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

sworn before me this 16th day
of November, 19 98

[Signature]
A Commissioner for Oaths.

L. CHRISTINE ENNS
BARRISTER & SOLICITOR

JUSTICES OF THE PEACE IN ALBERTA

DATE: APRIL 1, 1985
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INTRODUCTION

The purpose of this report is to document specific concerns and to identify policy questions requiring current consideration in relation to the functioning of Justices of the Peace within Alberta.

The report assumes that the Province will continue to utilize Justices of the Peace to perform a variety of administrative and judicial functions. Clearly, the need for the Justice of the Peace in Alberta could simply disappear if those functions they presently perform were to be totally absorbed within functions expected to be performed by Provincial Court Judges.

The rationales underlying the identification of policy questions requiring current consideration are documented sequentially within the report, under the topic headings of:

1. Circumstances generating the need to review the Justice of the Peace system;
2. Features of the current Alberta system;
3. Comparison of cross-Canada legislation;
4. Legal concerns relative to Alberta practices;
5. Justice of the Peace role models;
6. Policy questions, options, and recommendations.

1.0 UNDERLYING CIRCUMSTANCES

The growth in the number of Justices of the Peace reflects the present Departmental policy of utilizing Justices of the Peace, rather than Provincial Court Judges, to perform certain administrative and judicial functions economically throughout all geographic regions of the Province. In addition, the growth in number of Staff J. P.s reflect job classification requirements now existing in Judicial Clerk job classification categories.

Presently, the Department is, as a matter of policy, slowly replacing "Staff Justices of the Peace" with "Fee Justices of the Peace" for weekend and night-time duties. The rising salary costs for "Staff" Justices of the Peace, on an overtime basis, is significantly greater than fees paid to "Fees for Services" Justices of the Peace.

- 4 A number and variety of external events have given rise and impetus to a review of the Alberta Justices of the Peace system.

1.1 THE IRVING COMMISSION

The Commission recommended that the judicial functions of Justices of the Peace be placed under the supervision of the Chief Judge of the Provincial Court. It further recommended that the administrative functions of Justices of the Peace remain under the supervision of the Attorney General's Department. Clearly, those recommendations will require a response!

1.2 THE CHILD WELFARE ACT

The Government is committed to implementing the "new" Child Welfare Act and it is that Act which imposes additional judicial functions on Justices of the Peace.

The significance of that circumstance lies not only in the imposition of additional judicial functions on Justices of the Peace, but additionally, in the fact of a "forum" being established within the Court wherein the present legal structures underlying Justices of the Peace can be challenged. As this report concludes, there is a likelihood that such a challenge could be successfully mounted.

1.3 EXPECTATIONS OF THE JUDICIARY

The Chief Judge of the Provincial Court has made a number of public comments as to his desire for supervising Justices of the Peace. To some extent, that proposal underlies the current Trial Coordination Project being undertaken by the Chief Judge. It should be noted his view has been supported by the Irving Commission and clearly it will be a judicial expectation that a formal response be made relative to his request on one hand, and the Irving Commission recommendation on the other hand. There is an expectation on his part that he will be involved in planning the future role of Justices of the Peace.

1.4 PROPOSED AMENDMENTS TO THE CRIMINAL CODE

The Federal amendments to the Criminal Code (Bill C-18) presuppose the existence of a supervisory relationship between Justices of the Peace and the Chief Judge of the Provincial Court. For example, Federal proposals relative to telewarrants note that the person authorized to issue such a warrant is "a Justice designated for the purpose by the Chief Judge of the Provincial Court."

Such a proposal may well impose upon this Province a practical responsibility to have Justices of the Peace designated by the Chief Judge.

1.5 THE CURRIE CASE

The Ontario case of Currie v. The Niagara Escarpment Commission brings into question a number of practices followed both in Ontario and, to some degree, Alberta. That case, subsequently appealed, still leaves in doubt some practices followed in Alberta and the door is open for a challenge to the independence of Justices of the Peace in general and to questions of tenure, and salary in particular.

2.0 OPERATIONAL FEATURES: ALBERTA JUSTICE OF THE PEACE SYSTEM

Attached to this report (Appendix "A") are two charts providing a "snap shot" of the current Justice of the Peace system in Alberta. In summary, there are ten categories of Justices of the Peace in Alberta, performing a limited variety of judicial functions, and employed in a variety of ways. The second chart specifically identifies Alberta's practices, relative to appointment, tenure, salary, and control.

2.1 JUSTICES OF THE PEACE: HEARING OFFICER

As of February 1, 1985 there were 18 Staff Hearing Officers in Alberta, located as follows:

Edmonton	- 7 full-time
Calgary	- 6 full-time - 1 Staff in Provincial Court
St. Alberta	- 2 Staff in Provincial Court
Stony Plain	- 2 Staff in Provincial Court

Hearing Officers are employees of the Department of the Attorney General, Court Services Division. They are hired to perform specific "judicial" functions, such as:

- Accept guilty pleas for all traffic offences, by-laws, and all specified penalty (Provincial) offences;

- Impose fines (grant time to pay);
- Issue Warrants of Committal;
- Perform Bail Hearings, to release or remand an accused in custody;
- Conduct ex-parte trials;
- Issue Warrants and legal process (Summons, Warrants, and Subpoenae);
- Receive information and issue Search Warrants.

Jurisdiction is restricted by Section 4 of the Justice of the Peace Act and policy conditions set down by the Department (refer to Page 6).

Hearing Officers in Calgary and Edmonton provide a twenty-four hour, seven day per week coverage. Provincial Court Hearing Officers in St. Albert and Stony Plain provide "on-call" coverage.

2.2 POLICE JUSTICES OF THE PEACE

As of February 1, 1985, 612 R.C.M.P. and Municipal Police Officers held appointments as Justices of the Peace in Alberta.

Police Officers are not employees of the Department of the Attorney General, nor are they classified as civil servants.

Appointments are made for the purpose of receiving violation ticket complaints and affidavits only. Ticket complaints are issued for offences under the Highway Traffic Act, Off Highway Act, Motor Vehicle Administration Act, Liquor Control Act, Motor Transport Act, Municipal By-Laws, other Acts and regulations, (e.g. Litter Act, Clean Air Act Regulations, Wildlife Act, Livestock Brand Act, et cetera). Affidavits are received for service of summons, subpoena and other similar documents.

Police Officers receiving Justice of the Peace appointments are guided by their Department's internal policies in the use of appointments. The appointment remains active until the Officer resigns his appointment, this active period may include the Officer being stationed in non-operational duties when the appointment is not required for its intended purpose.

Appointments are cancelled by Order-in-Council by this Department, upon notification by the Police agency involved.

2.3 J. P.s (BASICALLY STAFF OF THE A. G.) ACTING AS SIGNATORIES

As of February 1, 1985, there were 183 Attorney General Staff Justices of the Peace.

All Staff Justices of the Peace are authorized to perform signatory functions:

- Swearing Informations;
- Issuing Subpoenae, Summons, and Warrants;
- Releasing accuseds on Judges' orders;
- Confirming/cancelling Police process

3.0 LEGISLATION

There is a variety of legislative models throughout Canada. The "Currie" case identifies appointment, tenure, salary, and supervision and control of Justices of the Peace as significant legislative aspects.

Attached as Appendix "B" is a chart highlighting those aspects of legislation as they differ from Province to Province.

3.1 APPOINTMENT

Alberta, like most of the other Provinces, formally appoints Justices of the Peace utilizing the Lieutenant-Governor in Council. Alberta, unlike Ontario, does not legislate that appointees must be approved by a Provincial Court Judge prior to the appointment.

3.2 TENURE

Alberta legislation virtually remains silent as to security of tenure. Ontario legislatively provides for the removal of a Justice of the Peace designation upon recommendation of the Judicial Council. The "Currie" case suggests that security of tenure is critical to the issue of independence of a Justice of the Peace performing judicial functions.

3.3 SALARIES

The Alberta legislation remains silent as to salary, other than indicating that fees may be paid to Fee Justices. The Ontario legislation provides for salaried Justices of the Peace who perform full-time judicial functions.

3.4 INDEPENDENCE AND CONTROL

Alberta legislation remains silent, as does most other Provincial legislation, relative to supervision of judicial functions of Justices of the Peace. In contrast, the Ontario legislation provides for supervision of Justices of the Peace judicial functions to be under the control of the Chief Judge of the Provincial Court.

The "Currie" case does raise some difficulty about Alberta legislation in the sense that security of tenure is not legislated.

The fact that Alberta legislation remains silent as to the authority of the Department to restrict the judicial function of Justices of the Peace may be significant in light of the practice of the Department to restrict such judicial functions by letters accompanying appointment.

4.0 LEGAL CONCERNS

The "Currie" case identifies the issues of tenure, salary, and control as being significant to the general issue of judicial independence. That case dealt with Ontario legislation and practice and the legal issues raised have relevance to the Alberta system as it presently operates.

4.1 TENURE: CURRIE CASE: ALBERTA PRACTICE: ONTARIO PRACTICE: AND THE CONSEQUENCES

4.1.1 As a Matter of Law

The tenure of Justices of the Peace performing a judicial function is to be equivalent to that of a Provincial Court Judge, that is removal for cause (Currie).

4.1.2 As a Matter of Practice in Alberta

The tenure of Justices of the Peace is presently subject to the practice of removal at the will of a Departmental official for any reasons suitable to the Department (just cause or otherwise).

4.1.3 As a Matter of Practice in Ontario

The tenure of Justices of the Peace is treated as equivalent to that of a Provincial Court Judge and hence, the Ontario practice was deemed suitable in the "Currie" case.

4.1.4 The Consequence of Present Alberta Practice

In the narrow sense, this means: that removal of Justices of the Peace by Departmental officials could be deemed illegal and in the widest sense, that the independence of Justices of the Peace was in question because Justices of the Peace lacked tenure equivalent to that of a Provincial Court Judge. In other words, the door is open for a legal challenge to the present Alberta structure relating to Justices of the Peace, when they perform a judicial function.

4.2 SALARY: CURRIE CASE: ALBERTA PRACTICE: ONTARIO PRACTICE: AND THE CONSEQUENCES

4.2.1 As a Matter of Law

The salary of Justices of the Peace for performance of judicial functions is to be in an amount identical paid to all other Justices of the Peace performing similar judicial functions. The amount of salary is not to be varied by a system of "merit" increases.

4.2.2 As a Matter of Practice in Alberta

The salary of Judicial (Staff) Justices of the Peace is subject to merit increase and is increased on an individual basis in line with Departmental evaluation of job performance and staff job classification.

4.2.3 As a Matter of Practice in Ontario

The salary of Judicial (Non-Staff) Justices of the Peace is, apparently, not subject to evaluation.

4.2.4 The Consequence of Alberta Practice

The present method of payment of Staff Justices of the Peace for performance of judicial functions does not meet the criteria imposed by law. As a matter of fact, Alberta salary practices are determined by job classifications

rather than by the nature of the Justice of the Peace function performed. Any change in Justice of the Peace salaries will lead to a major administrative problem relative to job classification of Staff Justices of the Peace.

4.2.5 As a Matter of Law: Payment of Fee Justices of the Peace

The payment of fees to Fee Justices of the Peace is appropriate as long as a roster system for utilization of Fee Justices of the Peace is adopted.

4.3 APPOINTMENT: CURRIE CASE: ALBERTA PRACTICE: ONTARIO PRACTICE: AND THE CONSEQUENCES

4.3.1 As a Matter of Law

Recommendations as to appointment of Justices of the Peace by Provincial, political Ministers is an acceptable practice.

4.3.2 As a Matter of Practice in Alberta

Appointment of rural Fee Justices of the Peace openly requires the approval of local M.L.A.s.

4.3.3 As a Matter of Practice in Ontario

Appointments are nominally approved by Provincial Court Judges.

4.3.4 Consequence of the Present Alberta Practice

Any abuse of M.L.A. recommendations may well have political implications.

4.4 JUDICIAL INDEPENDENCE: STATUS OF ATTORNEY GENERAL STAFF: STATUS OF FEE JUSTICES OF THE PEACE

4.4.1 As a Matter of Law

The mere fact that some Justices of the Peace are also staff of the Department does not automatically mean that Justices of the Peace, in law, should be deemed "not independent". Independence of the Justice of the Peace simply means that performance of their judicial function be untrammelled by considerations other than judicial.

The Fee Justice of the Peace (non Staff Justice of the Peace) is deemed at law to be "independent", particularly if a roster system is utilized, so that Fee Justices of the Peace are not "dependent" upon selective use.

The Police Justices of the Peace in Alberta perform no judicial function, hence, judicial independence is irrelevant.

4.4.2 As a Matter of Practice in Alberta

The training practices of Alberta may well be construed as direction rather than training, particularly when instructions are issued to Staff Justices of the Peace in the form of Policy Directives relative to their judicial function. To the extent that the Alberta training practices and the Alberta practice of providing Policy Directives to Justices of the Peace can be defined as control and supervision of judicial function, then to such an extent, Alberta Justices of the Peace may well not be independent in law.

4.4.3 As a Matter of Practice in Ontario

The supervision or control of Justices of the Peace, relative to performance of their judicial function, is vested by legislation in the Judge of the Provincial Court.

4.4.4 As a Matter of Consequence

Present training practices and present practices of issuing Policy Directives to Justices of the Peace are perceived by Departmental legal staff as being open to challenge thereby bringing in to question the judicial independence of Alberta Justices of the Peace.

IN SUMMARY: PRESENT SALARY PRACTICES

Present salary practices, tenure practices, and control practices of the Department are suspect in the sense that those practices may well be, in point of lawful consequence, the cause of upsetting our present administrative structure.

In terms of legislation, the constitutional validity of present Alberta legislation restricting the jurisdiction of Justices of the Peace, needs to be reviewed. No difficulty is anticipated but our position in this regard should be re-examined.

5.0 ROLE MODELS

5.1 THE ALBERTA JUSTICE OF THE PEACE: JUSTICE OF THE PEACE ACT

In Alberta, the jurisdiction of the Provincially appointed Justices of the Peace is restricted by legislation:

- 4(1) In the absence of any provision to the contrary in any relevant Act, a complaint or information may be heard, tried, and determined by one Justice of the Peace;
- 4(2) Nothing in this Act shall be taken to confer on any Justice of the Peace, other than one who is also a Provincial Judge acting in that capacity, the power to hold a Preliminary Inquiry under the Criminal Code (Canada);
- (3) Any one Justice of the Peace may:
 - (a) receive an information or complaint and grant a summons or warrant thereon or on an information or complaint received by any other Justice;
 - (b) issue his summons or warrant to compel the attendance of any witnesses for either part;
 - (c) do all other acts and matters necessary, preliminary to the hearing,

notwithstanding that the applicable Act provides that the information or complaint be heard and determined by two or more Justices of the Peace.

- (4) Every Justice of the Peace is, by virtue of his office, a Commissioner for taking affidavits, declarations and affirmations and for administering oaths.

In practice, the powers of Provincially appointed Justices of the Peace are further "restricted" by way of letters sent to them accompanying their appointment. The question arises as to legal effect of such letters as well as to the legality of the practice of sending them.

The reason for having Justices in addition to Provincial Judges, is to a large part, based on economics and convenience.

5.2 SUMMARY

On one hand, the Judges already have their independence and tenure of office and could be made available on a twenty-four hour, seven day per week basis to perform the same functions after hours as they perform during the day. Past experience indicates that such a practice is not really viable!

On the other hand, it appears that the legislators have already stated what a Justice of the Peace powers should be. It is reasonable to assume that they are aware of the economic and practical difficulties in having Judges available all hours of the day, on holidays, and weekends, throughout the Province.

5.3 THE ONTARIO JUSTICE OF THE PEACE - ROLE MODEL

5.3.1 Appointment: Ontario Legislation: Justice of the Peace Act

(3) "A person, other than a barrister or solicitor, desirous of being appointed a Justice of the Peace, shall be examined in regard to his qualifications for the office by a Provincial Judge of the Provincial Courts (Criminal Division) of the County or District in which he resides, or by such other person as is appointed in that behalf by the Lieutenant-Governor in Council, and no such person shall be appointed a Justice of the Peace without a certificate from such Judge or other person that he has examined the applicant and finds him qualified for the office and that, in his opinion, a Justice of the Peace is needed for the public convenience in matters pertaining to the administration of justice". R.S.O. 1970, c. 231, s. 2(2); 1973, c. 149, s. 1.

5.3.2 Judicial Functions: Ontario Legislation - Justice of the Peace Act

Duties
Assigned
By Chief
Judge

6(1) A Justice of the Peace, acting within his territorial jurisdiction, may exercise those powers and perform those duties conferred or imposed upon a Justice of the Peace by an Act of the legislature or of the Parliament of Canada or by a Municipal by-law when so directed by the Chief Judge of the Provincial Courts Criminal Division) or, the Chief Judge of the Provincial Court (Family and Youth Division), or by a Provincial Judge designated by either of them.

Direction
and
Supervision

6(2) Subject to subsection (3), the Chief Judge of the Provincial Courts (Criminal Division) or a Provincial Judge designated by him shall have general direction and supervision over the duties and sittings of Justices of the Peace.

Idem 6(3) The Chief Judge of the Provincial Courts (Family and Youth Division) or a Provincial Judge designated by him shall have general direction and supervision over the duties and sittings of Justices of the Peace in respect of matters pertaining to the business of the Provincial Court (Family and Youth Division). 1973, c. 149, s. 2, part.

Fees 7(1) Subject to subsections 2 and 3, Justices of the Peace shall be paid such fees, allowances, and expenses as are prescribed under the Administration of Justice Act.

5.3.3 Control: Ontario Justice of the Peace Act

Justices of the Peace Review Council 8(1) There shall be a Justices of the Peace Review Council, composed of:

- (a) the Chief Judge of the Provincial Courts (Criminal Division);
- (b) the Chief Judge of the Provincial Courts (Family and Youth Division);
- (c) the senior Provincial Judge for the County or District concerned in the matter being considered by the Council.

Substitution in Absence of Senior Judge 8(2) The Attorney General may designate a Provincial Judge in a County or District to act as a member of the Justices of the Peace Review Council in the absence of the senior Provincial Judge in the County or District.

Functions of Council 8(3) The functions of the Justices of the Peace Review Council is:

- (a) to review the conduct of and performance of duties by Justices of the Peace in the County or District.

In summary, the Ontario legislation provides for a model wherein, by legislation,

- Judicial J. P.s are paid either by "fee" or by "salary". Such J. P.s are not staff of the Department;

- Judicial J. P.s are under the direction of the Chief Judges;

- Tenure of salaried or fee J. P.s is the same as Judges of the Provincial Court and terminate only upon the direction of a J. P. Review Council;
- Appointment of a salary or fee J. P. requires examination by a Provincial Court Judge, and justification of a need for service.

6.0 POLICY QUESTIONS

Three basic policy questions relative to (1) current practices; (2) the decision to plan; and (3) the role model to be followed, require consideration.

6.1 CURRENT PRACTICES

Should the Department discontinue its practice of restricting the judicial power of Justices of the Peace?

Should the Department revise its practice of terminating the appointments at will?

Should the practice of determining pay scales of Staff Justices of the Peace, in terms of job classification and merit payments, be discontinued?

Should the present training practices and the practice of issuing directives to Justices of the Peace be discontinued in light of the legal opinion that such practices could be deemed as Departmental control of the judicial function of Justices of the Peace?

6.1.1 Decision Factors

In respect to the restrictions of the authority of Justices of the Peace to perform judicial functions, the question arises simply because that practice exists without legislative authority to restrict judicial functioning. The problem can be remedied by legislating the power to restrict the judicial functioning of certain Justices of the Peace.

The present practice of terminating Justice of the Peace appointments at will is a practice most likely open to legal challenge. It is suggested that the practice of terminating appointments be discontinued, particularly in cases of Justices of the Peace performing judicial functions.

At the present time, most Justices of the Peace in Alberta providing significant judicial service are members of the Attorney General's staff. Their salary is dependent upon their job classification. To revise this practice will involve considerable administration and coordination with P.A.O. in order to ensure that classifications of employees not be adversely impacted. The administrative issue of classification of judicial clerks has been a matter of internal difficulty within the Department and the change of classification resulting from any change in the Justice of the Peace structure will re-ignite that particular issue. The practice of replacing Staff Justices of the Peace with Fee Justices of the Peace will tend to lessen the problem.

6.1.2 Recommendations

It is recommended that there be no administrative or legal restriction as to the power of Justices of the Peace, but the authority to exercise such power be determined by the Chief Judge of the Provincial Court.

It is recommended that the practice of discontinuing Justice of the Peace appointments not be followed and that a formal direction be issued to the Department by the Minister indicating the discontinuance of such policy.

It is recommended that an interim committee be set up immediately to look at the issue of salary and classification in view of the administrative difficulties.

It is recommended that training practices be revised and that Policy Directives be discontinued.

A training manual, formally approved by the Chief Judge, might well overcome any possible challenge in this regard.

6.2 A DECISION TO PLAN CHANGE

Should the Department proceed, at this point in time, to plan changes to legislation and practices governing the role, structure, and administration of the Justice of the Peace system in Alberta?

6.2.1 Options

1. Embark upon planning to revise legislation and practices consistent with the Ontario model;

2. Embark upon limited planning to meet only the requirements of Bill C-18 and the Child Welfare Act;
3. Retain the status quo.

6.2.2 Decision Factors

To openly plan will create an expectation on the part of the Chief Judge that he be involved. The question is simply to what degree should the Chief Judge be involved in determining the future course of Justices of the Peace? Should he be involved in the choosing of the model or should he be involved only in planning the implementation of a pre-determined model?

To plan for only the Child Welfare Act has the advantage of meeting a current and present need. Any changes to accommodate that Act are going to create pressures for overall change.

To retain the status quo invites the possibility of legal challenge and the Department should be instructed to develop a contingency plan in the result of the occurrence. The planning of such a contingency plan should remain with the Department and not become known, at this point in time, to the public.

6.2.3 Recommendations

Option 1 is recommended. The advantage of Option 1 is simply that control over the particular model chosen will remain with the Department on one hand, and yet allow the interest of the judiciary to be accommodated in subsequent implementation planning. Option 1 presupposes Hearing Officers being paid solely as J. P.s unattached to the Department.

If Option 1 is not selected, it is recommended that Option 2 be followed in preference to Option 1.

Option 3 is not recommended.

6.3 ROLE MODELS

In the event that the Department proceeds to plan changes to legislation and practices, three policy questions clarifying models to follow can be identified:

1. Should the Department remove all judicial functions from Justices of the Peace and have those functions performed only by Provincial Judges?
2. Should the Department elect to expand the judicial role of Justices of the Peace similar to the Ontario practice?
3. Should the Department elect to follow the Ontario legislation as a model guideline?

6.3.1 Options

Three options are available, namely:

1. The Province could elect to expand the use of Provincial Court Judges to such an extent that Justices of the Peace would no longer be required;
2. The Department could legislatively overcome the problems of the "Currie" case by following the current Ontario legislation.
3. The Province could elect to expand the judicial functions of Justices of the Peace to off-set the growing need for Provincial Court Judges (as is done in Ontario);

6.3.2 Decision Factors

The extended use of Judges is probably not feasible in the economic sense.

The Child Welfare Act expands the use of Judicial Justices of the Peace, similar to the role of the Ontario Justices of the Peace, wherein selected Justices of the Peace, as approved and directed by the Chief Judge, perform judicial functions thereby alleviating the need for more Provincial Court Judges.

The Ontario legislative model overcomes the problems inherent in the "Currie" case but at the same time, the Ontario legislative model will provide administrative difficulty to this Department relative to the issue of salaries of judicial clerks. The Currie case suggests the use of Fee J. P.s be restricted to remote areas.

The use of "Fee" J. P.s as opposed to "Salaried" J. P.s involves both "economic" concerns and "qualification" concerns.

6.3.3 Recommendations

It is recommended the Department legislate a new J. P. Act to provide for:

1. Appointment of full-time, salaried J. P.s. Appointment of Fee J. P.s in remote areas;
2. Payment of salaried J. P. s to be determined in an amount established by the Lieutenant-Governor in Council in a manner similar to provision of salaries to Provincial Court Judges;
3. Powers of a J. P. to perform all judicial functions as provided in the Criminal Code and other legislation as directed by the Chief Provincial Court Judge;
4. Appointment of Fee and Salary J. P.s being subject to the certification of the Chief Judge of the Provincial Court, certifying as to need and qualifications;
5. Staff of the Attorney General's Department being excluded from appointment as a J. P.
6. J. P.s performing judicial functions being granted security of tenure in a manner similar to that provided for in the Ontario legislation.

It is recommended that an internal Department committee be established to resolve the classification and salary concerns which will result from the removal of J. P. functions from Court Services staff.

J. P. CATEGORIES AND FUNCTIONS
AS OF AUGUST 1984

Chart 1
November 5, 1984

CATEGORY	NUMBER	PRESENT JUDICIAL FUNCTION	PRESENT ADMINISTRATIVE FUNCTION
FEE J. P. s	169	<ul style="list-style-type: none"> - Receive Informations and issue criminal process. - Issue Subpoenas. - Judicially confirm; Appearance Notice; Notice to Appear; Police processed Recognizances. - J.I.R. Hearings. - Adjourn cases in the absence of the Judge. - Issue Search Warrants. 	<ul style="list-style-type: none"> - Transmittal of documents to the appropriate Court centre. - Responsible for Bail funds. - Maintain J.I.R. log sheets. - Complete forms. - Monthly statement.
A. G. STAFF AT COURT LOCATIONS (EXCLUDING HEARING OFFICERS)	183	<ul style="list-style-type: none"> - Same functions as Fee J. P. s 	<ul style="list-style-type: none"> - Same functions as Fee J. P. s - (Excluding monthly statements).
HEARING OFFICERS AT EDMONTON AND CALGARY	14	<ul style="list-style-type: none"> - Same functions as Fee J. P. s. - In addition, see the attached schedule. 	<ul style="list-style-type: none"> - Same functions as A. G. Staff J. P. s
ST. ALBERT STONY PLAIN	3 3		
R.-C.-H.-P. COMMISSIONED OFFICERS J. P. s	APPROXIMATELY 10 (Issued by Province)	<ul style="list-style-type: none"> - J. P. powers not used, (to our knowledge). 	

*NOTE: NO FEE J. P. s IN EDMONTON AND CALGARY . . . NONE PROJECTED.

J. P. CATEGORIES AND FUNCTIONS

AS OF AUGUST 1984

CATEGORY	NUMBER	PRESENT JUDICIAL FUNCTION	PRESENT ADMINISTRATIVE FUNCTION
R.C.H.P. N.C.O.'s DETACHMENT OFFICERS J. P.'s (RURAL/CITY)	354	<ul style="list-style-type: none"> - Do not handle Criminal Code procedures. - Process Violation Tickets. 	<ul style="list-style-type: none"> - Transmit documents to Court locations. - Commission Affidavits.
EDMONTON CITY POLICE SERVICE	109	- Same as R. C. H. P. (N.C.O.).	- Same as R.C.H.P. (N.C.O.).
CALGARY CITY POLICE SERVICE	86	- Same as R.C.H.P. (N.C.O.).	- Same as R.C.H.P. (N.C.O.).
RURAL POLICE J. P.'s (OTHER THAN R.C.H.P.)	39	- Same as R.C.H.P. (N.C.O.).	- Same as R.C.H.P. (N.C.O.).
MILITARY POLICE	5	<ul style="list-style-type: none"> - Only function on Military Base locations. - Same as R.C.H.P. (N.C.O.). 	- Same as R.C.H.P. (N.C.O.).
HIGHWAY PATROL (SOLICITOR GENERAL)	9	- Same as R.C.H.P. (N.C.O.).	- Same as R.C.H.P. (N.C.O.).

J. P. CATEGORY STATUS

CATEGORY	APPOINTMENT	TENURE	SALARY	CONTROL OVER ACTIVITIES
FEE J. P.	<ul style="list-style-type: none"> - By Lt. Gov. under J.P. Act in the form of O/C, and Individual Letter of Authority issued by A.G.'s Department. - Require M.L.A.'s recommendation. 	<ul style="list-style-type: none"> - As needed. - Will request resignation. - Automatic age termination at 70 years. 	<ul style="list-style-type: none"> - As per tariff for services. 	<ul style="list-style-type: none"> - A.G. Department through directives and training manual and training courses. - Supervision by Court Services Regional Staff.
STAFF J. P.s (INCLUDES HEARING OFFICERS)	<ul style="list-style-type: none"> - Same as Fee J. P. excluding M.L.A. recommendation. 	<ul style="list-style-type: none"> - As determined by A.G.'s Department. 	<ul style="list-style-type: none"> - Only receive salary as an A. G. Staff employee. 	<ul style="list-style-type: none"> - A.G. Department through directives, policy manuals and management by Court Services.
R.C.H.P. - N.C.O.	<ul style="list-style-type: none"> - Same as Staff J. P. 	<ul style="list-style-type: none"> - As specified by R.C.H.P. "K" Division. 	<ul style="list-style-type: none"> - Only receive salary as a Policeman. 	<ul style="list-style-type: none"> - None by A. G. other than appointment.
EDMONTON AND CALGARY CITY POLICE.	<ul style="list-style-type: none"> - Same as Staff J.P. 	<ul style="list-style-type: none"> - As specified by Deputy Chief. 	<ul style="list-style-type: none"> - Same as R.C.H.P. 	<ul style="list-style-type: none"> - Same as R.C.H.P.
RURAL POLICE, MILITARY POLICE AND HIGHWAY PATROL	<ul style="list-style-type: none"> - Same as Staff J. P. 	<ul style="list-style-type: none"> - As specified by enforcement agency. 	<ul style="list-style-type: none"> - Same as R.C.H.P. 	<ul style="list-style-type: none"> - Same as R.C.H.P.

		... the chief justice of the province the chief justice of the province ...
A74	Lieutenant Governor	The appointment of a justice of the peace terminates when he attains the age of 70 years.	The Lieutenant Governor ... may make regulations fixing the fees and allowances ...
SAS	Lieutenant Governor		The Lieutenant Governor ... may make regulations prescribing a schedule of fees and allowances that may be paid to justices of the peace ...
HW	Lieutenant Governor		... he paid such salary, fee and other remuneration as may be prescribed by the Lieutenant Governor; he appointed as provided in the Civil Service Act and paid remuneration and expenses as provided for civil servants ...
DIT	Lieutenant Governor (Examined by provincial Judge or designate)	Every justice of the peace who is paid by salary shall retire upon attaining the age of 65 years ... may, subject to the annual approval of the chief judge of the provincial court (criminal division), or the chief judge of the provincial courts (family division), continue ... until he attains the age of 70 years. A justice of the peace may be removed from office before attaining retirement age only if the justice of the peace has become incapacitated or disabled justices of the peace shall be paid such fees, allowances and expenses as are prescribed under the Administration of Justice Act. The Lieutenant Governor ... may authorize the payment of a salary to a justice of the peace and may make regulations, a) fixing the salaries of justices of the peace;
DE	Minister of Justice	Any appointment of a justice of the peace within Quebec may, at any time, be revoked by the Minister of Justice.	The government fixes the salary of the justices of the peace ...
N7	Commissioner	A justice of the peace holds office during pleasure for a term of 3 years.	The Commissioner may fix the remuneration that may be paid to a justice of the peace ... Notwithstanding the Public Service Ordinance, the remuneration ... may be paid to a justice of the peace who is employed in the public service in addition to his salary.
YUCN	Commissioner (upon recommendation of Justice of the Peace Council)		The Commissioner may fix the salary or other remuneration that may be paid to a justice of the peace. Notwithstanding any other Ordinance, the Commissioner may authorize the payment of remuneration to a justice of the peace who is employed in public service, in addition to his salary. Justices of the peace shall be paid such remuneration for the performance of their duties as may be prescribed.
R.S.	Governor in Council	Governor in Council may remove any person from the office of Justice of the peace ... notice thereof shall be given in the Royal Gazette ...	
MID	Lieutenant Governor (upon the recommendation of the Attorney General)	The name of any justice ... who shall cease to reside in the district in which he is appointed to act shall be removed by the Lieutenant Governor and the name of any justice may at any time be removed by the Lieutenant Governor in Council for any other cause, upon recommendation of the Attorney General.	
P.L.I.	Lieutenant Governor (upon recommendation of the Minister)	... holds office for a term prescribed by the Lieutenant Governor not exceeding 5 yrs. and upon the expiration of his term of office he may apply to the Minister for reappointment. ... may be removed from office by the Lieutenant Governor ... for cause or when in the opinion of the Lieutenant Governor ... the province does not require a justice of the peace in the area in which the justice of the peace resides.	

PURPOSE

To document specific concerns and to identify policy questions requiring consideration in relation to the functioning of the J. P. system in Alberta, in general, and in particular, the judicial functions performed by Alberta J. P.s.

BACKGROUND

The growth in the number of J. P.s in Alberta reflects current Governmental policy to utilize Staff J. P.s, rather than Provincial Court Judges, to perform certain administrative and judicial functions.

A number of recent events have given rise to the need to review present Alberta legislation and practices: including the report of the Irving Commission; the implementation of the Child Welfare Act; the expectations of the judiciary, the proposed amendments to the Criminal Code (Bill C-18); and the Currie case.

OPERATIONAL FEATURES: ALBERTA JUSTICE OF THE PEACE SYSTEM

Eighteen Attorney General Staff J. P.s act as Hearing Officers in Alberta. They perform specific "judicial" functions such as accepting guilty pleas and traffic offences, imposing fines or granting time to pay, issuing warrants of committal, performing bail hearings, and conducting ex parte trials.

A total of 612 R.C.M.P. and Municipal Police Officers act as J. P.s for the purpose of receiving violation ticket complaints and affidavits.

A total of 183 Attorney General staff act as J. P.s to perform a variety of functions including the swearing of informations, issuing of subpoenas, summons and warrants.

LEGISLATION

There is a variety of Provincial legislative models throughout Canada. The Currie case identified the issues of appointment, tenure, salary, and supervision and control of Justices of the Peace as the most legally significant legislative aspects. Alberta legislation remains silent as to security of tenure, salary, and independence and control. Alberta, like most of the other Provinces, formally appoints Justices of the Peace utilizing the Lieutenant-Governor in Council. Alberta, unlike Ontario, does not legislate that appointees must be approved by the Provincial Court Judges prior to appointment.

LEGAL CONCERNS

In Alberta, a legal concern exists relative to the present method of payment of Staff Justices of the Peace performing judicial functions. The amount of salary is determined by job classification and is subject to increase (or decrease) on a merit basis as established by Departmental management for performance of Departmental duties as a whole. The payment of fees to Fee Justices is not a matter of concern.

The issue of judicial independence may be in question as a consequence of present training practices which may amount to direction rather than training.

ALBERTA LEGISLATION

The Alberta Justice of the Peace Act provides that a J. P. may exercise all powers provided to a J. P. under any legislation, save and except the power to hold a Preliminary Hearing. In practice, however, the judicial powers of a J. P. are restricted by way of formal Departmental direction given to each J. P. on his appointment. The administrative practice of restricting powers is not authorized in the Act and may therefore well be legally questionable.

Alberta legislation remains silent as to salary, tenure, and judicial independence.

ONTARIO LEGISLATION

The power of the J. P. to perform all functions provided for in legislation is not limited in Ontario legislation. Rather the duty to act is placed under the direction of the Chief Judge of the Provincial Court.

In terms of supervision and direction the Ontario legislation provides for the Chief Judge of the Provincial Court to be responsible for such direction and supervision. In terms of salary, Justices of the Peace employed on a salary basis are paid from a distinct fund and are not paid as members of staff.

In terms of tenure, Justices of the Peace retain their appointment subject to a recommendation of a Justice of the Peace Review Council.

POLICY QUESTIONS

Three basic policy questions required consideration:

1. Current practices; should they be continued?
2. A decision to plan for change; should "planned change" be formally commenced?
3. The role model to be followed require consideration; should the Ontario role model be followed?

RECOMMENDATIONS

1. RE: Change of Practices

No administrative or legal impediment should be used to restrict the power of J. P.s (other than Preliminary Hearing), J. P.s to act only under the direction of the Chief Judge;

No arbitrary cancelling of J. P. appointments;

That a committee to look at salary and classification issues be established;

Training models be revised re training formally authorized by the Chief Judge.

2. RE: Decision to Plan Changes

To embark upon formal planning, following the Ontario model.

3. RE: Role Model

To legislate new J. P. Act:

- appointing full-time salaried J. P.s (now staff);

- to allow J. P.s to exercise all powers provided in the Code and other legislation as directed by the Chief Judge of the Provincial Court;

- to pay salaried J. P.s in a similar manner as Provincial Court Judges;

- Appointments subject to certification of the Chief Judge;

- Attorney General staff to be excluded.

- Security of tenure: J. P. Review Council (Ontario legislation).