



The Advocates' Society

PROMOTING EXCELLENCE IN ADVOCACY

January 29, 2014

VIA E-MAIL

Larry Banack
Commissioner
Case Management Masters Remuneration Commission
Suite 900, 333 Bay Street
Toronto, ON M5T 2T4

Dear Mr. Banack:

Re: Case Management Masters Remuneration Commission

I write in response to your letter of October 25, 2013 regarding submissions to the Case Management Masters Remuneration Commission (the "Commission"). As President of The Advocates' Society (the "Society"), I am pleased to offer the following submissions on its behalf.

The Society speaks on behalf of litigation lawyers from across the province. With more than 5,000 members, the Society reflects diverse and considered views of the litigation bar.

In 2008 the Society submitted to the Attorney General that Case Management Masters were then "substantially under-compensated compared to Traditional Masters", and recommended that Case Management Masters be compensated on par with Traditional Masters. This has yet to occur.

For the reasons given below, the Society continues to believe that Case Management Masters should be remunerated at a level comparable to that of Traditional Masters. To quote The Honourable Coulter Osborne in his report on Civil Justice Reform:

[N]o useful purpose is served by maintaining the distinction between masters and case management masters. All masters should exercise the same jurisdiction and receive the same salary. To avoid unseemly and costly disputes about remuneration, masters' remuneration should be linked to that of the Ontario Court judges.¹

Jurisdiction of Case Management Masters

Case Management Masters adjudicate important and complex disputes that can involve substantial sums of money and multiple parties. Not only are Case Management Masters engaged directly in delivering justice on substantive issues, their duties in the area of civil procedure are essential to the maintenance of effective access to justice.

¹ *Civil Justice Reform Project: Summary of Findings and Recommendations*, p. 88.

Under Section 86.1(6) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “Act”) Case Management Masters have the jurisdiction of Traditional Masters conferred by the *Rules of Civil Procedure* (the “Rules”) as well as the case management jurisdiction conferred under the *Rules*. Case Management Masters, along with Traditional Masters, have the authority to:

- hear and determine certain matters in civil cases, including motions, pre-trials and case conferences;
- adjudicate construction lien trials pursuant to references under Section 58 of the *Construction Lien Act*, R.S.O. 1990, c. C.30;
- adjudicate mortgage and general references;
- provide dispute resolution services; and
- serve as registrars in Bankruptcy under the *Bankruptcy and Insolvency Act*.

Case Management Masters therefore have authority to adjudicate the same classes of disputes adjudicated by Traditional Masters. In addition, the *Act* confers upon Case Management Masters an expanded case management jurisdiction, one not exercised by Traditional Masters.

Remuneration of Case Management Masters

Notwithstanding that Case Management Masters exercise jurisdiction broader than that of Traditional Masters, Case Management Masters are paid substantially less than Traditional Masters. Under Section 87(8) of the *Act*, Traditional Masters receive the same “salaries, pension benefits, other benefits and allowances” as judges of the Ontario Court of Justice. Case Management Masters’ salaries are linked to a different benchmark, *i.e.* the salaries of senior public servants at the SMG3 Classification level. This has resulted in a materially lower level of remuneration for Case Management Masters than for Traditional Masters. There is no rationale for this disparity.

There are currently 16 Case Management Masters in Ontario – 13 in Toronto Region, 2 in East Region and 1 in Southwest Region. By contrast, there are only two Traditional Masters remaining in Ontario, both of whom are in Toronto Region. We understand that the position of Traditional Master is in the process of being phased out.² As such, when the two remaining Traditional Masters retire from the Court, it is our understanding that they will not be replaced and the remaining Case Management Masters will be performing all of the duties of these Traditional Masters – along with their own case management duties under their broader jurisdiction – while being remunerated at a level materially below that of the Traditional Masters.

As noted, Traditional Masters are remunerated at the same level as judges of the Ontario Court of Justice. This approach to the compensation of Traditional Masters reasonably reflects the important role that Traditional Masters play in the administration of civil justice in the Province. It also reflects the well-recognized value of adequate compensation in securing judicial independence³ and in attracting and retaining qualified candidates.⁴

² *Masters’ Association of Ontario v. Ontario*, 2011 ONCA 243 at para. 6.

³ See, for example, Article 14 of the IBA Minimum Standards of Judicial Independence, adopted in 1982: “Judicial salaries and pensions shall be adequate”; See also, *Judges Act*, R.S.C. 1985, c. J-1, as amended, s. 26 (1.1)(b).

⁴ See, for example, *Judges Act*, R.S.C. 1985, c. J-1, as amended, s. 26 (1.1)(c).

The Society respectfully submits that these same considerations justify the same level of pay for Case Management Masters. Their essential role in the administration of civil justice warrants comparable remuneration to secure their independence and to attract and retain qualified candidates for the Ontario civil justice system.

We hope that these submissions will be of assistance to the Commission. We would be pleased to answer any questions you may have arising out of this letter.

Yours truly,

A handwritten signature in cursive script, appearing to read "A. Mark", written in black ink.

Alan H. Mark
President