

REPORT TO CAPCJ BY THE ASSOCIATION OF ONTARIO JUDGES

September 19-20, 2022

1. MEMBERSHIP OF THE ASSOCIATION OF ONTARIO JUDGES

Executive Board

The Board is composed of the Executive and Directors. The former includes the President, Past President, three Vice-Presidents, Treasurer and Secretary. There are eight regional directors, as well as one for per diem and retired judges, and three additional members at large for family matters. The current executive officers respectively are Justices Julie Bourgeois, Robert Gattrell, Jonathan Brunet, Romuald Kwolek, Martha Zivolak, Jacqueline Loignon, Robert Gee and Jacqueline Loignon.

Current Complement

The Ontario Court of Justice has a complement of **286** full time judges. The work of the court is assisted by **72** *per diem* judges (retired judges who work on an as requested basis). These **355** judges are represented by the Association of Ontario Judges. This association also serves the interests of approximately **195** fully retired judges.

Changes to the Membership of the Association of Ontario Judges between April 1, 2022 to August 31 2022:

APPOINTED - 8:

BAKER, Nathan – Oshawa – April 7, 2022 CE
BROWN, Andrew -St. Catherines – April 7, 2022 CW
LEFEBVRE, Julie – Sudbury – April 7, 2022 NE
PETERSON, Dana – Elliot Lake – April 7, 2022 NE
KAPURURA, Wiriranai - Toronto – April 14, 2022 TO
McMORROW, Colin – North Bay – April 14, 2022 NE
SZANDTNER, Danielle – Toronto – April 21, 2022 TO
STANLEY, Matthew – Guelph – April 28, 2022 CW

FULL TIME STATUS TO FULL TIME RETIRE - 7

LALANDE, Randall W. – NE – June 3, 2022 (mandatory)
SCULLY, Brian M. – TO – July 1, 2022 (mandatory)
BOVARD, Joseph – TO – July 14, 2022 (mandatory)
COOPER, Alan D. – CW – July 17, 2022 (mandatory)
ZISMAN, Roselyn – TO – January 20, 2023 (mandatory)
KHAWLY, Ramez – TO – February 24, 2023 (mandatory)
HOGAN, Mary J. – TO – March 11, 2023 (mandatory)

FULL TIME STATUS TO PER DIEM STATUS - 14

McLEOD, Katherine – CW - April 29, 2022
McKAY, Thomas A. – WT - April 30, 2022
CHISVIN, Howard I. – TO - April 30, 2022
FINNESTAD, Faith – TO – May 31, 2022
HAWKE, Kathryn – CW – June 30, 2022
KOZLOFF, Neil – TO – June 30, 2022
AUSTIN, Deborah – WT – August 31, 2022
McFADYEN, Anne – WT – August 31, 2022
DeFILIPPIS, Joe – CW – August 31, 2022
RENAUD, Gilles – EA – September 30, 2022
DOUGLAS, Jon-Jo – CW – October 31, 2022
WEST, Peter – CW – October 31, 2022
LAMBERT, Martin – NE – December 31, 2022
RABLEY, WAYNE – WT – January 31, 2023

PER DIEM STATUS TO FULL TIME RETIRE - 15

FOURNIER, Robert N. – ET - April 9, 2022 (mandatory)
GRAYDON, Robert – ET - April 23, 2022 (mandatory)
MASSE, Rommel G. – ET – April 29, 2022 (mandatory)
KUKURIN, John – NE – May 17, 2022 (mandatory)
BEATTY, George – CE – June 19, 2022 (mandatory)
HARRIS, Roland C. – CE – June 22, 2022 (mandatory)
COHEN, Marion L. – TO – June 27, 2022 (mandatory)
WILSON, Joseph B. – CE – July 2, 2022 (mandatory)
MARSHALL, Lauren– TO – October 30, 2022 (mandatory)
BISHOP, Peter T. – NW – November 30, 2022 (mandatory)
KERRIGAN-BROWNRIDGE, Jane – CW – Dec 30/22 (mandatory)
O'DEA, Michael P. – WT – December 31, 2022 (mandatory)
COLVIN, Tory J.A. – CW – January 16, 2023 (mandatory)
WAKE, David J. – ET – Feb 21, 2023 (mandatory) NON MEMBER
COLE, David P. – TO – February 27, 2023 (mandatory)

APPOINTED TO ANOTHER COURT - 1

RAHMAN, Mohammed M. – CW – SCJ – June 21, 2022

2. ASSOCIATION OF ONTARIO JUDGES FEES FOR 2022/2023

There is no change in our fees for full-time judges; they remain at \$1750. Per Diem judges pay 50% of the full-time fee.

3. THE 11TH QUADRENNIAL COMMISSION

The jurisdiction of this commission commenced on April 1, 2022. No commission has been appointed or discussed. We have developed a list of priority issues and will soon be beginning preparations to discuss these matters with the Province and prepare for the Commission. We, of course, will be seeking to maintain the binding nature of our Commission in respect of some matters, and a linkage, akin to Saskatchewan's to the federal bench.

4. SALARY

As of April 1, 2022, with the expiry of the 9th and 10th Commission, our salary is no longer linked to the federal rate. We, though, remain linked to the Industrial Average Income index. This is effective April 1, 2022, but usually implemented in October after finalization of the IAI in July.

The Province recently accepted our calculations and advised us of implementation in November 2022. The new rate is \$350,212, effective April 1, 2022.

All full-time Judges also receive an annual Judicial Allowance in the amount of \$3,750.00.

5. PENSION

We continue to have some very significant concerns with respect to the investment management agreement respecting the Trust's assets, which is proposed to be entered into between the Trustee and the Investment Management Company of Ontario. We have referred the matter to Chair of the 9th and 10th Commission, Mr. William Kaplan. We met with him on December 16 for some mediative discussion. These were not very fruitful. We filed a proposal suggesting some resolution in mid-January, but until recently have had no official response. A further facilitation meeting occurred in late August. Some progress has been made, though we have forwarded a series of questions to Treasury Board..

In order to assist with the back-log, the Attorney General supported a proposal to allow per diem judges to work more days in a year, without a reduction in their pension. Treasury Board agreed and a joint submission was brought to the 9th and 10th commission before their jurisdiction on this matter expired. Both an Order-In-Council respecting the pension plan and an amendment to s. 44 of the Courts of Justice Act are required.

An order-in-council temporarily amended the pension plan to eliminate any pension clawback if the combination of pension and per diem income exceeded the salary of a fulltime judge. This amendment will expire on March 31, 2024. At a daily rate of about \$1700, a retired judge could thus work about 100 days. Most per diem judges, if desired, could earn in total more than a full-time judge

No legislation has yet amended the Courts of Justice Act, so a per diem judge's per diem income is thus capped at 50% of a full-time judges, or \$172,010. If the Act is amended, a per diem judge would be allowed to earn 75% of the salary of a full-time judge, or \$258,015, or about 150 days, which allow them to earn in combination, significantly more than a fulltime judge.

6. INSURED BENEFITS

The last Commission decision ordered the creation of a joint insured benefits committee. The point of this committee was not to discuss, per se, benefits, but to address ongoing general issues respecting the general administration of the insured benefits plan by, mostly, Great West Life, now Canada Life. Of a 23 item list of changes to the wording of the benefits simply to bring clarity and avoid erroneous interpretations, the Province only accepted 6. After several meetings, little progress was made, so it appears likely this will need to be addressed by the next Commission.

7. ANNUAL BOARD MEETINGS AND EDUCATION CONFERENCES

The Board meets quarterly per annum, in January, April, September and December. They also meet once prior to the May Annual General Meeting for a final meeting with the year's executive and then again to welcome the new board after elections.

Education Dates are inclusive but not limited to the May Joint Annual General Meeting of the Ontario Court of Judges and the Association of Ontario Judges; four Fall Regional Seminars held throughout the province, Toronto, East, West, North and Toronto; Annual Family Law Program held in September; Judicial Development Institute; New Judges' Orientation Program held twice per year; Newly Appointed Provincial and Territorial Judges Skills Seminar (NJI Program); Technology and You; French Legal Terminology Session for French-speaking Judges (Office of the Commissioner for Federal Judicial Affairs Program); Pre-Retirement for Judges.

8. COVID

Our courts continue to operate as a combination of in-person, hybrid or fully remote proceedings though new matters being set for pleas or trials are being set as presumptively in person unless the parties agree or a judge rules otherwise.

Not surprisingly, many counsel from outside of the jurisdiction seem to prefer remote proceedings, while many local counsel seem to prefer in person proceedings. Looking for 'real' trial experience, it also appears that younger counsel have a preference for in-person proceedings.

The increase in cases-on-hand from pre-covid days hovers around 50,000, which is a significant back log. Despite the increase in the ability of per diem judges to assist, if they wish, and the resolve of the Crown to settle as many matters as possible and the extra 'loading' of our daily lists, it is unlikely that this backlog can be reduced without the significant use of remote proceeding; simply put, there are not enough court rooms to accommodate all the potential

trials. Most trials are now being set well into 2023. In addition, it is becoming ever clearer that there is a tremendous strain on most justice participants. It is a daily occurrence that there cannot be found sufficient staff to open all court rooms, competent new staff are quickly departing and the ones that remain are openly frustrated. The same is true of the various correctional facilities who perhaps suffered most from covid. Finally, it is increasingly obvious that many judges are being negatively affected by the strain of trying to do too much with too little.

Justice James Chaffe will be appearing as my alternate at this meeting.

RESPECTFULLY SUBMITTED BY:

**JUSTICE JON-JO A. DOUGLAS
ONTARIO DIRECTOR
CAPCJ**