

# Confidential

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## REPORT OF THE JUSTICE OF THE PEACE COMMITTEE

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This is the Exhibit marked " O " referred  
to in the Affidavit of  
KEN HAWRELECHKO

sworn before me this 16th day  
of November 1988

  
A Commissioner for Oaths.

L. CHRISTINE ENNS  
BARRISTER & SOLICITOR

## FORWARD

In April, 1986, the Committee on Justices of the Peace in Alberta was established by the Department of the Attorney General, and His Honour C.A. Kosowan, Chief Judge of the Provincial Court of Alberta, following discussions with the Honourable Neil Crawford, Q.C.

The mandate of the Committee was to analyse legal problems associated with the existing system of Justices of the Peace in Alberta and to recommend solutions to such problems. The Committee was directed to prepare a report of its findings for presentation to the Attorney General and to the Chief Judge of the Provincial Court.

The members of the Justice of the Peace Committee are:

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Court and Property Services  
Department of the Attorney General

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## REPORT OF THE JUSTICES OF THE PEACE COMMITTEE

### 1.0 Executive Summary

Justices of the Peace are appointed in Alberta by the Lieutenant Governor in Council to perform such functions as the receipt of informations and violation tickets, the issue of process and search warrants, the receipt of guilty pleas to provincial offences and the conduct of judicial interim release hearings.

The initial impetus for change to the Justice of the Peace system in Alberta came from a Committee formed by the Canadian Bar Association (Alberta Branch) under the Chairmanship of Mr. Howard L. Irving, Q.C., which recommended that responsibility for supervision of judicial functions of Justices of the Peace be transferred from the Department of the Attorney General to the Chief Judge of the Provincial Court of Alberta.

Developments in the case law on judicial independence assisted the Committee in its deliberations. The case of Re Currie and Niagara Escarpment Commission (1985) 16 C.C.C. (3d) 193 was a case of the Ontario Court of Appeal dealing with the issue of judicial independence of

Justices of the Peace in Ontario. The Court determined that the system of supervision of Justices of the Peace by the Provincial Court judiciary was acceptable and a sufficient guarantee of independence. In Valente v. The Queen (1986) 23 C.C.C. (3d) 193, the Supreme Court of Canada established essential conditions of judicial independence for purposes of S. 11(d) of the Canadian Charter of Rights and Freedoms as being security of tenure, security of remuneration, and institutional independence with respect to matters of administration bearing directly on the exercise of the judicial function.

In light of the recommendation of the Irving Committee and these two cases, the Justice of the Peace Committee was formed in April of 1986 to identify any legal problems associated with the current Justice of the Peace system in Alberta and to recommend solutions to such problems.

In Alberta, Justices of the Peace are appointed by Order-in-Council; the administration, remuneration, discipline, training and direction of Justices of the Peace are performed by the Court Services Branch of the Attorney General's Department. In practice, the Committee has identified four categories of Justices of the Peace

- (A) Hearing Officers - Departmental employees who are full time Justices of the Peace, and who are primarily located in Edmonton and Calgary;

- (B) Judicial Clerks - Departmental employees who exercise Justice of the Peace duties incidental to their duties as Clerks;
- (C) Fee-for-Service Justices - Private individuals exercising Justice of the Peace functions outside of Edmonton and Calgary on a fee-for-service basis;
- (D) Police Justices - police officers appointed as Justices of the Peace to process provincial violation tickets.

Using the Currie and Valente cases as guidelines for analysis, the Committee identified problems in the current system of Justices of the Peace in Alberta with respect to appointments, restrictions on the exercise of functions, the exercise of disciplinary functions by the Department, the lack of tenure for Justices of the Peace, method of remuneration, training and practice directions, and certain aspects of administration such as scheduling and assignment of duties. The appointment of police officers as Justices of the Peace was also considered to be problematic.

To ensure that issues of the independence and impartiality of Justices of the Peace were addressed in an orderly and planned manner, the Committee developed Short Term and Long Term recommendations for changes. The Committee proposes the short term recommendations as manageable initial steps in the implementation of the long term recommendations, noting however that a detailed analysis of the costs of implementation has not been done, and noting as well that implementation of the short term recommendations will decrease but not eliminate the possibility of a successful Charter challenge to the Justice of the Peace system in Alberta.

The short term recommendations are as follows:

1. That the Chief Judge of the Provincial Court assume responsibility for Justices of the Peace and that a person trained in law be appointed as the Co-ordinator of Justices of the Peace to assist the Chief Judge in exercising this responsibility.
2. That the existing Departmental Justice of the Peace administrative support unit be transferred to the Co-ordinator of Justices of the Peace.
3. That responsibility for Hearing Officers in Edmonton and Calgary be transferred to the office of the Chief Judge.

4. That Judicial Clerks cease to be appointed as Justices of the Peace, that their administrative signing functions be clarified by legislative amendment and that their judicial functions be taken over by fee-for-services Justices.
5. That a mandatory roster system for fee-for-service Justices be developed.
6. That the language of regulations prescribing payment for fee-for-service Justices be clarified where necessary to emphasize that payment is not contingent upon the results of an application.
7. That the Summary Convictions Act be amended to eliminate the need for police Justices of the Peace.

The long term recommendations are as follows:

8. That a Judge of the Provincial Court be appointed to assume the responsibilities of Co-ordinator of Justices of the Peace.

9. That a Justice of the Peace Review Council be established to consider the appointment, discipline, suspension and revocation of appointments of Justices of the Peace.
10. That Justices of the Peace be appointed to hold office to age 70 and to be removeable only for cause on the recommendation of the Review Council.
11. That Hearing Officers become fulltime salaried Justices of the Peace and that fee-for-service Justices be phased out in favour of part time salaried Justices of the Peace. Fixed term appointments might be possible where there is a legitimate need for temporary Justice of the Peace service.
12. That the long term recommendations of the Committee be enacted in amendments to the Justice of the Peace Act.

## 2.0 Recent Developments with Respect to Judicial Independence

2.1 In Alberta, Justices of the Peace perform a number of judicial activities and associated administrative activities. Some of their more significant functions include the conduct of judicial interim release hearings, issue of search warrants, receipt of informations, issue of process, swearing of violation ticket complaints, and receipt of guilty pleas in respect of provincial offences. Justices of the Peace in Alberta do not conduct trials.

2.2 The judicial independence of Justices of the Peace in Alberta was commented upon by a committee struck by the Alberta Branch of the Canadian Bar Association in its report to the Attorney General in 1984. The committee was chaired by Mr. Howard L. Irving, Q.C., and had been invited by the then Attorney General, The Honourable Neil Crawford, Q.C., to review the policies and practices of the Attorney General's Department and to make recommendations for change. On the subject of Justices of the Peace, the Committee recommended that:

"Because of the dramatic change in the role of the justice of the peace, especially as found in major urban centres, there requires a greater recognition of the judicial functions of justices of the peace. Due to these developments, we recommend that the supervision of the judicial function be transferred from the Attorney General's Department to the Office of the Chief Judge of the Provincial Court. Such a transfer will emphasize the need for the independence and impartiality of the justice of the peace" (page 41, Irving Committee Report).

2.3 In addition to the recommendations of the Irving Committee Report, recent judicial interpretation of the Canadian Charter of Rights and Freedoms, in particular Sections 7 and 11(d), has emphasized the requirement that judicial functions be exercised impartially and independently. The cases of Re Currie and Niagara Escarpment Commission (1985) 16 CCC (3d) 193, (Ont. C.A.) and Valente v. The Queen (1986) 23 CCC (3d) 193 (S.C.C.) have established the parameters within which the general recommendation of the Irving Committee must be implemented.

2.4 The Currie case was a case of the Ontario Court of Appeal which dealt specifically with the issue of judicial independence as it pertained to Justices of the Peace. In a detailed examination of the Ontario system of Justices of the Peace, the Court found that matters such as the designation of powers to be exercised by Justices of the Peace, annual performance appraisals and salary reviews, the setting of duty rosters, and training and direction of Justices of the Peace were performed by the Chief Judge of the Provincial Court. The Court held that the exercise of such supervisory powers by the Chief Judge was a sufficient protection against the possibility of undue influence by the executive branch of Government, and accordingly found that the Ontario system of Justices of the Peace operated in compliance with the requirements of the Charter of Rights and Freedoms.

2.5 The Valente case is a decision of the Supreme Court of Canada on the issue of the independence of the Provincial Court of Ontario. Although the case is concerned with Provincial Court Judges rather than Justices of the Peace, it is a clear statement by the Supreme Court of the essential conditions for judicial independence. The Supreme Court held that the test for independence for the purposes of Section 11(d) of the Charter is whether the tribunal may be reasonably perceived as independent. The perception must, however, be a perception of whether the tribunal enjoys the essential objective conditions or guarantees of

judicial independence, and not a perception of how it will in fact act, regardless of whether it enjoys such conditions or guarantees. The standard of judicial independence under Section 11(d) must necessarily be a standard that reflects what is common to, or at the heart of, the various approaches to the essential conditions of judicial independence in Canada and need not be a standard of uniform provisions such as the standard embodied in Section 99 and 100 of the Constitution Act, 1867 for judges of the Superior Courts. The Court then prescribed three essential conditions of judicial independence.

2.6 The first condition of judicial independence is that of security of tenure. The essential feature of security of tenure is that a judge be removable only for cause, and that cause be subject to independent review and determination by a process by which the judge affected is afforded a full opportunity to be heard. The essence of security of tenure is a tenure, whether until an age of retirement, for a fixed term, or for a special adjudicative task, that is secure against interference by the executive or other appointing authority in a discretionary or arbitrary manner.

2.7 The second condition of judicial independence for the purposes of Section 11(d) of the Charter is that of financial security, meaning security of salary or other remuneration and, where appropriate, security of pension. The essence of such security is that the right to salary and

pension should be established by law and not be subject to arbitrary interference by the executive in a manner that could affect judicial independence. It is not objectionable that pension and other civil service benefits be made applicable to the judiciary, provided that there can be no interference by the executive on a discretionary or arbitrary basis.

2.8 The third condition of judicial independence is the institutional independence of the tribunal with respect to matters of administration bearing directly on the exercise of the judicial function. Judicial control over such matters as assignment of judges, sittings of the court and court lists, as well as the related matters of allocation of courtrooms and direction of the administrative staff engaged in carrying out these functions, are examples of matters of administration which may be required for institutional independence.

2.9 In response to the recommendation of the Irving Committee, and to judicial interpretation of the Canadian Charter of Rights and Freedoms, a Justice of the Peace Committee was formed in April of 1986 by the Attorney General's Department in consultation with the Chief Judge of the Provincial Court. The Committee's mandate was to analyse the legal problems associated with the current Justice of the Peace system in Alberta and to prepare and recommend solutions to these problems.

3.0 The Current Justice of the Peace System in Alberta

3.1 Justices of the Peace are appointed in Alberta by Order-in-Council, pursuant to the provisions of the Justice of the Peace Act, c. J-3, RSA 1980. The administration, remuneration, discipline, training and direction of Justices of the Peace are performed by the Court Services Branch of the Attorney General's Department. Although there is no differentiation made in the appointment itself, there are in practise four categories of Justices of the Peace.

3.2 Hearing Officers

Hearing Officers are employees of the Court Services Branch who perform Justice of the Peace work on a full time basis. There are seven Hearing Officers in both Edmonton and Calgary who, together with part time clerical support, provide 7 day a week, 24 hour per day Justice of the Peace services in those cities.

The Edmonton and Calgary Hearing Officers provide a wide range of services, including the accepting of guilty pleas on provincial offences, the consequent impositions of fines and granting of time to pay, the conduct of judicial interim release hearings, the receiving of informations and the issue of process.

Hearing Officers have also been designated in Stony Plain and St. Albert to accommodate the receipt of guilty pleas on provincial offences. Functionally however, these Hearing Officers are not engaged full time in Justice of the Peace work as are the Edmonton and Calgary Hearing Officers.

### 3.3 Judicial Clerks

All judicial clerks employed by the Court Services Branch - other than Judicial Clerk I's - hold Justice of the Peace appointments. The exercise of Justice of the Peace functions is a part of the job description of the Judicial Clerk II, III, IV and V series and employees in those classifications are currently required to hold a Justice of the Peace appointment. For the most part, judicial clerks exercise a limited range of Justice of the Peace functions incidental to their employment as judicial clerks. This is particularly true in Edmonton and Calgary due to the use of Hearing Officers in those centres.

### 3.4 Fee-for-Service Justices of the Peace

In all areas of Alberta, except for Edmonton and Calgary, after hours and emergency Justice of the Peace services are provided by a network of fee-for-service Justices of the Peace. These are private individuals in local communities who hold Justice of the Peace appointments and who are called upon from time to time by the police when their services are required. They are remunerated on a piece work basis - i.e. per service performed - rather than on a salaried basis.

### 3.5 Police Justices of the Peace

In Alberta, over 600 R.C.M.P. and municipal police officers hold appointments as Justices of the Peace. The major function of police Justices is the processing of provincial violation ticket complaints pursuant to the Summary Convictions Act.

4.0 Identification of Problems with the Current System

On the basis of its analysis of the case law, the Committee has identified the following problems with the current Justice of the Peace system in Alberta:

4.1 Appointments

Justices of the Peace are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General. Although there are no legal problems associated with the current appointment process, the Committee has noted that a more rigorous process of selection and the involvement of an independent committee, such as the Judicial Committee appointed under the Provincial Court Judges Act, in the appointment process would be desirable.

4.2 Restrictions on Exercise of Functions

Presently, the Department restricts the individual exercise of Justice of the Peace functions by administrative means following the appointment of a Justice of the Peace. There is no express legislative authority for this aspect of control by the Department.

#### 4.3 Discipline

As judicial clerks and hearing officers are employees of the Department, they are subject to all Departmental regulations and policies which are administered by the Department. The ultimate sanctions of suspension and termination of employment are in the hands of the Department. The Committee notes the exercise of powers of discipline by the Department over employees who are judicial officers to run contrary to the system of judicial supervision approved in the Currie case.

#### 4.4 Tenure

No guarantee of tenure is provided to any Justice of the Peace in Alberta. By virtue of Section 19 of the Interpretation Act, the appointment of a Justice of the Peace is an appointment at pleasure. In practice, a Justice of the Peace appointment of a hearing officer or a judicial clerk would be terminated with the termination of employment, and the appointment of a fee-for-service Justice of the Peace can be revoked at any time at the discretion of the executive. As Valente requires security of tenure free from arbitrary or discretionary interference by the executive, the Committee is of the view that there must be a mechanism established which would remove this potential of interference.

#### 4.5 Remuneration

As employees of the Department, judicial clerks and hearing officers are paid by the Department. They may receive merit pay increases contingent upon the results of annual performance appraisals conducted by their superiors in the Department. As Valente requires that a judicial officer have security of remuneration free from arbitrary or discretionary interference by the executive, the Committee views the employment status of judicial clerks and hearing officers, and incidents of employment such as performance appraisals and granting of merit pay by the Department, to be problematic.

Fee Justices are not employees of the Department. However, they are paid per service performed, and, in the absence of a mandatory roster system, it is possible for police agencies to "justice shop" by seeking out Justices of the Peace who might be favourably inclined to police requests. Additionally, although fee Justices are paid for the provision of a service and not for the nature of the disposition of the case, the Committee believes that payment regulations should be amended where necessary to clearly state that remuneration is not contingent upon the disposition of a case in any particular way. The Currie case suggests that changes would be required in current Alberta practice in these areas.

#### 4.6 Training

Training of Justices of the Peace is coordinated by the Personnel Branch of the Department of the Attorney General with

input from Court Services, Criminal Justice and the Chief Provincial Court Judge. Although the good faith of all involved is not questioned, the Committee finds it problematic that the executive branch of government is responsible for the training of the judiciary, particularly where it is a lay judiciary without an independently acquired legal background. The Committee believes that the expertise of the Department's Personnel Branch in the training process could continue to be utilized, but questions the continued involvement of the Department in curriculum development.

4.7 Practice Directions, On The Job Assistance

A Justice of the Peace manual is prepared and maintained by the Department of the Attorney General. The manual is used by Justices of the Peace as a reference book in the exercise of their functions. Additionally, Court Services supervisors and administrators are looked to for guidance in the exercise of Justice of the Peace functions. Again while the good faith of all involved is not questioned, the Committee views this involvement of the executive branch of government as problematic.

4.8 Other Administrative Measures

Valente states that certain administrative functions which impact directly on the exercise of the judicial function should be controlled by the judiciary. The Committee therefore notes that matters such as the scheduling of hearing officers, the assignment of duties

to the Justices of the Peace, and the creation and maintenance of a roster system for fee-for-service Justices are matters which would more appropriately be functions of the judiciary than the executive branch of government.

4.9 Police Justices of the Peace

The Committee is of the view that there is a conflict arising from the appointment of a police officer as a Justice of the Peace which cannot be resolved, and therefore believes that police officers should not hold Justice of the Peace appointments.

5.0 Short Term Recommendations for Change

5.1 The fundamental objective of the Committee is to ensure that the administration of justice in the province is appropriately and properly conducted at the level of the Justice of the Peace, and the recommendations of the Committee are directed at ensuring their necessary independence and impartiality. At the same time, the Committee is of the view that the proper administration of justice requires an orderly and planned transition from the current system of Justices of the Peace.

5.2 Accordingly, the Committee has divided its recommendations into short and long term recommendations for change. The Committee's short term recommendations are proposed as manageable initial steps in a process of orderly and planned transition to the new system of Justices of the Peace contemplated by the long term recommendations. The

Committee would caution however that full implementation of the long term recommendations is required to obtain the type of system approved in Valente; implementation of the short term recommendations will decrease but not eliminate the possibility of a successful Charter challenge to the Justice of the Peace system. The Committee notes as well that detailed analysis of the costs of implementation has not been undertaken.

5.3 In the view of the Committee, the following short term recommendations are measures which could be taken in the near future to initiate changes in the Justice of the Peace system:

RECOMMENDATION NO. 1: That the Chief Judge of the Provincial Court assume responsibility for Justices of the Peace and that a person trained in law be appointed as the Co-ordinator of Justices of the Peace to assist the Chief Judge in exercising this responsibility.

DISCUSSION: This recommendation recognizes that the supervision of judicial functions is properly a matter for the judiciary and would transfer responsibility for the Justice of the Peace system in Alberta to the Chief Judge of the Provincial Court. The Chief Judge would become responsible for the following matters:

- (a) management and administration of the Justice of the Peace system;
- (b) revision and maintenance of the Justice of the Peace manual;
- (c) development of training materials and the organization of training courses;
- (d) screening and examination of candidates for appointment.

The Committee recommends that a Co-ordinator of Justices of the Peace be appointed or designated to act on behalf of the Chief Judge and report to him on Justice of the Peace matters. In the short term this position might be filled by a lawyer reporting to the Chief Judge; as soon as possible, a Judge should be appointed or designated to act as the Co-ordinator. (See Recommendation No. B).

IMPACT: The major impact would be the requirement for a position for the Co-ordinator of Justices of the Peace.

There would be a potential for disruptions in the justice system were the revision of the Justice of the Peace manual to result in any significant change in Justice of the Peace practice, unless there had been adequate prior consultation.

RECOMMENDATION NO. 2: That the existing Departmental Justice of the Peace administrative support unit be transferred to the Co-ordinator of Justices of the Peace.

DISCUSSION: A two person Justice of the Peace unit is presently located in the Court Services Branch of the Department of the Attorney General. These individuals would be relocated to the office of the Chief Judge of the Provincial Court where they would report to the Co-ordinator of Justices of the Peace. Additionally the existing files and records maintained by the unit would be transferred to the Office of the Chief Judge. This recommendation is consistent with the transfer of supervisory responsibility to the judiciary suggested by the Currie case.

IMPACT: This recommendation involves the transfer of existing personnel and positions.

RECOMMENDATION NO. 3: That Hearing Officers in Edmonton and Calgary be transferred to the Office of the Chief Judge.

DISCUSSION: As the caseload in Edmonton and Calgary is sufficient to require the services of Justices of the Peace on a full time basis, the Committee recommends that the Hearing Officer system be maintained in those cities. Due to the lower case volume in Stony Plain and St. Albert, the Committee recommends the replacement of Hearing Officers in those centres by fee-for-service Justices.

The Committee proposes that Hearing Officers in Edmonton and Calgary continue to be employed by the Department under their present classification, pay and benefit arrangements. The existing budgeting arrangements would be continued, with Hearing Officer salaries appearing in the respective Edmonton or Calgary Courts budget. Supervisory responsibility for Hearing Officers would be divided between the Co-ordinator of Justices of the Peace and the local Court Services Manager along judicial and administrative lines. Hearing Officers would report to the Co-ordinator for all judicial matters. Policy guidelines would provide that discipline and appraisals of Hearing Officers would be performed by the Co-ordinator with such assistance as he requests from the local Court Services Manager. Day to day scheduling of Hearing Officers would be done by the local Court Services Manager under the supervision of the Co-ordinator. The remaining administrative matters such as records keeping would continue to be the responsibility of the local Court Services Manager. The Committee is of the view that these steps would involve the judiciary in the essential aspects of supervision referred to in the Currie case and would begin the transfer of certain administrative elements to the judiciary pursuant to the Valente case.

IMPACT: Although the judiciary is to become involved in certain supervisory aspects with respect to Hearing Officers, the formal status of Hearing Officers is to remain unchanged. Some problems are foreseen as a result of the proposed split of reporting lines on judicial and administrative matters; undoubtedly a period of accommodation will be required.

RECOMMENDATION NO. 4: That Judicial Clerks cease to be appointed as Justices of the Peace, that their administrative signing functions be clarified by legislative amendment, and that their judicial functions be taken over by fee-for-service Justices.

DISCUSSION: The Committee's assessment of the current duties of Judicial Clerk Justices of the Peace indicated that many of their administrative functions could be done as "Clerk of the Court" rather than as Justice of the Peace; legislative amendments to the Alberta Evidence Act to clarify the signing functions of "Clerk of the Court" would be desirable. The remaining duties, which were considered to be judicial in nature, would be inappropriately performed by employees of the Department and would require a process utilizing persons other than Court staff. Accordingly, the Committee proposes that Judicial Clerks cease to be appointed as Justices of the Peace, and that existing appointments be phased out.

This process would see the gradual replacement over a period of time of Judicial Clerk Justices of the Peace by fee-for-service Justices of the Peace; the Co-ordinator of Justices of the Peace and the appropriate District Manager of Court Services would have joint responsibility for this process. Edmonton and Calgary are served by Hearing Officers and few if any fee-for-service Justices would be required in those cities. However, other areas of the province would require the appointment of additional fee-for-service Justices to provide the services currently offered by Judicial Clerk Justices. Throughout this process, the Chief Judge and the Co-ordinator of Justices of Peace would be responsible for training, manuals, practice directions and appointments, while the local District Manager would provide a support role in matters of day to day administration.

IMPACT: Over the province as a whole, the Committee believes that there would be some increase in the workload of fee for service Justices and some decrease in the workload of judicial clerks, to the limited extent that judicial clerks are currently involved in the performance of Justice of the Peace functions.

No impact on the classification of Judicial Clerks is foreseen by the Personnel Administration Office as the performance of judicial functions does not represent a significant amount of the work performed by Judicial Clerks. The Committee however anticipates a substantial negative impact on employee morale as the performance of judicial duties is a significant source of pride and job satisfaction. An effective communication plan must be an integral part of the implementation of the Committee's recommendations.

RECOMMENDATION NO. 5: That a mandatory roster system for fee-for-service Justices of the Peace be developed.

DISCUSSION: In accordance with the Currie case, the Committee proposes that the Chief Judge and the Co-ordinator of Justices of the Peace in consultation with local Court managers develop a mandatory roster system for fee-for-service Justices. A duty roster for such Justices would be established; police agencies would be required to use the scheduled Justice in most circumstances.

RECOMMENDATION NO. 6: That the language of regulations prescribing payment for fee-for-service Justices be amended to clearly state that payment is not contingent upon the result of an application.

DISCUSSION: Fee-for-service Justices are paid on the basis of the service performed; payment is not contingent upon the way in which a Justice disposes of an application. For example, a Justice of the Peace is paid for hearing a search warrant application, whether or not the warrant is granted. The Committee recommends that the language of the payment regulations be amended where necessary to more clearly reflect the actual practice.

RECOMMENDATION NO. 7: That amendments to the Summary Convictions Act be made to eliminate the need for police Justices of the Peace.

DISCUSSION: Police Justices of the Peace are currently required to process provincial violation tickets. The Committee recommends that the Summary Convictions Act be amended to replace the current process of sworn complaints and affidavits of service with a certification process. The amendments proposed would require a police officer to certify that an offence had been committed and that service had been effected. The Committee notes that the proposed amendments to the Summary Convictions Act could proceed on their own, or as part of any legislation required for a fines collection program. Once the amendments had been proclaimed, the existing appointments of police Justices of the Peace would be revoked.

IMPACT: Lead time would be required for the legislative process, and all activities associated with legislative proposals would have to occur. New ticket forms would have to be developed, printed, and distributed to all enforcement agencies in the province.

#### 6.0 LONG TERM RECOMMENDATIONS

The Committee's short term recommendations are proposed as measures which can be taken in the short term as steps toward the implementation of the long term recommendations. The long term recommendations proposed are intended to formally establish a system of judicial supervision of Justices of the Peace and to enact into legislation the essential features of judicial independence outlined in the Valente case.

RECOMMENDATION NO. 8: That a Judge of the Provincial Court of Alberta assume the responsibilities of Co-ordinator of Justices of the Peace.

DISCUSSION: the Committee is of the view that the appointment of a new Judge or the designation of an existing Judge to the position of Co-ordinator of Justices of the Peace would underline the judicial nature of the office of Justice of the Peace and enhance the qualities of judicial independence associated with the office. Such an appointment would as well remove the anomaly of a legally trained but non-judicial officer supervising and directing judicial officers.

RECOMMENDATION NO. 9: That a Justice of the Peace Review Council be established to consider the appointment, discipline, suspension, and revocation of appointment of Justices of the Peace.

DISCUSSION: The Committee recommends that a Justice of the Peace Review Council be established with a membership consisting of the Chief Judge of the Provincial Court, the Co-ordinator of Justices of the Peace (non-voting), a member of the Law Society, and a Justice of the Peace designated by the Chief Judge. The Council would consider proposed appointments of Justices of the Peace, conduct inquiries into whether there was cause for removal of a Justice of the Peace, and recommend the removal from office of a Justice of the Peace. The Council would have the power to suspend a Justice of the Peace with pay while inquiries were being pursued, and without pay as a disciplinary matter following a hearing into the conduct of a Justice of the Peace. A Justice of the Peace could only be appointed or removed from office upon the recommendation of the Review Council. This recommendation would create the type of review process for appointments currently in use for appointments to the Provincial Court Bench. It would as well establish an independent mechanism for the discipline and removal of Justices of the Peace in a manner consistent with the Valente case.

IMPACT: legislation would be required.

RECOMMENDATION NO. 10: That a Justice of the Peace be appointed to hold office to age 70 and to be removeable only for cause upon the recommendation of the Review Council.

DISCUSSION: A Justice of the Peace could be removed from office only where removal is recommended by the Review Council following an investigation by the Council and a finding that the Justice is incapable of or unable to perform his duty by reason of

- (i) infirmity;
- (ii) conduct that is incompatible with the execution of the duties of office;
- (iii) being engaged in an occupation which is inconsistent with holding an appointment as a Justice of the Peace;
- (iv) having failed to perform the duties of office as assigned;
- (v) having failed to satisfactorily complete training or pass competency exams as required by the Co-ordinator of Justices of the Peace;
- (vi) having failed to perform duties in a competent and professional manner; or
- (vii) having moved from the jurisdiction for which duties were assigned.

The Committee notes that this recommendation has the effect of granting tenure to Justices of the Peace. Although the Valente case suggests that other means may be used to achieve security of tenure, the model proposed by the Committee is a model which was expressly approved by the Valente case.

IMPACT: Although tenure is to be granted to Justices of the Peace, effective operation of the Review Council would preclude the retention of incompetent or inefficient Justices of the Peace. Legislation would be required to implement this recommendation.

RECOMMENDATION NO. 11: That two categories of Justices of the Peace be created, full time and part-time. Hearing Officers would become full time Justices of the Peace; fee-for-service Justices of the Peace would be phased out and replaced with part-time salaried Justices of the Peace.

DISCUSSION: Hearing Officers would become full time salaried Justices of the Peace. The general benefit package, including salary and pension, accruing to the full time Justices of the Peace would be specified by regulation under an amended Justice of the Peace Act. It would be possible to provide the Justices of the Peace with the benefit plans available for the Opted Out and Excluded or the Management employees group. Provisions dealing with the appointment and discipline of Justices of the Peace would be excluded and dealt with by the Justice of the Peace Review Council.

Fee-for-service Justices of the Peace would be phased out and replaced by part-time salaried Justices of the Peace. The Committee believes that in view of the judicial character of the office, it would be preferable to have rural Justices of the Peace paid on a part-time salaried basis rather than on a fee-for-service basis. The Committee believes that the dignity and independence of the office would be enhanced by this measure. The salary of a part-time Justice of the Peace would be based on the Co-ordinator's assessment of the Justice's workload and calculated in accordance with a formula to be developed.

To provide for some flexibility in the level of Justice of the Peace service throughout the Province, the Committee notes the possibility raised in Valente that judicial officers might be appointed for a fixed term. It is possible that a fixed term appointment might be constitutionally valid where:

- (a) there is a legitimate need for a temporary appointment;
- (b) there is security of tenure within the term of the appointment;
- (c) the decision to renew or to terminate an appointment is based only on considerations of need for the appointment.

The Committee therefore recommends that fixed term appointments be considered where there is a legitimate need for a temporary appointment of a Justice of the Peace.

RECOMMENDATION NO. 12: That the long term recommendations of the Committee be enacted by way of amendment to the Justice of the Peace Act.

DISCUSSION: Many of the more significant long term recommendations of the Committee would require legislation to implement. Legislation as well would assist in satisfying the Valente criteria that there must be objective standards or measures to guarantee judicial independence. In the course of legislating, the Committee recommends that provision be included to expressly authorize the prescription of duties and certain categories of duties to Justices of the Peace, and that Justices of the Peace be protected from civil liability for acts or omissions done in the execution of duty in the absence of malice and with reasonable and probable cause.