

SUBMISSION REGARDING REMOVAL ALLOWANCES

The Hon. Mr. Justice John deP. Wright
Superior Court (Ontario)

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All judges are assisted when moving to the job site but only some judges are assisted when moving home again. All judges should be treated equally in this respect.

To:
Judicial Compensation and Benefits Commission
99, Metcalfe
Ottawa, Ontario K1A 1E3

SUBMISSION:

- 1. It is submitted that all persons appointed to superior courts and their dependants:**
 - a) Who were required by law to live in a particular area, and**
 - b) Who had to move from their home area to fulfill that requirement**

should be entitled to a removal allowance upon death, retirement or resignation as are the judges of the Tax Court, The Federal Court of Canada and the Supreme Court of Canada now.
- 2. While the amount of this removal allowance would be calculated upon the basis of the cost of returning the judge to his original home, it should be available to transfer him anywhere in Canada.**

DISCUSSION:

- 1. At the present time a removal allowance is paid to all persons who are appointed to superior courts or to the Tax Court of Canada and who are required to move from their place of residence to a place outside the immediate vicinity of the place where they resided at the time of their appointment; [S. 41(1)(a) Judges Act, see Annex 1]**
- 2. While all new judges have their costs of moving paid upon appointment (and upon transfer during their tenure), only Judges of the Tax Court, The Federal Court, the Supreme Court of Canada, and under certain conditions, the judges of the superior courts of the Yukon, the Northwest Territories and Nunivat have their way paid home again upon death, retirement or resignation. [S. 41 (1)(c) and(d) Judges Act, See Annex 1]**
- 3. Simple claims to equality as guaranteed by the Charter would seem to suggest that all S.96 Judges should be treated in the same manner in this regard.**
- 4. The situation becomes particularly poignant when a judge uproots his family and then is killed or dies while holding office leaving the**

surviving spouse and children to make their own way back to where their support network may be.

5. A judge who leaves the community where he or she has lived and practiced law leaves behind a network of friendships and relationships. Because of the very nature of the office and the age of appointment this network cannot be fully replicated in the new community of residence. It is understandable that upon retirement the couple may wish to face the approaching rigors of old age and eventual death in their original home community or another community where they can rely upon family caregivers.
6. While the judge, survivor or child should have a choice of destination within Canada, the amount of the allowance paid should be limited to the amount that would have been paid had the judge returned to the place of his residence at appointment.

SUGGESTED AMENDMENTS:

1. Delete paragraphs 40(1) (e) (f) and (1.1) of the Judges Act,
2. Amend paragraphs 40(1) (c), (d) (1.2) and 40(2) to read:

[A removal allowance shall be paid to:]

(c) a judge of a superior court or of *the Tax Court of Canada* who, within two years after retiring or resigning from that office, moves to a place of residence in Canada outside the area within which the judge was required to reside by the Act establishing that Court; and

(d) a survivor or child, as defined in subsection 47(1), of a judge of a superior court or *the Tax Court of Canada* who dies while holding office as such, where the survivor or child lives with the judge at the time of the judge's death and, within two years after the death, moves to a place of residence in Canada outside the area within which the judge was required to reside by the Act establishing that Court.

(1.2) Paragraphs (1) (c) and (d) apply only in respect of a judge, who, at the time of appointment to a superior court or *the Tax Court of Canada*, as the case may be, resided outside the area within which the judge was

required to reside by the Act establishing that Court or *the area to which the judge was subsequently transferred.*

(2) A removal allowance referred to in subsection (1) shall be paid for moving and other expenses of such kinds as are prescribed by or under the authority of the Governor in Council and on such terms and conditions as are so prescribed, *but in no case shall the allowance payable under subsections (c) or (d) exceed the amount that would have been paid to move the judge from his or her place of residence to the judge's place of residence when appointed.*

A handwritten signature in black ink that reads "John deP. Wright". The signature is written in a cursive, flowing style.

The Hon. John deP. Wright
Northwest Region
Superior Court (Ontario)

22 December 2003

ANNEX 1

JUDGES ACT

40. (1) A removal allowance shall be paid to

(a) a person who is appointed a judge of a superior court or of the Tax Court of Canada and who, for the purposes of assuming the functions and duties of that office, is required to move from the person's place of residence to a place outside the immediate vicinity of the place where the person resided at the time of the appointment;

(b) a judge of a superior court who, during tenure and for the purposes of performing the functions and duties of that office, is required to change the place of residence of the judge to a place other than that at which or in the immediate vicinity of which the judge was required to reside immediately before being required to change the place of residence of that judge;

(c) a judge of the Supreme Court of Yukon,, the Supreme Court of the Northwest Territories or the Nunavut Court of Justice who, within two years after retiring or resigning from that office, moves to a place: of residence in one of the ten provinces or to another territory;

(d) a survivor or child, as defined in subsection 47(1), of a judge of the Supreme Court of Yukon, the Supreme Court of the Northwest Territories or the Nunavut Court of Justice who dies while holding office as such, where the survivor or child lives with the judge at the time of the judge's death and, within two years after the death, moves to a place of residence in one of the ten provinces or to another territory;

(e) a judge of the Supreme Court of Canada., the Federal Court or the Tax Court of Canada who, within two years after retiring or resigning from that office, moves to a place of residence in Canada outside the area within which the judge was required to reside by the Act establishing that Court; and

(f) a survivor or child, as defined in subsection 47(1), of a judge of the Supreme Court of Canada, the Federal Court or the Tax Court of Canada who dies while holding office as such, where the survivor or child lives with the judge at the time of the judge's death and, within two years after the death, moves to a place of residence in Canada outside the area within which the judge was required to reside by the Act establishing that Court.

(1.1) Paragraphs (1)(c) and (d) apply only in respect of a judge who resided in one of the ten provinces or in another territory at the time of appointment to the Supreme Court of Yukon, the Supreme Court of the Northwest Territories or the Nunavut Court of Justice, as the case may be.

(1.2) Paragraphs (1)(e) and (f) apply only in respect of a judge who, at the time of appointment to the Supreme Court of Canada, the Federal Court or the Tax Court of Canada, as the case may be, resided outside the area within which the judge was required to reside by the Act establishing the Court.

S. 40. (2) A removal allowance referred to in subsection (1) shall be paid for moving and other expenses of such kinds as are prescribed by or under the authority of the Governor in Council and on such terms and conditions as are so prescribed.