

August 3, 2007

Commissioner Louisa Davie  
The Remuneration Committee for Deputy Judges  
939 Queen Street West,  
Mississauga, ON L5H 4E1

Dear Commissioner Davie:

The Ontario Bar Association (OBA), which represents 17,000 lawyers, judges, law professors and law students across the province, is pleased to have the opportunity to make this submission to the Compensation Commission on behalf of the members of the legal profession who serve Ontarians as Deputy Judges in the Small Claims Court system.

For many years the OBA has championed the efforts of the Ontario Deputy Judges Association (ODJA) for parity in compensation and resources with Ontario Provincial and Superior Court Judges. In this regard, attached as Schedules A, B & C, are copies of correspondence from past presidents of our Association.

The OBA will continue to be a strong advocate for a professional, independent and properly resourced Small Claims Court system. No other court has as significant an engagement with Ontarians in providing timely access to justice.

The continued failure of the governments of Ontario to adequately compensate and resource the Small Claims Court system will ultimately erode the public's confidence, as qualified members of the bar will decline to act as Deputy Judge in a compromised system. The current \$232 per diem rate for Deputy Judges, unchanged since 1982, is equivalent or even less than, the rate paid to many legal assistants. To add insult to injury, the Deputy Judges subsidize the overhead costs of producing decisions. This is an untenable situation, long overdue for reform.

The Small Claims Court has seen unprecedented growth as a result of the expanded mandate and increased numbers of litigants. This increasing jurisdiction, coupled with virtually no resources has culminated in the situation in which we now exist – whereby those of the profession who take on the judicial mantle are forced into polarizing actions in a situation where the solution is self-evident. That the mandate is continually under pressure to be expanded, is yet another strong factor in favour of a dramatic overhaul of remuneration for Ontario's Deputy Judges.

Provincial Court Judges frequently sit in Small Claims Court performing the exact same job functions as the Deputy Judges. However, Deputy Judges do not receive the same salary as Provincial Court Judges and do not have equal financial independence.

Clearly, the Deputy Judges should, at a minimum, be compensated and resourced at the level of their judicial brethren in the Provincial Court. There simply is no reasonable argument to the contrary.

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As officers of the court we are sworn to uphold the ethical and sustainable systems of justice that make no favour amongst historical levels of administration. Justice services cannot be a lottery. What exists now is a patchwork whereby one branch discharges their duties in good order, confident of a full array of services and administrative resources. Another busier division struggles to achieve any meaningful effect, having to rely upon their personal and professional largesse in the dispensation of justice.

Can a crisis of public confidence in the entire system be far behind?

Whether the system that exists today is an accident of history or was a deliberate exercise in political expediency matters not. The citizens of Ontario do not discriminate between levels of judicial administration. They expect and deserve appropriate judicial services at every interface. Our Deputy Judges are an integral spoke in the justice wheel and deserve that parity which is long overdue.

The administration of justice is one of the cornerstones of our civilized society. At all levels, it requires, perhaps even demands, funding and resourcing in proportion to our systems of healthcare and education. It is no less vital to our citizens and we must be vigilant in ensuring that the erosion stops now.

Fair and reasonable compensation for Deputy Judges demands per diem parity with those full time members of the judiciary who also sit in the Small Claims Court, namely Provincial Court judges.

We thank you for the opportunity to submit our viewpoint on this very important matter and we look forward to your recommendations.

Yours sincerely,



James Morton  
President

Cc: David McCutcheon  
Counsel, Ontario Deputy Judges Association

Meredith Brown  
Ministry of the Attorney General