



Report and Recommendations

of the

**2000 JUDICIAL COMPENSATION
COMMISSION**

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

July 31, 2000



2000 Alberta Judicial
Compensation Commission

July 31, 2000

The Honourable David Hancock, Q.C.
The Minister of Justice and Attorney
General for the Province of Alberta
Room 320, Legislature Building
Edmonton, Alberta
T5K 2B6


Dear Mr. Hancock:

The 2000 Judicial Compensation Commission has the honour of presenting its report including recommendations with respect to the salaries, pensions and other benefits of the Provincial Court Judges in Alberta.

In conducting its inquiry and formulating its conclusions, the Commission proceeded in accordance with the Alberta Provincial Judges Compensation Commission Regulation 100/2000 to the Judicature Act.

This report also is being presented to the Chief Judge and to the Judges of the Provincial Court of Alberta.

Respectfully yours,



J. Bruce Dunlop, F.C.A.

cc: Fraser Milner Casgrain
Attention: T. W. Wakeling
Bennett Jones
Attention: D.O. Sabey



2000 Alberta Judicial
Compensation Commission

July 31, 2000

The Honourable E.J.M. Walter
Chief Judge
The Provincial Court of Alberta
6th Floor, Law Courts Building, North
Edmonton, Alberta
T5J 0R2

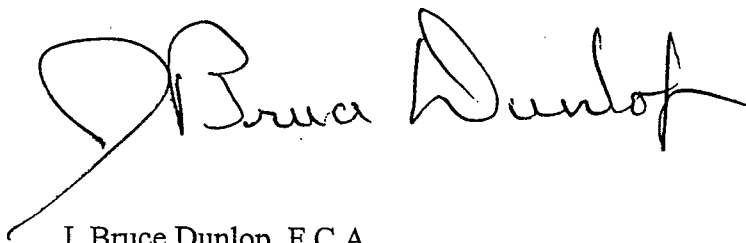
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Respectfully yours,



J. Bruce Dunlop, F.C.A.



2000 Alberta Judicial
Compensation Commission

July 31, 2000

The Honourable Judge T.G. Hironaka
President
The Alberta Judges Association
Court House
320 - 4th Street S.
Lethbridge, Alberta
T1J 1Z8

Dear Judge Hironaka:

The 2000 Judicial Compensation Commission has the honour of presenting its report including recommendations with respect to the salaries, pensions and other benefits of the Provincial Court Judges in Alberta.

In conducting its inquiry and formulating its conclusions, the Commission proceeded in accordance with the Alberta Provincial Judges Compensation Commission Regulation 100/2000 to the Judicature Act.

This report also is being presented to the Minister of Justice and Attorney General and to the Chief Judge of the Province of Alberta.

Respectfully yours,

A handwritten signature in black ink, appearing to read "J. Bruce Dunlop".

J. Bruce Dunlop, F.C.A.

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A. Appointment and Terms of Reference

Alberta Provincial Judges Compensation Regulation 100/2000 (Appendix 1) ("Regulation") to the Judicature Act established the 2000 Alberta Judicial Compensation Commission ("2000 Commission"). The Regulation sets out the terms of reference for the 2000 Commission including conducting an inquiry respecting:

- "a) the appropriate level of compensation for judges sitting full or part time or on a supernumery basis,
- b) the appropriate design and level of judges' pension benefits of all kinds,
- c) the appropriate level and kind of benefits and allowances of judges, and
- d) such other issues relevant to the financial security of the judges which the Commission agrees to resolve"

Section 3 of the Regulation provides that the 2000 Commission consists of one member appointed by the Minister with the agreement of the Alberta Provincial Judges' Association ("Association") and the Chief Judge of the Provincial Court. J. Bruce Dunlop, FCA, a retired partner of PricewaterhouseCoopers LLP was appointed as the member of the 2000 Commission on May 26, 2000.

The 2000 Commission has been asked to report to the Minister by July 31, 2000. Recommendations are for the period April 1, 2000 to March 31, 2003. The recommendations are binding on the government of Alberta "Government" unless the Lieutenant Governor in Council decides otherwise in writing to the Association with reasons for the rejection or modification of such recommendations in whole or in part.

B. Conduct of the Inquiry

Notice of the establishment of the 2000 Commission, the public hearing dates and inviting written submissions was published on June 2, 2000 in the Calgary Herald, Calgary Sun, Edmonton Journal and Edmonton Sun. (Appendix 2) Public hearings were held in the Edmonton Law Courts Building on June 15, 2000 and in the Calgary Court House on June 16, 2000.

Written submissions and two binders of agreed exhibits (Appendix 3) were received from the Government and the Association. A further written submission was received from Judge Michael Horrocks concerning remuneration of supernumery judges. Letters of support for Judge Horrocks' submission were received from Judge J.P. Jorgensen and Judge William M. Mustard. Judges Horrocks and Mustard attended the Commission's hearing in Edmonton and Judge Horrocks made an oral submission on the issue. Judge W.E. Kerr attended the Calgary hearing in support of

Judge Horrocks' submission. The Government provided a further written submission relating to payments to supernumery judges during the hearing.

Judge Manfred Delong provided a submission concerning professional allowances.

The Law Society of Alberta provided a copy of their submission to the 1998 Commission indicating it still reflected their position.

Oral presentations were made by counsel for the Government and the Association at each of the hearings.

C. Context of this Inquiry

This is the second judicial compensation commission in Alberta. The groundbreaking first commission presented its report and recommendations on June 19, 1998. That report includes an excellent historical background to the determination of judges salaries and pensions in Alberta. The 1998 report also includes the historical background of the Provincial Court of Alberta. A further excellent discourse on the evolution of the Court is to be found in the 1999 annual report of the Provincial Court of Alberta; the first such report ever published by the Court.

On August 26, 1998 the Lieutenant Governor in Council issued an order-in-council rejecting with reasons the 1998 commission's salary recommendations and reducing the recommended pension contribution rate of 9% to 7%. The Association applied to the Court of Queen's Bench to declare the order-in-council unconstitutional and have the recommendations made binding on the Government. The Court held that the Government's reasons for rejecting the recommendations did not meet the constitutional standard of "simple rationality" set out by the Supreme Court of Canada in the Provincial Court Judges case. The Court also held that the recommendations became binding on the Government. The Government appealed that decision to the Alberta Court of Appeal. On July 20, 1999 that court held that the appeal should be dismissed.

Some issues concerning pension benefits which were included in an earlier lawsuit by the Association and a number of individual judges against the Government were not resolved by the Supreme Court of Canada's decision in the Provincial Court Judges case.

On February 1, 2000 in a letter agreement ("the Agreement"), the parties agreed to settle those issues as follows:

"The pension benefits earned by a judge for the period January 1, 1992 to March 31, 1998 shall be calculated and paid without:

- a) any capping of pensionable salary less than the actual salary earned by the judge during that period,
- b) any reduction in survivor benefits to less than 75%, and
- c) any penalty (introduced by amendments to the Income Tax Act (Canada) which came into force on January 1, 1992) for early retirement after the age of 55"

The settlement also included the Government's agreement to pay the Association's costs incurred in respect of the lawsuit, the 1998 commission and subsequent lawsuit and appeal.

The Association undertook to recommend the settlement to its members and to file Discontinuances of Action on its own behalf and on behalf of the individual judges who consent thereto. I am advised that such Discontinuances have been filed by all except one or two individual judges.

The settlement also dealt with the circumstances if the Government's application for leave to appeal the 1999 Alberta Court of Appeal decision to the Supreme Court of Canada was accepted. Subsequently, the Supreme Court denied leave to appeal.

The Agreement also included the terms of the joint proposal to the 2000 Commission as follows:

"We note that during our discussions concerning the lawsuit, we also addressed the establishment of a 2000 Judicial Commission Committee ("the 2000 Commission") as is required by law. On behalf of its members, the Association made certain representations to the Government about what constituted adequate judicial compensation (as authorized in *The Queen v. Campbell et al*) and indicated that those representations would be reflected in the Association's submissions to the 2000 Commission. It became evident that the Government was in substantial agreement with the Association's view of what was reasonable. Accordingly, to assist in the orderly, and efficient discharge of the 2000 Commission's constitutionally mandated obligations, the Association is prepared to join with the Government in a submission to the 2000 Commission containing the following terms;

1. The annual salary of a puisne judge of the Provincial Court of Alberta ("a judge") be increased, as of April 1, 2000, to \$170,000.00. The additional payments made to the Chief Judge and the Associate Chief Judges will continue at the current levels.
2. The pension contribution made by a judge shall be decreased from 9% per annum to 7% per annum beginning April 1, 2000.
3. The pension accumulation rate for a judge shall be increased to 3% for each year of judicial service earned after April 1, 2000.
4. The solicitor and his or her own client costs, calculated in the same manner as Her Majesty the Queen in right of Alberta and the Lieutenant Governor in Council, compensate their counsel and all reasonable disbursements or at such greater rate or amount as may be fixed by the 2000 Commission, and incurred by the Association in relation to the Judicial Compensation Commission for the year 2000 will be paid by the Government.
5. For judges who retire after April 1, 2000, the penalty for early retirement, on the pension benefits they have or will earn after April 1, 1998, will be the greater of:

- a) 3% of those benefits for every year of retirement before the age of 60, or
- b) 3% of the benefits for "x" years, where "x" is determined by this calculation: $x = 80 - (\text{judge's age in years} + \text{judge's years of judicial service})$.

For example, those pension benefits of a 56 year old judge who retires with 10 years service will be reduced by 42%. This is because (b) is greater than (a). Under (b) "x" is fourteen ($80 - (56+10)$), and 3×14 is 42.

6. Increase full pension ceiling from 66 2/3% to 70% effective April 1, 1998.
7. The recommendations of the 2000 Commission cover the period April 1, 2000 to March 31, 2003.
8. The 2000 Judicial Compensation Committee shall be informed of the inclusion of the pension capping issue as set forth in 1(a) above.
9. It is acknowledged that the parts of this letter which deal with pension issues set out general principles and that it is necessary to incorporate these general principles into the formal pension plan. This task will be discharged in due course.

The joint submission to the 2000 Commission would be made by the Association and the Government simply to assist the 2000 Commission in its work, and in full recognition and acknowledgement that, as required by Canadian constitutional law, the 2000 Commission must be an objective, independent, and effective body which has the power to make a recommendation at variance with a joint submission.

This intended submission on the part of the Association is subject to the Association's members instructing this course of action. Such instructions will be sought at a meeting of the Provincial Court Judges on February 5, 2000.

The Association is prepared to consent to this particular 2000 Commission consisting of one person, (as opposed to the usual situation of the Commission consisting of one member appointed by the Government, one member appointed by the Association, and a third member being appointed by the other two appointees). The Government will bear the costs of the Commission and the 2000 Commission itself, as well as the cost of gathering, preparing, and presenting the evidence used to support the joint submission".

I am advised that the terms of the settlement and proposal were approved at the meeting of Provincial Court Judges in R&d Deer on February 5, 2000.

The Agreement also included a draft of the regulation to establish this Commission and the Association did not agree with Section 31 which is included in the final regulation as follows:

“31(1) If

- a) the Lieutenant Governor in Council makes a decision rejecting the Commission report or one or more of the recommendations contained in the Commission report,
- b) the Association brings an application for judicial review of that decision, and
- c) the application for judicial review is successful,

the Lieutenant Governor in Council has 90 days from the day that the application is granted to reconsider the Commission report in accordance with the directions, if any, of the Court.

- (2) Where an application for judicial review is successful, the Commission report is not deemed to be binding on the Crown solely because the reasons given by the Lieutenant Governor in Council for the rejection of the Commission report or one or more of the recommendations contained in the Commission report were found to be inadequate by the Court”.

The Association’s concern with Section 31 is stated in the Agreement as follows:

“The Association is of the view that section 31 of the draft regulation is not in accordance with the law, as stated by the Supreme Court of Canada. The Association acknowledges that the Minister can pass whatever regulation the Minister deems appropriate. However, the Association must continue to be free to challenge those regulations. Accordingly, the Association does not consent to the inclusion of paragraph 31 in the proposed regulations.

With respect, it seems to us that paragraph 31 is unnecessary in any event. If the Judicial Compensation Commission were to make a recommendation greater than the joint submission, the Government would have no trouble in satisfying the “simple rationality” test as set forth by our Court of Appeal. Indeed, should the Judicial Compensation Committee make a recommendation in excess of the joint submission, the Association will undertake to neither challenge, nor support a challenge of, the Government’s rejection of the excess in that recommendation”.

I had some concern as to whether any of the terms of or the process surrounding the February 1, 2000 letter with respect to this Commission were in any way not in accord with the principles contemplated for independent judicial compensation commissions in the Supreme Court of Canada's decision in the Provincial Court Judges case. A submission from Judge Sandra A. Hamilton which was received after the beginning of the hearing in Calgary (i.e. it was late and was not officially accepted by the 2000 Commission) expressed somewhat similar concerns. I have been assured by counsel for the Government and the Association that there are absolutely no grounds for any such concerns with respect to this Commission.

D. Submissions

The Joint Proposal

As described above, in February 2000, the Government and the Association agreed to the following changes in the compensation of Provincial Court judges and have proposed them in their respective submissions to the 2000 Commission:

- a) For the period April 1, 2000 to March 30, 2003 salaries should be increased:
 - i) for judges from \$152,000 to \$170,000 per year,
 - ii) for assistant chief judges from \$159,000 to \$177,500 per year, and
 - iii) for the chief judge from \$167,000 to \$185,000 per year
- b) the judges' pension contribution rate should be reduced from 9% to 7%.
- c) The pension accumulation rate should be increased from 2.67% to 3% per year for each year of judicial services after April 1, 2000.
- d) For judges who retire after April 1, 2000 the penalty for early retirement on the pension benefits earned after April 1, 1998 will be the greater of
 - i) 3% of those benefits for every year of retirement before the age of 60, and
 - ii) 3% of the benefits for "x" years, where "x" is determined by the calculation; $x = 80 - (\text{judge's age in years} + \text{judge's years of judicial services})$ i.e.: no penalty under the rule of 80.
- e) increase the full pension ceiling from $66 \frac{2}{3}$ to 70% effective April 1, 1999.

The Government quantified the cost of the total compensation of 113 judges and masters in chambers would increase from approximately \$21 million to \$24.3 million, in its submission.

Neither the Government nor the Association proposed changes to any other benefits.

Professional Allowances

Judge Manfred Delong's submission dealt with the issue of professional allowances and recommends that "each Provincial Judge be allocated a non-taxable educational allowance of \$2,500 per year for the purposes of furthering his or her education by attending conferences and seminars, by buying books and material, and by maintaining memberships in judicial and professional organizations. The recovery of this expenditure should be by expense account submitted through the Chief Judge's office".

Such annual allowances are presently included by certain other provinces in their compensation programs as follows:

British Columbia	\$	2,000
Saskatchewan		3,000
Ontario		2,000
Quebec		1,200
Newfoundland		1,000

Federally appointed judges are eligible for a non-taxable allowance of \$2,500 per year. The May 31, 2000 Federal commission report recommends this amount be increased to \$5,000. In Alberta presently only the chief judge receives an allowance which is in the form of an automobile, judicial attire and parking.

The 1998 Commission included the following comments regarding 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."

Judge Delong makes the point, with which I agree, that expenses for professional development such as courses, seminars, etc. and books are tax deductible to lawyers in private practice and judges should be allowed similar treatment. The Government continues to provide \$85,000 annually to the Association for educational conferences.

Payments to Supernumery Judges.

Judge Horrocks' submission noted the following reference in the 1998 commission report:

“Supernumery judges currently receive $1/200^{\text{th}}$ of the annual salary of full-time judges for a 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”

Judge Horrocks noted the factor quoted was incorrect; supernumery judges were in fact paid on the basis of $1/224^{\text{th}}$. This was confirmed in a supplementary submission of the Minister of Justice Relating to Payments to Supernumery Judges. Section 7(a) of the Regulation makes it clear that the 2000 Commission is to consider “compensation for judges full or part time or **on a supernumery basis**”

Judge Horrocks presents a calculation which suggests full time judges would have about 187 days per year sitting in court. He contends this number is a better comparator for supernumery judges who are not paid for holidays, conferences and chamber days. Judge Horrocks also refers to the Justices of the Peace Compensation Order in Council 174/2000 in which the Government reasoning in support of per diem compensation of part time Justices of the Peace accepted a significant supplement recognizing the absence of pensions and benefits and an allowance for overheads. Judge Horrocks concludes by suggesting that a per diem calculation for supernumery judges based on $1/200^{\text{th}}$ “would be a lot more equitable” and one based on $1/165^{\text{th}}$ as for Justices of the Peace “would not be inappropriate”.

The Government’s submission explains how the factor of $1/224^{\text{th}}$ is derived as follows:

- “ 1. There are 261 working days in a year ($365/7 \times 5$).
2. The Alberta public service uses the 261 working days number to establish pay rates for nonpermanent employees.
3. It is a common practice to increase the per diem rate by sixteen percent for non-permanent employees who do not receive statutory holiday pay, sick leave entitlements and health care benefits.
4. The product of $1/261$ and sixteen percent is .00444 ($1/261 \times 1.16 = .00444$) which is the equivalent of $1/224$ ($1/224 = 0.00446$).”

The Government notes that the per diem rate will rise from \$678.56 to \$758.91 if the proposed salary of \$170,000 is adopted and concludes by saying “There is no need to change the fraction by which an increasing annual salary is multiplied”.

I am advised that few other provinces provide for supernumery or part time judges. Saskatchewan’s present per diem rate calculation is based on $1/238^{\text{th}}$ and Nova Scotia’s is based on $1/248^{\text{th}}$.

Federally appointed supernumery judges are clearly in another league. They are eligible for appointment as a supernumery when they have earned full pension (66 2/3%) and they then continue at full salary with a reduced (50%) workload.

On balance, I conclude that the present basis for calculating compensation for supernumery judges should continue.

Judge Horrocks' submission also included the following suggestion:

"Owing to the method of appointment, re-appointment and scheduling, there is a substantial question of judicial independence, which is clearly beyond the parameters of this Commission; though it might well recommend to the Government the appointment of someone, perhaps a senior member of the Bar, to examine and make recommendations on the status, appointment, re-appointment and use of Supernumery judges".

Since I have received no evidence concerning "a substantial question of judicial independence" I will not make such recommendations and merely repeat Judge Horrocks' comments here for consideration by the Government.

E. Criteria

Section 25 of the Regulation requires the Commission in making its recommendations, to give every consideration to the following criteria:

- (a) the constitutional law of Canada;
- (b) the need to maintain the independence of the judiciary;
- (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 and 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 and masters in chambers;
- (j) the current financial position of the government; and
- (k) any other factors relevant to the matters in issue."

- (a) and (b) the constitutional law of Canada/the need to maintain the independence of the judiciary.

The constitutional law of Canada clearly establishes that the judiciary must be independent of the legislative and executive branches of government. In order to maintain the independence of the judiciary, they must receive a sufficient level of individual compensation as well as support for the institution. This Commission recognizes the fundamental necessity of judicial independence and the need for an adequate and independently determined individual compensation for Provincial Court judges. These points are well covered in the 1998 commission's report on pages 21 through 24.

- (c) the unique nature of the judges' role

The judges' role is unique in that they must place themselves apart from much of society in assuming the role and effectively preclude returning to private practice or other careers.

- (d) the need to maintain a strong court by attracting qualified applicants

Clearly the level of compensation is a most important factor in attracting and motivating highly qualified candidates. The evidence submitted in the agreed exhibits shows that 80% of the appointees to the current bench came from private practice and almost all of the rest came from government. Accordingly the most important comparative compensation is that of lawyers in private practice. Evidence submitted after the hearing in Edmonton notes that 25 of 134 approved candidates at May 17, 2000 are highly recommended.

- (e) compensation in other jurisdictions

The following table shows the salaries of judges in other provinces and territories as well as of federally appointed judges in Alberta:

Jurisdiction	Salary at April 1, 2000	Applicable Through
British Columbia	\$ 144,000	December 31, 2000
Alberta	152,000	March 31, 2000
Saskatchewan	143,000	March 31, 2003
Manitoba	112,000	March 31, 1999 (in litigation)
Ontario	172,210	March 31, 2001
Quebec	123,393	June 30, 2000 (in litigation)
New Brunswick	127,774	March 31, 2001 (in litigation)
Nova Scotia	137,000	March 31, 2001
		(\$144,000 commencing April 1, 2001)

Prince Edward Island	131,499	October 31, 2000 (adjusted to the Canadian average every six months)
Newfoundland	102,000	February 21, 1999 (in litigation)
Yukon	135,000	
North West Territories	155,200	
Federal	182,200	March 31, 2001 (includes \$3,000 Surrogate stipend paid by Alberta)

In Nunavut, provincial court jurisdiction is exercised by federally appointed judges who receive the federal base salary of \$179,200.

Since the 1998 Alberta commission, more recent judicial compensation commission reports have been issued in Quebec – August 4, 1998, New Brunswick – July 30, 1998, Manitoba – June 22, 1998, Nova Scotia – March 26, 1999, Ontario – May 20, 1999, Saskatchewan – December 21, 1999 and, most recently, the federal commission – May 31, 2000.

The current salary levels in the other provinces and territories are of interest:

- 1) Because of the wide range from \$102,000 in Newfoundland to \$155,200 in the Northwest Territories.
- 2) Litigation between the judges and governments as to the constitutionality of the salaries continues in Manitoba, Quebec, New Brunswick and Newfoundland.
- 3) The different timing of the compensation commissions in each province can encourage a degree of “leap-frogging”.
- 4) They certainly reflect the varying state of the economy in each province as well as the related fiscal condition of the government (in marked contrast to the uniform national salaries of federally appointed judges).

Federally Appointed Judges

The current annual salary of federally appointed judges in Alberta is \$182,200. The Judicial Compensation and Benefits Commission submitted its report to the Minister of Justice of Canada on May 31, 2000. It is the first federal commission following 1998 amendments to the Judges Act and the Supreme Court decision in the Provincial Court Judges case. Its recommendations cover a four year period from April 1, 2000. Highlights of the report and recommendations are as follows:

- Continued support for uniform salaries nation-wide as “a compromise best serving the broad public interest”
- Continued mandatory annual indexation of salaries as a matter of law

- Retention factors have not played a material part in setting judicial salaries
- Judges requested a salary level of \$225,000.
- Government submitted the current level plus indexation was adequate but that the maximum increase that could be justified would be 5.7% as of April 1, 2000 inclusive of indexing (approximately \$192,600).
- comparators are;
 - Salaries of the most senior level of deputy ministers (DM-3)
 - Incomes of the top one-third of lawyers in private practice
 - Remuneration of senior judges in other countries

The commission clearly gave greatest weight to the deputy minister salary level and essentially concluded the information from other countries was not comparable.

- The mid-point salary of 13 DM-3's is \$188,250 plus an over-all average of "at-risk pay" of 8.19% providing a total remuneration of \$203,686
- The report noted that "a rough equivalency between the overall remuneration of DM-3's and the salary level of judges is both proper and in the public's interest"
- The average income of the top third by income of lawyers aged 44 to 56 who earn more than \$50,000 is \$342,280 (1997 data)
- Income of lawyers at the 75th percentile is \$230,000 in Canada
 - \$283,000 in Alberta (highest province)
 - \$375,000 in Calgary (highest city)
- the conclusions with respect to the adequacy of judicial salaries in relation to the incomes of private practitioners were as follows:
 - "i) the total compensation of judges includes a significant pension annuity that has substantial value when a comparison of judicial compensation to the income of private practitioners is undertaken;
 - ii) continued use of a uniform national salary scale for puisne judges will have an adverse differential impact in different regions of the country and, therefore, potentially on the ability to attract outstanding candidates to the Judiciary in some areas of the country; and
 - iii) while judicial salaries should not be set according to the most lucrative legal services market, they must be set at a level which will not have a chilling effect on recruitment by serving as a disincentive to outstanding candidates in the Largest Metropolitan Areas, including those urban centres in which lawyers in private practice realize the highest incomes. They must also be set at a

level that does not result in unfairness to those current and future judges residing in larger urban areas”.

- The recommended salaries are \$198,000 for the year beginning April 1, 2000, \$200,000 plus indexing for the year beginning April 1, 2001. For each of the next two years an increase of \$2,000 plus indexing.

The proposed \$170,000 salary would bring the Alberta Provincial Court judges up from the current 83% to 93% of the present base salary level of federally appointed judges. If the recommendations of the federal commission are accepted the percentage would decrease to 86%. Put the other way, the present “gap” of 17% would be reduced to 7% but increase to 14% compared to the recommended federal salaries at April 1, 2000. The gap would increase slightly over the subsequent two years with the recommended federal increases of \$2,000 plus indexing.

The joint proposal puts the salaries in Alberta at the same level as Ontario, \$170,000, but for the three years from April 1, 2000. Ontario’s next commission will recommend salaries for April 1, 2001 and on. On the basis of recent history it seems likely that Ontario’s salary level will increase. (In Ontario the judicial compensation commission’s salary and benefits recommendations, other than regarding pensions, are binding on the government).

The 2000 commission agrees with the Association’s submission that the circumstances in Ontario are most comparable to those prevailing in Alberta.

(f) growth and decline in real per capita income

The only specific data on this criterion was a chart in the Government’s Budget 2000 document comparing the 1994 – 98 annual average per capita personal income in Alberta with the other provinces. It shows Alberta ranking second only to Ontario at just under \$25,000 and notes that Alberta was highest in 1998. The chart does not indicate whether or not the amounts were inflation adjusted i.e. real per capita income

(g) and (j) prevailing economic conditions in Alberta and the overall state of the economy/current financial position of the government

The Budget 2000 document and related three year Government of Alberta Business Plan provide ample evidence that the “prevailing economic conditions in Alberta and the overall state of the economy” continue to be very good. Interestingly the government issued a news release on February 23, 2000, the day before the budget was issued, announcing the proposed salary increase for Provincial Court judges and the \$3 million estimated annual cost of the increase. More recently the Government announced that the surplus for its last fiscal year

amounted to some \$2.7 billion. Having eliminated the net debt Alberta is now proceeding to eliminate its gross debt. Alberta clearly has the healthiest financial position of all of the provinces.

(h) cost of living index

The consumer price index from Statistics Canada shown in the agreed exhibits, increased a bit over 3% during 1999 in Alberta and for each of Edmonton and Calgary. The Association used an annual rate of 3% from April 1, 1999 to April 1, 2003 to illustrate that approximately one-half of the proposed increase could represent recovery from inflation with the remaining half being an increase in real income. It is interesting to note that federally appointed judges' salaries are adjusted annually for changes in the cost of living as are the judges in some other provinces (Ontario, Quebec and New Brunswick). On the other hand, the 1999 Saskatchewan commission report said "The Commission is of the opinion that once an individual earns a salary at a certain level, the influence of a cost of living increase is less significant. Provincial Court Judges earn a relatively high income already (compared to most citizens in the Province) and will be subject to an increase in compensation that is sufficient to provide for any increase in cost of living. In short, the Commission is of the view that an increase in cost of living is not a factor to justify extensive deliberation". Saskatchewan's present salary also is the same amount for a three year period.

This Commission concurs with that view so long as the inflation rate remains low and the judge's salaries are adjusted at least every third year.

(i) nature of the jurisdiction of the court and masters in chambers

The 1998 commission's report provided a thorough explanation of the jurisdiction of the Provincial Court of Alberta. The statistics included in the agreed exhibits show that the numbers of criminal, civil, family, youth and child welfare cases dealt with by the court continue to increase year by year as the population of Alberta grows.

F. Recommendations

Salaries and Pensions:

Having considered all of the material submitted to the 2000 Commission with respect to the criteria specified in the Regulation, I have concluded that the joint proposal of the Government and the Association is reasonable and accordingly the 2000 Commission recommends the following changes to the compensation of Provincial Court judges and masters in chambers:

1. For the period April 1, 2000 to March 31, 2003 salaries should be increased:
 - (a) for judges from \$152,000 to \$170,000 per year
 - (b) for assistant chief judges from \$159,000 to \$177,500 per year, and
 - (c) for the chief judge from \$167,000 to \$185,000 per year.

2. With respect to pensions:
 - (a) the contribution rate should be reduced from 9% to 7% effective April 1, 2000
 - (b) the accumulation rate should be increased from 2.67% per year to 3% per year for each year of judicial service after April 1, 2000
 - (c) for judges who retire after April 1, 2000 the penalty for early retirement on pension benefits earned after April 1, 1998 should be the greater of:
 - (j) 3% of those benefits for every year of retirement before the age of 60, or
 - (ii) 3% of those benefits for every year less than the total of the judge's age in years plus the judge's years of judicial services deducted from 80 (the rule of 80)
 - (d) increase the maximum pension ceiling from 66 2/3% to 70% effective April 1, 1998.

For the sake of completeness and certainty, the 2000 Commission also confirms its agreement with and recommends the following pension changes in the Agreement:

For the period January 1, 1992 to March 31, 1998 the pension benefits earned by a judge shall be calculated and paid without:

- (i) any capping of pensionable salary less than the actual salary earned by the judge during that period,
- (ii) any reduction in survivor benefits to less than 75%, and

- (iii) any penalty (introduced by amendments to the Income Tax Act (Canada) which came into force on January 1, 1992) for early retirement after the age of 55.

During the public hearings the Association added a further point regarding survivor's benefits to the joint proposal which the 2000 Commission confirms and recommends as follows:

Survivor's benefits should continue at 75% from April 1, 1998 onwards.

Allowances:

Although not included in the joint proposal, I have concluded from the evidence, including the practice in several other provinces and in the federal jurisdiction, that provision of a professional allowance for Provincial Court judges in Alberta would be a desirable change. Accordingly the 2000 Commission recommends:

Judges should be allowed an accountable (non-taxable) professional allowance of \$2,500 per year beginning April 1, 2000.

Costs:

As provided for in Section 30 of the Regulation and to confirm a part of the joint proposal in the Agreement the 2000 Commission recommends:

The Government should pay the costs incurred by the Association in making its submissions to the 2000 Commission, calculated in the same manner as the government compensates its external counsel.

In conclusion I wish to express my thanks to T. W. Wakeling, G. D. Chipeur and B. B. Johnston, Counsel for the Minister of Justice and Attorney General for Alberta and to D. O. Sabey, Q.C. and Bradley G. Nemetz, Counsel for the Association for their assistance in the information provided with their written submissions, oral presentations and response to my questions during and after the public hearings. Also, I thank Ken Hawrelechko, Senior Manager, Strategic Initiatives of Court Services for his and his staff's support. Finally my thanks to Maria Dodsley and Lynne Tilley of PricewaterhouseCoopers LLP for their long distance typing and faxing assistance in compiling this report.

Respectfully Submitted

2000 Judicial Compensation Commission



J. Bruce Dunlop, F.C.A.

APPENDIX

Judicature Act

ALBERTA PROVINCIAL JUDGES
COMPENSATION COMMISSION REGULATION*Table of Contents*

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Definitions

1 In this Regulation,

- (a) "Association" means the Alberta Provincial Judges' Association;
- (b) "Commission" means the Alberta Judicial Compensation Commission appointed under section 3(3);
- (c) "compensation" means the salary, pension, including the contributions of the Government of Alberta and a judge, benefits and allowances provided to the judges;
- (d) "court" means The Provincial Court of Alberta;
- (e) "Crown" means Her Majesty the Queen in right of Alberta as represented by the Minister;
- (f) "judges" means the judges of The Provincial Court of Alberta and the masters in chambers appointed under the *Court of Queen's Bench Act*;
- (g) "Minister" means the Minister of Justice and Attorney General;
- (h) "reasons" means an explanation that meets the justification standard under the Constitution of Canada used to evaluate decisions of a government to depart from a

recommendation of an independent body regarding judicial compensation;

- (i) "report" means the report of the Commission under section 8 and, if any, under section 26 and includes the recommendations relating to judicial compensation.

Role of the Commission

2(1) This Regulation provides a framework for establishing an independent, effective and objective commission for the determination of issues relating to judicial compensation.

(2) The inquiry process and the report of the Commission will contribute to maintaining and enhancing the independence of the court and the judges.

Commission

3 The Alberta Judicial Compensation Commission consists of one member who is appointed by the Minister with the agreement of the Association and the Chief Judge of the Provincial Court.

Commission

4 Active judges, members of the Legislative Assembly, members of other boards and commissions appointed by the Province of Alberta, persons who hold office by way of an appointment by the Province of Alberta and public service "employees", as defined in the Public Service Act, may not be a member of the Commission.

Commission

5 The Crown shall pay the Commission member such remuneration and expenses, including but not limited to counsel, expert and secretarial services, as are reasonable in the circumstances and must make such resources available as the Commission determines to be necessary to assist it in the performance of its functions.

Commission

6 The Crown shall establish the remuneration for the Commission member.

Scope of the inquiry

7 The Commission must conduct an inquiry at such times as are determined by the Lieutenant Governor in Council 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 and kinds of benefits and allowances of judges, and
- (d) such other issues relevant to the financial security of the judges which the Commission agrees to resolve.

Commission Report

8 The Commission must present a report to the Minister at a time determined by the Minister.

Commission report

9 Within 90 days of the presentation of the report under section 8, the Minister must place the report presented under section 8 before the Lieutenant Governor in Council, obtain its decision, and if any of the recommendations in the report are not accepted, ensure reasons for not accepting any of the recommendations in the report are provided.

Commission report

10 The effective date of any recommendations in a report are April 1, 2000 and are for the period April 1, 2000 to March 31, 2003 inclusive.

Commission report

11(1) The recommendations in a report are binding on the Crown unless the Lieutenant Governor in Council decides otherwise, in writing delivered to the Association within 90 days of presentation of the report under section 8 which decision must be accompanied by written reasons justifying the rejection of such recommendations in whole or in part.

(2) If the Commission amends, alters or varies the report, pursuant to section 26, the 90 days run from the date of variation.

Inquiry and report procedures

12 The Commission must give public notice of the commencement of its inquiry as it considers necessary and such notice must advise of the closing date for written submissions.

Inquiry and report procedures

13 The Crown and the Association may confer prior to, during or following the commencement of the inquiry for the purpose of

creating, if possible, an agreed statement of facts and an agreed list of exhibits for the use of the Commission.

Inquiry and
report
procedures

14 (1) The Commission must consider all relevant written and oral submissions made to it by the Crown, the Association, individual judges and members of the public.

(2) Written submissions, information requests by the Crown and the Association and the responses to information requests, must be provided in accordance with the time lines set by the Commission.

(3) The Commission may on application direct the Crown and the Association to produce documents not subject to privilege.

Inquiry and
report
procedures

15(1) At the earliest opportunity, prior to the Commission hearing oral submissions, the Crown and the Association must meet with the Commission to address the scheduling of witnesses, the conduct of the inquire any preliminary matters that may arise and such other matters as the Commission sees fit.

(2) The Crown and the Association will provide the Commission with an agreed statement of facts and an agreed list of exhibits to be filed, to the extent that they have been able to agree on them.

Inquiry and
report
procedures

16 The Commission may use a court reporter to record any oral evidence and must provide transcripts to those who request them and pay the required fee.

Inquiry and
report
procedures

17 The Commission may accept such evidence as is relevant to the determination of the issues and is not required to adhere to the rules of evidence applicable to courts of civil or criminal jurisdiction.

Inquiry and
report
procedures

18(1) Any member of the public is entitled to attend the inquiry and to make written submissions to the Commission.

(2) The Commission may, after hearing from the Crown and the Association, choose to limit to written submissions any submission from an individual judge

(3) The Commission may, after hearing from either the Crown or the Association, grant leave to any member of the public to make oral submissions.

(4) The Commission may require the attendance of any person who has filed a written submission and may require that person to respond to any questions from either the Crown or the Association, as well as from the Commission.

(5) If any person fails to appear when required to do so or to respond to questions as directed, the Commission may ignore the written submissions of the person who fails to appear or respond to a question as directed.

(6) The Commission may not award costs for written submissions but may award the reasonable travel, accommodation and meal expenses of anyone required by the Commission to attend.

Inquiry and
report
procedures

19 Any one requesting copies of any written submissions to the Commission is entitled to receive a copy of the submissions on payment of a reasonable fee.

Inquiry and
report
procedures

20 The recommendations in a report must be based solely on the evidence submitted to the Commission.

Inquiry and
report
procedures

21(1) Evidence may be presented to the Commission in either or both of the following:

(a) an agreed statement of facts and list of exhibits;

(b) the Crown and the Association may present evidence through its witnesses;

(2) The testimony of witnesses must be under oath or affirmation.

(3) The Association and individual judges who, at their own expense, wish to make personal oral submissions and have been granted leave to do so, must present their evidence first, following which the Crown must present its evidence and finally, the Association, including any individual judges who wish to make personal oral submissions, may present their rebuttal evidence.

(4) A witness is subject to direct examination, cross-examination and redirect examination and questioning by the Commission.

(5) Unless the Commission grants leave, only the Crown, the Association and individual judges may make oral submissions.

Inquiry and
report
procedures

22(1) After the Commission has heard the evidence, the Commission must hear oral argument from the Association and the Crown.

(2) The Association may proceed first and, if it does, it has the right of reply.

Inquiry and
report
procedures

23 The Commission may determine such other procedures as may be necessary to effectively carry out its inquiry.

Inquiry and
report
procedures

24 Prior to the commencement of the inquiry, either the Association or the Crown may initiate a reference to the Commission relating to procedure, by serving written notice on the Crown or the Association, as the case may be, and the Commission at least 3 clear days prior to the day on which the Commission commences its inquiry.

Inquiry and
report
procedures

25 The Commission, in making the recommendations in its report, must give every consideration to the following criteria:

- (a) the constitutional law of Canada;
- (b) the need to maintain the independence of the judiciary;
- (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 and 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 and masters in chambers;
- (j) the current financial position of the government; and
- (k) any other factors relevant to the matters in issue.

Inquiry and
report
procedures

26 The Commission may, within 15 days after presentation of the report under section 8, on application by either the Crown or the Association made within 7 days after the presentation of the report under section 8, subject to affording either the Crown or the Association, as the case may be, the opportunity to make representations to the Commission, amend, alter or vary its report 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.

Review

27 The Crown and the Association may meet at any time to discuss improvements to the Commission inquiry process.

Communica-
tion

28 The Minister must advise the Association of any change made to the judges' compensation after the presentation of a report under section 8 within 7 days of the Lieutenant Governor in Council's decision to change the judges' compensation and the Association must inform the judges of any such change.

Communica-
tion

29(1) The Minister must provide the Association with one updated copy of the legislation, regulations or schedules related to changes described in section 28.

(2) The Association must provide the judges with updated copies of legislation, regulations or schedules as necessary.

Costs **30** The Commission may order the Crown to pay the reasonable costs incurred by the Association in making its submissions to the Commission.

Judicial review **31(1)** If

(a) the Lieutenant Governor in Council makes a decision rejecting the Commission report or one or more of the recommendations contained in the Commission report,

(b) the Association brings an application for judicial review of that decision, and

(c) the application for judicial review is successful,

the Lieutenant Governor in Council has 90 days from the day that the application is granted to reconsider the Commission report in accordance with the directions, if any, of the Court.

(2) Where an application for judicial review is successful, the Commission report is not deemed to be binding on the Crown solely because the reasons given by the Lieutenant Governor in Council for the rejection of the Commission report or one or more of the recommendations contained in the Commission report were found to be inadequate by the Court.

Notice **32(1)** Where notice is required to be given to the Crown, it shall be given by leaving a written copy at the legislative office of the Minister of Justice.

(2) Where notice is required to be given to the Association, it must be given by leaving the written copy at the registered office of the Association.

(3) If the Crown gives notice in writing of the appointment of counsel, notice may be given by service on counsel as provided for in the Alberta Rules of Court.

Effect of regulation **33** This Regulation only has effect for the Commission appointed in 2000.



ALBERTA

JUDICIAL COMPENSATION COMMISSION REQUEST FOR SUBMISSIONS AND NOTICE OF HEARINGS

On May 24, 2000, 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 be holding hearings which will be open to the public in the following locations:

Edmonton Law Courts Building - 1A Sir Winston Churchill Square, Edmonton on Thursday, June 15, 2000 at 9:00 a.m.

Calgary Court House - 611 - 4 Street, S.W., Calgary on Friday, June 16, 2000 at 9:00 a.m.

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; and
- 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:**

J. Bruce Dunlop
Chair
The Judicial Compensation Commission
c/o Price Waterhouse Coopers
1200, 425 - 1 Street, S.W.
Calgary, Alberta
T2P 3V7

Submissions should include your name, mailing address and telephone number. Please provide a summary of your submission if it is lengthy. 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 June 12, 2000. The commission will submit its recommendations to the Minister of Justice by July 31, 2000.

*For further information contact Ken Hawrelechko at Alberta Justice: (780) 427-4992.
To be connected toll free dial 310-0000 and then dial (780) 427-4992.*

**JUDICIAL COMPENSATION COMMISSION 2000
AGREED EXHIBIT LIST**

Tab	Description
1.	Re Provincial Court Judges, [1997] 3 S.C.R. 3
2.	Legislation/Regulation <ul style="list-style-type: none"> a) 1998 Frame Work Agreement b) Judicature Act c) Provincial Court Judges Act d) Regulation 100/2000
3.	Judicial Compensation Comparison Data From Across Canada
4.	Alberta Budget Summaries and Speeches <ul style="list-style-type: none"> a) Alberta Budget 2000 Speech b) Alberta Budget 2000 c) Alberta Business Plan Budget 2000
5.	1998 Provincial Court Judicial Compensation Commission Report
6.	Judicial Compensation Commission Reports from Across Canada
7.	Pension Materials <ul style="list-style-type: none"> a) Province of Alberta Public Sector Pension Plans, Tables 1 and 2 b) Excerpt from Pension Plans in Canada, January 1, 1996, Statistics Canada
8.	Consumer Price Index Guide and CPI for Alberta, Edmonton and Calgary (1999, 1998, 1997 & 1996) & Cost of Living Comparisons
9.	Provincial Court Demographics <ul style="list-style-type: none"> a) Candidates b) Current Provincial Court Judges
10.	Government of Alberta News Release Dated February 23, 2000
11.	Alberta's Population
12.	Selected Provincial Court Statistics
13.	Selected Lawyer Demographics
14.	Provincial Court of Alberta Annual Report 1999
15.	Provincial Court of Alberta Three Year Business Plan 2000-2003
16.	Submissions to the 1999 Judicial Compensation Commission <ul style="list-style-type: none"> • Government of Canada •

- Canadian Judicial Council

17. Selected Income Statistics of Canadian Lawyers

18. Reasons for Decision on Review of 1998 Alberta Commission

- Court of Queen's Bench
- Court of Appeal