

**THE JUSTICES OF THE PEACE COMPENSATION
COMMISSION**

COMMISSION REPORT

**Presented to
the Minister of Justice and Attorney General
and to
the Justices of the Peace of Alberta**

February 29, 2000

TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	THE JUSTICES OF THE PEACE COMPENSATION COMMISSION	2
A.	Appointment and Terms of Reference	2
1.	Alberta Compensation Commissions	2
2.	The <i>Justices of the Peace Compensation Commission Regulation</i>	2
3.	A Note Respecting Non-Presiding Justices of the Peace	4
B.	Conduct of the Inquiry	4
C.	Context of the Inquiry	6
III.	THE HISTORY AND PRESENT STATUS OF THE JUSTICES OF THE PEACE OF ALBERTA	7
A.	History of the Justices of the Peace of Alberta	7
B.	Present Status of the Justices of the Peace of Alberta	10
1.	Appointment and Terms of Office	11
2.	Jurisdiction and Duties	12
a.	Sitting Justices of the Peace	12
b.	Presiding Justice of the Peace	17
3.	Role of the Justices of the Peace Review Council	18
C.	Summary of Current Compensation	19
1.	Full Time Sitting Justices of the Peace	19
2.	Part Time Sitting Justices of the Peace	19
3.	Part Time Presiding Justices of the Peace	19
IV.	SUBMISSIONS OF COUNSEL	19
A.	Submissions Regarding the Applicable Principles	19
B.	Submissions Regarding Applicable Sources of Comparisons	21
C.	Submissions Regarding Appropriate Compensation	22
1.	The Crown's Recommendations	22
2.	The Justices of the Peace' Recommendations	22
V.	ANALYSIS	23
A.	Governing Principles	23
1.	The <i>Commission Regulations</i>	23
2.	Constitutional Principles	24
B.	The Unique Nature of the Office of Justice of the Peace	25
C.	Consideration of Alberta's Financial Position and the Overall State of the Economy	26
D.	Consideration of the Cost of Living Index and the Growth or Decline of Per Capita Income	27
E.	Consideration of the Need to Attract Qualified Candidates	27

F.	Comparisons	28
1.	General Observations	28
2.	Provincial Court Judges	28
3.	Justices of the Peace in Other Canadian Jurisdictions	30
4.	Lawyers	30
5.	Senior Government Officials	31
6.	Federal and Provincial Decision Making Tribunals	32
7.	Summary of Comparisons.....	32
G.	Consideration of the Ten Year Term	32
H.	Considerations Unique to Part Time Justice of the Peace Positions.....	33
I.	Consideration of the Status Quo	34
VI.	RECOMMENDATIONS.....	35
A.	Full Time Sitting or Presiding Justices of the Peace.....	35
B.	Part Time Sitting Justices of the Peace	35
C.	Part Time Presiding Justices of the Peace.....	35
D.	Concluding Remarks.....	36
VII.	ACKNOWLEDGMENTS	37

LIST OF APPENDICES

- A. Comparative Data
- B. Calculation of Factors
- C. *Justices of the Peace Compensation Commission Regulation, Alta. Reg. 8/2000*
- D. Public Notice dated November 2, 1999
- E. List of Exhibits

1. EXECUTIVE SUMMARY

The Justices of the Peace Compensation Commission hereby offers its unanimous, independent and impartial recommendations respecting appropriate compensation for the Justices of the Peace of Alberta between April 1, 1998 and March 31, 2003. The Commission is mindful of the differences between sitting and presiding Justices of the Peace but feels that the differences are offset and counterbalanced. Therefore, we draw no distinction for the purposes of determining appropriate compensation. We see a greater difference between part time and full time positions.

The Commission's recommendations recognize that in neither the case of full time nor part time Justice of the Peace positions with a 10 year term, is a pension benefit feasible. Therefore, a fixed sum is considered appropriate in lieu thereof for full time and the equivalence is built into the part time rate. Our recommendations, however, do contemplate a difference between full time and part time Justices of the Peace in terms of other benefits. Therefore existing benefits with regards to full time Justices of the Peace are recommended to continue. An equivalent value is taken into account in the recommended *per diem* for part time Justices of the Peace.

The recommended compensation is based on our analysis of all relevant factors and is set at approximately two thirds of the Provincial Court Judges' compensation. The Commission concludes that this is a fair apportionment based on the relative degree of responsibility. In consideration of an appropriate *per diem* for both part time sitting and presiding Justices of the Peace, we have also taken account of the fact that those positions effectively require that a practising lawyer must carve out time from an existing and relatively mature legal practice with relatively fixed overhead. The *per diem* rates have been calculated on the basis of 210 days (4 weeks of holidays) applied to a compensation package including fringe benefits. To this a modest amount has been added for overheads to convert it to a reduced billing rate. For the reasons more fully stated below, the Commission hereby recommends that the compensation to be paid to Justices of the Peace of Alberta be as follows:

	April 1, 1998	April 1, 1999	April 1, 2000	April 1, 2001	April 1, 2002
Full Time Sitting or Presiding Justices of the Peace	\$95,000 per annum plus 10% in lieu of pension plus current benefits	\$95,000 per annum plus 10% in lieu of pension plus current benefits	\$100,000 per annum plus 10% in lieu of pension plus current benefits	\$100,000 per annum plus 10% in lieu of pension plus current benefits	\$105,000 per annum plus 10% in lieu of pension plus current benefits
Part Time Sitting Justices of the Peace	\$600 per diem no pensions or benefits	\$600 per diem no pensions or benefits	\$650 per diem no pensions or benefits	\$650 per diem no pensions or benefits	\$670 per diem no pensions or benefits
Part Time Presiding Justices of the Peace	\$600 per diem no pensions or benefits	\$600 per diem no pensions or benefits	\$650 per diem no pensions or benefits	\$650 per diem no pensions or benefits	\$670 per diem no pensions or benefits

2. THE JUSTICES OF THE PEACE COMPENSATION COMMISSION

1. Appointment and Terms of Reference

1. Alberta Compensation Commissions

On April 30, 1998 amendments to the *Judicature Act* came into force which provide for, among other things, the establishment of a compensation commission to review the remuneration and benefits to be paid to Justices of the Peace.¹ "Justice of the peace" is defined in the *Judicature Act* by reference to the *Justice of the Peace Act* to mean a person designated by the Lieutenant Governor in Council as either a "sitting justice of the peace" or a "presiding justice of the peace".² Further, such a commission "shall be established on or before April 1, 2000 and every 3 years thereafter."³

2. *The Justices of the Peace Compensation Commission Regulation*

Commission established by regulation.

The Justices of the Peace Compensation Commission (the "Commission") was established pursuant to subsection 2(1) of the *Justices of the Peace Compensation Commission Regulation*⁴ (the "*Commission Regulations*"). The basis for the *Commission Regulations* was a proposed Framework Agreement 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 Justices of the Peace of Alberta.⁵ The Commission recognizes that the Parties did not have the benefit of the *Commission Regulations* when making their submissions, however, since the *Commission Regulations* contain essentially the same provisions as the proposed Framework Agreement, this Commission

¹ *Judicature Act*, R.S.A. 1980, c. J-1, s. 32.92; as amended by the *Justice Statutes Amendment Act, 1998*, S.A. 1998, c. 18, s. 2(2).

² *Judicature Act*, s. 32.1(e); *Justices of the Peace Act*, R.S.A. 1980, c. J-3, s. 2.1.

³ *Judicature Act*, s. 32.92(2).

⁴ Alta. Reg. 8/2000. A copy of the *Commission Regulations* is reproduced in Appendix "C".

⁵ A copy of the proposed Framework Agreement was provided to the Commission and is reproduced in Appendix "B" of the Written Submissions of the Justices of the Peace dated January 7, 2000 (Exhibit No. 13).

Report will refer to the *Commission Regulations*.

As stated in the *Commission Regulations*, the Commission's purpose is to "...review the remuneration and benefits to be paid to Justices of the Peace and in so doing the Commission is to conduct an Inquiry respecting the appropriate level of compensation for Justices of the Peace who sit full time, part time or on an ad hoc basis."⁶

In accordance with the *Commission Regulations*, three members were appointed to the Commission: one member appointed by the Justices of the Peace, one member appointed by the Minister of Justice and Attorney General (the "Minister") and a chairperson appointed jointly by the Justices of the Peace and Minister's appointees.⁷ The Commission members are:

Chairperson: Harry G. Schaefer, F.C.A. (Calgary)

Justices of the Peace' Appointee: Larry G. Anderson, Q.C.
(Edmonton)

Minister's Appointee: Linda Steinmann (Ponoka)

Part 2 of the *Commission Regulations* prescribes the procedures followed by the Commission in conducting the Inquiry, including publication of public notices as well as the right of any member of the public or interested group to attend the Inquiry, to make written submissions and, with leave of the Commission, to make oral submissions. The Justices of the Peace and the Crown (collectively the "Parties") were entitled to make written and oral submissions to the Commission, to present witnesses and to respond to each other's submissions.

The *Commission Regulations* require the Commission to complete and deliver to the Parties this written report and recommendations (the

"Commission Report") by no later than February 29, 2000.⁸ The

⁶ *Commission Regulations*, s. 3(1).

⁷ *Commission Regulations*, s. 2.

⁸ *Commission Regulations*, s. 3(2)

Commission Report includes the Commission's recommendations in respect of the remuneration and benefits to be paid to Justices of the Peace for the period April 1, 1998 to March 31, 2003.

Within 90 days of receipt of the Commission Report, the Minister must place the same before the Lieutenant Governor in Council who must then issue an Order accepting, in whole or in part or subject to any conditions or modifications, or rejecting the Commission Report and setting out the reasons for such acceptance or rejection.⁹

3. A Note Respecting Non-Presiding Justices of the Peace

Commission is not empowered to review compensation of non-presiding Justices of the Peace.

Pursuant to the *Justice of the Peace Act* the Minister may "...appoint a person as a justice of the peace designated as a non-presiding justice of the peace."¹⁰ It is important to note that both the provisions of the *Judicature Act* which address compensation commissions and the *Commission Regulations* do not currently contemplate the Commission receiving submissions from or making recommendations relating to non-presiding Justices of the Peace. Consequently, this Commission Report does not purport to address compensation issues relating to non-presiding Justices of the Peace, including salaries, pensions, allowances, or benefits.

2. Conduct of the Inquiry

Public notices announcing the commencement of the Inquiry and inviting written submissions¹¹ were placed in the following newspapers on November 2, 1999:

- The Calgary Herald;
- The Calgary Sun;

- The Edmonton Journal;
- The Edmonton Sun;

⁹ *Commission Regulations*, s. 4 and 5. Also, pursuant to section 20 of the *Commission Regulations* the Commission may amend the Commission Report in prescribed circumstances within 15 days of delivering it to the Parties, in which case the 90 days would start from the date that the Minister receives such variation.

¹⁰ *Justice of the Peace Act*, s. 2 (1)

¹¹ A copy of the Notice appears in Appendix "D"

- The Red Deer Advocate;
- The Lethbridge Herald; and
- The Grande Prairie Daily Herald.

A number of meetings with counsel for the Parties were held, usually by telephone, to facilitate the process. Background information was provided to the Commission which became part of the record. It is identified in Appendix "E".

Public hearings held
November 10, 1999 and
January 21, 2000.

The Commission also received detailed written submissions from the Parties, as well as from the Law Society of Alberta and certain individual Justices of the Peace.¹² Public hearings were held at the Edmonton Law Courts on November 10, 1999 and at the Calgary Court House on January 21, 2000. Copies of all written submissions and transcripts of the oral hearings were provided routinely to counsel for the Parties. Oral testimony was heard by the Commission at the November 10, 1999 hearing from the following Justices of the Peace:

- Mr. Doug Ingersoll (presiding Justice of the Peace);
- Mr. John Michael Maguire (non-presiding Justice of the Peace);
- Mr. Patrick Michael McIlhargey (full time sitting Justice of the Peace);
- Mr. Glenn Morrison (rural part time sitting Justice of the Peace);
- and
- Ms. Lee Hagen (urban part time sitting Justice of the Peace).

Counsel for the Crown was provided with the opportunity to cross-examine those witnesses. Oral argument on behalf of the Parties was heard by the Commission at the January 21, 2000 hearing.

As discussed in the preceding section, the Commission Report does not purport to address compensation issues relating to non-presiding Justices of the Peace. It should be noted that while the Commission heard oral testimony from Mr. Maguire, a non-presiding Justice of the Peace, those submissions were not considered by the Commission in determining its recommendations for sitting and presiding Justices of the Peace.

3. Context of the Inquiry

¹² A list of exhibits is provided in Appendix "E".

Report and Recommendations of the 1998 Judicial Compensation Commission were constructive and helpful but our task involved some different considerations and distinct issues.

A few words to put this Inquiry into context may be appropriate. This Commission, as earlier stated, was constituted as a result of amendments to the *Judicature Act* in April 1998.¹³ Those amendments, in turn, were the result of recommendations made by the Supreme Court of Canada in its decision in *Reference Re Remuneration of Judges of the Provincial Court to Prince Edward Island*¹⁴ (the "Provincial Court Judges case") which, among other things, recommended that compensation commissions be established. These recommendations have resulted in independent commissions being established across the country to review the compensation paid to Provincial Court Judges. Such a commission was established in Alberta in 1998 and on June 19, 1998 the Judicial Compensation Commission appointed by the Alberta government delivered its Report and Recommendations. That Report has been placed before the Commission as have many of the materials that the Judicial Compensation Commission considered.

The recommendations of the Judicial Compensation Commission were not accepted by the Alberta government and the government has articulated reasons for rejecting the recommendations. These reasons have since been reviewed by the Alberta Court of Queen's Bench and the Alberta Court of Appeal¹⁵ in accordance with the contemplated procedures and test enunciated by the Supreme Court of Canada. The test is articulated as the "simple rationality test". To date, neither court of review has found the Alberta government's rejection of the recommendations to be justifiable although at the time of this Commission, leave to the Supreme Court of Canada has been sought by the Alberta government.

The Commission has found the analysis and insight contained in the Judicial Compensation Commission Report to be instructive and helpful. We are mindful, however that our task involves different considerations and distinct issues.

Breaking new ground for

¹³ *Justice Statutes Amendment Act*

¹⁴ [1997] 3 S.C.R. 3.

¹⁵ *Alberta Provincial Judges' Association v. Alberta*, (26 January 1999), Calgary 9801-15266, Reasons for Judgement of the Honourable Mr. Justice G.R. Forsyth (Alta. O.B.), (20 July 1999), Calgary 18200, Reasons for Judgement Reserved (Alta. C.A.).

Justices of the Peace in Alberta as no experience elsewhere as yet.

This Commission has not had the benefit of other compensation commission reports dealing specifically with Justices of the Peace, either in Alberta or elsewhere, as Alberta is "in the vanguard" respecting the applicability of independence principles to Justices of the Peace.¹⁶ This Commission is in a sense, breaking new ground as each of the Provincial Judges Compensation Commissions thus far has had to do. We are grateful to have been guided by experienced and learned counsel and a vast array of background material in pursuit of a fair compensation package for Alberta Justices of the Peace.

3. THE HISTORY AND PRESENT STATUS OF THE JUSTICES OF THE PEACE OF ALBERTA

1. History of the Justices of the Peace of Alberta

Justices of the Peace have been playing an important role in the criminal justice system.

Justices of the Peace have a long history with the administration of justice in Alberta. The role and duties of the Justices of the Peace have changed significantly over time and particularly within the past few years. Nonetheless, it is helpful to look at the history of Justices of the Peace in Alberta to evaluate where they stand now.

An apt historical summary of the Justices of the Peace of Alberta is provided by Justice McMahon in his Reasons for Decision in *Ell v. Alberta*. Justice McMahon wrote as follows:

To fully understand the nature and importance of the position, a brief review of the history of Justices of the Peace is useful. I have been provided with much material on that subject. Included is this summary from a 1984 report prepared by Howard Irving, Q.C. (now Irving, J.A.) for the Canadian Bar Association, Alberta Branch, following a review of certain policies and practices of the Alberta Attorney General's Department:

The Justices of the Peace have been playing an important role in our criminal justice system since

¹⁶

Submission of the Crown in the Right of Alberta dated January 6, 2000. Exhibit No. 11 at 3.

ancient times. In the English legal system this office was created to perform local government functions, including that of ex officio magistrate. English justices of the peace, although customarily untrained in law and unpaid, were vested with wide powers to commence criminal proceedings, conduct trials and mete punishment in the form of substantial fines or imprisonment up to six months. The office was considered vital to the criminal Justice system partly because of the rural nature of the population and the impracticality of placing judges at each location, and thus ensuring that an accused would not face undue delay, and additionally, the local justice could bring to bear upon a case his knowledge of local affairs and of the accused himself. In England, the justice of the peace was appointed by the Lord Chancellor, and thus the office was separated from the arm of the government.

In Canada, the office of Justice of the Peace was preserved when in 1892 the Criminal Code of Canada was adopted. Pursuant to the Criminal Code, Justices of the Peace are empowered to receive and swear informations, issue warrants for arrest and issue search warrants. As the Canadian Justice system does not have a Lord Chancellor, appointments as a Justice of the Peace, by custom are conferred by the Attorney General.

Initially in Canada such appointments followed the English example in that justices of the peace were not salaried, but paid on a case by case basis. Usually they were untrained local citizens who were not full time government employees. Furthermore, their appointments restricted the nature of the powers they could exercise. As the volume of cases increased, and as the provincial

courts were expanded to cover rural areas, it became customary to appoint a senior Court clerk

In recent years the judicial functions of Justices of the Peace have been enlarged.

as a justice of the peace to receive informations, as well as grant adjournments and hear bail applications when a provincial judge was not available to do so.

In recent years, in Alberta particularly, the judicial functions of justices of the peace have been enlarged greatly. By virtue of the Provincial Court Judges Amendment Act, justices of the peace have been granted all the powers with respect to judicial interim release as are exercisable by Provincial Court Judges. They also have the power to receive and swear Informations, issue process, grant search warrants, receive pleas with respect to certain provincial offences, impose fines or time in gaol for default of payment of fine, grant or withhold time for payment of a fine, or extensions of time for payment of a fine.

As a practical development, Justices of the peace in urban centres often are engaged as Hearing Officers and thus exercise their function on a full time basis. While as hearing officers, or Court clerks, they were considered as employees of the Attorney General's Department, particularly as in early years, their functions as Justices of the peace occupied only a small percentage of time, in comparison to their overall clerk or administrative duties.

Because of the dramatic change in the role of the justice of the peace, especially as found in major urban centres, there requires a greater recognition of the judicial functions of justices of the peace. Due to these developments, we recommend that the supervision of their judicial function be transferred from the Attorney General's Department to the Office of the Chief

Judge of the Provincial Court. Such a transfer will emphasize the need for the independence and

impartiality of the Justice of the Peace.

The recommendation made in the final paragraph above was in fact implemented not long after, with the acknowledged objective of enhancing the real and perceived independence of Justices.¹⁷

Increased judicial role⁵ has created the need for legally trained officers with significant experience.

In recent years the role of the Justice of the Peace in Alberta has continued to shift its emphasis away from the administrative toward the judicial. Justices must now be legally trained with significant experience; their conduct is subject to review by the Judicial Council and more judicial functions have been given, particularly to presiding Justices of the Peace with the enactment of the *Protection Against Family Violence Act*¹⁸ and the advent of tele-bail whereby arrestees across the province have the option of speaking to judicial interim release before a Justice of the Peace prior to appearing in Provincial Court.

2. Present Status of the Justices of the Peace of Alberta

4 full time and 53 part time Justices of the Peace.

At present, there are 23 sitting Justices of the Peace (4 full time and 19 part time) and 34 presiding Justices of the Peace, all of whom are part time. The Justices of the Peace are located as follows:

	Full Time Sitting Justices of the Peace	Part Time Sitting Justices of the Peace	Part Time Presiding Justices of the Peace
Calgary	2	7	16
Edmonton	2	6	18
Red Deer		2	

¹⁷ *Ell v. Alberta*, (21 January 1999). Calgary 9801 13713. Reasons for Decision of the Honourable Mr. Justice T.F. McMahon (Alta. Q.B.) at 4-5.

¹⁸ S.A. 1998, c. P-19.2.

	Full Time Sitting Justices of the Peace	Part Time Sitting Justices of the Peace	Part Time Presiding Justices of the Peace
Lethbridge		2	
Grande Prairie		2	
TOTAL	4	19	34

In addition to sitting in the above designated centres, sitting Justices of the Peace also travel to and preside over provincial offences court located in rural areas, including Okotoks, Cochrane, Didsbury, Ponoka, Wetaskiwin, Leduc, St. Albert, Stoney Plain and Sherwood Park.

Average age in mid-40s with an average of 15 years or more experience.

The age range of the sitting Justices of the Peace is from 40 to 65 years of age, with an average age of 45 years and a median age of 48 years. The sitting Justices of the Peace currently have a range of experience in terms of years at the bar from 10 to 38 years, with the average being 19.87 years and the median is 17 years.

With respect to the presiding Justices of the Peace, the age range is from 31 to 68 years of age, with an average age of 46 years and a median age of 44 years. The sitting Justices of the Peace currently have a range of experience in terms of years at the bar from 5 to 42 years, with the average being 15 years and the median is 13 years.

Most part time Justices of the Peace spend less than 50% of their time on these duties and _ spend less than 20% of their time on these duties.

Time estimates indicate that: 6 sitting Justices of the Peace spend 19% or less of their time on Justice of the Peace duties, 11 spend 20% to 39% of their time on Justice of the Peace duties and 2 spend 40% to 59% of their time on Justice of the Peace duties.

Time estimates also indicate that as at the time of this Inquiry, 17 presiding Justices of the Peace spend 19% or less of their time on Justice of the Peace duties, 8 spend 20% to 39% of their time on Justice of the Peace duties, 6 spend 40% to 59% of their time on Justice of the Peace duties and 6 spend 60% to 79% of their time on Justice of the Peace duties. Virtually all of the presiding Justices of the Peace carry on practice of law, to varying extents, in addition to performing shifts as a Justice of the Peace.

Legally trained with minimum 5 years experience.

1. Appointment and Terms of Office

Section 2 of the *Justice of the Peace Act* empowers the Lieutenant Governor in Council with the discretion to appoint both sitting and presiding Justices of the Peace if the Judicial Council has determined that the person is qualified. Certain people are ineligible to be appointed as

a Justice of the Peace, including those who are not Canadian citizens,¹⁹ persons who are 70 years of age or over and specified persons who are employed by or represent various levels of government or law enforcement.²⁰ All Justices of the Peace must be legally trained and they must have at least five years of experience at the Bar in order to be eligible for an appointment.

Sitting and presiding Justices of the Peace are appointed for a nonrenewable term of 10 years. A Justice of the Peace may only be removed from office in accordance with the complaint provisions discussed in section 3 (Role of the Justices of the Peace Review Council) below.²¹

2. Jurisdiction and Duties

The jurisdiction and duties of the Justices of the Peace are set out in the *Justice of the Peace Act* and the *Justice of the Peace Regulation*.²² Each Justice of the Peace is provided with a Justice of the Peace Manual which sets out some guidance as to the proper exercise of their duties.

¹⁹ *Justice of the Peace Act*, s. 2(1).

²⁰ *Justice of the Peace Act*, s. 2.1(5).

²¹ *Justice of the Peace Act*, s. 2.4(1).

²² Alta. Reg. 6/99.

1. Sitting Justices of the Peace

Sitting Justices of the Peace have jurisdiction to preside over trials involving a number of provincial matters. Sitting Justices of the Peace also have all of the powers exercised by presiding Justices of the Peace and discussed in further detail in below. Subsection 3(1) of the *Justice of the Peace Regulations* state:

Sitting Justices of the Peace preside over trials involving a number of provincial matters.

3(1) Subject to subsection (2), a sitting justice may hear, try and determine matters arising under the following:

- (a) the Amusements Act;
- (b) the Animal Protection Act;
- (c) the Dangerous Dogs Act;
- (d) the Dangerous Goods Transportation and Handling Act;
- (e) the Fisheries (Alberta) Act;
- (f) the Forests Act;
- (g) the Fuel Tax Act;
- (h) provisions of the Gaming and Liquor Act that relate to liquor matters;
- (i) the Government Property Traffic Act (Canada);
- (j) the Highway Traffic Act;
- (k) the Livestock Identification and Brand Inspection Act;
- (l) the Livestock and Livestock Products Act;
- (m) the Motor Transport Act;
- (n) the Motor Vehicle Administration Act;
- (o) the Off-highway Vehicle Act;
- (p) the Petty Trespass Act;
- (q) the Provincial Offences Procedure Act, section 5;
- (r) the Provincial Parks Act;
- (s) the Railway Act (Canada);
- (t) the School Act, section 21(1);
- (u) the Stray Animals Act;
- (v) the Tobacco Tax Act, sections 3(1) and 3.2(4);
- (w) the Transportation of Dangerous Goods Control Act;

- (x) the Trespass to Premises Act;
- (y) the Young Offenders Act, section 16;
- (z) the Wildlife Act;
- (aa) any regulations or orders made under any Act referred to in clauses (a) to (g) and (i) to (z);
- (bb) a provision of
 - (i) the Environmental Protection and Enhancement Act,
 - or
 - (ii) a regulation made under that Act for which a specified penalty is set out in Schedule 2, Parts 3.1 to 3.4 of the Procedures Regulation (AR 233/89) under the Provincial Offences Procedure Act;
- (cc) the Alberta Fishery Regulations made under the Fisheries Act (Canada);
- (dd) regulations made under Schedule 12 of the Government Organization Act;
- (ee) regulations made under the Gaming and Liquor Act that relate to liquor matters;
- (ff) provisions of the Young Offenders Act, to the extent that those provisions deal with statutes, regulations, bylaws and orders referred to in clauses (a) to (hh);
- (gg) any bylaw of a municipality or a Metis settlement;
- (hh) any orders made by the Minister of Municipal Affairs in respect of an improvement district or special area.

Sitting Justices of the Peace may not, however, be assigned to hear, try or determine (i) any complaint or information involving the death of any person, (ii) any complaint or information involving a determination of whether any *Charter* rights have been infringed or denied, (iii) any issue relating to the constitutional validity of any enactment or (iv) any complaint or information involving a determination of any aboriginal or

23

Justice of the Peace Regulation, s 3(2). However, pursuant to subsection 1(6) of the *Constitutional Notice Regulation*, Alta. Reg. 102/99, Sitting Justices of the Peace may continue to hear a proceeding involving *Charter* remedies, the constitutional validity of legislation or aboriginal or treaty rights if no notice under section 25 of the *Judicature Act* or section 1 of the *Constitutional Notice Regulation* has been given and neither the Crown nor the accused requests the matter

treaty right.²³ This is not to say, however, that Justices of the Peace have any lesser responsibility to respect and protect the Constitutional rights of persons appearing before them.

Under the above noted statutes, sitting Justices of the Peace may impose fines of varying amounts or imprisonment of varying duration. In addition, sitting Justices of the Peace have the power under certain statutes to suspend motor vehicle operator's licences or recreational hunting licences, as well as make compensation orders.

Sitting Justices of the Peace are essentially trial judges adjudicating upon offences under the above noted statutes. When sitting as a trial judge, they are afforded all of the powers of a Provincial Court Judge, although they do not have same jurisdiction as Provincial Court Judges. Trials are conducted in the same manner as in Provincial Court. The most common type of offences heard by sitting Justices of the Peace are traffic offences. Consequently, sitting Justices of Peace are often referred to as "Traffic Commissioners" and the court over which they preside is commonly called "Traffic Court".

As noted above, the Commission received written submissions and heard the testimony of Mr. Patrick Michael McIlhargey, describing a "day in the life" of a full time sitting Justice of the Peace. In Mr. McIlhargey's words:

Sitting 5 days a week, 52 weeks per year, statutory holidays excepted.

Sittings in our court are basically as per the Alberta court calendar. We sit five days a week, 52 weeks per year, statutory holidays excepted.

...
I took two or -- I took dockets from Calgary for November 2nd to November 4th. They are appended or exhibited under tab 3. The reason I selected the 2nd and the 4th, and that's for all three courtrooms in Calgary, it just gives you the traffic matters that are being heard in 110 and 112 and of course the 2nd and the 4th are a Tuesday and Thursday so there's by-law matters being dealt with on the Tuesdays and Thursdays.

[Looking at a sample docket] for courtroom 11 for November 2nd, you can see that most of the docket is

taken up with dogs: dogs running at large, dogs barking, dogs biting people and it's these situations that can become quite heated in court.

On occasion we've had assault charges arising from attacks by victims on defendants or defendants on victims outside our courtroom following that. So they can get quite heated. Sometimes they require ejection. But not too many people are ejected.

People sometimes lose their temper. You just let them go if it's not too bad. So that gives you an example of the dockets and what's heard.

The dockets for 110 and 112 as you can see they're comprised [of various driving matters.] Further on down the docket, TTP, that's a trespass to premises so there's an unlawful trespass charge. We'll end up with gaming and liquor, common offences: intoxicated in a public place under the Gaming and Liquor Act. When we are sitting on circuit you tend to get a lot of wildlife charges, especially this time of the year. So that's basically the sittings in Calgary.

Circuit courts are a docket court and they're also a trial court so when I go out to Okotoks, I'll have a 23 or a 24-page docket. The first couple of pages will be Youth Court matters: first appearances and trials. The next 20 or so pages will be first appearances on traffic matters, wildlife matters, matters that are just there for plea. And the last couple of pages will be trial matters. So when we go out on circuit we start court at 10 o'clock and you basically sit until you've worked your way through the docket. A lot of the lesser offences, speeding tickets, that sort of thing that are less serious, the specified penalty is shown on the violation ticket. A person will just come to the front counter and if they're not disputing that they'll pay the specified penalty. If they want to plead not guilty and set a date for trial, when we're on circuit we have the court or the RCMP liaison officer would be in the court with us, so they'll come in, the charge will be read, they'll plead not guilty and set a date for trial. Circuit again goes till it's completed until we've dealt with all of those

matters.²⁴

Mr. McIlhargey estimated that based on his experience approximately "[o]ne to three matters will proceed a half day in Traffic Court and probably in By-law Court more: three to six."²⁵

Mr. McIlhargey described some of the trial matters as "fairly straight forward" and others as more complicated such that a decision will have to be reserved. Few people are represented by lawyers.²⁶

The Commission also received written submissions and heard the testimony of Mr. Glenn Morrison and Ms. Lee Hagen describing a typical day for rural and urban part time sitting Justices of the Peace, respectively. The evidence of those Justices of the Peace largely indicated that the day to day experiences of part time sitting Justices of the Peace are similar to full time sitting Justices of the Peace, with the exception that part time Justices of the Peace maintain a legal practice in addition to their Justice of the Peace duties.

As noted previously, most sitting Justices of the Peace spend less than 40% of their time on Justice of the Peace duties.

2. Presiding Justice of the Peace

Duties mainly deal with preliminary matters such as interim release, warrants in person or by telephone.

The duties of presiding Justices of the Peace are not set out in detail in either the *Justice of the Peace Act* and the *Justice of the Peace Regulations* but basically encompass what might be described as preliminary or interlocutory matters pursuant to the *Criminal Code*.²⁷ Such matters include judicial interim release (at the accused's option), issuance of search warrants, arrest warrants, blood warrants, Feeney warrants (to enter a dwelling house to arrest an accused), swearing of informations and facilitating administrative releases. Warrants and judicial interim release orders can be obtained at in person appearances before the presiding Justice of the Peace or by telephone appearances for areas outside of the large urban centres. Presiding Justices of the Peace

²⁵ Transcripts, November 10, 1999, p. 147.

²⁶ Transcripts, November 10, 1999, p. 137.

²⁷ R.S.C. 1985, c. C-46.

also have jurisdiction under the *Protection Against Family Violence Act* to grant emergency protection orders.

The Commission received written submissions and heard the testimony of Mr. Doug Ingersoll describing a typical "day in the life" of a presiding Justice of the Peace. Mr. Ingersoll described the procedures and protocols in carrying out these day to day duties. He further described

another aspect of the Justices' duties – dealing with members of the public wishing to swear "private informations" or "peace bond" applications.

He stated:

The private appointments with members of the public wishing to make peace bond applications or lay Informations in respect of criminal charges presents its own unique "handling" criteria. In primarily all instances, these are individuals who have been unable to obtain police assistance to facilitate their requests. These individuals, by and large, are not familiar with the Judicial system or how it works and accordingly, a high degree of "people skills" is required to assist, educate and lead these individuals through the process that is involved. Many are just not able to fully appreciate that a Justice of the Peace may refuse to issue process in a given circumstance. In these instances, extreme care must be taken so as to not unduly disturb the individuals should a decision be made not to issue process.²⁸

As noted previously, most presiding Justices of the Peace spend less than 40% of their time on Justice of the Peace duties.

3. Role of the Justices of the Peace Review Council

The conduct of both sitting and presiding Justices of the Peace is subject

Judicial Council governs
the qualifications and

²⁸

Binder of "Submissions to the Justice of the Peace Compensation Commission" dated November 10, 1999, Exhibit No. 4 at 7.

appointment of a Justice of the Peace.

to review upon complaint to the Chief Judge of the Provincial Court or the Judicial Council.²⁹ Also, as discussed above, the Judicial Council determines whether a person is qualified to be appointed as a Justice of the Peace and has previously established the qualification that a Justice of the Peace must be at least a five year member of the Law Society of Alberta. It should be noted that Justices of the Peace are not appointed by the Crown.

3. Summary of Current Compensation

Current compensation for Justices of the Peace is set out in the *Justice of the Peace Regulation*.

1. Full Time Sitting Justices of the Peace

Current annual salary is \$55,008 plus benefits except pension.

Since 1991 full time sitting Justices of the Peace receive an annual salary of \$55,008 less any deductions required by law or authorized by them and all benefits of a mid-level manager in the civil service except the pension plan (with no allowance in lieu thereof).³⁰ They are given one reading day a month and three weeks vacation per year. The Crown pays one-half of the cost of their participation in the Alberta Health Care Insurance Plan and they are entitled to 18 sick days per year.

2. Part-Time Sitting Justices of the Peace

Current per diem rate is \$250.

Part time sitting Justices of the Peace receive \$250 for every day (or \$125 for one half of a day) they sit with no benefits. That rate has been in place since 1991.

3. Part Time Presiding Justices of the Peace

Current per diem rate is \$220.

Presiding Justices of the Peace are currently paid \$220 a day (or \$110 for one half of a day) with no benefits.

4. SUBMISSIONS OF COUNSEL

²⁹ *Justice of the Peace Act*, s 51, *Judicature Act*, part 61

³⁰ *Justice of the Peace Regulation*, s 6(1)

Principles agreed upon based on a Supreme Court of Canada decision.

1. Submissions Regarding the Applicable Principles

There are no significant differences between counsel as to the applicable principles governing the Commission's Inquiry. Rather, the major differences between counsel relate to how such principles are to be applied. It is common ground between counsel that the most relevant principles are those set out in the Supreme Court of Canada's decision in

the *Provincial Court Judges* case and to a lesser extent *Elli v. Alberta* and *Airth v. Alberta*.³¹

There is no issue between the Parties as to whether or not Justices of the Peace should be impartial and independent from the executive branch of government. Indeed, the fact that this Commission was constituted is a recognition of the fact that Justices of the Peace are in the same position as other members of the judiciary insofar as the need for independence is concerned.

Counsel for the Justices of the Peace essentially takes the position that the need for independence is a constitutionally entrenched value that applies equally to Justices of the Peace and that the primary differentiation between Justices of the Peace and Provincial Court Judges is the level or degree of responsibility related to their duties. Counsel for the Justices of the Peace submits that compensation for Justices of the Peace should be tied to a percentage of the compensation recommended in the Judicial Compensation Commission previously constituted in this province.

Counsel for the Crown resists the notion of tying the salaries of Justices of the Peace to Provincial Court Judges. The government submits that no reasonable person would see the role of the Justice of the Peace as being comparable to that of the Provincial Court Judge. Counsel for the Crown also reminds this Commission that the constitutional guarantee of independence requires that salaries must not fall below a minimum. The Constitution does not require some higher standard. It is acknowledged by the government however that fair compensation does not necessarily mean minimal compensation.

Both Parties before this Commission agree with the basic principle that an appropriate compensation package should take into account all relevant factors with particular regard to the principles enunciated in the *Provincial Court Judges* case and the *Commission Regulations*.

2. Submissions Regarding Applicable Sources of Comparisons

No true comparators with different views on the relevance of various compensation information provided.

Both counsel for the government and counsel for the Justices of the Peace agree that there are no "true comparators" in the sense of comparing Alberta Justices of the Peace to another group whose position is on all fours with theirs. The basic position of the Justices of the Peace is that the best true comparator is the role of the Provincial Court Judge. The Justices of the Peace also invite the Commission to look at salary ranges of other decision makers such as the National Parole Board and the Human Rights Commission who deal with issues similar to those with which Justices of the Peace must deal, including decisions about life, liberty and security of the person.

The government does not disagree that these sources of comparison are relevant but disagrees as to the significance of these comparators. The government tends to focus the Commission on existing salaries of Justices of the Peace in Alberta as being the primary comparator, other Justices of the Peaces' salaries across the country and the salaries of Crown Prosecutors in Alberta. Counsel for the Crown further submits that Alberta tribunals and regulators serve as a better source of comparison than federal ones.

Both counsel are cautious about using statistics regarding lawyers' salaries as a comparator although this Commission cannot ignore the fact that as an entrance requirement to the 10 year position of Justice of the Peace in Alberta at least five years experience as a practicing lawyer is necessary. Nor can the Commission ignore the evidence respecting salaries within the private bar and particularly the relatively sharp increase after approximately ten years in practice and finally the need to remain in and or return to private practice after the appointment.

3. Submissions Regarding Appropriate Compensation

1. The Crown's Recommendations

Counsel for the Crown submits that based on the applicable principles,

the compensation should be as follows:

	April 1, 1998	April 1, 1999	April 1, 2000	April 1, 2001	April 1, 2002
Full Time Sitting Justices of the Peace	\$60,000 per annum plus benefits	\$65,000 per annum plus benefits	\$65,000 per annum plus benefits	\$70,000 per annum plus benefits	\$70,000 per annum plus benefits
Part Time Sitting Justices of the Peace	\$258 per diem including benefits	\$279 per diem including benefits	\$279 per diem including benefits	\$301 per diem including benefits	\$301 per diem including benefits
Part Time Presiding Justices of the Peace	\$258 per diem including benefits	\$279 per diem including benefits	\$279 per diem including benefits	\$301 per diem including benefits	\$301 per diem including benefits

2. The Justices of the Peace' Recommendations

Counsel for the Justices of the Peace on the other hand basically submits that Justices of the Peace should receive 80 percent of what Provincial Court Judges receive. This would translate into the following approximate figures:

	April 1, 1998	April 1, 1999	April 1, 2000	April 1, 2001	April 1, 2002
Full Time Sitting Justices of the Peace	\$113,600 per annum plus benefits	\$113,600 per annum plus benefits	\$121,600 per annum plus benefits	\$121,600 per annum plus benefits	\$121,600 per annum plus benefits
Part Time Sitting Justices of the Peace	\$590 per diem plus benefits	\$590 per diem plus benefits	\$630 per diem plus benefits	\$630 per diem plus benefits	\$630 per diem plus benefits
Part Time Presiding Justices of the Peace	\$590 per diem plus benefits	\$590 per diem plus benefits	\$630 per diem plus benefits	\$630 per diem plus benefits	\$630 per diem plus benefits

5. ANALYSIS

1. Governing Principles

Regulations set out matters to be considered by the Commission.

1. *The Commission Regulations*

The *Commission Regulations* state that:

- 16.. In preparing the Commission Report following conduct of the Inquiry, the Commission shall give consideration to at least the following matters:
- a) the constitutional law of Canada;
 - b) the role of the Justices of the Peace in the administration of justice;
 - c) the necessity to maintain the independence of the Office of the Justice of the Peace;
 - d) the unique nature of the Office of Justice of the Peace;
 - e) how the Alberta compensation package compares to compensation packages in other jurisdictions, having regard to the differences between these jurisdictions, in Canada;
 - f) the growth or decline in real per capita income;
 - g) the need to provide fair and reasonable compensation for Justices of the Peace 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 Justices of the Peace relative to its increases;
 - i) the nature of the jurisdiction of the Justices of the Peace;
 - j) the current financial position of the Government;
 - k) the need to attract qualified candidates to be appointed as Justices of the Peace;
 - l) any other factor which it considers relevant to the matters in issue.

In performing our analysis, we are governed by the *Commission Regulations* and therefore our findings with respect to each of the points of reference contained in those regulations will be dealt with, although not

necessarily in the same order as stated in the regulations.

2. Constitutional Principles

The need to ensure judicial independence requires independent, impartial and effective bodies to determine appropriate compensation.

There is little doubt that the most comprehensive statement of the constitutional principles governing this Commission's task is the *Provincial Court Judges* case which we have reviewed and which counsel for both of the Parties discussed extensively in written materials and oral submissions. In that case, the Supreme Court of Canada found that judicial independence is a constitutional tenet both through section 11(d) of the *Charter* and earlier conventions.³² The Court recognized three aspects of judicial independence: security of tenure, administrative independence and financial security. Security of tenure has been addressed respecting Justices of the Peace in Alberta by making the position a 10 year non-renewable term. Administrative independence has been effected by transferring the administrative duties to the office of the Chief Provincial Court Judge. The issue of financial security is the only aspect of judicial independence which this Commission must address.

Financial security has both an individual dimension as well as an institutional one. Not only must individual jurists be independent, so must the office. It is in furtherance of this principle that the creation of independent, impartial and effective bodies, such as this Commission, is now a constitutional requirement.

The mandate of this Commission is therefore rooted in the constitutional requirement of judicial independence and one of the core characteristics of this is a need to ensure that the process of determining judicial compensation be depoliticized.³³

In regard to the exercise of this Commission's mandate, the Supreme Court of Canada sets out a few broad principles. Firstly, the Court states

³² *Provincial Court Judges* case at para. 83

³³ *Provincial Court Judges* case at paras. 130, 140 and 166

that the perspective of the Commission should be that of the "reasonable and informed person."³⁴ This test is adapted from the earlier decision of *R. v. Valente* (No. 2)³⁵ which dealt with individual rather than institutional independence.

The goal is to present an objective and fair set of recommendations dictated by the public interest.

The objective or goal of this Commission is also defined in the *Provincial Court Judges* case: "[t]he goal is to present "an objective and fair set of recommendations dictated by the public interest".³⁶

Guidance is also found in the Supreme Court of Canada's adoption of the United Nations' Draft Declaration of the Independence of Justice which states: "[t]he salaries and pensions of judges shall be adequate, commensurate with the status, dignity and responsibility of their office, and shall be periodically reviewed..."³⁷

This Commission therefore sees its function as grounded in reason and fairness, and dictated by the public interest.

2. The Unique Nature of the Office of Justice of the Peace

They are judicial decision makers who function as the first and sometimes only encounter that individuals may have with the justice system.

Justices of the Peace in Alberta are judicial decision makers who function as the first and sometimes only encounter that individuals may have with the justice system. The Justices bear the responsibility of fair and impartial treatment of those affected by their decisions and often the decisions must be made in difficult circumstances. In the hearing offices, matters of judicial interim release must be determined, often very soon after a person has been accused of a criminal offence or domestic violence, usually in the absence of counsel and often in an atmosphere of high emotion. The new procedures that allow for bail applications by teleconference provide a particular challenge to the decision maker. Matters involving applications to search are less emotionally charged but time is often of the essence and decisions of major impact must be made

³⁴ *Provincial Court Judges* case at para. 13.

³⁵ (1983), 2 C.C.C. (3d) 417 (S.C.C.).

³⁶ *Provincial Court Judges* case at para. 73.

³⁷ *Provincial Court Judges* case at para. 194.

quickly. Justices of the Peace are also charged with the responsibility of determining whether "private informations" should issue in circumstances where aggrieved individuals wish to have criminal charges laid and where the police have chosen not to proceed.

In "Traffic Court" the decision making is more removed from the accused's initial contact with the law yet the impartiality and fairness expected of the judicial officer is no less important. The Commission has heard that most people appearing in this Court are not represented by counsel and thus are not acquainted with the rules of evidence or courtroom procedures, yet often feel quite passionately about their predicament. Traffic Court may often be a person's only encounter with the justice system.

The role of the Justice of the Peace demands balance, fairness and impartiality within an inherently adversarial system often without the involvement of key players, namely professional advocates. In order to ensure that justice is both done and perceived to be done in uniquely challenging circumstances, a Justice of the Peace must continually draw upon considerable tact, diplomacy and maturity.

3. Consideration of Alberta's Financial Position and the Overall State of the Economy

Alberta's financial position and the overall state of the economy considered.

Copies of the 1998 and 1999 budgets for Alberta were placed before the Commission. There is no question that Alberta's economic picture in the foreseeable future is positive. There is also little doubt that Alberta's financial strength and the unique tax status of Albertans are due in part to the fiscal restraint that the government has shown in the 1990s, the period of time during which the current Justice of the Peace positions and current salary levels were created.

Counsel for the government submits that this Commission's recommendation should reflect the same fiscal restraint that has led to Alberta's strong financial position. The position of the Justices of the Peace on the other hand is that the fiscal restraints initiated by the government in the 1990s should not operate to now retard fair compensation. Rather, compensation should recognize that the economy is strong.

The Commission is of the view that the Alberta economy should not create a windfall for persons paid by the government, including Judges and Justices of the Peace. On the other hand, nor can fiscal restraint justify less than fair compensation.

4. Consideration of the Cost of Living Index and the Growth or Decline of Per Capita Income

Cost of living has eroded compensation by 29%.

The Commission has been shown that the Alberta Consumer Price Index rose from 124.6 to 140.9 between 1991 and 1999.³⁸ The decline in the real adjusted income of Justices of the Peace since 1991 has been about 29%. These are factors that the Commission has considered but their relevance is limited. Of greater significance to the Commission is the changing role of the Justices of the Peace since 1991 and changes in judicial compensation since 1991.

5. Consideration of the Need to Attract Qualified Candidates

Need to attract qualified candidates is important with non-renewable 10 year term an important consideration.

It is accepted by both Parties that the level of compensation for Justices of the Peace should be such that the position attracts qualified candidates. Counsel for the Crown observes that there has been no shortage of applicants for the position of Justice of the Peace thus far. On the other hand there has been no evidence as to the quality of the candidates that were rejected by the Judicial Council in the screening process. This Commission recognizes that the current compensation level does not seem to have been a deterrent to attracting qualified candidates. The Commission also recognizes, however, that many factors are likely to attract candidates to this position, including a basic desire to perform a valuable public service as well as the prestige and respect that would come from holding this position. This is part of the reason why an independent third party such as this Commission is seen as essential in determining appropriate compensation. If the compensation level is not fair and commensurate with the level of responsibility and respect that the office engenders, then the position holders are open to a form of exploitation. Therefore, although the need to attract qualified candidates is a factor relevant to appropriate compensation, the Commission sees this as only one part of the equation.

The fact that there is no security and tenure beyond the non-renewable ten

³⁸

Binder No. 2 of "Supplementary Informational Material" dated January 11, 2000, Exhibit No. 14 at tab 32.

year term is also a factor that the Commission has taken into account. This will be expanded upon in a later section.

6. Comparisons

1. General Observations

No true comparators, but need to set a benchmark.

As earlier stated, the consensus of counsel as well as of this Commission is that there are no true comparators in the sense of comparing Alberta Justices of the Peace to another group of individuals with the same responsibilities in the same totality of circumstances. This Commission is effectively being asked to set a new benchmark for the relatively new role of Justice of the Peace in Alberta. As observed by counsel for the government, Alberta has been in the vanguard respecting the role of Justices of the Peace. For better or for worse it falls to this Commission to be somewhat in the vanguard in fixing appropriate compensation.

2. Provincial Court Judges

Not equated with Provincial Court Judges but established at _ of the compensation of a Provincial Court Judge.

Neither counsel for the Justices of the Peace nor counsel for the government submits that Justices of the Peace should be equated with Provincial Court Judges. It is the position of the Justices of the Peace that, however, there are many similarities. The Commission agrees. In the case of sitting Justices of the Peace, the day to day routines are quite similar to sitting Provincial Court Judges, including sitting times. The primary difference of course is the nature and severity of the cases that are being heard. Criminal cases will generally involve more serious consequences, sometimes jail sentences and some offences dealt with in Provincial Court can carry penalties as high as life imprisonment. On the other hand, cases heard by sitting Justices of the Peace are usually highway traffic matters although jurisdiction does extend to cover many provincial statutes. Traffic Commissioners do have the jurisdiction to impose periods of imprisonment and fines in some cases as high as \$100,000.00. Their decisions routinely affect the driving privileges of Albertans and the Commission takes into account that a large portion of the population that has any direct involvement with the justice system encounters it in Traffic Court. The sensitivity of presiding Justices of the Peace to issues of public perception is no less important than in other levels of court: dignity and decorum can be expected in Traffic Court every bit as much as in Provincial Criminal or Family Court.

The role of the presiding Justice of the Peace is quite different than that

of a sitting Justice of the Peace in terms of the day to day routine. Presiding Justices of the Peace perform their duties in eight hour shifts and cover 24 hours of the day. Despite the differences in day to day routines, however, some of the functions that presiding Justices of the Peace perform are among the most important functions within the criminal justice and family law proceedings. A significant part of their duties includes the issuance of search warrants which include determining when it is appropriate to authorize the search of one's home or other place or in some cases, when it is appropriate to authorize the taking of blood.

A significant part of the duties of a Justice of a Peace include determining judicial interim release. Justices of the Peace have the same jurisdiction as Provincial Court Judges when performing this function and rarely do Justices of the Peace have the benefit of counsel to make submissions. Although such an order is reviewable, it can have very significant consequences on the trial process and invariably affects the liberty of citizens.

The relatively new duty of dealing with emergency protection orders is again a form of decision making that can have very serious consequences including dispossessing a person of the right to occupy his or her home and access to monies. These decisions are, of course, all reviewable. However, the decisions of Provincial Court Judges and Superior Court Judges are also always reviewable.

Counsel for the Justices of the Peace submits that duties and levels of responsibilities for Justices of the Peace should be equated to 80 % of that for Provincial Court Judges. The Commission disagrees. The Commission does agree, however, that the compensation of Justices of the Peace can be rationally tied to the Provincial Court Judges on a percentage basis having regard to the respective levels of responsibility, stature and duties. We have concluded that two thirds is an appropriate value. We have in turn measured this against other comparators which lead us to the same conclusion.

It should be noted that in structuring an appropriate equivalency of two thirds, the Commission fixed a base salary and, in lieu of pension and benefits that Provincial Court Judges receive, recommends a cash payment of 10% for pension and a continuation of benefits where possible or an equivalent cash payment where it is not. The allowance for pension

was determined from information provided on the cost to the Crown of its pension plans.

3. Justices of the Peace in Other Canadian Jurisdictions

Justices of the Peace' compensation in other jurisdictions considered.

Little guidance is found in a comparative analysis of salaries for Justices of the Peace in other jurisdictions. It appears that several jurisdictions do not have Justices of the Peace. Some provinces have lay Justices of the Peace whereas other jurisdictions require a law degree. And in some jurisdictions the functions performed by Alberta's Justices of the Peace are performed by Provincial Court Judges. In short, the requirements, scope of duties and functions of Justices of the Peace appear to vary significantly across the country. The second reason that a comparison to Justices of the Peace in other jurisdictions is of limited value is the fact that none of the salary ranges provided to this Commission are the product of an independent Commission.

4. Lawyers

Comparison to lawyers' income in private and public practice considered.

The Commission approached a comparison to lawyers' incomes with some caution. The use of statistics in respect of lawyers' salaries is also an exercise that requires particular care. On the other hand, the position of Justice of the Peace in Alberta does require, as a prerequisite, that one be a lawyer with experience and the judicious exercise of mature legal skills is fundamental to the position. In this sense, lawyers' incomes are very relevant.

It has been pointed out that, statistically, the average personal income for lawyers in Alberta is in the range of \$70,000 and that 60% of Alberta lawyers make less than that. What portion of the bar has less than five years experience and what part of that 60% is comprised of junior lawyers is not before us. Presumably, however, there is a rough correlation between experience and income and it would not be appropriate to compare the maturity or stature of Justices of the Peace to the junior or less financially successful segment of the private bar. The Committee is of the view that probably the most pertinent data respecting incomes of lawyers in the private bar is the data showing a trend toward an accelerated increase in incomes after ten or more years of practice. This

is illustrated in the survey results of PriceWaterhouseCoopers summarized in Appendix "A". Those survey results reveal that with

equivalent experience the range is \$90,000 to \$150,000. Whether or not the numbers are precise, having regard to the limited sample as pointed out by counsel for the Crown, the general trend is relevant because it corresponds with precisely the same segment of the bar having experience commensurate with the Justices of the Peace.

The Commission has also considered the salaries of Crown counsel, taking into consideration the Crown submission that "[f]rom the perspective of the entirety of the justice system, their [Justices of the Peace] role while important, is no more key than other participants in the system such as Crown prosecutors and defence counsel."³⁹ The salaried position of Crown counsel is a legitimate comparator but it also distinguishable in that Crown counsel do not surrender their position after 10 years to return to private practice or begin a new career.

Lawyers' charge out rates as an ad hoc prosecution or under legal aid were considered.

The Commission also notes that since 1991 ad hoc prosecutors are paid based on a capped hourly rate of \$72.00 per hour or (at 8 hours) \$576.00 per diem. If a 29% cost of living adjustment were added, that would now be \$743.00 per 8 hours.

Lawyers under the Legal Aid tariff in Alberta (now negotiating an increase) have since 1991 been paid a notional hourly rate of \$61.00 per hour or \$488.00 per diem. A 29% increase would equal to \$629.00 per eight hours. The suggestion that the salaries of Justices of the Peace should be lower than the notional Legal Aid tariff is not accepted by the Commission. If Justices of the Peace play an equally important role as other counsel, their salaries should at least be comparable.

5. Senior Government Officials

Comparison made with senior government officials.

As recognized in the *Provincial Court Judges* case, Judges are not civil servants. On the other hand, the salaries of highly positioned government officials have been placed before this Commission as a relevant comparable. What is evident from the materials is that "tough decision makers" within government have received a significant increase in salary

within the past two years. This increase was based largely on a comparative analysis to the private sector and a recognition of the need to

³⁹

Submission of the Crown in Right of Alberta dated January 6, 2000, Exhibit No. 11 at 11.

provide fair and reasonable compensation. The range of salaries for senior government officials is summarized in Appendix "A". It appears to the Commission that senior government officials in bands 2 and 3 receive salaries in the range of \$50,700 to \$90,000 and including bonuses from \$60,840 to \$108,000 plus benefits. The graphs in Appendix "A" put the salary ranges into a visual context.

6. Federal and Provincial Decision Making Tribunals

Federal and provincial decision making tribunals considered.

Tribunals and Commissions are not the best comparators in that often, as in the case of this Commission, involvement is based on a spirit of public service; functions and requirements vary widely. It is noteworthy, however, that in cases where persons are asked to have a law degree, mature legal skills and to commit to independent decision making, salary ranges are \$83,600 to \$98,300 in the case of the National Parole Board for example and \$93,200 to \$109,600 in the case of the Human Rights Commission. Similarly, compensation for Alberta regulators ranges from \$63,200 to \$127,500 plus up to 10% in additional bonuses.

The Commission has been provided with a great deal of information regarding compensation for various federal and provincial regulators and tribunals. The charts in Appendix "A" depict the general compensation ranges.

7. Summary of Comparisons

The comparison of the foregoing salary information is depicted on the last chart in Appendix "A". It can be seen that the comparisons are consistent with the Commission's recommendations based on the two thirds ratio of compensation for Provincial Court Judges.

7. Consideration of the Ten Year Term

Ten year non-renewable term considered.

A prospective applicant for a ten year Justice of the Peace position assumes a long term commitment. The position also requires a law degree and at least five years experience. The net result is that a lawyer

either effectively terminates his or her law practice to assume a full time position or carves a part time position out of an existing practice. In the former case, prospective applicants are effectively asked to take the position of Justice of the Peace during the years that are statistically the

most lucrative for a lawyer and then return to practice 10 years later or not at all. At the very least, any graduated income through practice is deferred for a minimum of 10 years. In the case of a part time Justice of the Peace, the commitment would have less impact on the person's practice. However, part time positions have their own unique impacts as set out in the next section.

8. Considerations Unique to Part Time Justice of the Peace Positions

It would appear that most part time Justices of the Peace in Alberta also carry on law practices to varying degrees. Their schedules are made up far in advance and take up between 20% and 40% of a lawyer's practice.

Although overheads will vary from one lawyer to the next, the overhead for each of the lawyers also serving as Justice of the Peace will be relatively fixed. Consequently, although a lawyer may be devoting 40% of his or her time to performing Justice of the Peace duties, the lawyer continues to pay the same or a similar amount in order to be able to practice law. This means that a person's ability to earn income from practice as a lawyer is reduced by the amount of time that he or she sits as a Justice of the Peace. For this reason, the Commission felt that in the case of part time Justices of the Peace, a lawyer's billing rate (as opposed to personal income) is a better standard by which to measure *per diem* rates rather than a pure percentage of salary. Mitigating against this, however, is a recognition that schedules are fixed for six months at a time.

In determining an appropriate *per diem* rate, the Commission considered the appropriate number of working days to be used. Counsel for the Crown suggested 215 was appropriate based on three weeks of vacation.

The Alberta Judicial Compensation Commission adopted 200 days based on 6 weeks of vacation. A similar number of days is used for federal regulators. Four weeks vacation, which is two thirds of what Provincial Judges receive, was considered by this Commission to be appropriate. Accordingly, 210 working days has been used in calculating the *per diem* rate.

The Commission then considered the salary proposed for a full time sitting Justice of the Peace, added an allowance of \$15,000 for pension and fringe benefits and converted it to a *per diem* rate using the factor of 210 working days (see Appendix "B" for detailed calculation). To this was added a modest amount for overheads to convert it to a billing rate.

This rate was then considered in context with the ad hoc prosecutors' billing rate of \$576 fixed since 1991 and the legal aid billing rate of \$629

Lawyer's billing rate, as opposed to personal income, is a better measure for per diem rates.

(adjusted for inflation). Finally, we applied a reasonableness test. A billing rate of \$650 or \$81 per hour for services of a highly qualified professional seems to be reasonable.

9. Consideration of the Status Quo

Current levels of
compensation considered.

The Commission does not find currently paid compensation rates to be at all helpful. They appear to be out of line with any of the comparables that this Commission has looked at. They have not been the product of any type of independent inquiry process and they do not accord with the principles that both Parties espouse in respect of appropriate compensation for Justices of the Peace.

6. RECOMMENDATIONS

For the reasons discussed more fully in the preceding sections, the Commission hereby offers its unanimous, independent and impartial recommendations respecting appropriate compensation for the Justices of the Peace of Alberta between April 1, 1998 and March 30, 2003.

1. Full Time Sitting or Presiding Justices of the Peace

For the years commencing April 1, 1998 and April 1, 1999, the Commission recommends that full time sitting or presiding Justices of the Peace receive \$95,000 per annum plus 10% in lieu of pension and continue to receive their current benefits. For the years commencing April 1, 2000 and April 1, 2001 we recommend an annual salary of \$100,000 plus 10% for pension and continuation current benefits. For the year commencing April 1, 2002 we recommend \$105,000 plus 10% for pension and continuation of current benefits.

We further recommend that full time sitting or presiding Justices of the Peace receive 4 weeks vacation per year commencing April 1, 2000.

2. Part Time Sitting Justices of the Peace

For the years commencing April 1, 1998 and April 1, 1999, the Commission recommends that part time sitting Justices of the Peace receive \$600 per diem with no pension or benefits. For the years commencing April 1, 2000 and April 1, 2001 we recommend a *per diem* of \$650 with no pension or benefits. For the year commencing April 1,

2002 we recommend \$670 per diem with no pension or benefits.

3. Part Time Presiding Justices of the Peace

The Commission recommends that part time presiding Justices of the Peace receive the same compensation as part time sitting Justices of the Peace as set out in the preceding section.

4. Concluding Remarks

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

All of which is respectfully submitted this 29th day of February, 2000.

Larry G. Anderson, Q.C.

Linda Steinmann

Harry G. Schaefer, F.C.A.
Commission Chairperson

7. ACKNOWLEDGMENTS

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 Alan Hunter, Q.C. and Rob Armstrong, representing the Justices of the Peace, and to Phyllis Smith, Q.C., counsel to the Crown. 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.

Doug Ingersoll, Patrick Michael McIlhargey, Glenn Morrison and Lee Hagen, as witnesses in the course of the public hearings, provided us with a rare opportunity to share a day in the life of a Justice of the Peace. Certain other Justices of the Peace also made written submissions to the Commission which provided us with further insights into their position.

The support provided by Ken Hawrelechko and Ken Kereliuk 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, the Commission extends its deepest appreciation to the Commission's counsel, Stephen Lee, whose organizational skills have permitted us to present this report in a timely manner.

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

Larry G. Anderson, Q.C.

Linda Steinmann

Harry G. Schaefer, F.C.A.
Commission Chairperson

APPENDIX "A"

COMPARATIVE DATA

Comparative data was provided to the Commission for a number of occupations and offices in Exhibits No. 9 and 14. The following is a summary of the comparative data corresponding to those occupations and offices discussed in section V of the Commission Report.

JUSTICES OF THE PEACE IN OTHER CANADIAN JURISDICTIONS

A survey of Canadian sitting and presiding Justices of the Peace was carried out on November 1, 1999 (Exhibit No. 9, tab 12). The information on salaries and benefits is set out below:

- Alberta \$55,000 per annum, benefits of mid-level managers excluding pension benefits, 1 reading day per month, 3 week paid vacation time, 1 yearly meeting, travel expenses. Ad hoc's receive \$250.00 per diem, no benefits.
- British Columbia \$67,251 per annum, all benefits of level five managers including pension benefits, 4 weeks vacation initially, increasing to 5 weeks and then 6 weeks after twenty years.
- Manitoba approximately \$55,000 to \$56,000 per annum, same benefits as managers in the public service.
- Nova Scotia \$30,000 per annum (4 nights per week), income can be increased by being on call for bail hearings and search warrants for \$100 per hour, no benefits.
- Northwest Territories \$45.00 per hour or part of an hour to a maximum of \$270.00 per day, no benefits.
- Nunavut \$45.00 per hour or part of an hour to a maximum of \$270.00 per day, no benefits.
- Ontario \$61,882 per annum, all benefits of government manager. 9 regional senior justices of the peace receive \$64,409 per annum due to their supervisory duties, all benefits of government managers.
- Quebec approximately \$84,750 to \$90,400 per annum, pension benefits.
- Saskatchewan \$56,000 per annum. same benefits as mid-level managers in the public service.
- Yukon \$50.00 per hour (cannot bill for more than 6 hours per day), no benefits. 1 supervising justice of the peace, \$62,000 per annum. no pension. 6 weeks annual vacation. Salary set by Territorial Government.

LAWYERS

PriceWaterhouseCoopers carried out a compensation survey for Alberta Justice in June 1997 (Exhibit 9, tab.1). That survey compares compensation within Alberta Justice by six classification levels (higher number reflecting more seniority). Levels 3 to 5 correspond to experience levels of the Justices of the Peace. The survey revealed that for example, in 1997 at level 4 Alberta Justice compensation was behind the government sector by 21% and the private sector by 39%.

The following sets out the PriceWaterhouseCoopers survey findings of the salary ranges based on years of experience:

Experience				
	10 to 14 years		15 to 19 years	
Salary Ranges	Minimum	Maximum	Minimum	Maximum
Alberta Justice	\$ 58,000	\$ 75,000	\$ 62,000	\$ 87,000
All Governments	\$ 65,000	\$ 127,000	\$ 78,000	\$ 127,000
Private Sector	\$ 90,000	\$ 160,000	\$ 95,000	\$ 150,000
Average Salary	Average		Average	

Alberta Justice	\$ 62,797	\$ 70,628
All Governments	\$ 71,732	\$ 81,454

SENIOR GOVERNMENT OFFICIALS

On April 8, 1998 a report on Compensation for Alberta Government Senior Officials was presented to the Crown (Exhibit No. 9, tab 7). The report revealed a salary gap of approximately 16% at the executive level, which appears to correspond to salary group 5 in the PriceWaterhouseCoopers survey for Alberta Justice discussed above. The report recommended new pay "bands". Band 2 embraces Alberta Justice levels 2 to 4 and band 3 includes Alberta Justice level 5. The following table sets out the ranges suggested:

	Minimum	Maximum
Band 2	\$ 50,700	\$ 76,000
Band 3	\$ 68,500	\$ 90,000

The maximum level was set at the medium level to permit a bonus of up to 20% for senior officials and 10% for quasi-judicial officials. These bands are subject to market modifiers of up to 15% to meet market conditions.

The following table and chart show the ranges with the bonus range included:

	Minimum	Maximum
Band 2	\$ 60,840	\$ 91,200

Band 3	\$ 82,200	\$ 108,000
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FEDERAL AND PROVINCIAL DECISION MAKING TRIBUNALS

Information was provided on the salary ranges for Alberta quasi-judicial officials effective April 1, 1999 (Exhibit No. 14, tabs 16 and 46). This information is set out below:

Decision Making Tribunal	Minimum	Maximum
Range D Chair AEUB	\$94,860	\$127,500
Range C Chair Labor Relations Chair Surface Rights Chair Appeal Commissioner WB Vice Chair AEUB	\$81,600	\$113,628
Range B Mental Health Patient Advocate Members AEUB Vice Chair Surface Right Board	\$68,340	\$94,656
Range A Members Land Compensation Board Members Surface Rights Board	\$63,240	\$86,700

Although not stated specifically, these ranges would appear to be similarly adjusted downwards to permit a bonus range of up to an additional 10% of salary.

The following information was also provided on federal regulatory bodies:

Decision Making Tribunal	Minimum	Maximum
GIC-7 National Parole Exec. Vice Chair Veterans Review Chair RCMP Complaints Chair	\$107,100	\$126,000
GIC-6 National Parole Vice Chair Human Rights Member Military Police Complaints Chair	\$93,200	\$109,600
GIC-5 National Parole Member RCMP Complaints Vice Chair	\$83,600	\$98,300

Decision Making Tribunal	Minimum	Maximum
Veterans Review Deputy Chair Transportation Accident Board Member		
GIC-4 Immigration Board Member Veterans Review Member	\$76,400	\$89,900

The following chart compares the foregoing information for the above Alberta and federal regulators:

APPENDIX "B"

CALCULATION OF FACTORS

Justices of the Peace				
		Vacation	Vacation	Vacation
		3 weeks	4 weeks*	6 weeks
Max. working days	52 x 5	260	260	260
Vacation		15	20	30
Statutory Holidays		12	12	12
Sickness		18	18	18
Time off		45	50	60
Working days		215	210*	200
	Annual	Per Diem	Per Diem	Per Diem
Compensation†	\$ 95,000			
Fringe Benefit Allowance	\$ 15,000			
	\$110,000	\$ 511.00	\$ 523.00	\$ 550.00
Allowance for Overheads			\$ 77.00	
Per Diem Rate			\$ 600.00	

* The 210 factor is based on two thirds of the vacation of a Provincial Court Judge.

† Recommendation for 1998 and 1999.

APPENDIX "E"

LIST OF EXHIBITS

No.	Exhibit	Dated
1	Letter Submission of Allan Fay	November 1, 1999
2	Letter Submission of John R. Shaw	November 9, 1999
3	Binder of "Informational Material"	September 22, 1999
4	Binder of "Submissions to the Justice of the Peace Compensation Commission" (index attached)	November 10, 1999
5	Mission Statement Justice of the Peace Manual	October 1997
6	Written Submission by Brenda L. Edwards	undated
7	Written Submission by Siona Gunn-Graham	undated
8	Notice of Hearings and Request for Written Submissions	November 22, 1999
9	Binder No. 1 of "Supplementary Informational Material" (including Tab 15 Demographic Information submitted by Alberta Justice (Ken Hawrelechko) on behalf of Emery Jamieson under cover of letter dated December 21, 1999) (index attached)	November 29, 1999
10	Letter Submission of David M. Duggan	January 3, 2000
11	Submission of the Crown in Right of Alberta	January 6, 2000
12	Letter Submission of the Law Society of Alberta	January 7, 2000
13	Justices of the Peace of Alberta Written Submissions to the Justice of the Peace Compensation Commission	January 7, 2000
14	Binder No. 2 of "Supplementary Informational Material" (including (i) Tab 32 Cost of Living Calculations and Tab 33 1997 Statistics Canada Income Report submitted by Emery Jamieson under cover of letter dated January 6, 2000 and (ii) additional materials for Tabs 5 and 33, and new Tabs 46 and 47 submitted by Alberta Justice on behalf of Emery Jamieson under cover of letter dated January 17, 2000) (index attached)	January 11, 2000
15	Justices of the Peace of Alberta Addendum to the Written Submissions of the Justice of the Peace Compensation Commission	January 14, 2000
16	Letter Submission of Peter Royal, Q.C. dated January 7, 2000	January 14, 2000
17	Reply Submission of the Crown	January 18, 2000
18	Order in Council No. 2 2000 (Alta Reg 8 2000)	January 26, 2000

No.	Exhibit	Dated
19	Justices of the Peace of Alberta Reply to the Written Submission of the Crown	January 14, 2000
20	Information Requests of the Commission and Responses, including two e-mail responses both dated January 18, 2000	January 19, 2000
21	Justices of the Peace of Alberta Additional Information	January 21, 2000
†	Submission of the Crown re: clarification of Schedules "C" and "D" contained in the "Reply Submission of the Crown" dated January 18, 2000	January 27, 2000
†	Submission of the Justices of the Peace re: (i) Quebec Justices of the Peace and (ii) responsibility levels of government ministers and Federal Boards and Commissions identified in the Supplementary Informational Materials, Tabs 2 and 16, respectively, dated January 11, 2000.	January 28, 2000
†	Submission of the Crown re: submission of the Justices of the Peace dated January 28, 2000	February 1, 2000
†	Submission of the Crown re: management salary increases effective April 1, 1999	February 11, 2000
‡	Submission of the Justices of the Peace re: the British Judge Advocate General Office	February 18, 2000
‡	Submission of the Crown re: the British Judge Advocate General Office	February 22, 2000

Exhibit Nos. 1 to 8 were marked during the hearing convened on November 10, 1999 at Edmonton, Alberta.

Exhibit Nos. 9 to 21 were marked during the hearing convened on January 21, 2000 at Calgary, Alberta.

† These submissions were requested by the Commission during the hearing convened on January 21, 2000 at Calgary, Alberta and subsequently provided by counsel for the Parties.

‡ These submissions were provided by counsel for the Parties subsequent to the hearing convened on January 21, 2000 at Calgary.