.
- Normal pensionable age was between the ages of 65 and 70, but a participant could retire after 60 with a penalty reduction in the amount of pension benefits paid at the rate of 6 per cent per year before 65.
- Normal pension payable on retirement increased to 3 per cent of a retiree's average salary over the five consecutive years during which salary was highest multiplied by the number of years of pensionable service.
- Pension benefits continued to be payable for life, with a spousal survival benefit of 75 per cent of normal pension.

Each individual judge was to be given the opportunity to opt out of the old Public Service Management Pension Plan at the time of implementation. Future judicial appointees were to be governed by the new proposal.

Following protracted correspondence with the federal government, the pension plan was eventually registered pursuant to the *Income Tax Act*, subject to the understanding that the plan would have to comply with anticipated future changes to the *Income Tax Act*, effective January 1, 1990. These changes would effectively "cap" the benefits payable under any pension plan which was registered under the Act.¹⁶

The Provincial Court Judges' Plan was never implemented as the government subsequently established a new pension arrangement, the Provincial Judges and Masters in Chambers Pension Plan, effective September 1, 1988. The significant features were as follows:

¹⁶ Registration of a pension plan under the *Income Tax Act*, whether employment is in the public or private sector, provides certain benefits, including the compounding of interest earned in the pension fund without taxation until such time as it is paid out to the employee. The amendments to the Act referred to above simply limited the taxable benefits by imposing restrictions on the maximum benefits payable under the registered plan.

- The participants' obligation to contribute was eliminated.
- Normal pensionable age was 70, but a participant could retire after age 55 without penalty.
- The normal pension payable on retirement was an amount equal to 2 per cent of a retiree's average salary over the five consecutive years of service during which salary was highest multiplied by the number of years of pensionable service.
- Pension benefits were payable for life, with a spousal survival benefit of 75 per cent of the normal pension.

Essentially, the terms of the new plan were the same as the original Public Service Management Pension Act Plan with the notable exceptions that the participant contribution was eliminated and the normal pensionable age increased from 65 in the old plan to 70 in the new plan. Judges were not provided with the opportunity to opt out of the old plan and into the new proposed Provincial Judges and Masters in Chambers Pension Plan. The new plan was accepted for registration by Revenue Canada, subject again to the understanding that the plan would have to comply with anticipated future changes to the *Income Tax Act*.

On January 1, 1992, the anticipated income tax amendments became effective, "capping" pension benefits as follows:

- The maximum salary upon which registered pension plan benefits would accrue post-1991 service would be \$86,111 per annum (subsequently indexed for the year 2005 and thereafter).
- The spousal benefits post 1991 would be a maximum of two-thirds of a participant's pension.
- The pension benefits for post-1991 service would be reduced by 3 per cent for every year the participant retires before the age of 60 or for every year less than the total of the participant's age in years plus years of pensionable service deducted from 80 years, whichever is greater.

By the *Provincial Judges and Masters in Chambers Pension Plan Amendment Act*, the plan was amended to comply with the *Income Tax Act*.

On numerous occasions, in anticipation of and subsequent to the federal income tax amendments, the Judges' Association discussed with the government the adverse effect that "capping" of pensions would have on the judges' pensions given their age at appointment and the years of service most judges would be able to accumulate. In February of 1992, counsel for the Association put forth a framework proposal to the Attorney General. The proposal included the reinstatement of member contributions (in the range of 7 – 9 per cent of salary) through the existing plan and the creation of a supplemental plan by regulation to make up for the benefits lost by the recent income tax changes and to increase the normal pension benefit by 1 per cent of final earnings for each year of service after 1991.

The judges' pension plan has earned surpluses since it was established. In September 1993, \$2,340,000 of the surplus was transferred from the plan to the province's General Revenue Fund. Subsequently, the government effected a further decrease in the plan fund by creating a \$940,000 shortfall in its contributions. As at March 31, 1995, the last

official valuation date, the surplus was valued at \$5,500,000. Unofficially, the surplus is now estimated at \$15,000,000 to \$20,000,000.

2. Summary of Compensation

Following is an overview of the principal forms and amounts of compensation Provincial Court judges currently receive.

By way of general comment, Alberta currently ranks fourth among the provinces, and behind the two territories, in respect of salaries paid to Provincial Court judges.¹⁷ According to the 1998 survey of the Canadian Association of Provincial Court Judges, Alberta stands third to last in the value of the pension it provides to its judges with 20 years of service.¹⁸ Based on data provided by counsel, Alberta ranks seventh among provinces and behind the two territories in terms of the relative value of total compensation (salary, pension, vacation, disability benefits, other benefits and allowances) to the Provincial Court judges.¹⁹

a. Salaries

The current salary for Provincial Court judges in Alberta, is \$113,964. The Chief Judge and Assistant Chief Judges receive \$128,220 and \$121,092 respectively. By way of comparison, current remuneration for provincial, territorial and federal judges are:

| | |
|------------------------|-----------|
| British Columbia | \$118,402 |
| Alberta | \$113,964 |
| Saskatchewan | \$112,961 |
| Manitoba | \$98,173 |
| Ontario | \$128,623 |
| Quebec | \$108,100 |
| New Brunswick | \$100,412 |
| Nova Scotia | \$124,000 |
| Prince Edward Island | \$112,934 |
| Newfoundland | \$102,000 |
| Yukon | \$129,234 |
| North West Territories | \$130,307 |
| Queen's Bench | \$175,806 |

¹⁷ British Columbia, Ontario, Nova Scotia and Newfoundland are the four provinces which pay their Provincial Court judges more than Alberta.

¹⁸ Newfoundland and Manitoba rank behind Alberta in value of 20-year pensions.

¹⁹ Newfoundland, New Brunswick and Manitoba rank behind Alberta in value of total compensation to the judges.

b. Pensions

As noted previously, judges of our Provincial Court are entitled to pensions under the Provincial Judges and Masters in Chambers Pension Plan, which was amended in 1992 to comply with the Income Tax Act. The principal terms are:

| | |
|----------------------------|---|
| Contributions: | Non-contributory |
| Vesting Period: | 5 years |
| Calculation of Benefits: | [(2% of average salary for best 5 years) x (years of judicial service prior to 1992)] + [2% (years of judicial service after 1991) x \$86,111] |
| Retirement Allowances: | \$2,000 for each year of service prior to September 1988 |
| Normal Retirement: | 70 years |
| Early Retirement: | If vested, at age 55 or after provided the sum of retiree's age and pensionable service amount to not less than 80, or retiree is 60 |
| Years to Maximum Benefit: | 35 |
| Spousal Survival Benefit: | 75% on pension earned on pre-1992 service and 66.67% after 1991 |
| Cost of Living Adjustment: | 60% of the Consumer Price Index |

The maximum salary upon which registered pension plan benefits accrue after 1991 is \$86,111 (indexed after 2005), the notional amount imposed by Revenue Canada. Prior to 1992, the maximum average salary upon which benefits could be calculated is \$105,415, the average of the best five years of actual salary prior to 1992. Applying these principles, the Canadian Association of Provincial Court Judges calculates the pension payable to provincial judges in Alberta as at December 31, 1997 as follows:²⁰

| | |
|---------------------|-------------|
| 5 years of service | \$8,611.10 |
| 10 years of service | \$18,766.52 |
| 15 years of service | \$29,308.02 |
| 20 years of service | \$39,849.52 |
| 25 years of service | \$50,391.02 |
| 30 years of service | \$60,932.52 |
| 35 years of service | \$71,474.02 |

By way of comparison, the Canadian Association of Provincial Court Judges calculated full pensions and 20-year pensions for the provincially and federally appointed judges across Canada as of December 31, 1997 as follows:²¹

²⁰ 1998 Spring Survey.

²¹ 1997 Compensation Survey.

| Province | Full Pension | 20-Year Pension |
|-------------------------|--------------|-----------------|
| British Columbia | \$72,548.00 | \$61,891.00 |
| Alberta | \$76,989.00 | \$42,801.00 |
| Saskatchewan | \$70,387.20 | \$60,418.20 |
| Manitoba | \$64,706.00 | \$36,159.00 |
| Ontario | \$70,250.00 | \$63,863.00 |
| New Brunswick | \$60,247.00 | \$60,247.00 |
| Nova Scotia | \$69,325.00 | \$69,325.00 |
| Prince Edward Island | \$76,545.00 | \$76,545.00 |
| Newfoundland | \$60,732.54 | \$38,087.70 |
| Yukon | \$75,918.00 | \$42,264.00 |
| Northwest Territories | \$89,693.00 | \$51,253.00 |
| Queen's Bench | \$104,000.00 | \$104,000.00 |
| Supreme Court of Canada | \$123,567.09 | \$123,567.09 |

c. Long Term Disability

The Alberta government provides Provincial Court judges with long term disability benefits under the Alberta Public Service Employees Long Term Disability Income Continuance Plan, which contains the following definitions:

"Disability" means a medical condition that causes an employee to be unable

- (i) to perform any combination of duties which prior to the commencement of illness or injury regularly took at least 50 per cent of his time at work to complete, or
- (ii) to be gainfully employed.

"Gainfully employed" means being employed in any employment that an employee is medically fit to perform for which he has at least the minimum qualifications and which provides a salary that is at least 60 per cent of his salary before commencement of the disability.

During the initial 80 consecutive days of disability, the participant is entitled to full salary. Thereafter, the amount is reduced to 70 per cent of pre-disability salary to a maximum of \$78,000 per annum, less other amounts received for disability such as Canada Pension Plan disability benefits. Coverage is continued until recovery, retirement or death.

Long term disability benefits cease at the earlier of the time that the participant (i) is capable of returning to work, (ii) is fit for gainful employment; (iii) attains the age of 65 or his pension vests, whichever is later; (iv) resigns; or (v) dies.

d. Group Life Insurance

The Alberta government provides Provincial Court judges with group life insurance in the amount of \$200,000, with a spousal benefit at \$10,000 and dependants at \$5,000 each. Judges have the option at their cost to increase the coverage up to four times salary (currently \$455,856) to a maximum of \$600,000.

e. Medical and Dental Coverage

The Alberta government and the Provincial Court judges share equally the premiums for Alberta Health Care and core coverage. Core coverage includes semiprivate hospital accommodation, home nursing care to a maximum of \$15,000 in five consecutive years, eye examinations up to \$50 per person every 24 months and certain other medical services, subject to a total annual maximum of \$25,000. The cost of enhanced coverage is shared by the government (11 per cent) and the judges (89 per cent) and includes private hospital room, higher limits on home nursing care (\$30,000) and vision care (\$250) and emergency out-of-country expenses up to \$1,000,000 annually.

The government provides core dental coverage which includes 80 per cent of diagnostic and preventative care (one visit per year), 50 per cent of major restorative services (combined basic and major to maximum of \$1,500) and 50 per cent of orthodontic services to a lifetime maximum of \$1,500 per person. Enhanced dental coverage, the premiums for which are shared by the government (74 per cent) and the judges (26 per cent), includes 80 per cent of two visits per year for diagnostic and preventative care, 80 per cent of major restorative services and 60 per cent of orthodontic services.

The government and the judges share equally the premiums for prescription drugs. Core coverage includes 80 per cent of the cost of approved drugs to a maximum annual amount of \$25,000. Enhanced coverage, the premiums for which are shared by the government (42 per cent) and the judges (58 per cent), includes 80 per cent coverage on the first \$5,000 and 100 per cent thereafter, with no annual maximum.

f. Vacation

Provincial Court judges in Alberta are entitled to 30 days (six weeks) vacation leave, with the right to accumulate 60 days (12 weeks).

g. Allowances

We were advised by counsel to the Crown that the government currently provides \$85,000 a year to the Provincial Court Judges' Association for educational conferences. As a matter of practice, we understand that the provincial judges are entitled to two educational seminars in Alberta a year. Attendance at seminars or conferences outside the province are permitted with the approval of the Chief Judge.

Because of the number of locations that have to be serviced, some Provincial Court judges travel extensively.²² The Alberta government reimburses the judges for use of their own automobiles at the rate of 30 cents per kilometre.

²² For example, Judge Bradley testified that he travelled 39,800 kilometres in 1997 in the performance of his duties as a rural circuit judge.

II. THE PROVINCIAL COURT OF ALBERTA

A. Historical Background

In its 1975 report, the Kirby Board of Review traced the origin of the Provincial Court in Alberta to an act of the Imperial Parliament enacted in 1803, which extended the jurisdiction of the courts of Lower Canada to the territories not within the limits of Upper or Lower Canada. The act provided for the appointment by the Governor of Lower Canada of magistrates and justices of the peace.²³

Seventy years later, the first Canadian authority for the appointment of judicial officers followed, when *The Dominion Statutes* of 1873 were enacted. That act provided for the organization of the North West Mounted Police and the appointment of stipendary magistrates having the authority of two justices of the peace. The police commissioner and each superintendent of the police were appointed ex-officio justices of the peace. The authority of the commissioner and assistant commissioners was subsequently extended, in 1874 and 1879 respectively, to include the powers of a stipendary magistrate.

As noted in the Kirby report, the first provincial legislation relating to magistrates, enacted in 1906, provided for the appointment by the Lieutenant Governor in Council of police magistrates having all the powers and authorities of two justices of the peace. An appointee was required to have practised law as a barrister or solicitor for not less than three years. The requirement of legal experience for police magistrates was eliminated in 1922 with revisions to *The Magistrates and Justices Act*. In 1955, the designation "police magistrate" was changed to "magistrate."

The term "provincial judge" came into being in Alberta in 1970 when *The Magistrates and Justices Act* was replaced by *The Provincial Judges and Justices Act*. In turn, that act was replaced by the *Provincial Court Act*, which created the Provincial Court of Alberta, effective July 1, 1973.²⁴

B. Appointment and Terms of Office

Judges of the Provincial Court are appointed provincially by the Lieutenant Governor in Council. Under the *Provincial Court Judges Act*, the Judicial Council is required to consider proposed appointments and report its recommendations to the Minister of Justice and Attorney General. Although there is no legislative requirement that judges be qualified as lawyers, as a matter of practice, only qualified lawyers are appointed.

For all intents and purposes, Provincial Court judges, once appointed, are secure from removal of office until they reach the age of 70, the statutory age of retirement. No

²³ The Kirby report, note 8 above, at pp. 3-4.

²⁴ In tracing the origins of our Provincial Court, the Kirby report cites as a reference, the Early Administration of Justice in the NorthWest, by The Honourable Horace Harvey, C.J.A., Alberta Law Quarterly 1934, Vol. 1, p. 1.

judge may be removed from office before attaining retirement age except by the authority of the Lieutenant Governor in Council, upon the recommendation of the Judicial Council following a complaint and full inquiry.²⁵

The Provincial Court Judges Act also provides that a judge who is employed as a full-time judge shall not carry on or practise any other business, profession, trade or occupation, unless otherwise authorized by the Lieutenant Governor in Council.

C. Judicial Demographics

In addition to the Chief Judge and eight Assistant Chief Judges, there are 98 full-time judges for a total of 107. In addition, there are 13 supernumerary judges.

Of the full-time judges, 80 are assigned to the Criminal Division, 17 to the Family and Youth Divisions and nine to the Civil Division.

The following statistics with respect to Provincial Court judges are provided as of January 1, 1998:

| | |
|--|---------------------|
| Average age of appointment: | 45 years, 8 months |
| Average number of years experience as a lawyer before appointment: | 19 years* |
| Average age of judges: | 57 years, 10 months |
| Average number of years experience as judges: | 12 years, 3 months |
| Average age of retirement for past 10 years: | 66.4 years |

* Excludes seven judges for whom information was not available.

Distribution by Age Group at Date of Appointment

| Years | Male | Female | Total |
|----------|------|--------|-------|
| 35 to 40 | 19 | 2 | 21 |
| 40 to 45 | 21 | 10 | 31 |
| 45 to 50 | 21 | 1 | 22 |
| 50 to 55 | 14 | 1 | 15 |
| 55 to 60 | 10 | | 10 |
| 60 to 65 | 4 | | 4 |

²⁵ The Judicial Council comprises the Chief Justice of Alberta, the Chief Justice of the Court of Queen's Bench, the Chief Judge of the Provincial Court of Alberta, the President of the Law Society of Alberta and not more than two persons appointed by the Minister of Justice and Attorney General.

Distribution By Age Group of Sitting Provincial Court Judges

| Years | Male | Female | Total |
|--------------|-------------|---------------|--------------|
| 35 to 40 | | | 0 |
| 40 to 45 | | | 1 |
| 45 to 50 | 9 | 8 | 17 |
| 50 to 55 | 12 | 3 | 15 |
| 55 to 60 | 28 | 1 | 29 |
| 60 to 65 | 19 | 1 | 20 |
| 65 or more | 20 | 1 | 21 |

Also as of January 1, 1998, there were 149 approved candidates for the Provincial Court, 25 of whom were considered "highly recommended." The average age of all applicants is 48 years. The average number of years of experience as a lawyer practising in Alberta is 21 years.

III. SUMMARY OF SUBMISSIONS

A. Principal Parties

Having spent several days in hearings with counsel to the principal parties and having received comprehensive submissions from both parties, it is difficult to do justice to their submissions in a few lines. At the risk of oversimplifying, we set forth below a brief summary of those positions, further details of which appear elsewhere in this Report.

To put the nature of the submissions in context, the process was not an arbitration between adversarial parties. While the Judges' Association put forward its position with some vigor, the Crown, in large part, did not take issue with the philosophical and practical underpinnings of the position advanced by the Association. The Crown simply put forward, in a very candid and helpful way, statistics and references which it thought would be helpful to us in our deliberations. The constructive approach adopted by the Association was equally helpful.

1. Provincial Court Judges

Throughout its submissions, the Judges' Association emphasized **judicial independence** as an historic, fundamental and constitutional principle of our society. Referring to the Supreme Court of Canada's decision in the Provincial Court Judges Case, counsel underscored the importance of three **core characteristics** of judicial independence—security of tenure, financial security and administrative independence, as well as the two **dimensions**—the independence of a judge and the institutional or collective independence of the Court.

In tracing the history of the Provincial Court in Alberta and the role of the judge within our system, counsel emphasized the increasing jurisdiction of the Court and the weighty responsibilities of the judge. Analyzing and comparing the Provincial Court judges and judges of the Court of Queen's Bench, counsel concluded that "in summary, one could spend significant time trying to distinguish the two roles only to find that the differences are significantly dwarfed by the similarities."

On the subject of salaries, the Judges' Association submitted that Provincial Court judges should receive compensation equal to that received by federally appointed judges. Counsel acknowledged that a phase-in period for achieving parity may be appropriate, assuming adequate improvements are made in the interim to the pensions of Provincial Court judges. In support of their salary recommendations, counsel relied upon a number of exigencies, including the importance of attracting highly qualified practitioners to the Court, the current incomes of the practising bar, the need to compete for qualified applicants with the Court of Queen's Bench and the similarities between the roles and responsibilities of Provincial Court judges and federally appointed judges. Counsel also emphasized the loss in purchasing power of our provincial judges since 1988, the income required to keep pace with inflation and the strength of the Alberta economy.

With respect to pensions, the Judges' Association submitted that Provincial Court judges should be entitled to receive pensionable benefits equal to two-thirds of the

average of the highest three years' salary at age 65, and after 20 years of judicial service. The plan should be contributory, with Provincial Court judges contributing at the rate of 7 per cent of annual salaries. Transitional provisions should ensure at a minimum the existing 2 per cent per year accrual rate and the opportunity to upgrade future benefits, based on earlier actual salaries and years of service. Moreover, provision should be made for a judge with 20 years of service who becomes incapacitated before the age of 65.

Addressing other benefits, the Judges' Association raised a number of issues relating to the Alberta Public Service Employee Long Term Disability Income Continuance Plan including problems inherent in the regulation establishing the plan, the current administrative practices, the level of benefits and the term of coverage. The Association also requested representational and professional allowances and an increase in the rate of reimbursement per kilometre for use of private automobiles in the performance of judicial duties.

2. Government of Alberta

The Crown emphasized that it was not the intention of the Alberta government to put forth any specific recommendations with respect to the appropriate level of compensation in its totality or specifically. The government did, however, identify several principles and other considerations that should be taken into account in assessing the fairness and reasonableness of the compensation of the Provincial Court judges and the recommendations put forth by the Judges' Association.

The Crown strongly supported the principle of judicial independence as an essential component of the democratic structure in Canada and confirmed its commitment to the development and application of processes to enhance and maintain that independence. Acknowledging not only the vital role of the Provincial Court judges, but also the significant contribution they make in the administration of justice, counsel posed the rhetorical question in final submissions to the Commission, "How do you value something that is priceless?"

In addressing the principle of fairness and reasonableness, the Crown was of the view that the present compensation of our Provincial Court judges was not so low or so inadequate as to be below the minimal acceptable level of judicial remuneration as discussed in the Provincial Court Judges Case. That did not, however, preclude the necessity to review the fairness and reasonableness of the compensation, having regard to the criteria set out in the Framework Agreement and the principles articulated in the Supreme Court case.

In determining fair and reasonable compensation, the Crown emphasized three principal criteria. First, remuneration should be inherently "made in Alberta," giving strong weight to current provincial circumstances and government policies. Within this context and for other reasons, compensation linked to those of other jurisdictions or federally appointed judges would be inappropriate.

Second, due regard should be given to compensation of senior government officials in Alberta, as reflective of the province's ability to pay and the appropriate level of salary for individuals at the highest level of skills and ability. The Crown submitted that compensation commensurate with the most highly qualified senior employees bearing

the highest level of responsibility for implementation of legislative and executive policy would create a perception of discrimination, which in turn could adversely affect public confidence.

Third, consideration should be given to providing a reasonable standard of living, commensurate with the status and dignity of the judiciary and sufficient to attract highly qualified candidates. The Crown noted, however, that there was no evidence currently that strong candidates are deterred from seeking appointment to the bench. Moreover, non-pecuniary benefits such as security of tenure and individual and collective independence need be considered.

With reference to current economic conditions, counsel attributed the improved financial position of the province to significant spending reductions during the period 1993 through 1997 and emphasized the volatility of revenues derived from the resource sector.

The Crown submitted that, relative to the income of the average Canadian, judges were very well compensated and that they were impacted by inflation to a lesser degree than lower wage earners.

B. Other Submissions

We have had the benefit of both written and oral submissions from the Law Society of Alberta. Citing the principle of judicial independence as a cornerstone of the administration of justice and our democracy, the Law Society urged the Commission to consider the following criteria within the context of judicial independence:

- appropriate compensation for the responsibilities of the position;
- an appropriate comparison to the salaries of Superior Court judges, as well as to Provincial Court judges in other jurisdictions;
- a compensation level which permits the recruitment of the most qualified individuals; and
- pension, disability and other retirement policies such as to relieve judges of any concern about their future.

The Canadian Bar Association (Alberta Branch) emphasized the importance of judicial compensation, not only on an individual basis but also on a collective or institutional basis to maintain the integrity of the judicial system and to ensure that the courts be free and appear to be free from political interference. In the words of the Association:

It has been well established and accepted that to secure high levels of judicial competence and independence, it is necessary that judges' salaries and benefits must be at a level to attract the best practitioners to the judiciary, must be commensurate with the position of a judge in our society, and must be reflective of the respect with which our Courts are to be regarded. The independence and quality of the judiciary is predicated on an assurance of adequate salary while in office and an assurance of an equitable provision of retirement security.

In considering the appropriate level of compensation, the Association encouraged the Commission to consider remuneration paid to Superior Court judges, the income level

of private practitioners and corporate counsel of comparable age and seniority, the broad jurisdiction of the Provincial Court, the increasing workload of and demands on the judiciary and the unique role of the judge.

We also wish to acknowledge the submissions of the eight individuals who made valuable contributions to our deliberations and to the process as a whole.

IV. GOVERNING PRINCIPLES AND OTHER CONSIDERATIONS

The Framework Agreement provides that the Commission, in making its Report and Recommendations, shall give every consideration to, but not limited to, the following criteria:

- the constitutional law of Canada;
- the need to maintain the independence of the judiciary;
- the unique nature of the judges' role;
- how the Alberta compensation package compares to compensation packages in other jurisdictions, having regard to the differences between these jurisdictions, in Canada, including the federal jurisdiction;
- the growth or decline in real per capita income;
- the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions in Alberta and the overall state of the economy;
- the cost of living index and the position of the judges relative to its increases;
- the nature of the jurisdiction of the Court;
- the current financial position of the government; and
- any other factor which it considers relevant to the matters in issue.

In this section of our Report, we address each of the criteria set out in the Framework Agreement, including factors not specifically enumerated which we consider relevant.

A. Judicial Independence and the Constitutional Law of Canada

Members of the Commission are unanimously of the view that judicial independence is the overriding and paramount principle to be considered in determining compensation of the Provincial Court judges. Affirmation of this principle has a number of consequences for the design and level of the compensation arrangements, but let us first review the constitutional parameters of judicial independence.

1. The Provincial Court Judges Case

Although the Provincial Court Judges Case is not the first decision of the Supreme Court of Canada²⁶ to deal with the issue of judicial independence, it is a path-breaking judgement in that it clearly declares the independence of the Provincial Court as constitutionally protected. In the words of Chief Justice Lamer, speaking for the six-member majority:

²⁶ We note in particular, *R. v. Valente* [1985] 2 S.C.R. 673 and *Beauregard v. Canada* [1986] 2 S.C.R. 56.

In conclusion, the express provisions of the *Constitution Act, 1867* and the [Canadian] *Charter [of Rights and Freedoms]* are not an exhaustive written code for the protection of judicial independence in Canada. Judicial independence is an unwritten norm, recognized and affirmed by the preamble to the *Constitution Act, 1867*. In fact, it is in that preamble, which serves as the grand entrance hall to the castle of the Constitution, that the true source of our commitment to this foundational principle is located.

At issue in the Provincial Court Judges Case was judicial independence in the context of salary reductions for Provincial Court judges by the provincial executives in Alberta, Manitoba and Prince Edward Island. From Alberta's perspective, the salary reduction was found to be unconstitutional because there was no "independent, effective and objective commission" in the province to recommend changes to judges' salaries.²⁷

While we do not intend to review the Supreme Court's decision in its entirety, we do propose to set forth certain principles which we believe to be fundamental to this and subsequent judicial compensation processes.

Financial security was initially identified by LeDain, J. in *R v. Valente*²⁸ ("Valente") as one of three core characteristics of judicial independence, the other two being security of tenure and administrative independence. Noting that Valente only addressed the **individual dimension** of financial security, Chief Justice Lamer expressed the view that financial security has both **an individual and a collective or institutional dimension**. The Court went on to say that financial security for the Courts as an institution has, in turn, three components, which flow from the constitutional imperative that, to the extent possible, the relationship between the judiciary and the executive and legislative branches of government be depoliticized. To paraphrase, those three components are:

- First, salaries of Provincial Court judges may be reduced, increased or frozen, subject to prior recourse to a special process, which is independent, effective and objective, for determining judicial remuneration.
- Second, under no circumstances is it permissible for the judiciary to engage in negotiations over remuneration with the executive or representatives of the legislature.
- Third, any reduction to judicial remuneration, including de facto reductions through the erosion of salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge.²⁹

Expanding on the first point, in particular the need for the independent commissions to be objective, Chief Justice Lamer states:

They must make recommendations on judges' remuneration by reference to objective criteria, not political expediencies. The goal is to present an objective and fair set of recommendations dictated by public interest.³⁰

²⁷ The salary reduction in P.E.I. was declared unconstitutional for the same reason. In Manitoba, the unconstitutionality arose from the fact that the government ignored the Judicial Compensation Commission process.

²⁸ Note 26 above.

²⁹ Note 9 above, at pp. 90-91.

³⁰ Ibid. at p. 111.

With reference to the third component of the constitutional dimension of financial security, the Chief Justice states:

I want to make it 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.³¹

Quoting the Draft Universal Declaration on the Independence of the Judiciary, the Court went on to say:

The salaries and pensions of judges shall be adequate, commensurate with the status, dignity and responsibility of their office, and shall be periodically reviewed to overcome or minimize the effect of inflation.³²

While the Court chose not to address the question of what the minimum acceptable level of judicial remuneration is, Chief Justice Lamer did extend the principle to include protection against the erosion of judicial salaries by inflation in addition to reductions of remuneration by the executive or the legislature. At the same time, he emphasized 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," noting "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."³³

2. The Implications of Judicial Independence

By way of introductory comment, we note that both of the principal parties strongly endorsed the concept of judicial independence, not only as a constitutional guarantee but as an essential component of the administration of justice and our democracy. There were, however, some differences of opinion on the consequences for judicial compensation of endorsing that principle. For our part, we wish to emphasize four points which we believe to be fundamental in the context of the present inquiry.

First, we wish to underscore the point made by Chief Justice Lamer that "financial security is a means to the end of judicial independence and is therefore for the benefit of the public." In the words of Professor Friedland in *A Place Apart: Judicial Independence and Accountability in Canada*:

Even if economic conditions were such that a very large portion of the bar was willing to accept an appointment at a much lower salary, we would still want to pay judges well to ensure their financial independence—**for our sake, not for theirs**.³⁴ [Emphasis added.]

Second, we do not interpret the Supreme Court of Canada in the Provincial Court Judges Case as prescribing or intending to prescribe a **minimum acceptable level of judicial remuneration** as the standard of compensation to achieve judicial independence in the circumstances before us. At issue in the Provincial Court Judges

³¹ Ibid, at p. 124.

³² Ibid, at p. 125.

³³ Ibid, at p. 125.

³⁴ Friedland, *A Place Apart: Judicial Independence and Accountability in Canada*, a report prepared for the Canadian Judicial Council, 1995, at p. 56.

Case was the **reduction** of salaries by the executive branch, although the Court extended the guarantee of minimum salary to include reduction of salaries by inflation. In our view, what was said 10 years ago in the Report of the Ontario Provincial Courts Commission (Henderson) within the context of the Valente case, is equally valid today:

[The] conception we espouse of an independent judiciary goes beyond the minimum standard the Supreme Court of Canada enforced in Valente. At issue there was not the articulation of an **ideal standard** of independence for judges; the task instead was to ascertain the absolute **minimum conditions** sufficient to make a tribunal (which might or might not be a court) independent enough to try offence proceedings.³⁵ [Emphasis added.]

Third, we are of the opinion that judicial independence cannot be achieved by a direct comparison of salaries of Provincial Court judges to anyone whose salary is paid by the Alberta government. Again, we refer to the 1988 Henderson report:

[A further] consequence of our conception of judicial independence is that Provincial Court judges are not meaningfully comparable with anyone whose salary is paid by the Ontario government and who does not perform a judicial or quasi-judicial function. The fact that provincial civil servants' salaries, pensions or benefits are of a certain cost or value, are administered in particular ways or are subject to certain conditions, for instance, has nothing whatever to do with what compensation Provincial Court judges should receive, and vice versa. There may, of course, be respects or situations in which the compensation provided to judges and government employees will, coincidentally, be similar; all such similarities, though, require independent justification.

While we believe the compensation of Provincial Court judges ought not to be determined by any direct relationship to salaries of government employees, the current compensation practices may well be relevant as indicative of current economic conditions, a matter that is addressed in subsequent sections of this Report.

Finally, we fully accept that the judiciary should not be exempt from the effects of deficit reduction. Indeed, while acknowledging that it is not germane to this compensation process, we venture to say that the 5 per cent rollback in Provincial Court judges' salaries in 1994 may not have been an issue had the judges of the day been satisfied that judicial independence had been served, both in terms of process and level of compensation at the time of the salary rollback. With reference to the current economic situation, we simply note at this point that there have been no deficits in Alberta since fiscal year 1994-95 and the government is now working on reducing the debt, a matter which we will consider subsequently in greater detail.

B. Jurisdiction of the Court

The Court is established by the *Provincial Court Act* with the following divisions: Criminal, Civil, Family and Youth. The Court may sit at any place in the province for the orderly dispatch of the business of the Court. According to a Statistics Canada 1997 survey,³⁶ the Criminal Division has 23 permanent and 51 circuit locations. The Family and Youth Divisions have 23 permanent and 48 circuit locations. The Civil Division sits at most of the same locations as the Criminal Division.

³⁵ 1988 Report of the Ontario Provincial Courts Committee, p. 50.

Regardless of the division in which they sit, all Provincial Court judges have all the authority any Provincial Court judge is given by statute. In practice, judges are generally appointed with one of the specific divisions in mind and, upon appointment, spend most of their time in office presiding in cases that arise in that division, although it is not uncommon for judges to go on circuit from time to time. Rural circuit judges generally handle criminal, family, youth and civil matters and, in many of the locations they serve, all of those matters in a single day.

1. Criminal Division

Provincial Court judges have long had jurisdiction to try, without a jury, all federal summary conviction offences. In more recent years, their trial jurisdiction over indictable offences has also become almost unlimited. With respect to indictable offences, there are essentially three types: (i) certain indictable offences may be tried only before a Provincial Court judge; (ii) most other offences may be tried, at the option of the accused, before a Provincial Court judge sitting without a jury or before a higher court, with or without a jury; and (iii) murder, treason and certain other rarer offences such as piracy cannot be tried before a Provincial Court judge. In those circumstances where the accused is not to be tried in the Provincial Court, a judge of the Criminal Division is required to hold a preliminary hearing to determine whether there is enough evidence to commit the accused for trial.

In addition, the Criminal Division has jurisdiction to deal with numerous quasi-criminal offences under various federal statutes such as the *Controlled Drugs and Substances Act*, the *Environmental Protection Act*, the *Unemployment Insurance Act* and the *Income Tax Act*. The Court also handles numerous quasi-criminal offences under provincial legislation.

2. Family and Youth Divisions

Leaving aside divorce and issues of matrimonial property, which are exclusively entrusted to the Superior Courts, there are few family law matters which fall outside the jurisdiction of the Family Division. The jurisdiction of the Family Court is derived from numerous statutes and includes custody, access, spousal and child support, private guardianship and reciprocal enforcement of maintenance orders.

Under the *Child Welfare Act*, the Provincial Court has broad jurisdiction in matters concerning the survival, security and development of children up to the age of 18. Jurisdiction of the Court includes child protection proceedings, secure treatment proceedings and temporary and permanent guardianship orders.

The Provincial Court is a Youth Court within the meaning of and for the purposes of the *Young Offenders Act* (Alberta) and the *Young Offenders Act* (Canada), and has all the powers vested in a Youth Court under those acts.

The Youth Division generally handles all matters of criminal jurisdiction for young people between the ages of 12 and 18. Exceptions to the rule include those cases in which the Crown or the young person successfully make application to transfer the case to the adult ordinary courts (the Criminal Division) and cases of murder, attempted murder, manslaughter and aggravated assault for young people between the ages of

³⁶ Profile of Courts in Canada 1997, p. 144.

16 and 18, which are presumptively transferable to the adult ordinary courts. In the latter cases, the young person may apply for a transfer back to the Youth, Court. Transfer applications are heard by the Youth Court judge.

3. Civil Division

The Provincial Court Civil Division has jurisdiction to try and adjudicate any claim for debt, whether payable in money or otherwise, or for damages, including damages for breach of contract, if the amount claimed or counterclaimed does not exceed \$7,500, exclusive of interest payable under an act or by agreement on the amount claimed. The Court does not have jurisdiction to adjudicate on matters in which title to land is an issue or actions for malicious prosecution, false imprisonment or defamation.

Much has been written on the increasing jurisdiction of Provincial Courts and consequential impact, both in terms of complexity and volume of work, on the judges. To quote Mr. Justice Lamer in the Provincial Court Judges Case, "it is worth noting that the increased role of Provincial Court judges in enforcing the provisions and protecting the values of the Constitution is in part a function of a legislative policy of granting greater jurisdiction to these courts."³⁷ Clearly, the responsibility of the judiciary at all levels has been increased as a result of the *Canadian Charter of Rights and Freedoms*. The laws governing admissibility of evidence in criminal trials is undoubtedly increasingly complex. In the civil actions, the monetary jurisdiction in Alberta has recently been raised to \$7,500 and it appears likely that that trend will continue. In family and youth matters, the jurisdiction of the Provincial Court has been expanded in a number of areas including domestic strife, custody and enforcement matters. Moreover, the Provincial Court must contend with many cases in which one or both parties are not represented by counsel, necessitating a challenging balancing act in attending to the interests of the unrepresented parties and remaining fair and objective to the other party.

C. Unique Nature of the Judge's Role

For members of the Commission, the opportunity to hear the personal experiences of four judges of our Provincial Court provided us with a unique opportunity to share a day in the life of a judge.

An otherwise upstanding member of the community has a head-on collision driving home after an evening of drinking at a private club, killing one child and injuring a second. In imposing the sentence as required by the law, how does a judge in the Criminal Division respond to the mother who says: "Is that all you think that the life of my child is worth?"

At two o'clock in the morning the judge gets a call. A child has been trampled by a horse, has massive internal bleeding and has been transported by air ambulance to the Royal Alexandra Hospital. In conducting the hearing at the hospital in the middle of the night, how does a judge of the Family Division deal with the survival of an unconscious child and the rights of parents who oppose any medical treatment?

A child is apprehended in a drug house and is taken to the secure treatment unit for

³⁷ Note 9 above, at p. 88.

initial evaluation. The child is volatile and a danger to himself and others. How does a judge of the Youth Division protect and help the child and deal with the destruction of the family unit?

While the circumstances cited above are not everyday occurrences, there is no question about the critical role that our judges play in enforcing the law and protecting the values of our society. In the end, it is the judge who must take away the liberties of the individual, sentence an individual to incarceration and adjudicate on issues of survival, security and development of children. No other member of our society has the same responsibility and authority of a judge.

The office of judge casts on the recipient at once the glory of appointment and the burden of office. On the one hand, the judge is entitled to very substantial independence, power over the lives and property of his or her fellow citizens, prestige of office and security of position. These, in turn, are counter-balanced by the office's significant obligations and restraints.

Upon taking office, a judge must dissolve any business or financial transactions he or she had prior to appointment. Thereafter, a judge may not carry on or practise any other business, profession or occupation, unless authorized by the Lieutenant Governor in Council.

Appointment to the bench is viewed as a long-term commitment, not a stepping stone to another career. Following retirement, the options are limited for a number of reasons. The Rules of the Law Society preclude a judge for an extended period from returning to practise before a Court over which he or she has presided, or any Court over which that Court has jurisdiction. Moreover, judges from private practice (approximately 80 per cent in Alberta) would have given up their practice and severed business relationships years before.

The judge is obligated to be circumspect in all social situations, to decline participating in politics or financial opportunities that might possibly reflect badly on the Court, not to seek nor expect advancement or status, to avoid appearance of bias or favouritism and to keep at arm's length the persons who appear before him either as counsel or as parties. As a consequence of these obligations, the judge often becomes estranged from his or her professional contemporaries and endures a strong sense of isolation.

Increasingly, judges are reminded and must be conscious that the power of office is offset by the burden of being constantly aware that an inappropriate remark or one taken out of context, an ill-considered opinion, an unpopular acquittal or conviction can and maybe will result in unwarranted or unanswerable criticism of the judge, the Court in which he or she serves and perhaps the administration of justice. Such criticism must be born in silence. Whatever a judge's private convictions, he or she must subordinate them to the impartiality of the judicial role.

Finally, we mention that judges are in a unique situation in that they are not in a position to negotiate their compensation. As so clearly stated by the Supreme Court of Canada in the Provincial Court Judges Case, "under no circumstances is it permissible for the judiciary—not only collectively through representative organizations, but also as individuals—to engage in negotiations over remuneration with the executives or representatives of the legislature."³⁸ Moreover, a judge with 20 or 25 years on the bench is paid the same compensation as a new appointee.

³⁸ Note 9 above, at pp. 90-91.

As part of this judicial compensation process, the public hearings provided a rare opportunity for our judges to speak openly. Without exception, each of the four Provincial Court judges who appeared before us expressed grave concerns about the level of compensation and the process. While those individuals made it clear that they were only speaking for themselves, we were left with the clear impression that the issues before us have had a deep impact on the morale of the bench. At the same time, we hasten to add that we were most impressed by the outstanding commitment, dedication, competence and professionalism of each of those individuals. They serve all Albertans with pride and honour.

D. Comparative Analysis with Other Jurisdictions

We have had the benefit of reviewing no fewer than 34 committee reports from other jurisdictions in Canada, dating back as early as 1978.³⁹ The experience and expertise inherent in many of those reports has been invaluable.

Elsewhere in this Report, we have provided a comparative analysis on current salaries and relative value of pensions for federally and provincially appointed judges throughout Canada, which we incorporate here by reference.⁴⁰ In this section, admittedly at the risk of oversimplifying the process, we provide a brief summary of the primary principles considered by commissions from other jurisdictions, with particular emphasis on recent reports. We note, in advance, that the majority of the independent commissions addressed the issue of judicial independence.

1. Federal

As a result of amendments to the *Judges Act* in 1975, the salary level of Superior Court judges was brought to within 2 per cent of the mid-point of the salary range of the most senior level of federal deputy ministers (DM-3s). Thereafter, for a period of 18 years, salaries were adjusted annually by applying the Industrial Composite (now Industrial Aggregate) Index to allow for inflation, with a cap of 6 per cent and 5 per cent in 1983 and 1984 respectively, to reflect the limit on salary adjustments for members of the public service under the *Public Service Compensation Restraint Act*. The resultant salary level was commonly referred to as the "1975 equivalence."

The 1993 Triennial Review Commission (Crawford) rejected the concept of the "1975 equivalence" as being "in serious danger of acquiring the status of arbitrariness" and adopted as a benchmark by which to gauge judicial salaries the rough equivalence with the mid-point of the salary range of the most senior level of federal public servant, the deputy ministers. To quote the Crawford Commission: "the DM-3 range and mid-point reflect what the marketplace expects to pay individuals of outstanding character and ability, which are attributes shared by deputy ministers and judges."

With the salaries of Superior Court judges having been frozen since December 1992 under the *Public Service Compensation Restraint Act*, the 1996 Triennial Review Commission (Scott) identified the withdrawal of indexing as the most significant factor,

³⁹ A list of the reports from other jurisdictions is set out in Appendix "E."

⁴⁰ See Section I.C.2 above: Summary of Compensation.

emphasizing the disparity between judicial salaries and those of the provincial bar and recommending adjustments to ensure that the erosion of the salary base caused by the elimination of statutory indexing be corrected. The Scott Commission also dealt extensively with the process and the need for reform to ensure effective response from the government following receipt of recommendations from the committee.

2. British Columbia

The 1995 Judicial Compensation Commission (Connaghan) unanimously agreed that the level of Provincial Court judges in British Columbia should be 90 per cent of that for Superior Court judges. The recommended salaries would have achieved that target by 1997.⁴¹

By the time the 1998 Judicial Compensation Committee (Hughes) met, judicial salaries in British Columbia had been frozen for five years. Given the rejection by the legislature of the recommendations of the Connaghan Committee, the Hughes Committee chose to recommend as its base the 1993 salary level, to be adjusted for inflation using the Consumer Price Index for Vancouver. The resultant level of salary would then be increased to \$133,402 by increments of \$5,000 for each of the three years commencing in 1998, representing in the year 2000, 76 per cent of the proposed salaries then before Parliament for judges of the Court of Queen's Bench. While agreeing in principle to the 90 per cent target advocated by its predecessor, the Committee acknowledged the current economic realities in the province, noting its financial obligations ought not be determined by another level of government. Other factors included the need to attract and maintain highly qualified members of the practising bar and the risk of the Court becoming heavily weighted with judges whose experience comes entirely from the prosecutorial side.

3. Saskatchewan

The 1993 Provincial Court Commission (Irwin) rejected a strict formula approach in favour of a number of other considerations: that the judges should be amongst the highest paid wage earners in Saskatchewan; that some of the best of the profession's candidates ought not to be excluded on the basis of salary; that judicial compensation should be "made in Saskatchewan"; and that due regard should be given to the province's economic conditions, lower cost of living and ability to pay.

4. Manitoba

In 1991 and 1993, the Judicial Compensation Committees (Baizley and Green) in Manitoba recommended salaries should be adjusted to reflect the average of the salaries of Provincial Court judges in Saskatchewan, Nova Scotia and New Brunswick.

5. Ontario

In 1988, the First Tribunal Report of the Ontario Provincial Judges Courts Committee (Henderson) outlined three governing principles, namely the imperative of an independent judiciary, the presumption that professionals will perform professionally if they are treated in a professional manner and the importance of looking at the

⁴¹ The rejection by the legislature of the Commission's recommendations ultimately led to litigation, with a decision by the British Columbia Court of Appeal currently pending.

judges' compensation as a whole. These principles have guided the recommendations of subsequent committees in the province.

In 1996, the Provincial Judges' Remuneration Commission in its Third Tribunal Report, after reviewing salary levels for deputy ministers, practising lawyers and federally appointed judges, reached two general conclusions. First, the role of provincial judges has become increasingly important in the administration of justice in Ontario, both as to level of responsibility and increase in caseload. Second, in light of the financial condition of the provincial government, it would be inappropriate to add to the Aggregate Industrial Wage increase in the salaries of Provincial Court judges.

6. Quebec

The 1993 Advisory Committee (Poissant) concluded that the functions of a judge of the Court of Quebec are more like those of a judge of the Quebec Superior Court than like those of Provincial Court judges in other provinces. The Committee also concluded that the function of a judge cannot be compared with other high ranking positions in government in determining judicial salaries, although salaries of deputy ministers may be considered as a tool for comparison.

7. New Brunswick

The 1989 Commission of Inquiry (MacLauchlan) concluded that judicial salaries should be established in accordance with two criteria. First, the salary should be adequate to attract, retain and motivate highly qualified members of the professional community. Second, the salary should achieve a level of economic fairness, relative to comparable professional groups (superior and Provincial Court judges), consistent with the circumstances and the reasonable expectations of the New Brunswick community. The MacLauchlan Inquiry rejected the "national average" approved and recommended a base salary, with certain adjustments in subsequent years.

8. Nova Scotia

The 1998 Judicial Salary Tribunal (Grant) rejected the use of a formula in favour of a more flexible approach. The following factors were identified as important and relevant to the process: the absence of salary increases since 1991; the disparity in salaries between federal and Provincial Court judges; the national average of Provincial Court judges' salaries; the salaries of practising lawyers; the need to attract highly qualified members of the bar; the expanding jurisdiction of the Provincial Courts; economic trends, nationally and in Nova Scotia; and judicial independence.

9. Prince Edward Island

The 1998 Judicial Remuneration Review Commission (Poirier) followed the lead of the 1987 Commission of Inquiry (MacLauchlan) in recommending the "Canadian average" approach, being the average of the remuneration of Provincial Court judges in other provinces of Canada.

10. Newfoundland

The 1997 Tribunal on Salaries and Benefits of Provincial Court Judges recommended that judicial salaries be based on the average Provincial Court judges' salaries in the provinces of Nova Scotia, New Brunswick and Prince Edward Island.

From our perspective, at the risk of generalizing, a comparative analysis of other jurisdictions is clearly instructive but not determinative of the appropriate compensation for our Provincial Court judges, for a number of reasons. We highlight, in particular, the following:

First, the current compensation of judges in many parts of Canada does not reflect the recommendations of the independent tribunals, as the executive or legislative branch of the governments have, in many cases, rejected or delayed implementation of those recommendations.

Second, the principles and other considerations that this Commission believes are most relevant or should be given the greatest weight are not the same as those of other jurisdictions. While there are no doubt several common elements, there are also several differences.

Third, we have no knowledge of the current basis upon which compensation is paid in several jurisdictions. New Brunswick, for example, has not issued a report since 1989. Moreover, with the exceptions of British Columbia and Nova Scotia, reports from other jurisdictions predate the Supreme Court decision on the Provincial Court Judges Case.

Finally, with specific reference to the compensation of federally appointed judges which the Judges' Association urged us to consider, we believe any direct or indirect link as a means to determining salaries for Provincial Court judges to be inappropriate. We fully acknowledge the expanding nature of the jurisdiction of the Provincial Court and the responsibilities of the judges in Alberta. We cannot, however, accept that the jurisdiction and roles are so similar to the Superior Court judges as to warrant parity. To accept the salaries of federally appointed judges as the appropriate compensation assumes we are satisfied not only with their salary level, but also with the basis upon which they are determined, neither of which we are qualified or prepared to comment upon. Any salary recommendations for judges in Alberta should reflect economic and other conditions that are present in this province. Moreover, as highlighted by other commissions, provincial governments have neither the plenary powers of taxation, nor the authority to regulate interest rates or money supply, as is the case with the federal government.

We want to emphasize that our views with respect to parity with federally appointed judges are not promoted by the importance of one Court over another. The importance of the role of the Provincial Court judges is of the highest order. However, there is an historical hierarchy that we believe should continue to be observed. It is commonly understood and accepted that transfers from the Provincial Court to the Queen's Bench are considered "elevations." There are graduations of judicial responsibility and, as is generally the case, with greater responsibility goes higher compensation.

E. Comparative Analysis with Senior Government Officials

We were provided with detailed information regarding compensation of deputy ministers and other senior officials within the public sector. With respect to deputy ministers, we were advised that the Alberta government recently implemented salary

raises, following recommendations of a private sector committee commissioned by the Minister Responsible for Personnel Administration. The base salary is now established at \$125,000, compared to the previous salary range of \$75,700 to \$111,800. In addition, deputy ministers are entitled to be considered for lump sum performance payments from a pool equal to 20 per cent of the combined salaries of senior officials. As we understand it, if the government's primary goals are met, funds are released from the pool and allocated 75 per cent on the basis of achievement of government objectives and 25 per cent on the basis of achievements of individual performance. Assuming then, that both government and individual objectives are met in any particular year, the average salary of deputy ministers could approximate \$150,000.

In urging the Commission to consider the salary level of senior officials as a key factor in judicial compensation, counsel to the Crown pointed out that the impact of the pay freeze over the past five years had affected deputy ministers more than others in the public service. Moreover, their level of responsibility has increased as a consequence of restructuring.

With respect to the pension plan for senior government officials, the terms and benefits are similar to those for Provincial Court judges with the following exceptions. Senior management employees contribute at the rate of 7 per cent of pensionable earnings, whereas the judges' plan is at the moment non-contributory. The normal retirement age for senior government officials is 60 years, compared with the statutory age of 70 for Provincial Court judges. Further, management employees qualify for unreduced pension as early as 55, compared to 60 for the judiciary, provided in both cases that age plus years of service equals 80.

As is our view with respect to a comparative analysis of other jurisdictions, we believe that the salary level of senior government officials is instructive but not determinative of the appropriate compensation of Provincial Court judges. What was said by the Henderson Commission in Ontario in 1988 is equally true today:

Wholly different imperatives govern the salaries appropriate to each. Deputy ministers are primarily managers, who ensure the prompt, efficient realization of government policy. In paying them it is appropriate to provide wide salary ranges and payment based on performance. The function of a Provincial Court judge, however, is neither administrative nor managerial; thus, it is not truly comparable to that of a deputy minister. More important, judges comprise a distinct, third branch of government; their appointment and salary structure must reflect that reality and ensure their insulation from the legislative and executive branches.

As is the case with federally appointed judges, our views with respect to senior government officials as a reference point are not promoted in any way by the relative importance of the positions. In all cases, we share the objective of attracting individuals of outstanding character and ability. We should also add, that the level of compensation for senior government officials may well be indicative of provincial economic conditions and circumstances, which are addressed later in this Report.

F. Attracting, Motivating and Retaining Highly Qualified Applicants

In our view, one of the key factors in determining compensation for the Provincial Court judges is attracting candidates of the highest quality and, once appointed, to motivate and retain those individuals for the duration of their career.

As noted previously, the average age at date of appointment to the Provincial Court is 45 years, 8 months. The average number of years experience practising law prior to appointment is 19. Over 80 per cent of the judges currently sitting full-time on the bench are from private practice, with the balance from government.⁴² With these demographics in mind, the Judges' Association, with the use of expert evidence, presented us with a number of independent surveys indicating that salaries at the median for private practitioners with 15 to 19 years at the bar ranged from a low of \$213,000 to a high of \$233,000. In sharp contrast, data from Statistics Canada showed the average earnings for lawyers in Canada and Quebec notaries in 1995 was \$81,617 and 43.8 per cent of lawyers in Alberta in 1996 earned less than \$50,000.

Turning to public service practitioners, the 1997 Alberta Justice Lawyers Compensation Review shows that Alberta Justice lawyers with 15 to 19 years from bar admission were paid \$70,628. Lawyers with 20 or more years were paid \$75,010.⁴³

Quite frankly, it is impossible to give much weight, if any, to the data which we were provided for private practitioners. With respect to the independent surveys, we are not satisfied that the data is statistically valid, given the size and selection of the samples. Moreover, there was no attempt to value total compensation and include, for example, the value of pensions. As to the Statistics Canada data, the all encompassing definition of "lawyer" is far too broad to be meaningful in the present context. However, notwithstanding our concerns with the statistical data, we are satisfied that the disparity between the salaries of Provincial Court judges and members of the practising bar, at least in the cities of Calgary and Edmonton, is substantial.

On a more general note, the Crown submitted that there was no evidence that qualified applicants were being deterred by the current level of compensation. By the same token, there is little evidence to the contrary. The fact that there are 149 candidates on the list, 25 of whom are considered "highly recommended," does not in itself demonstrate that highly qualified candidates are not being deterred. We are not, however, suggesting that it is necessary to match the judges' earnings before appointment to the bench. To quote the 1985 Report of the Canadian Bar Association:

[I]t is neither necessary nor desirable to establish judicial salaries at such a level as to match the judges' earnings before appointment to the bench. The most obvious reason for this is that such a policy would tend to attract people to the bench for purely financial reasons. The sort of person who would accept a position on the bench because it paid well is not the sort of person who would make the best judge. Rather, the sort of persons we would wish to see on the bench are those who appreciate the honour of being a judge and who see as part of their reward the satisfaction of serving society on the bench.⁴⁴

We wish to emphasize that the importance of **attracting** highly qualified candidates to the bench ought not overshadow the significance of two other fundamental principles in human resource management, **motivating** and **retaining** those individuals once appointed. If history and current practice are any guide, appointment to the bench is a long-term commitment, not a staging post.

⁴² We note that one individual on the bench is from a private corporation.

⁴³ Price Waterhouse, Alberta Justice Lawyers' Compensation Review, June 24, 1997.

⁴⁴ The Independence of the Judiciary in Canada. Report of the Canadian Bar Association Committee on the Independence of the Judiciary in Canada, August 20, 1985, at p. 18.

As of January 1, 1998, the average age of our Provincial Court judges was 57 years, 10 months and the average age of retirement was 66.4 years. If the level of compensation is inadequate to attract qualified applicants to the bench, one can hardly assume that it will be sufficient to motivate and retain judges who have been on the bench for 20 or so years.

G. Fair and Reasonable Compensation within Prevailing Economic Conditions

We consider the prevailing economic conditions in Alberta and the overall state of the economy to be important factors in determining fair and reasonable compensation. By way of introduction, we will briefly review recent economic trends and statistics.

1. Current Financial Position in Alberta⁴⁵

From fiscal years 1985-86 to 1993-94, Alberta had nine consecutive annual deficits. During that period, close to \$20 billion was borrowed to finance the overspending. The province went from having net assets of \$12.6 billion to a net debt of \$8.3 billion.

In 1993, the government established a four-year plan to balance the budget by cutting spending by 20 per cent. Strong economic growth and higher than expected energy revenue, combined with the success of the plan, eliminated the annual deficit two years ahead of schedule and resulted in significant progress being made in repaying the debt. Over the last four years, our net debt has been reduced by \$6.8 billion, from \$8.3 billion to \$1.5 billion.

Since 1993, Alberta has had the fastest growing economy in Canada, with gross domestic product per capita averaging 27 per cent higher than second place Ontario. Among the provinces, Alberta has gone from having the highest annual deficit as a percentage of gross domestic product in 1992-93 to the highest surplus in 1997-98 and lowest net debt relative to GDP.

Looking forward, the economy is expected to grow by a further 4.6 per cent in 1998 compared to 5.5 per cent in 1997. The current fiscal plan targets \$1.46 billion over the next two years from budgeted surpluses and revenue cushions⁴⁶ to eliminate net debt. If these targets are realized, net debt will be essentially eliminated by March 31, 2000, 10 years ahead of the legislated requirements under the *Balanced Budget and Debt Retirement Act*. Resource revenue (net of the revenue cushion), which is estimated to represent 15.2 per cent of total revenue, is expected to decline as a result of lower oil and natural gas prices. However, the revenue cushion and budgeted surplus is expected to keep the budget balanced even if oil and natural gas prices average US \$16.00 and Cdn. \$1.55 respectively over the year, assuming other revenues remain on target.

Program spending in 1997-98 is estimated at \$13.9 billion, with continued investment

⁴⁵ The data in this section is taken from the "1998-2001 Fiscal Plan, Budget '98" and "Alberta Advantage, Budget '98."

⁴⁶ The Balanced Budget and Debt Retirement Act requires that the combined budget revenue for corporate income tax and resource revenue must be the lower of the five-year average of actual revenue or 90% of the forecast of these two revenues. This creates a revenue cushion that protects against weaker than expected corporate income tax and resource revenue.

in Alberta's top two priorities: education and health. Repayment of debt continues to be the first priority for higher than expected revenues.

From the personal perspective, Alberta families have the lowest overall tax level of any province in the nation and no sales tax. The 1997 unemployment rate of 6 per cent was the lowest since 1981 and the lowest rate across Canada.

2. Other Economic Indicators

According to Statistics Canada,⁴⁷ the average family income in Alberta in 1996 was \$57,735. Families earning more than \$100,000 represented 11.1 per cent, whereas 28.5 per cent of individuals with a university degree had incomes greater than \$50,000. On a national basis, 27.5 per cent of families whose occupational head had a university degree earned incomes in excess of \$100,000.

Although tax rates are considerably lower than those in other provinces, the cost of living (which typically includes the impact of taxes) in Alberta in 1997 was around or slightly above the average for major Canadian cities.⁴⁸ The cost of living for Calgary and Edmonton were 109.3 and 100.0 respectively.

Turning to national statistics on pension plans,⁴⁹ the Crown drew to our attention that, as of January 1, 1996, only 42 per cent of the Canadian work force was covered by registered pension plans, 48 per cent of whom were public sector employees. Most of the public sector members (95 per cent) participated in defined benefit plans. Over 93 per cent of these members had a prescribed retirement benefit equal to 2 per cent of their earnings for each year of service. Virtually all public sector members were required to contribute to their pension plan, over 76 per cent of them paying 7 per cent or more of their earnings.

In addressing the relevance of the state of the economy, let us first recall Professor Friedland's comment that even in difficult economic times, "we would still want to pay judges well to ensure their financial independence—**for our sake, not for theirs.**" As residents and taxpayers of Alberta, we all share the responsibility for the Provincial Court judges' remuneration. At the same time, each and every one of us are the beneficiaries of a strong and independent judiciary.

Although fiscal restraint and responsibility remain priorities of the government, ours is not a weak economy. To quote the government, "the Alberta Advantage has helped us create the strongest economy in Canada."⁵⁰ We fully appreciate that repayment of the debt is the first priority of the government, the annual deficits having been eliminated. We are also mindful of the government's spending priorities in the areas of education, health, family and social services, but surely that is not to say that compensation of the judiciary is of a lesser or secondary importance. Just as the government has established a goal to have "the best education system in Canada,"⁵¹ so too do we need to establish

⁴⁷ Statistics Canada; Income Distributions by Size in Canada, 1996.

⁴⁸ Alberta Justice Lawyers' Compensation Review, June 1997, p. 6.

⁴⁹ Statistics Canada: Pension Plans in Canada, January 1, 1996.

⁵⁰ 1998-2001 Fiscal Plan, Budget '98, p 30.

⁵¹ Ibid, at p. 36.

and maintain a standard of excellence for the judiciary. The people of Alberta deserve nothing less.

As to the impact of inflation, salaries of the Provincial Court judges were, in effect, insulated from cost of living increases during the period 1977 to 1988 when remuneration was tied to the federal system of salary increases. Using the Alberta Consumer Price Index and a base year of 1988, the income required to keep pace with inflation would be \$138,367, compared to the actual Provincial Court judges' current salary of \$113,964. To put it another way, the adjusted real income for our judges today is \$81,345.⁵² Although the actual impact of inflation on higher income earners will be less than that on lower wage earners, the reduction to judicial remuneration through the erosion of salaries by inflation is significant by any measure.

The broader statistics relating to incomes of the average family and pensions within the public service are useful in terms of looking at the economy as a whole. At the same time, we are addressing compensation for individuals who have had seven years of university and an average of 19 years practising law before appointment to the bench. Moreover, for reasons articulated previously in this Report, a comparison to the public service is instructive but not determinative. Referring to pensions, in particular, given the average age of appointment (45 years, 8 months) and retirement (66.4 years), the years of service that most judges would be able to accumulate would likely be significantly less than that of members of the public service.

H. Made In Alberta Principle

The Commission fully endorses the principle that judicial compensation for the Provincial Court judges should be "made in Alberta." It is interesting to note that while both the parties support this approach, they interpret the application of the principle quite differently.

On the one hand, the Judges' Association takes the position that the objective will have been achieved provided the provincial government makes the decision, acting on its own and not under any direction, pressure or legislation dictated by a third party such as the federal government. The Crown, on the other hand, emphasizes the need to give strong weight to current provincial circumstances and government policies. To adopt parity with federally appointed judges as requested by the Judges' Association would, in the view of the Crown, be inconsistent with the "made in Alberta" principle.

For our part, we believe that "made in Alberta" encompasses, in part, the positions of both parties—and more. First, as to process, the decision should clearly be made by our government in accordance with the terms agreed upon by the parties. Second, the relevant considerations certainly encompass the state of the economy and the ability of the residents of Alberta as taxpayers to shoulder the responsibility for judicial compensation. We also endorse the propositions put forth by Chief Justice Lamer in the Provincial Court Judges case that our Recommendations must be made by reference to

⁵² The above figures vary depending upon the base year used. To illustrate, the income required to keep pace with inflation using 1991 as a base year would be \$129,280. Using 1976, the figure drops to \$107,085.

"objective criteria, not political expediencies," with the goal to present "an objective and fair set of recommendations dictated by public interest."⁵³

We simply add that, from our perspective, "made in Alberta" also includes a careful consideration of all the factors laid out in the Framework Agreement. Having gone through that process, we have determined that it is not appropriate to have a direct or indirect link to any other jurisdiction or group for the reasons identified elsewhere in this Report. That is not to say, however, that we view a formula or parity approach as inherently inconsistent with the "made in Alberta" principle. At a different time or in another jurisdiction, such an approach may well meet the test.

I. Total Compensation Principle

At the risk of stating the obvious, we believe that it is imperative to consider the compensation arrangements as a whole, not only in terms of benefits but also costs. The principle of total compensation has a number of implications.

First, in our opinion, it is not simply a matter of benefits for the judges and costs to the taxpayers. To us, that suggests that our judges are a liability, in sharp contrast to our view that the Provincial Court of Alberta is and must be regarded as one of this province's major assets. Moreover, the cost to the public, in terms of the quality of the judiciary and judicial independence, of not providing appropriate financial security may be far greater in the long term than the monetary value of judicial remuneration today.

Second, considering the compensation arrangements as a whole necessitated, on our part, not only a balancing of the individual components of the total package, but also some compromises to achieve the overall objectives.

Third, since our Report and Recommendations are designed to make sense as a whole, they need to be looked at in their totality.

With respect to costs specifically, we requested and received from counsel for both parties, with the assistance of their experts, considerable detail on the costs of changes to the current pension plan, using various assumptions. This exercise was most helpful and did result in modifications to our Recommendations.

In conclusion, we sought to design Recommendations which, in their totality, are fair and reasonable to all constituents.

⁵³ Note 9 above, at p. 111.

V. RECOMMENDATIONS

Judicial independence remains the overriding and guiding principle in determining compensation of the Provincial Court judges of Alberta. At the same time, compensation payable to our judges ought to be reflective of the circumstances, conditions and social fabric of Alberta. The compensation must not only be, but be perceived to be, fair and reasonable within prevailing economic conditions.

With the salaries of Provincial Court judges having been frozen since 1991, the reduction to judicial remuneration by inflation has been significant. In terms of relative value of total compensation, our judges now rank behind all provinces in Canada with the exception of Newfoundland, New Brunswick and Manitoba.

We must have due regard not only to attracting, but also to motivating and retaining highly qualified applicants. The nature of the jurisdiction of the Provincial Court and the unique role of the judge within our society also warrants special emphasis.

In addition to the considerations referred to above, it is appropriate and we have considered references to the level of compensation paid to lawyers in the private sector and public service, to senior government officials in the province of Alberta and to judges from other jurisdictions across Canada. Although those factors assisted us in determining the appropriate compensation for Provincial Court judges in Alberta, we consider it inappropriate to make any direct or indirect link to any one of those groups or jurisdictions. Accordingly, we have no single reference point and the percentage relationship to any particular group or jurisdiction is coincidental.

Finally, we sought to design Recommendations which, in their totality, are fair and reasonable. As a corollary, the Recommendations need to be looked at as a whole and within the context of the full Report.

A. Salaries

The Commission recommends that, effective April 1, 1998:

- **judges of the Provincial Court of Alberta receive an annual salary of \$142,000;**
- **the Chief Judge of the Provincial Court of Alberta receives annually \$15,000 in addition to his annual salary as a judge;⁵⁴ and**
- **the Assistant Chief Judges receive annually \$7,500 in addition to their annual salaries.⁵⁵**

The Commission further recommends that, effective April 1, 1999:

- **judges of the Provincial Court of Alberta receive an annual salary of \$152,000.**

Supernumerary judges currently receive 1/200th of the annual salary of full-time judges

⁵⁴ The Chief Judge currently receives \$14,256.

⁵⁵ The Assistant Chief Judges currently receive \$7,288.

for one full day of sitting and one-half of that amount for one-half day of sitting. The Commission was not requested to and does not make any recommendations for a change.

B. Pensions

To use the words of Mr. Justice Kirby in 1975, the Provincial Judges and Masters in Chambers Pension Plan "does not meet the particular needs of Provincial Court judges."⁵⁶ Given the average age today of appointment (45 years, 8 months) and retirement (66.4 years), the years of service that most judges would be able to accumulate would be 21 years. Moreover, the maximum salary upon which benefits accrue after 1991 has been capped at \$86,111. As noted previously, the Canadian Association of Provincial Court Judges calculates the 20-year pension payable to provincial judges in Alberta as at December 31, 1997 to be \$38,849.52, which is 34 per cent of the current salary. Only Newfoundland and Manitoba rank behind Alberta in the value of a 20-year pension.

Pensions are, without question, a critical part of judicial independence and judicial security. Further, there is no doubt in our view that the current plan for the Provincial Court judges needs reform. In making our Recommendations with respect to pension benefits, we considered a number of specific factors in addition to general principles and considerations discussed previously.

First, given the statutory age of retirement at age 70 under the *Provincial Court Judges Act*, we believe that the pension scheme should be designed in such a way as to permit but not encourage retirement at an earlier age.

Second, judges who have served for a long period of time should be allowed to retire on full pension. On this point, we agree with Professor Friedland's conclusion in his report to the Canadian Judicial Council that "25 years should surely qualify."⁵⁷

Third, addressing the first two points together, we would support retirement with full pension at age 65 or over, provided that the number of years of service plus the age of the judge adds up to 80, the so called "rule of 80." We note that the current plan provides for early retirement without penalty at age 60.

Fourth, the current \$86,111 salary "cap" upon which benefits accrue after 1991 is driven by the federal government for reasons of fiscal restraint and should not dictate the level of pension benefits for Provincial Court judges. We believe a full pension of two-thirds of salary after 25 years of service to be reasonable.

Fifth, the use of a five-year salary average to determine pension benefits may well be appropriate to account for significant annual variances in compensation for reasons of bonuses or otherwise, but it is not appropriate for a retiring judge whose salary is the same as that of a new appointee to the bench. On this point, we would add that while we consider the last year of service to be the appropriate standard for judges, we are recommending a three-year average at this time, as a reasonable compromise in terms of the total compensation package.

⁵⁶ Note 8 above, at p. 61.

⁵⁷ Note 34 above, at p. 70.

Finally, we believe that the Provincial Court judges should make a significant contribution to their pension plan, in recognition of the unusual features of the plan designed to meet the unique circumstances of the judges, the benefits that will accrue to the judges and the cost to the people of Alberta.

The Commission recommends that, effective April 1, 1998:

- **the pension plan be made contributory, with judges contributing at the rate of 9 per cent of annual salaries for a maximum of 25 years;**
- **benefits under the plan accrue at the annual rate of 2.67 per cent of judges' salaries;**
- **the calculation of benefits on retirement be based upon the judge's average salary over the three consecutive years of service during which the salary was the highest;**
- **provision be made in the plan for early retirement without penalty, if vested, at age 65 or after provided that the sum of the retiree's age and years of pensionable service equals at least 80;**
- **pension benefits for post-1998 service be reduced by 3 per cent for every year the judge retires before the age of 65 or for every year less than the total of the judge's age in years plus years of pensionable service deducted from 80 years, whichever is greater; and**
- **the plan provide that the years to maximum benefit be 25 years.**

We note that the following provisions in the current plan would remain unchanged: the vesting period of five years; normal retirement at age 70; the calculation of benefits prior to April 1, 1998; the calculation of reduction for early retirement prior to April 1, 1998; the spousal survival benefit of 75 per cent on pension earned on pre-1992 service and 66.67 per cent after 1991; and the cost of living adjustment at 60 per cent of the Consumer Price Index.

We wish to acknowledge that we are concerned about the level of pension benefits for the senior members of the bench who may retire in the foreseeable future. In that regard, we note that there are currently 21 full-time judges at age 65 or more and 20 judges at ages 60 to 65.

Insofar as our Recommendations, both for salary and pension, are prospective, the full benefit of our proposals, if accepted, would not be achieved for many years. Judges facing retirement in the next few years will feel the full impact of the \$86,111 "cap" for service from 1991 to date and the fact that salaries have not been increased for seven years. By the same token, it is those very factors (plus investment income) that have resulted in a surplus in the current pension plan for the Provincial Court judges, estimated unofficially at \$15 million to \$20 million. We would urge the government to consider using a portion of the surplus to enhance those pensions lost due to salary "capping" for the handful of individuals most adversely affected. For example, a supplemental plan, funded through a Retirement Compensation Arrangement (RCA), could provide for a pension unit of 2 per cent per annum on salary in excess of \$86,111 for all service since 1991 up to the effective date of the proposed new plan or, alternatively, a pension unit of 2.67 per cent of all salary (without limit) for service after implementation of the proposed new plan.

Finally, we appreciate that our Recommendations for changes to the current pension plan will necessitate the use of supplemental plans.

C. Other Benefits

1. Long Term Disability

Provincial Court judges are appointed to age 70. Long term disability coverage is provided to age 65 under the Alberta Public Service Employee Long Term Disability Income Continuance Plan. Coverage under the plan is limited to 70 per cent of pre-existing salary to a maximum of \$6,500 per month or \$78,000 per year.

The Commission recommends that, effective April 1, 1998:

- **long term disability coverage be extended to judges of the Provincial Court to age 70.**
- **long term disability coverage should not be limited to \$6,500 per month or \$78,000 per annum.**

In our opinion, the limit of coverage at 70 per cent of pre-existing salary should remain unchanged.

With respect to the administrative practices relating to the plan, the Commission has chosen not to make any formal recommendation at this time, on the assumption that progress will continue to be made and the importance of the judicial independence of the judges will be reflected in those practices. We do, however, strongly urge the government to implement a long term disability plan for Provincial Court judges, separate and apart from the current plan for public service employees. The plan should address the role of the Judicial Council as adjudicator, clarify the ambiguities in the definitions and clarify that disability time is credited toward years of pensionable service.

2. Allowances

Provided that judicial compensation is otherwise fair and reasonable, the Commission is of the view that individual representational, professional and educational allowances are unnecessary. Assuming that the government continues to fund educational conferences at a reasonable level, we believe Provincial Court judges should assume responsibility for their own professional needs and development over and above that, in keeping with the office of a judge and the dignity and professionalism of the bench.

With reference to the rate of reimbursement for use of private automobiles in the performance of judicial duties, the Commission is not prepared to make a recommendation for change at this time.

As a final note, we believe that the quality of physical facilities and administrative services within the judicial system has a direct and measurable impact on the efficiency and effectiveness of the Provincial Court. At one time, prior to Mr. Justice Kirby's report, many of our judges sat in arenas, legion halls, meeting rooms and RCMP stations. Following the recommendations of the Kirby Board of Review, Provincial Court

buildings were established throughout the province and, in all probability, are presently without peer in the rest of Canada. To secure full advantage of the Provincial Court, we should ensure that administrative assistance and support provided to the judges are of an equally high quality.

In conclusion, we make our Recommendations for the judges of the Provincial Court in the interest of the people of Alberta and in the interest of judicial independence throughout Canada.

All Of Which Is Respectfully Submitted,
1998 Judicial Compensation Commission

E. Susan Evans, Q.C., Chair

Roderick A. McLennan, Q.C.

Louis D. Hyndman, Q.C.

Appendix A Framework Agreement Dated March 3, 1998

FRAMEWORK AGREEMENT

THIS FRAMEWORK AGREEMENT made on the 3rd day of March, 1998

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA** as represented by the
Minister of Justice and Attorney General

(the "Crown")

-and-

THE CHIEF JUDGE

(the "Chief Judge")

-and-

THE JUDGES OF THE PROVINCIAL COURT OF ALBERTA
as represented by the Alberta Provincial Judges' Association

(the "Judges")

DEFINITIONS

1. In this Framework Agreement,
 - a) "Association" means the Alberta Provincial Judges' Association;
 - b) "Chief Judge" means the Chief Judge of the Provincial Court of Alberta;
 - c) "Commission" means the Judicial Compensation Commission;
 - d) "Court" means the Provincial Court of Alberta established pursuant to section 2 of the Provincial Court Act;
 - e) "Crown" means Her Majesty the Queen in Right of the Province of Alberta as represented by the Minister;
 - f) "Judges" means the Judges of the Provincial Court of Alberta;

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- g) "Minister" means the Minister of Justice and Attorney General for the Province of Alberta; and
- h) "Parties" means the Crown and the Judges.

IN CONSIDERATION OF the mutual covenants herein, the Parties agree as follows:

INTRODUCTION

2. The purpose of this Framework Agreement is to establish a framework for the regulation of certain aspects of the relationship between the Parties, including an Inquiry process by way of the establishment of a Commission as an independent, effective and objective body for the determination of issues relating to judicial remuneration, including Judges' compensation, pensions, allowances, and benefits. It is intended that both the Inquiry process and the decisions made by the Commission shall contribute to entrenching, maintaining and enhancing the judicial independence of the Court and the Judges thereof.

COMMISSION AND APPOINTMENTS

3. A Commission called the Judicial Compensation Commission shall be established, consisting of the following three members:

- a) one appointed by the Association, after consultation with the Chief Judge;
- b) one appointed by the Minister;
- c) one, who shall be the Chairperson of the Commission, appointed jointly by the two appointees referred to in clauses (a) and (b);

4. Active Judges, Members of the Legislative Assembly, members of other Boards and Commissions appointed by the Province of Alberta, anyone who holds office by way of an appointment by the Province of Alberta, and public service "employees" as defined in the Public Service Act, shall not be members of the Commission.

5. The Crown shall pay the Commission members such remuneration and expenses (including, but not limited to, counsel, expert and secretarial services) as are reasonable in the circumstances and shall make such resources available as the Commission from time to time determines to be necessary to assist it in the performance of its powers, duties and functions. The rate of remuneration for Commission members shall be set by the Crown.

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SCOPE

6. In 1998, the Commission shall conduct an Inquiry respecting:
 - a) the appropriate level of compensation for Judges sitting full or part-time or on a supernumerary basis;
 - b) the appropriate design and level of Judges' pension benefits of all kinds;
 - c) the appropriate level of and kinds of benefits and allowances of Judges; and
 - d) such other issues relevant to the financial security of the Court and the Judges thereof as are raised by the Parties and which the Commission agrees to resolve.
7. The Commission shall begin its Inquiry forthwith. The Commission shall, on or before the 19th day of June in 1998, present a written report and recommendations (the "Report" and "Recommendations") to the Parties with respect to the issues raised before it. Within 90 days thereafter, the Minister of Justice shall place the matter before the Lieutenant Governor in Council, obtain his decision, and if reasons are necessary, ensure reasons for not accepting any of the recommendations are provided.
8. The effective date of any Recommendations shall be April 1, 1998. The Recommendations will be for the period April 1, 1998 to March 31, 2000.
9. The Recommendations or any variation under paragraph 29 shall be binding, upon the Crown unless the Lieutenant Governor in Council decides otherwise, in writing delivered to the other Party within 90 days of the delivery of the Report and Recommendations as aforesaid, which decision shall be accompanied by written reasons justifying the rejection of such Recommendations in whole or in part. If the Commission amends, alters or varies the Report, pursuant to paragraph 26 herein, the 90 days runs from the date of variation.

POWERS AND PROCEDURES

10. The Commission shall give public notice of the commencement of the Commission Inquiry in such manner as it deems fit. Such notice shall advise of the closing date for written submissions.
11. The Parties may confer prior to, during or following the conduct of an Inquiry for the purpose of creating, if possible, an Agreed Statement of Facts and Agreed List of Exhibits for the use of the Commission.
12. In conducting its Inquiry, the Commission shall consider all relevant written and oral submissions made to it by the Parties, individual Judges, members of the public and interested groups.

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13. The written submissions of each Party, individual Judges, members of the public and interested groups, and information requests by the Parties and responses to same, shall be provided to each Commission member, and to the other Party in accordance with the time lines set by the Commission. Either Party may request in writing, production of documents from the other Party and such other Party shall, subject to, any Crown privilege or solicitor-client privilege, provide such documents within two weeks of receipt of such request.

PRE-HEARING CONFERENCES

14. At the earliest opportunity, prior to the Commission hearing oral submissions, the Parties shall meet with the Commission to address the scheduling of witnesses, the conduct of the Inquiry, any preliminary matters that may arise and such other matters as the Commission sees fit. The Parties will also provide the Commission with an Agreed Statement of Facts and an Agreed List of Exhibits to be filed, to the extent that the Parties have been able to agree upon them.

INQUIRY

15. The Commission shall use a court recorder to record any oral evidence and transcripts thereof shall be provided to the Parties on request and at their expense.

16. The Commission shall be at liberty to accept such evidence as is relevant to the determination of the issues and shall not be required to adhere to the rules of evidence applicable to courts of civil or criminal jurisdiction.

17. Any member of the public or interested group shall be entitled to attend the Commission Inquiry and make written submissions to the Commission. The Commission may, after hearing from either of the Parties, choose to limit to written submissions any submission from individual Judges. The Commission may, after hearing from either of the Parties, grant leave to any member of the public or interested group, who/which has made a written submission, to make oral submissions. Further, the Commission may require the attendances of any person who has filed a written submission and may require that person to respond to any questions from either of the Parties, as well as from the Commission. If any person fails to appear when so required, or to respond to questions as directed, his/her/its written submissions shall be ignored by the Commission. The Commission shall make no award of costs for written submissions made pursuant to this paragraph, but may award the reasonable travel, accommodation and meal expenses of anyone required by the Commission to attend.

18. Anyone requesting same shall be entitled to receive copies of or access to (whichever is reasonable in the circumstances in the determination of the Commission), any written submissions to the Commission on payment of a reasonable photocopy fee; and to make oral or written submissions to the Commission in response. Copies will be provided on payment of a reasonable photocopy fee.

19. The Commission's Report and Recommendations shall be based solely on the evidence submitted to it.

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20. Evidence shall be presented to the Commission in the following manner.

- a) Each of the Parties may present its evidence through such witnesses as it from time to time deems advisable.
- b) The testimony of all witnesses shall be under oath or affirmation.
- c) The Judges (including any individual Judges who, at their own expense, wish to make personal, oral submissions) shall present their evidence first, following which the Crown shall present its evidence, and finally, the Judges (including any individual Judges who wish to make personal, oral submissions) shall present their rebuttal evidence.
- d) The order of examination of witnesses shall be examination-in-chief by counsel for the person, cross-examination by other counsel and then re-examination by the person's own counsel. Members of the commission shall also have the right to examine and cross-examine the witnesses.
- e) The written submissions of members of the public or interested groups, filed in accordance with paragraph 19 may only be supplemented with oral submissions, with leave of the Commission.

21. Following the conclusion of the Judges' rebuttal evidence, the judges shall present their oral argument which shall be followed by the oral argument of the Crown with the Judges having the right of reply.

22. The Commission may determine such other procedures as from time to time may be necessary to effectively carry out the inquiry process.

RESOLUTION OF DISPUTES

23. Prior to the commencement of oral submissions, either of the Parties may initiate a reference to the Commission, relating to procedure, by serving written notice on the other Party and the Commission at least three (3) clear days prior to the day on which the dispute is to be heard by the Commission.

CRITERIA

24. The Commission, in making its Report and Recommendations, shall give every consideration to, but not limited to, the following criteria, recognizing the purposes of this Agreement as set out in paragraph 2:

- a) the constitutional law of Canada;
- b) the need to maintain the independence of the judiciary;

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- c) the unique nature of the Judges' role,
- d) the need to maintain a strong Court by attracting highly qualified applicants;
- e) how the Alberta compensation package compares to compensation packages in other jurisdictions, having regard to the differences between these jurisdictions, in Canada, including the Federal jurisdiction;
- f) the growth or decline in real per capita income;
- g) the need to provide fair and reasonable compensation for Judges in light of prevailing economic conditions in Alberta and the overall state of the economy;
- h) the cost of living index and the position of the Judges relative to its increases;
- i) the nature of the jurisdiction of the Court;
- j) the current financial position of the government; and
- k) any other factor which it considers relevant to the matters in issue.

REPORT

25. In the event the Commission cannot deliver a unanimous Report and Recommendations, the Report and Recommendations of the majority of the Commission members shall be the Report and Recommendations of the Commission, but if there is no majority, the Report of the Chair is the Report of the Commission. The majority Report, minority Report and Recommendations shall be immediately delivered to the Parties. The Minister shall table all Reports and Recommendations with the Lieutenant Governor in Council. Copies of the Reports and Recommendations shall be made available to all interested parties requesting same.

IMPLEMENTATION

26. The Commission may, within fifteen (15) days after delivery of the Commission Report and Recommendations (the "Delivery Date"), upon application by either Party made within seven (7) days after Delivery Date, subject to affording the Parties the opportunity to make representations thereupon to the Commission, amend, alter or vary its Report and Recommendations where it is shown to the Commission's satisfaction that it has failed to deal with any matter properly arising from the Inquiry or that an error is apparent in the Report and Recommendations. The Commission shall present such amendments, alterations or variations to the Minister within this 15 days period and they shall be considered to be part of the Report and Recommendations previously submitted to the Minister.

27. Any Commission Recommendations not rejected in accordance with paragraph 9, within the specified time frame, shall be deemed to be binding on the Lieutenant Governor in Council.

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REVIEW

28. Either Party may, at any time, request the other Party to meet to discuss improvements to the Commission inquiry process.

29. This Framework Agreement may be amended from time to time as agreed to in writing by the Parties and only has effect for the first Commission process.

COMMUNICATION

30. The Minister shall advise the Association within seven (7) days of the Lieutenant Governor in Council's decision concerning any Recommendation(s), of the change to the Judges' compensation, pension, benefits or allowances as a result of the Commission Recommendation(s) and their endorsement. The Parties agree that each individual Judge should thereafter be advised by the Association of any such changes.

31. The Minister shall provide the Association with one updated copy of the legislation, regulations or schedules related to changes referenced in the above paragraph. The Parties agree that each individual Judge should thereafter receive, from the Association, updated copies of legislation, regulations, or schedules as necessary.

JUDGES' COSTS

32. The Crown shall pay the reasonable expenses of the Judges (but not individual Judges), including research and preparation of submissions for the Inquiry and the Inquiry process, (including but not limited to counsel, accounting and actuarial services). Any dispute as to the reasonableness of such expenses shall be determined by a reference to the Commission. It is acknowledged and agreed that the Crown will make payment towards the Judges' reasonable expenses, limited to a total of \$100,000, with the further limitation that the legal fees of the Judges' counsel will not exceed the tariff by which the Crown sets its fee for the private sector lawyers which it retains.

33. The Crown agrees to the payment of the reasonable expenses on the above basis notwithstanding that it takes the position that the Crown is not required by law to pay the reasonable expenses of the Judges.

34. The Judges take the position that the Crown is required by law to pay the Judges' reasonable expenses without any limitation and that they may commence a legal action arguing that the Crown is liable to pay all the Judges' reasonable expenses without any limitations.


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NOTICE

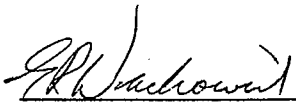
35. Where notice is required to be given herein to the Minister of Justice, it shall be given by leaving a written copy thereof at his/her Legislative Office. Where notice is required to be given herein to the Chief Judge, it shall be given by leaving a written copy thereof at his/her Law Chambers. Where notice is required to be given herein to the Association, it shall be given by leaving a written copy thereof at its Registered Office. Notwithstanding the preceding, if any of the aforementioned advise the others in writing of the appointment of general counsel, notice may be made by service on said general counsel, as provided for in the Rules of Court.

SIGNED, SEALED AND DELIVERED this day of , 199


**HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
ALBERTA**


The Honourable Jon Havelock, Q.C.
Minister of Justice and Attorney General
for the Province of Alberta

**THE CHIEF JUDGE OF THE
PROVINCE OF ALBERTA**


The Honourable E.R. Wachowich

**THE ALBERTA PROVINCIAL JUDGES'
ASSOCIATION**


The Honourable Judge Harry Gaede
President

Appendix B Request for Submissions to the Judicial Compensation Commission



ALBERTA

REQUEST FOR SUBMISSIONS TO THE JUDICIAL COMPENSATION COMMISSION

On March 3, 1998, the Minister of Justice established a Commission to review the compensation provided to Judges of the Provincial Court of Alberta.

The Judicial Compensation Commission will determine:

- the appropriate level of compensation for Judges sitting full or part-time or on a supernumerary basis.
- the appropriate design and level of Judges' pension benefits.
- the appropriate level and type of benefits and allowances for Judges.
- any other issues relevant to the financial security of the Judges of the Provincial Court as raised by the Government and the Judges, which the Commission agrees to resolve.

The Commission is inviting written submissions on any of the above matters. Please write to:

E. Susan Evans, Q.C.
Chair
The Judicial Compensation Commission
c/o IPL Energy Inc.
2900 - 421 7th Avenue SW
Calgary, Alberta
T2P 4K9

Submissions should include your name, mailing address and telephone number. Please provide a summary of your submission if it is lengthy. The deadline is April 20, 1998. The Commission will submit its recommendations to the Minister of Justice by June 19, 1998.

*For further information contact Ken Hawrelechko at Alberta Justice: 427-4992.
To be connected toll free dial 310-0000 and ask for 427-4992.*

Appendix C Judicial Compensation Commission Notice of Hearings



ALBERTA

JUDICIAL COMPENSATION COMMISSION NOTICE OF HEARINGS

The Judicial Compensation Commission will be holding hearings which will be open to the public in the following locations:

Edmonton Law Courts Building - 1A Sir Winston Churchill Square, Edmonton
Starting Wednesday, May 6, 1998 at 9:00 a.m. and continuing through that week as necessary.

Calgary Court House - 611 4th Street SW, Calgary
Starting Wednesday, May 20, 1998 at 2:00 p.m. and continuing through that week as necessary.

Edmonton Law Courts Building - 1A Sir Winston Churchill Square, Edmonton
Starting the week of Monday, May 25, 1998 at 9:00 a.m. and continuing through that week as necessary.

The Judicial Compensation Commission will determine:

- the appropriate level of compensation for Judges of the Provincial Court of Alberta.
- the appropriate design and level of Judges' pension benefits.
- the appropriate level and type of benefits and allowances for Judges.
- any other issues relevant to the financial security of the Judges of the Provincial Court as raised by the Government and the Judges, which the Commission agrees to resolve.

The Commission is inviting written submissions on any of the above matters. Please write to:

E. Susan Evans, Q.C.
Chair
The Judicial Compensation Commission
c/o IPL Energy Inc.
2900 - 421 7th Avenue SW
Calgary, Alberta
T2P 4K9

Submissions should include your name, mailing address and telephone number. As the Commission may grant leave to anyone making a written submission to make an oral submission before them, please indicate whether or not you also wish to make an oral submission. The deadline for written submissions is noon on April 30, 1998. The Commission will submit its recommendations to the Minister of Justice by June 19, 1998.

Appendix D Submissions to the Judicial Compensation Commission

The following individuals and organizations made submissions to the Judicial Compensation Commission:

Canadian Bar Association (Alberta Branch)

Lawrence Cherneski (Taber)

The Honourable Judge Manfred Delong (Calgary)

Henry Hall (Carvel)

Reverend Brother Doctor Leslie Fawcett (Edmonton)

Peter Bruce Gunn (Edmonton)

R.E. Kott (Calgary)

Eugene Kush, Q.C. (Hanna)

Law Society of Alberta

R.A.F. Montgomery (Calgary)

Appendix E Reports of Commissions from Other Jurisdictions

Federal

- 1996.09.30 Report and Recommendations of the 1995 Commission on Judges' Salaries and Benefits (Scott Report) (41 pp.)
- 1993.03.31 Report and Recommendations of the 1993 Commission on Judges' Salaries and Benefits (Crawford Report) (74 pp.)
- 1990.03.05 Report and Recommendations of the 1989 Commission on Judges' Salaries and Benefits (Courtois Report) (48 pp.)
- 1987.02.27 Report and Recommendations of the 1986 Commission on Judges' Salaries and Benefits (Guthrie Report) (49 pp.)
- 1983.10.06 Report and Recommendations of the 1983 Commission on Judges' Salaries and Benefits (Lang Report) (20 pp.)
- 1981.12.21 Report of the Advisory Committee on Judicial Annuities (de Grandpre Report) (29 pp.)
- 1978.11.22 Report and Recommendations of the Advisory Committee on Judicial Compensation and Related Matters (Dorfman Report) (37 pp.)

British Columbia

- 1998.05.11 Report of the Judicial Compensation Committee (Hughes Report) (25 pp.)
- 1995.04.28 Report of the 1995 Judicial Compensation Committee of British Columbia (Connaghan Report) (31 pp.)
- 1993.04.14 Report on Process of the 1992 Compensation Advisory Committee on Provincial Court Judges (Connaghan Report) (39 pp.)
- 1993.03.29 Report on Compensation of the 1992 Compensation Advisory Committee on Provincial Court Judges (Connaghan Report) (33 pp.)
- 1990 Report and Recommendations of the 1990 Compensation Advisory Committee (Heaney Report) (10 pp.)
- 1988 Report and Recommendations of the 1988 Compensation Advisory Committee (Kidd Report) 42 pp.)

1986.12.31 Report and Recommendations of the 1986 Compensation Advisory Committee
(Autor Report) (18 pp.)

Alberta

1975.08.06 Report No. 2 of the Board of Inquiry Under the Public Inquiries Act, Review of the Administration of Justice in the Provincial Courts of Alberta
(Kirby Report) (124 pp.)

Saskatchewan

1993.12.13 Report of the 1993 Provincial Court Commission
(Irwin Report) (19 pp.)

1991.03.27 Report of the 1990 Provincial Court Commission
(Schmeiser Report) (37 pp.)

Manitoba

1995.12.29 Report and Recommendations of the Judicial Compensation Committee
(Green Report) (32 pp.)

1991.06.07 Report and Recommendations of the Judicial Compensation Committee — 1991
(Baizley Report) (41 pp.)

1989.06.28 Report on the Independence of Provincial Judges, Manitoba Law Reform Commission
(Edwards Report) (177 pp.)

Ontario

1996 Report of the Provincial Judges Remuneration Commission
(11 pp.)

1992 Report of the Provincial Judges Remuneration Commission
(Henderson Report) (71 pp.)

1988.09.27 Report of the Ontario Provincial Courts Committee
(Henderson Report) (179 pp.)

Quebec

1993.08.01 Report and Recommendations of the Advisory Committee Studying the Remuneration, the Pension Plan and Other Social Benefits of the Members of the Court of Quebec
(Poissant Report) (pp. 93) (in English)

1993.08.01 Summary of Recommendations of Poissant Report (10 pp.)
(in English)

New Brunswick

1989.07.12 New Brunswick Commission of Inquiry Report re Salaries of Provincial Court Judges,
(MacLauchlan Report) (13 pp.)

Nova Scotia

- 1998.03.13 Report of the 1998 Nova Scotia Judicial Salary Tribunal (Graht Report) (30 pp.)
- 1994.03.03 Report of the 1994 Tribunal on Salaries of Nova Scotia Provincial and Family Court Judges (Dunsford Report) (28+ pp.)
- 1991.01.25 Report of the 1991 Nova Scotia Judicial Salary Tribunal (Hayward Report) (5 pp.)
- 1990.01.24 Report of the 1990 Nova Scotia Judicial Salary Tribunal (Huestis Report) (6 pp.)
- 1989.01.20 Report of the 1988-89 Tribunal on Salaries of Provincial Court Judges (Huestis Report) (7 pp.)

Prince Edward Island

- 1998.03.27 Report of the Judicial Remuneration Review Commission (Poirier Report) (6 pp.)
- 1987.07.24 Commission of Inquiry Re: Salaries of Provincial Court Judges, Province of Prince Edward Island (MacLauchlan Report) (66 pp.)

Newfoundland

- 1997.02.21 Report of the Tribunal on Salaries and Benefits of Provincial Court Judges (Roberts Report) (16 pp.)
- 1992.04.14 1992 Report of the Tribunal on Salaries and Benefits of Provincial Court Judges (Whalen Report) (33 pp.)
- 1985.12.02 Report of The Commission of Enquiry into Salaries and Benefits of Provincial Court Judges (Orsborn Report) (69 pp.)

Other Reports

- 1997.09 Parliament of the Commonwealth of Australia: The Parliamentary Contributory Superannuation Scheme and The Judges' Pension Scheme