

## **CHAPTER 3**

### **OTHER ALLOWANCES**

Under section 27 of the *Judges Act* provision is made for various annual allowances to judges. These allowances are referred to as “Incidental Allowances”, “Northern Allowances” and “Representational Allowances”.

Incidental Allowances cover such things as the cost of repair and replacement of court attire, the purchase of law books and periodicals, memberships in legal and judicial organizations, the purchase of computers and other assorted expenses associated with the position. The purchase of art, furniture and rugs, hospitality costs, and expenses relating to spouses and to office personnel are not covered.

Northern Allowances are paid to judges working in the northern communities. They are intended to provide compensation for the higher cost of living in those locations.

Representational Allowances cover travel and other expenses actually incurred by a judge or the spouse of a judge in discharging the special extra-judicial obligations and responsibilities that are required of their position. Representational Allowances, like Incidental Allowances, cover only those expenses not covered elsewhere under the *Act*.

#### **3.1 Incidental Allowances**

Subsection 27(1) of the *Judges Act* provides that the Judiciary are entitled to be reimbursed up to \$2,500 each year for “*reasonable incidental expenditures that the fit and proper execution of the office of judge may require, to the extent that the judge has actually incurred the expenditures*”

*and is not entitled to be reimbursed therefor under any other provision of [the Judges Act]”.*

They have been set at the same level since 1989.

Several parties in their submissions to the Commission indicated that the level of Incidental Allowances was no longer adequate and requested that it be adjusted to reflect the true cost of expenditures. The Conference and Council cited, as examples, the increased cost of law books and the growing need for computers and information on CD-ROM. Increases to levels between \$3,200 and \$5,000 were suggested. It was also initially requested that Incidental Allowances should be indexed, a request that was opposed by the Government. The issue became moot, however, because at the public hearing on February 14, 2000 the Conference and Council withdrew the request for indexing of Incidental Allowances.

The Commission agrees that Incidental Allowances should be adjusted upward to better reflect the cost of goods in today's marketplace.

### **Recommendation 3**

**The Commission recommends that Incidental Allowances be adjusted to a level of \$5,000 per year effective as of April 1, 2000.**

### **3.2 Northern Allowances**

Under subsection 27(2) of the *Judges Act*, judges in the northern territories are entitled, in addition to Incidental Allowances, to a yearly allowance of \$6,000 as compensation for the higher cost of living in the northern communities.

Seven judges currently receive Northern Allowances. The amount of the Northern Allowances was last adjusted in 1989.

The Conference and Council, in their submissions, requested an increase to between \$16,000 and \$20,000 citing the allowances paid to public servants under the Treasury Board's Isolated Posts Directive (the "IPD") as a comparator. The IPD provides for an environmental allowance

and adjustments for cost of living and fuel and utility differentials at site specific locations in the territories and in the provinces.

The Government submitted that the IPD was not a good comparator, and argued that the environmental allowance provided for under the IPD is used for recruitment and retention purposes and should not apply to judges. The Government did note that the cost of living is higher in the territories, particularly in Nunavut, and that the Northern Allowances should be reviewed. It asked for the Commission's advice on the scope, structure and amount of these Northern Allowances.

Northern Allowances under the IPD vary between locations. Judges qualifying for Northern Allowances reside in Whitehorse, Yellowknife and Iqaluit. Using the IPD, allowances of \$5,123, \$9,161 and \$15,356, including the environmental allowance, respectively, would apply. If the environmental allowance component is excluded, as urged by the Government, and only the cost of living adjustment is considered, the Northern Allowances would be \$3,088, \$5,338 and \$10,108, respectively.

In our view there are sound reasons to maintain the traditional approach of having a uniform level of Northern Allowances. We looked at the numbers provided for under the IPD, in particular those for Iqaluit, which range from \$10,108 to \$15,356. We decided that \$12,000 was an appropriate Northern Allowance for all three locations.

#### **Recommendation 4**

**The Commission recommends that Northern Allowances be adjusted to a level of \$12,000 per year effective as of April 1, 2000.**

### **3.3 Representational Allowances**

Under subsection 27(6) of the *Judges Act*, the Chief Justice of Canada, puisne judges of the Supreme Court of Canada, Chief Justices of the Federal Court and the Chief Justices of each of

the provinces, other specified Chief Justices and Judges, and the Chief Judge and Senior Judges of the northern territories are entitled to be paid Representational Allowances.

The maximum yearly amounts currently allowed for Representational Allowances are listed below.

Chief Justice of Canada	\$10,000
Chief Justices of the Federal Court of Canada and the Chief Justice of each province	\$ 7,000
Supreme Court of Canada Puisne Judges, Trial Chief Justices, Other Designated Chief Justices and Senior Judges	\$ 5,000

The amount of these Representational Allowances has not been changed since 1985. The Supreme Court of Canada and the Canadian Judicial Council (the “Council”) made submissions to the Commission requesting increases in the maximum yearly limits. The Courtois Commission (1990) recommended that the levels be increased to \$15,000, \$10,000 and \$8,000, respectively. Bill C-50, which was introduced in December 1991, contained the increases recommended by the Courtois Commission. However, Bill C-50 died on the Order Paper. Two years later, the Crawford Commission (1993) concluded that the recommendations of the Courtois Commission were still adequate and endorsed the same levels. No Bill was introduced to implement these recommendations.

Both the Supreme Court of Canada and Council suggested that, after 15 years, the maximum level for these Representational Allowances is no longer adequate and that an increase is necessary to cover the increasing demands on judges to participate in activities both inside and outside of Canada. Both of these parties requested that the Representational Allowances be indexed annually and suggested that they be increased to \$22,500 for the Chief Justice of Canada, \$15,000 for Chief Justices of the Federal Court and provinces, and \$12,000 for other eligible judges. Submissions were based on increasing either the current levels, or the levels

recommended by the Courtois Commission, according to various indexation measures.

The Government's submission noted that automatic indexation of allowances, generally, was not necessary, stating that "*while judicial independence may require indexing protection to prevent erosion of judicial salaries by inflation, the same cannot be said for allowances*"<sup>1</sup>. The Government maintained that this was particularly true for Representational Allowances and that a review of them on a quadrennial basis was sufficient.

We agree that the maximum level for Representational Allowances should be increased to reflect the increase in the cost of living over the past 15 years. We also agree with the Government that the Commission should review the amount of the Representational Allowances every four years.

We indexed the Courtois Commission's recommendations, as if implemented in 1990, to 1999 using both the IAI index and the CPI index to determine the range in which those recommendations would be today. We believe that the resulting levels are a valid basis for establishing current Representational Allowances.

### **Recommendation 5**

**The Commission recommends that, effective as of April 1, 2000, Representational Allowances be set as follows:**

<b>Chief Justice of Canada</b>	<b>\$18,750</b>
<b>Chief Justices of the Federal Court of Canada and the Chief Justice of each province</b>	<b>\$ 12,500</b>
<b>Supreme Court of Canada Puisne Judges, Trial Chief Justices, Other Designated Chief Justices and Senior Judges</b>	<b>\$ 10,000</b>

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<sup>1</sup> Submission of the Government of Canada dated January 21, 2000, at 9, para. 39.