

**CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES (CAPCJ)
REPORT OF JUDICIAL INDEPENDENCE – FINANCIAL SECURITY SUB-
COMMITTEE**

April 22, 2023

This sub-committee continued to remain active since it met in person in Halifax in September 2022, by ZOOM videoconference every second month, with an average attendance of about 85%. It has continued these initiatives since then.

1. Canadian Bar Association

Judge Natalie LeBlanc continues to monitor the contents of the CBA's Web-based Toolkit for use by its Branches and members at judicial compensation commission hearings; and the sub-committee continues to remind provincial/territorial associations of its utility and appropriateness.

2. Potential Academic Paper

The sub-committee continues to actively look for another academic to publish a paper which might advance the principles of judicial independence relating to the process of determining judicial compensation, and while it did have a promising lead several months ago, that lead simply did not work out.

3. Templates

The 15th edition (not annual, but beginning in 2002) of the Templates, was updated by Judge David Orr and Judge Mark Linehan as of 2022, containing 10 or more pages of data for each province /territory. It provides comprehensive information on the components of judicial compensation for each province/territory.

As always, the reliability of the data depends upon the individual continuous review of the data as to its accuracy and completeness by each provincial/territorial compensation representative.

Concerns continue about the possibility of erroneous data being distributed, and thereby negatively affecting the credibility of the sub-committee to outsiders. This leads the sub-committee to continue to recommend that access to the data be restricted to provincial/territorial representatives on the sub-committee, and to counsel for the provincial/territorial associations.

4. Data Collection

At its meeting in September 2014, the CAPCJ Board approved the following motion:

CAPCJ will fund up to the sum of \$25,000 a project where two present or past members of the Compensation Committee will conduct a focused, in depth and electronically recorded collection of data on the history of difficulties with the judicial compensation process as set out in the *PEI Reference* and modified by *Bodner*. This collection of data will involve them personally meeting with as many past and present members of and counsel for the provincial/territorial associations' compensations committees.

It is intended to collect that data for possible use as (a) an intervener before the Supreme Court of Canada in any future litigation revisiting *Bodner*; and (b) as research for the production of essays or papers discussing the difficulties with the judicial compensation process as set out in the *PEI Reference* and modified by *Bodner*.

The Alberta Provincial Court Judges' Association had already agreed to fund this project by a matching fifty-fifty grant on the first \$10,000 spent, providing an overall budget of \$35,000. So far about \$5,000 of that amount has actually been spent.

The two initial "collectors" were Judge Cari Roller of Manitoba and myself, with David Walker replacing Judge Roller several years ago.

We have collected the data (with some deficiencies which we are following up on) in New Brunswick, Manitoba, Quebec, Newfoundland and Saskatchewan. The first four provinces, as well as British Columbia, were considered the most important in terms of issues incurred in the judicial compensation process since the *PEI Reference Case*.

Summaries of the data have been drafted for New Brunswick and Manitoba. Those drafts were reviewed by the judges/counsel of those provinces. I have been tardy in following up.

For the umpteenth time, I observe that from my perspective, this has proven to be a much more labour-intensive project than I had anticipated. I regret that Covid-19 no longer provides an acceptable excuse. I am well on my way to Hell, having paved many miles of good intention.

5. Litigation

The sub-committee continues to closely monitor compensation litigation which abounds across Canada.

Litigation starts afresh in Newfoundland with respect to the government's rejection in December of its latest Tribunal's recommendations.

Last month the British Columbia Supreme Court found fault with the government's reasons rejecting of the 2019 Judicial Compensation Commission recommendations, but sent the matter back to the government for further consideration.

CAPCJ has intervened in the Quebec Court of Appeal reference as to the authority of the Chief Judge of the Court of Quebec.

6. CAPCJ Website

Judge David Walker is spearheading this sub-committee in uploading all litigation decisions, all commission reports and such other material as the sub-committee considers appropriate to store there as a databank.

7. Budget Addition

The sub-committee was asked over the last year by the judges' associations of New Brunswick and Newfoundland, to provide a representative to make a presentation on behalf of CAPCJ to their respective Commission and Tribunal. A representative and presentation were provided in each case. In one instance an awkward situation occurred relating to funding the expenses incurred in making that presentation. As result, at the suggestion of CAPCJ's Treasurer, the sub-committee has requested, on an ongoing basis, a budget item of \$5,000 per annum to cover any such future expenses.

8. Other

The sub-committee continues to explore other potential initiatives which might prove useful to the provincial/territorial associations as well as CAPCJ in addressing issues of judicial independence as it pertains to financial security.

The sub-committee is made up of the provincial/territorial chairs and some assistant or vice-chairs of each provincial/territorial association's various compensation or judicial independence committees. As such, they are appointed directly by their associations, personal experience and expertise usually valued over any concern about term limits. CAPCJ's Executive itself appoints the sub-committee's Chair and Vice-Chair The current Chair was appointed much too long ago and the current Vice-Chair was only appointed in 2017. The sub-committee is actively trying to recruit replacements.

John Maher

Chair, Judicial Independence Committee– Financial Security Sub-Committee

April 6, 2023