

Submission of the Canadian Judicial Council

to the

1999 Quadrennial Commission

**re Representational Allowances
and Salary Differentials for Chief Justices**

December 1999

Representational Allowances

As the heads of their courts, and symbolic heads of the judiciary at the federal or provincial level, members of the Canadian Judicial Council are required to discharge many extra-judicial duties which bring with them expenses of travel and hospitality. Chief justices take part in educational and public events, and they have responsibilities of a ceremonial and social nature, for example, playing host to official guests from foreign jurisdictions. In many instances it is appropriate and expected that they will be accompanied by their spouses. Many functions are related to issues of court administration including, for example, working lunches with other judges, members of the Bar, law professors, court officers and staff. Gifts related to retirements, deaths or illnesses may be purchased for judges, families of judges and others.

Prior to 1975, chief justices paid such expenses personally or recovered them from the budget of the Department of Justice with the express permission of the Minister of Justice, practices characterized by the 1989 Commission on Judges' Salaries and Benefits (the "Courtois" "Triennial" Commission) as unfair or undignified at best. Since 1975, the *Judges Act* has provided for representational allowances to be paid to Council members and judges of the Supreme Court of Canada (for which it is understood there will be a separate submission to the Commission) for reasonable travelling and other expenses actually incurred in carrying out such duties, to the extent that they are not reimbursable under other provisions of the *Act*.

In 1985, the *Act* was amended to permit reimbursement of expenses incurred by or on behalf of a spouse in accompanying a chief justice or other judge entitled to the benefit of the allowance, at certain official and semi-official events.

The amounts of the allowances were last amended in 1985 as follows:

Chief Justice of Canada	\$10,000
Chief Justices of the Federal Court of Canada and the Chief Justice of each province	\$7,000
Trial Chief Justices/Chief Judge and Senior judges, northern territories	\$5,000

The March 1990 Report of the 1989 Triennial (Courtois) Commission recommended that the representational allowance be increased to \$15,000 for the Chief Justice of Canada, \$10,000 for the Chief Justice of the Federal Court of Canada and the Chief Justices of the Provinces, and to \$8,000 for others in receipt of the allowance.

The Commission also recommended that the *Act* be amended to authorize the Minister of Justice "to approve the payment of additional amounts as representational allowance in any given year."

Bill C-50, which was introduced in the House of Commons in December 1991, and which died on the Order Paper, contained the amendments recommended by the Courtois Commission. The March 1993 report of the 1992 Triennial Commission (the "Crawford" Commission) endorsed the amounts set out in Bill C-50.

A number of Council members report that the existing allowances are quite inadequate and that each year they are absorbing from their own pockets costs of formally representing their courts and, in some cases, their governments.

The Council believes that adjustment of representational allowances -- fixed at the existing levels for the past 14 years -- is long overdue. Moreover, the experience of the past 25 years suggests that the periodic and unpredictable adjustment of fixed ceilings has meant that the allowances have always lagged behind actual expenses. This problem should be addressed by indexing the allowances to the cost of living.

An appropriate formula would be to work from the levels recommended by the 1989 Triennial Commission and endorsed by Bill C-50, and to calculate indexing from the date of the Commission's report in March 1990, as follows:

	Courtois Recommendation	Indexation (Rounded)	Total
Chief Justice of Canada	\$15,000	\$7,500	\$22,500
Chief Justices of the Federal Court of Canada and the Chief Justice of each province	\$10,000	\$5,000	\$15,000
Chief/Associate Chief Justices (Judge) of Trial Courts and the Senior Judges three northern territories	\$8,000	\$4,000	\$12,000

Provision should also be made for the Minister's authorization of additional amounts in extraordinary circumstances, as proposed by the 1989 Commission and Bill C-50. Such decisions could be delegated by the Minister to the Commissioner for Federal Judicial Affairs, upon submissions from Chief Justices.

The Council recommends:

1. That ss.27(7) of the Judges Act be amended to increase the amounts for representational expenses to the levels proposed by the 1989 Commission on Judges' Salaries and Benefits, and indexed from March 1990.

The annual aggregate representational allowance permitted for each eligible judge in 1999 would therefore be as follows effective April 1, 1999:

<i>Chief Justice of Canada</i>	<i>\$22,500</i>
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*Chief Justices of the Federal Court of Canada
and the Chief Justice of each province* \$15,000

*Chief/Associate Chief Justices (Judge)
of Trial Courts and the Senior Judges
three northern territories* \$12,000

2. That the Judges Act be amended to allow for the annual indexing of the amounts set out in ss.27(7) of the Act.

3. That the Minister of Justice be authorized to approve the payment of additional amounts as representational allowances in any given year, in exceptional circumstances.

Salaries

For more than 25 years a relatively constant differential has been maintained between the salaries of *puisne* judges and chief justices/associate chief justices. The history reflects the additional workload associated with court management and administration, and the unique responsibility and accountability carried by these individuals.

The following table illustrates the differential since 1988.

Federal Court/Tax Court/Provincial superior courts

Effective date	C.J./A.C.J.	Salary J	\$ difference	% difference
Apr 1/99	195,200	178,100	17,100	9.6
Apr 1/98	192,600	175,800	16,800	9.5
Apr 1/97	181,300	165,500	15,800	9.5
Apr 1/92-Mar 31/97 (freeze)	170,600	155,800	14,800	9.5
Apr 1/91	161,800	147,800	14,000	9.5
Apr 1/90	153,700	140,400	13,300	9.5
Apr 1/89	146,400	133,800	12,600	9.4
Apr 1/88	139,700	127,700	12,000	9.4

The Council recommends that the Commission recommend a continuation in the differential between salaries of *puisne* judges of the superior courts/Federal Court of Canada/Tax Court of Canada and the salaries of their chief justices/associate chief justices of approximately 10%.