

REPORT

OF THE FOURTH

ONTARIO JUSTICES OF THE PEACE

REMUNERATION COMMISSION

2007

1. Background Introduction

This is the fourth Ontario Justices of the Peace Remuneration Commission. It is established pursuant to the provisions of the December 1999 amendments to the Justices of the Peace Act, R.S.O. 1990 c.J.4. We have read and considered the three earlier reports carefully prepared by the earlier Commissions.

At the outset, the *Justices of the Peace Act* established two categories, namely, presiding and non-presiding Justices of the Peace. It was made clear to us that the category of non-presiding justices was rapidly disappearing to the extent that it will be unnecessary to deal with the non-presiding category to any significant extent. The Association suggested that there should be an indication from this Commission that the designation of non-presiding Justices of the Peace should be abolished. This certainly appears to be the view of the Chief Justice of the Ontario Court of Justice expressed in his speech at the opening of the Court as early as January 2003.

There are a number of scheduling difficulties that arose which delayed the hearings and, thus, this report. In fairness it should be mentioned that the Association of Justices of the Peace was not responsible for any significant delays in the process.

This statutory criteria for assessing the remuneration are set out in section 7 of O. Reg. 319/00. They provide:

“In developing its recommendations..., the Commission shall consider the following criteria:

- (1) the laws of Ontario.
- (2) the need to provide fair and reasonable remuneration to justices of the peace.

- (3) the economic conditions in the Province, as demonstrated by indicators such as the Provincial Inflation Rate.
- (4) recent Ontario public sector compensation trends.
- (5) the growth or decline in per capita income.
- (6) the financial policies and priorities of the Government of Ontario.
- (7) the principles of compensation theory and practice in Canada.”

Like earlier Commissions, we agree that the most important criteria is the need to provide fair and reasonable remuneration to Justices of the Peace, although we have considered all the requisite criteria.

It must be noted that the hearings of the present Commission were, for the most part, held in late December 2006 and January 2007, well into the three year period for which this Commission must make recommendations.

We are indebted to counsel for the parties, Mr. Boniferro for the Province of Ontario and Ms. Mary Cornish for the Association. Their submissions were detailed, lengthy and helpful. We note that counsel for both parties provided expert reports and expert witnesses that were of great assistance. We will mention it now and refer to it later that the Association should recover all reasonable costs incurred in obtaining the expert reports and presenting the expert evidence.

2. Remuneration

The annual remuneration to be paid to the Justices of the Peace is the most important issue and should be dealt with first.

- (a) The Association forcefully contended that their remuneration should be a fixed percentage of the remuneration to Judges of the Provincial Court in Ontario. We cannot agree with this position. However, we all agree that greater attention must be given to the importance of the work of Justices of the Peace. The Association points to the ever increasing remuneration of the Provincial Court Judges. It was noted that the current salary for Provincial Court Judges is approximately three times that of presiding Justices of the Peace. However, there is now and always will be a very real difference between the qualifications and work performed by Justices of the Peace and Provincial Court Judges. We have agreed that it is not appropriate at this time to attempt to fix a percentage of the Provincial Court Judges remuneration as being appropriate compensation for Justices of the Peace.
- (b) However, the importance of the work of Justices of the Peace must be recognized and restated. Indeed, perhaps insufficient emphasis has been given to their work in the past. A great deal of their time is occupied in considering and, where appropriate, issuing search warrants. The Supreme Court of Canada has long recognized the importance and significance of search warrants

It has long been accepted that individuals are entitled to reasonable privacy in their offices and still greater privacy in their homes. Canadians are rightly entitled to expect that this privacy will only be overridden in clear and compelling circumstances following careful consideration by a Judicial Officer.

In *Hunter v. Southam* [1984] 2 S.C.R. 145 Justice Dickson, as he then was, considered the scope and importance of s.8 of the Charter of Rights which provides that persons are to be free from unreasonable searches. He recognized that the section grants a broad right to be free from unreasonable search. In other words, to be secure from encroachment

upon a reasonable expectation of privacy. He went on to say that prior authorization is a precondition for a valid search.

It is the Justices of the Peace, acting as independent Judicial Officers, who consider and, if appropriate, authorize the issuance of a search warrant, fulfilling the precondition for a valid search. Justice Dickson recognized the vital importance of this role and thus significance of the work of Justices of the Peace performing this task.

With the advent of the telephone search warrant, Justices of the Peace must, at all hours of the day and night, consider urgent applications for search warrants. Their role in search warrant applications makes the function and work of Justices of the Peace vitally important in the protection of privacy and ensuring freedom from unreasonable searches.

There is still more important work performed by Justices of the Peace on a daily basis. They are the first to consider applications for bail. In undertaking this task, they must take into account and balance the fundamentally important concepts of the freedom of the subject and the safety of the community. This is a role that cannot be lightly undertaken. Rather very serious consideration must be given to every application. This demonstrates the type of important judicial decision that Justices of the Peace are called on to make every day. There must be respect for this role in the community. There cannot be any thought that Justices of the Peace could be influenced in their work either by threats or bribes from individual criminals or organized crime groups. The income of Justices of the Peace must be such that they can disdain and dismiss any offers of bribes. This Commission must set a level of remuneration that truly establishes the independence of the Justices of the Peace and recognizes the importance of their work.

In addition to bail hearings and search warrants, Justices of the Peace have jurisdiction to sit on charges of breaches of Provincial Acts.

The importance of this role was demonstrated during the course of our hearings. With the increased role of Provincial Judges who determine well over 90 percent of the criminal cases in Ontario, there has been a concomitant increase in the demand and need for Justices of the Peace to preside in cases involving Provincial offences. As a result of the increasing backlog of Provincial offence cases, a significant number of new appointments were made to the Justices of the Peace bench. Although it was said that this did not demonstrate any change in the work of Justices of the Peace, it does once again emphasize the importance of their role. If the backlog is to be reduced and these cases carefully tried and considered, there must be Justices of the Peace who are fully trained to preside in these cases. It would appear that the training period would be between six months and one year.

Although the statistics do not reflect the current sittings of Justices of the Peace on Provincial offences, it is realistic to expect that there will be an increasing demand for Justices of the Peace to undertake more and more cases involving Provincial offences. These cases are important to individuals and to the community. They would include not only driving offences but also workplace safety, environmental safeguards and, indeed, all the fields where Provincial legislation provides both statutory standards and penalties for their breach. These Acts provide for the safety and well being of all residents of Ontario. Charges for breaches of these statutes must be carefully tried and considered by competent and independent Justices of the Peace.

What we have said regarding the importance of the role of Justices of the Peace should never be taken as criticizing earlier Commissions but simply as a present day recognition and confirmation of the exceedingly important work performed by the Justices of the Peace.

Taking all the requisite factors into account, we would fix the remuneration of Justices of the Peace at:

\$103,000. as of April 1, 2005,

\$106,000. as of April 1, 2006,

\$109,000. as of April 1, 2007.

This, of course, pertains only to presiding Justices of the Peace. However, we were advised that there will not be any non-presiding Justices of the Peace remaining in the system within the next year.

We recommend that beginning April 1, 2008 that the IAI formula be applied to the salary of Justices of the Peace. This provision may well be of assistance in the deliberations of future Commissions.

If there are still non-presiding Justices of the Peace still in the system at the time of the release of this report, they should be remunerated in the same ratio to presiding Justices of the Peace as they were in earlier reports. For example, in April 2004, a presiding Justice of the Peace was paid \$88,511.00 while a non-presiding Justice of the Peace was paid \$64,396.00. The same ratio should pertain to the present recommended remuneration of the presiding justices and non-presiding Justices of the Peace.

3. Part-time Justices of the Peace

If part-time Justices of the Peace are to be appointed, their remuneration should be on the same scale as that recommended for presiding justices of the peace on a *per diem* basis.

4. Per Diem

If the wages of Justices of the Peace are fair and the compliment of Justices of the Peace is appropriate then generally there would be no need to consider per diem payments to part-time Justices of the Peace. However, if it is to be considered in a situation, for example, where retired Justices of the Peace are needed in order to ensure that the work of Justices of the Peace is done in a timely manner, then they should be paid on a per diem basis based on the annual salary.

5. Interest

In our view, interest should not be paid on back wages.

6. Vacations

There can be no doubt that Justices of the Peace need vacations. For anyone who has observed the pressure and sheer weight of numbers of those awaiting bail hearings to appreciate that vacations are necessary to preserve reason and good judgment. Vacations can and should be looked upon as a means of preserving not only good health but also a high level of efficiency. To keep pace with their increased workload and the importance of their work, they should be awarded an additional five days of vacation on an annual basis.

7. Judges' Attire

We see no reason to change the current provisions with regard to the attire of Justices of the Peace.

8. Judicial Allowance

Justices of the Peace presently receive a judicial allowance of \$500.00 per annum. To keep pace with the ever increasing costs of text books and reports, it would be appropriate to increase that allowance to \$750.00 per annum.

9. Mileage

We see no reason to recommend an increase in the current mileage allowance.

10. Leave Allowance

Once again, we see no need to change the present provisions for leave allowance.

11. Leave of Absence

We do not make any recommendation on this matter which should be left to the Chief Justice of the Provincial Court.

12. Non Presiding Days

We agree that there should be no change in the present arrangement.

13. Severance Pay

We do not consider it appropriate to make any recommendation on this issue.

14. Pensions

Justices of the Peace should have a constitutionally valid pension plan. Although it may seem that we are shirking our responsibilities, we recommend that this issue be considered at the next review.

We take this approach for a number of reasons. First, now that the great importance of the work of the Justices of the Peace has been recognized, it may well be that from this day forward that it will be simpler to fix their annual remuneration. The pension issue could not be resolved until there was some finality on the question of annual remuneration. Applicants for the position of Justice of the Peace are entering into a second career. Some will already have pension entitlements. In any event, the present pension entitlements cannot be said to be grossly inadequate. In addition, we must be mindful of the significant increase in expenditures which will flow from our recommendations with regard to the annual income of Justices of the Peace. In the circumstances, it is more appropriate for the next Commission to review, consider and make recommendations regarding the pension plan for the Justices of the Peace. The whole spectrum of issues regarding the form, type and provisions pertaining to the pension plan will be for the next Commission to determine.

15. Mandatory Dues Deduction

In light of the other recommendations we have made, we are of the opinion that it is not necessary to deal with this issue.




16. Rollover of Back Pay into RRSPs

The Association sought our recommendation that back pay payable to the Justices of the Peace should, at the option of the Justices of the Peace, be rolled over into Registered Retirement Savings Plans. We agree with this suggestion with the proviso that this procedure will only be appropriate if the method used to obtain the rollover meets all statutory requirements, particularly those of the *Income Tax Act*.

17. Costs

The representations and submissions made by counsel on behalf of the Association of Justices of the Peace were not only helpful but essential to the resolution of the issues raised. The Association should recover all reasonable costs incurred by counsel in obtaining expert reports and the testimony of experts. It is to be hoped that counsel can agree upon the costs to be paid for this essential expert evidence together with the general costs of counsel for the Association. If agreement is not reached, the Commission will meet with counsel to hear their submissions with a view to making recommendations in order to fix a fair and reasonable allowance for costs.

Dated at Toronto this 7th day of June 2007


The Hon. Peter Cory, Chair
Roy Filion, Q.C.
Ronald Pink, Q.C.