

**Review of June 7, 2007 Decision of the 4th Triennial Justice of the Peace
Remuneration Commission**

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The 4th Triennial Justice of the Peace Remuneration Commission has now delivered to the Chair of the Management Board of Cabinet on June 22, 2007 its unanimous Report dated June 7, 2007. Chair of Management Board then forwards the Report to the Lieutenant Governor in Council who is required to consider and respond to the Commission's report in the time frame set out in the Regulation. The Report is also to be tabled in the Legislative Assembly.

SUMMARY

This decision represents a breakthrough in the recognition of Justices of the Peace as key independent Judicial Officers in Ontario's Court of Justice and their increased workload. This is reflected in the Commission's remuneration recommendations for significantly greater salary, an ongoing IAI adjustment, increased vacation and the need to design an appropriate and constitutional pension plan. In reaching its decision, the Commission stated it "must set a level of remuneration that truly establishes the independence of the Justices of the Peace and recognizes the importance of their work." The Commission reviews in its decision the "exceedingly important work" which Justices are called upon to decide every day and the need for "respect for this role in the community." This work includes search warrants, bail applications, and breaches of Provincial Acts, such as workplace safety and environmental safeguards which "provide for the safety and well-being of all residents of Ontario".

The Commission recommends the following:

Presiding Justices Salary:	April 1, 2005	\$103,000	16.369%
	April 1, 2006	\$106,000	2.912%
	April 1, 2007	\$109,000	2.830%

This represents a total increase of 23.14% over the three years from the current salary of \$88,511. The Government proposed 2.0%, 2.25% and 2.5% resulting in a salary of \$94,620.00 as of April 1, 2007.

Salary Indexing: IAI (Industrial Aggregate Wage) Adjustment annually commencing April 1, 2008. (Note: IAI adjustment for April 1, 2006 was 2.5% (Ont.) And 3.1% (Federal). The Government opposed an IAI adjustment on grounds Justices already well compensated.

Vacation: One extra week vacation. The Government opposed any change to the vacation entitlement.

Costs: Recovery of all reasonable costs incurred by the Association for experts and legal

counsel. Government opposed payment of such costs.

Pension: Justices entitled to constitutionally valid pension and whole spectrum of issues from form, type and provisions deferred to next Commission. Government opposed any change to the Pension on grounds current pension more than adequate.

Benefits: No other changes - Government proposed mix of additions and cutbacks to benefits.

Judicial Allowance: Increase from \$500 to \$750. Government opposed change.

Roll over Lump Sum Payment - Granted subject to meeting statutory tax requirements.

REVIEW OF REPORT AND ITS RECOMMENDATIONS

1. Statutory Criteria for Assessing Remuneration

The Commission cites all the statutory criteria for assessing remuneration set out in section 7 of O. Reg. 31 9/00 and concluded that

“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.”

Note: Unlike the last Commission, the Government this time around agreed that the main criteria to be considered was the fair and reasonable remuneration of the Justices although they also continued to emphasize the other factors. This agreement followed on the Association's numerous efforts prior to the commencement of the hearings to persuade the Government of the importance of approaching the statutory criteria in a manner which did not exclude any relevant evidence from the consideration of the Commission and which recognized the primacy of this factor.

2. Fair and Reasonable Remuneration Criteria

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

“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.”

Note: The Association had argued for linking in a general way the remuneration of the Justices of the Peace to a proportion of the remuneration of the Provincial Judges, their judicial partners in the Ontario Court of Justice. While the decision disagreed with a fixed linkage, the decision’s review of the work of the Justices set out below reveals clearly their important role in the Court.

3. Work of the Justices of the Peace

In arriving at its conclusion with respect to the appropriate remuneration of the Justices of the Peace, the Commission states as follows:

Restatement of Important Role of Justices

“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.”

Search Warrants

“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.

Bail Applications

“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.”

Provincial Offences Act

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

Increased Demand and Need for Justices

“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.”

4. Recommendation - Salary - Presiding Justices of the Peace

The Commission makes the following order with respect to Presiding Justices of the Peace stating it is taking all the requisite factors into account:

**\$103,000 as of April 1, 2005,
\$106,000 as of April 1, 2006,
\$109,000 as of April 1, 2007.**

5. IAI Adjustment - Industrial Aggregate Wage

Recommendation - Commencing April 1, 2008, the IAI formula is applied to the salary of Justices of the Peace

The Commission states that this formula

“may well be of assistance in the deliberations of future Commissions.”

Note: This brings the Justices in line with the remuneration of other judiciary, including Provincial Court Judges who receive any IAI adjustment.

6. Salary - Non Presiding Justices of the Peace

Recommendation - Remunerated on same ratio to Presiding Justices as previously done.

The Commission states:

“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.”

“it was advised that there would not be any non-presiding Justices of the Peace remaining in the system within the next year.”

“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.”

7. Salary -Part Time Justices of the Peace

Recommendation: Remuneration on same scale as Presiding Justices on per diem basis.

The Commission states:

“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.”

8. Per Diem

Recommendation - Re: Retired Justices - Pay on Per Diem based on Annual Salary

The Commission states:

“If the wages of Justices of the Peace are fair and the complement 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.”

9. Interest

Recommendation - No Interest

The Commission decided that “interest should not be paid on back wages.”

10. Vacations

Recommendation - Additional 5 days vacation

The Commission recommends an additional 5 days vacation on an annual basis.

“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.”

11. Judges' Attire

Recommendation - no change

The Commission said:

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

12. Judicial Allowance

Recommendation - Increase from \$500 per annum to \$750.00 per annum.

The Commission states:

“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.”

13. Mileage

Recommendation - No Change

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

14. Leave Allowance

Recommendation - No Change

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

15. Leave of Absence

Recommendation - No Recommendation - Leave matter to Chief Justice

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

16. Non Presiding Days

Recommendation - No Change

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

16. Severance Pay

Recommendation - No recommendation

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

Note: Justices will continue to receive severance pay.

17. Pensions

Recommendation - Defer to Next Review

The Commission stated:

"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".

- a. *"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."*
- b. *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."*
- c. *"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."*
- d. *"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.”

18. Mandatory Dues Deduction

Recommendation - Not necessary to Address

The Commission states:

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

19. Rollover of Back Pay into RRSPs

Recommendation - Agreed Subject to Compliance with Income Tax Act.

The Commission states:

“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.”

20. Costs

Recommendation - Government to pay all reasonable costs of experts and expert reports and testimony of experts and general costs of counsel for the Association

The Commission states:

“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.”