



**Report and Recommendations
of the 2017 Provincial Court
Commission of Saskatchewan**

**Presented to the Minister of Justice and
Attorney General and the Saskatchewan
Provincial Court Judges Association**

December, 2017

TABLE OF CONTENTS

I.	INTRODUCTION	1
A.	THE COMMISSION AND ITS MANDATE	1
B.	COMMISSION PROCESS AND PROCEEDINGS	2
II.	PREVIOUS COMMISSIONS	3
III.	PROVINCIAL COURT OF SASKATCHEWAN	6
IV.	PRINCIPLES TO BE ADHERED TO BY PROVINCIAL COURT COMPENSATION COMMISSIONS	7
V.	POSITIONS OF THE PARTIES AND ISSUES TO BE DETERMINED	10
A.	ISSUES AGREED UPON	10
B.	THE POSITIONS OF THE ASSOCIATION AND THE GOVERNMENT IN RESPECT OF THOSE ISSUES TO BE DETERMINED	13
(1)	JUDGES' SALARIES.....	13
(2)	VACATION DAYS.....	13
VI.	SUBMISSIONS OF THE PARTIES	13
A.	THE ASSOCIATION'S SUBMISSION	13
(1)	JUDGES' SALARIES.....	13
(a)	Judicial Independence	13
(b)	Economic Climate and Fiscal Conditions of Saskatchewan	14
(c)	Role, Responsibilities and Workload of the Provincial Court	16
(d)	Recruitment and Retention of Judges	19
(e)	Salaries of Comparator Groups	20
(i)	Salaries for Queen's Bench Judges	20
(ii)	Salaries for Provincial Court Judges Across Canada	23
(iii)	Salaries of Private Practitioners	23
(2)	VACATION DAYS.....	24
(a)	Improved Health and Well-being	24
(b)	Recruit and Retain Senior Members of the Bar	24
(c)	Queen's Bench Judges	24
(d)	Provincial Courts Across Canada	25

(e)	Potential Increased Costs	25
B.	THE GOVERNMENT’S SUBMISSION	25
(1)	JUDICIAL SALARIES.....	25
(a)	Judicial Independence	25
(b)	Recruitment and Retention of Provincial Court Judges	31
(c)	Salaries of Comparator Groups	32
(i)	Comparison with Other Judges	32
(ii)	Comparison with Practicing Lawyers	34
(d)	Prevailing Economic and Fiscal Conditions of Saskatchewan	35
(e)	Increases in the Cost-of-Living	37
C.	CHIEF JUDGE JAMES A. PLEMEL	37
D.	SASKATOON CRIMINAL DEFENCE LAWYERS ASSOCIATION	39
E.	THE CANADIAN BAR ASSOCIATION	40
F.	GOVERNMENT REPLY	41
(1)	JUDICIAL SALARIES.....	41
(2)	VACATION DAYS.....	43
G.	ASSOCIATION REPLY	44
(1)	JUDICIAL SALARIES.....	44
VII.	COMMISSION’S ANALYSIS	46
A.	SALARIES	46
(1)	Starting Point and Analysis.....	46
(a)	Judicial Independence	49
(b)	Economic Climate and Fiscal Conditions of Saskatchewan	49
(c)	Provincial Court Workload	51
(d)	Recruitment and Retention of Provincial Court Judges	51
(e)	Salaries of Comparator Groups	53
B.	VACATION DAYS	55
VIII.	RECOMMENDATIONS OF THE COMMISSION	56
A.	SALARIES	56
XI.	CLOSING REMARKS	57

I. INTRODUCTION

A. THE COMMISSION AND ITS MANDATE

1. The 2017 Provincial Court Commission (the "Commission") was appointed pursuant to section 36 of *The Provincial Court Act*, 1998, S.S. 1998, c P-30.11 (the "Act"). The Commission is composed of the following members:

- i) Leslie W. Prosser, Q.C. – Chairperson, appointed by the two other members of the Commission;
- ii) Paul S. Jaspar FCPA FCA – Appointee of the Saskatchewan Provincial Court Judges Association (the "Association"); and
- iii) Merlis M.R. Belsher FCPA FCA LLB – Appointee of the Minister of Justice (the "Minister").

2. The mandate of the Commission is set out in s. 38(1) (compulsory) and s. 38(2) (advisory) of the Act:

38(1) A commission **shall** inquire into and make recommendations with respect to the following:

- (a) the salaries to be paid to:
 - i) the chief judge;
 - ii) an associate chief judge;
 - iii) judges other than the chief judge, associate chief judges and temporary judges; and
 - iv) temporary judges;
- (b) the remuneration to be paid to judges who perform administrative duties assigned to them pursuant to clause 8(f);
- (c) the allowances to be paid to judges who reside in the Northern Saskatchewan Administration District;
- (d) professional allowances;
- (e) vacation leave;
- (f) pension benefits and additional retirement benefits;

(2) A commission **may** inquire into and make recommendations with respect to the following:

- (a) the support staff, facilities, equipment and security of the court;

- (b) the benefits to be provided to judges pursuant to regulations made pursuant to clause 65(d). [emphasis added]

B. COMMISSION PROCESS AND PROCEEDINGS

3. Advertisements calling for submissions to this Commission were placed in the Regina Leader Post and the Saskatoon Star Phoenix on Saturday, September 23, 2017. The advertisements indicated that the Commission would be receiving submissions from interested parties and that hearings were to be held in Regina and Saskatoon at the locations and dates indicated. Notice of the hearing dates was further posted on the Commission's website at <http://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/saskatchewan-provincial-court-commission#submissions-and-replies>.
4. The Commission received written and oral submissions from the following:
 - i) the Association;
 - ii) Deputy Minister of Justice on behalf of the Government of Saskatchewan (the "Government");
 - iii) Canadian Bar Association – Saskatchewan Branch (the "CBA");
 - iv) Saskatoon Criminal Defence Lawyers Association Inc. (the "SCDLA") and
 - v) Chief Judge James A. Plemel.
5. These documents and other materials can be found on the Commission website at <http://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/saskatchewan-provincial-court-commission#submissions-and-replies>.
6. The Commission conducted public hearings in Saskatoon on November 8, 2017 and in Regina on November 10, 2017.
7. The Commission is required to prepare a report with its recommendations on the s. 38(1) matters for the three year period commencing April 1, 2018 and submit it to the Minister and the Association by December 31, 2017. (s. 41 of the Act)

II. PREVIOUS COMMISSIONS

8. There have been eight previous Provincial Court Commissions in Saskatchewan:
- i) The Schmeiser Commission reported in 1991;
 - ii) The Irwin Commission reported in 1993;
 - iii) The Bundon Commission reported in 1998 and 1999;
 - iv) The Vicq Commission reported in 2002;
 - v) The Barnard Commission reported in 2005;
 - vi) The Zakreski Commission reported in 2008;
 - vii) The Hood Commission reported in 2011; and
 - viii) The Hodson Commission reported in 2014.
9. In the reports of the Hood and the Hodson Commissions, a detailed report of the work of previous Commissions was provided, as follows, (including this Commission's summary of the work of the Hodson Commission):

All of the above, with the exception of the Schmeiser and Irwin Commissions, reported under the current legislation.

The Government rejected the recommendations of the Schmeiser and Irwin Commissions. The initial salary recommendation of the Schmeiser Commission was for a salary of \$104,000 (October 1, 1990) and the initial salary recommendation of the Irwin Commission was \$108,000 (April 1, 1993).

The rejection of the Irwin Commission salary recommendations resulted in the commencement of a lawsuit against the Government by the Association. In June 1997, the Minister of Justice announced that a settlement had been reached in the lawsuit. Under the terms of the settlement, the amount of the salary for Provincial Court Judges was \$112,961 effective April 1, 1997.

The first Bundon Report addressed a joint submission from the Minister of Justice and the Association and the recommendation of the Commission followed the 1997 settlement.

The second Bundon Report addressed the period from April 1, 2000 to March 31, 2003. On January 13, 2000, the Government announced that it would accept all of the recommendations of this Commission. The salary recommended by the Commission was

\$143,000 for the period ending March 31, 2003.

The Vicq Report addressed the period from April 1, 2003 to March 31, 2006. The Government announced in January of 2003 that it accepted all of the recommendations of this Commission. The recommendations resulted in a salary of \$163,190 for the period ending March 31, 2006 and indexing of pension benefits.

The Barnard Report applied for the period April 1, 2006 to March 31, 2009. The Government announced in January of 2006 that it accepted all of the recommendations of this Commission. The recommendations resulted in a base salary for Judges to be set at \$195,000 for the first year commencing April 1, 2006 and to be adjusted in each of the two following years by the increase in the Saskatchewan Consumer Price Index. The recommendations resulted in a salary of \$204,552 for the period ending March 31, 2009. The Barnard Commission also recommended additional amounts for the salaries of Chief Judge of \$10,000, \$5,000 for the Associate Chief Judge and \$3,000 for the Administrative Judges per year above the base salary. The Barnard Commission made additional recommendations relating to the daily rate for Temporary Judges, an increase in the professional allowance for Judges, and Judge Morin's entitlement to receive northern allowance.

The Zakreski Report applied for the period April 1, 2009 to March 31, 2012. The Government announced in January of 2009 that it accepted all of the recommendations of this Commission. The recommendations resulted in setting the base salary for Judges of the Provincial Court at \$220,916 for the period April 1, 2009 to March 31, 2010. This recommendation amounted to an eight percent increase in the base salary. The Zakreski Commission further recommended that the base salary be increased by a further four per cent in each of the two following years. This resulted in the base salary for Judges of \$238,943 for the current period April 1, 2011 to March 31, 2012.

The Zakreski Commission was not prepared to recommend any change in the current level of indexing of pension benefits. The Zakreski Commission accepted the joint agreement of the Government and the Association relating to the additional compensation to be paid to the Chief Judge, the Associate Chief Judge and the Administrative Judges. Accordingly, the Zakreski Commission recommended that the Chief Judge receive a salary of seven and one-half percent greater than the base salary, and the Administrative Judges receive a salary of two and one-half percent greater than the base salary.

The Zakreski Commission recommended that the daily remuneration for Temporary Judges be set by a formula of 1/220 of the base salary of the full-time Judge.

The Zakreski Commission declined to recommend certain changes

which the Association had requested with respect to an increase in the number of days of vacation leave from 30 days; declined to recommend "red circling" of the Chief Judge's salary at the conclusion of his or her term; and did not recommend that contributions no longer be made after 18 services [sic] by Judges who benefit from the special provision of section 13 of the Provincial Court Compensation Regulations R.R.S. c P-30-11 Reg. 2.

The Hood Report applied for the period April 1, 2012 to March 31, 2015. The Government announced in January of 2012 that it accepted all of the recommendations of this Commission. The Hood Commission recommended the base salary for Judges be increased by the Saskatchewan Consumer Price Index ("SCPI") plus an additional one percent for each of the three years resulting in a base salary as follows:

2012/13 - \$248,010

2013/14 - \$254,458

2014/15 - \$260,819

The Hood Commission accepted the joint agreement of the Government and the Association relating to the additional compensation above the base salary to be paid to the Chief Judge (7½%), the Associate Chief Judge (5%) and the Administrative Judges (2½%). The Hood Commission also recommended that the daily remuneration for Temporary Judges be set by a formula of 1/220 of the base salary of a full time Judge.

The Hood Commission rejected the requested change to pension entitlements including indexing. It also rejected the request for sabbatical for the office of the Chief Judge and did not recommend any changes to the medical, drug, dental and eye care benefits for the Judges. The Hood Commission agreed to increase the Professional Allowance from \$3,500 to \$3,650.

The Hodson Report applied for the period April 1, 2015 to March 31, 2018. Unlike responses to previous Commission Reports, the Minister did not respond in 2015 to the recommendations of the Hodson Commission. However, in accordance with s. 41(1)(a) of the Act, the recommendations of the Hodson Commission came into force on January 31, 2015. The Hodson Commission recommended the base salary for Judges be increased by the SCPI plus an additional 2% for each of the three years resulting in a base salary as follows:

2015/16 - \$272,975

2016/17 - \$282,184

2017/18 - \$290,848

The Hodson Commission declined to increase vacation days beyond the

30 days which have been set at that level since the first Provincial Court Commission in 1998 having received no submission from either the Government or the Association relating to the additional compensation above the base salary to be paid to the Chief Judge (7.5%), the Associate Chief Judge (5%) and the Administrative Judges (2.5%), the Hodson Commission recommended that those administrative allowances remain the same. Similarly, the Hodson Commission recommended that the remuneration for temporary judges remain at a daily rate of 1/220 of the base salary of a Judge.

The Hodson Commission accepted the request of the Association to increase the annual professional allowance for Judges from \$3,650 to \$4,000.

In keeping with the recommendations of the Vicq Commission (2002), the Barnard Commission (2005) and the Hood Commission (2011), the Hodson Commission rejected the request by the Association to extend health care and dental benefits to those Judges currently working into their retirement as additional retirement benefits. The Hodson Commission concluded that it did not have the jurisdiction to do so and, in any event, was “not convinced that this request is warranted”. The Hodson Commission also rejected the request for a sabbatical for the Office of the Chief Judge, a request that the Hood Commission (2011) had also rejected.

III. PROVINCIAL COURT OF SASKATCHEWAN

10. The Provincial Court of Saskatchewan currently consists of a Chief Judge and 48 additional judges sitting in 13 permanent judicial centers and 62 addition circuit points, for a total of 75 circuit points throughout the Province.
11. The administration of the Provincial Court is the responsibility of the Chief Judge, one Associate Chief Judge and five Administrative Judges.
12. As noted in the submission of the Association and the 2011 Commission (para. 25) the number of Judges has remained relatively stable since 1979, following the establishment of the Provincial Court in 1978, and has ranged between 41 and 50 Judges on the Provincial Court Bench.
13. As noted in the Zakreski Commission Report (2008) and reiterated in the Hood Commission Report (2011) (paras. 57 and 217):

[...] [T]he Provincial Court plays a vital role in our society. Traditionally, this Court is the point of entry into the criminal justice system and the data provided to us shows their role is ever-increasing.

They preside over the vast majority of criminal matters and they have wide reaching powers that require them to balance the rights of persons charged with offenses against the need to ensure our communities are protected and well served. Two of the most onerous duties are, as defined by the Association, to determine guilt and impose sentences, where necessary, that balance the protection of the public and the needs of the offender. In these and all of their duties, it is a delicate balance as it requires they must be independent and unbiased, and be perceived as such at all times.

IV. PRINCIPLES TO BE ADHERED TO BY PROVINCIAL COURT COMPENSATION COMMISSIONS

14. The Supreme Court of Canada has identified the principle of judicial independence and the application and adherence to that principle by Provincial Court Compensation Commissions in two seminal cases, namely:
 - i) Reference re Remuneration of Judges of the Provincial Court (PEI) [1997] 3 SCR 3 ("Provincial Judges Reference"); and
 - ii) Provincial Court Judges' Association of New Brunswick v. New Brunswick [2005] 2 SCR 286 ("New Brunswick Reference").
15. This Commission is required to be independent and objective. The process is intended to be "flexible, consultative and not in the nature of adjudicative interest arbitration nor judicial decision-making. Its focus is on identifying the appropriate level of remuneration for the judicial office in question. All relevant issues may be addressed. The process is flexible and its purpose is not simply to "update" the previous Commission's Report. However, in the absence of reasons to the contrary, the starting point should be the date of the previous Commission's Report". (para. 14, New Brunswick Reference)
16. In order to ensure judicial independence, the Judiciary must enjoy security of tenure, financial security and administrative independence.
17. The Government, in para. 1 of its submission, recognizes that the principle of judicial independence "is the cornerstone of the Canadian Court system. Judicial independence is essential to ensure fair and reasoned decisions from the Courts, decided solely on the merits of each case. Judicial independence also ensures that the public has confidence in the Court system and in Court decisions, confident that the Courts make their decisions

without any external pressures or influences. Judicial independence is a crucial guarantee of the rule of law in a free and democratic society”.

18. As a critical component of judicial independence, it is the role of this Commission to make recommendations on the compensation to be paid to Provincial Court Judges since there is to be no negotiation on matters relating to judicial remuneration between the judiciary and the Government. In addition, salaries may not fall below an acceptable minimum level. Lamer C.J. discussed these three factors in the Provincial Judges Reference at paras. 133 - 135:

133. First, as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. However, any changes to or freezes in judicial remuneration require prior recourse to a special process, which is independent, effective, and objective, for determining judicial remunerations, to avoid the possibility of, or the appearance of, political interference through economic manipulation. What judicial independence requires is an independent body, along the lines of the bodies that exist in many provinces and at the federal level to set or recommend the levels of judicial remuneration. Those bodies are often referred to as commissions, and for the sake of convenience, we will refer to the independent body required by s. 11(d) as a commission as well. Governments are constitutionally bound to go through the commission process. The recommendations of the commission would not be binding on the executive or the legislature. Nevertheless, though those recommendations are non-binding, they should not be set aside lightly, and, if the executive or the legislature chooses to depart from them, it has to justify its decision - if need be, in a court of law. As I explain below, when governments propose to single out judges as a class for a pay reduction, the burden of justification will be heavy.
134. Second, under no circumstances is it permissible for the judiciary – not only collectively through representative organizations, but also as individuals - to engage in negotiations over remuneration with the executive or representatives of the legislature. Any such negotiations would be fundamentally at odds with judicial independence.

As I explain below, salary negotiations are indelibly political, because remuneration from the public purse is an inherently political issue. Moreover, negotiations would undermine the appearance of judicial independence, because the Crown is almost always a party to criminal prosecutions before provincial courts, and because salary negotiations engender a set of expectations about the behavior of parties to those negotiations which are inimical to judicial independence. When I refer to negotiations, I utilize that term as it is traditionally understood in the labor relations context. Negotiations over remuneration and benefits, in colloquial terms, is a form of "horse-trading". The prohibition on negotiations therefore does not preclude expressions of concern or representations by chief justices and chief judges, and organizations that represent judges, to governments regarding the adequacy of judicial remuneration.

135. Third, and finally, any reductions to judicial remuneration, including *de facto* reductions through the erosion of judicial salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge. Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation, as is witnessed in many countries. [emphasis added]

19. Further, Lamer C.J. at para. 173 of the Provincial Judges Reference stated:

Moreover I recommended (but do not require) that the objectivity of the commission be ensured by including in the enabling legislation or regulations a list of relevant factors to guide the commission's deliberations. These factors need not be exhaustive. A list of relevant factors might include, for example, increases in the cost of living, the need to ensure that judges' salaries remain adequate, as well as the need to attract excellent candidates to the judiciary.

20. However, in Saskatchewan the Act, unlike similar legislation in other provinces, does not contain a list of such relevant factors to be considered by this Commission. The Vicq Commission (2002) at pp. 8 and 9 of its report did identify a list of relevant factors which have been followed by subsequent commissions, as follows:

The Commission was keenly aware throughout its deliberations of the foundation principle of judicial independence. The Commission's task – as Chief Justice Lamer made very clear – is to make recommendations based on *objective* factors, and it should be "fully informed" before doing so. (para. 172, Provincial Judges

Reference) In our view, the interpretation of The *Provincial Court Act, 1998* which best meets these objectives is that the Commission has the jurisdiction to and should consider a broad range of "objective" factors. This approach is also consistent with Chief Justice Lamer's recommendation that legislation contain a "non-exhaustive" list of relevant factors, and that the list might include the need for "adequate" salaries. The notion of "adequacy" is inherently flexible, and invites the Commission to consider all factors it considers relevant in the course of discharging its constitutionally mandated task.

[...]

To summarize, it is the Commission's view that while all of its deliberations must be framed by and fully respect the principle of judicial independence; it is, within that framework, entitled to take account of a wide variety of "objective" factors. Those factors include the history of judicial remuneration, changes in cost of living, prevailing economic and fiscal conditions in Saskatchewan, public and private sector salary comparators both within and outside Saskatchewan, recruitment and retention issues and the unique responsibilities and work environment of Provincial Court Judges.

V. POSITIONS OF THE PARTIES AND ISSUES TO BE DETERMINED

A. ISSUES AGREED UPON

21. Based on the submissions received and heard, those issues which have been determined by the Commission to be agreed upon between the Association and the Government, are as follows:

- i) Salary of Chief Judge, Associate Chief Judge, Administrative Judge
 - (a) The Chief Judge of the Provincial Court receive a salary seven and one-half (7.5) percent greater than the amount paid to Judges other than the Associate Chief Judges and Administrative Judges.
 - (b) The Associate Chief Judge receive a salary five (5) percent greater than the amounts paid to Judges other than the Chief Judge and Administrative Judges.
 - (c) The Administrative Judges receive a salary two and one-half (2.5) percent greater than the amounts paid to Judges other than the Chief Judge and the Associate Chief Judges.

ii) Salary of Temporary Judges

The remuneration for Temporary Judges be based on a formula of 1/220 of the salary paid to a full-time Judge. This recommendation was implemented and continued by operation of law.

These recommendations were recommended initially by the Zakreski Commission and subsequently implemented by agreement of the parties, and by the Hood Commission and the Hodson Commission. Neither the Association nor the Government has requested any change to this statutory formula in their respective submissions before this Commission.

The Hodson Commission at paras. 20 and 21 of its report outlined the following benefits to which the Judges are entitled:

20. In addition to salary, the Judges are entitled to the following pension and retirement benefits:
 - i) Pension and Additional Retirement Benefit – A benefit rate of 3% per year of service (to a maximum of 23 1/3 years - 70%), multiplied by average salary over best 3 years.
 - ii) Survivor Pension - Surviving spouse is entitled to defined benefits pension for life.
 - iii) Surviving Child Benefit – The benefit is paid to a surviving child of a Judge, if the Judge dies without a spouse or if the spouse later dies; payable up to age 18; can be extended up to 5 more years if the child is attending educational institutions.
 - iv) Early Retirement Pensions - Full pension of 70% times average salary over best 3 years, when a judge's age and years of service equal 80 and, is aged 58 or older with a minimum of 18 years' service. The pension is based on a reduced formula if a Judge retires between age 55 and age 65, having served at least two years on the Court.
 - v) Indexing of Pension - Pensions are indexed to 75% of CPI up to a CPI of 5% and indexed at 50% of CPI for portion of CPI over 5%.
 - v) Judges Contributions - Judges contribute 5% of salary.

- vii) Government Contributions - Government contributes the amount necessary to make up the difference between the Judges' contributions and the amounts necessary to pay the pension and additional retirement benefits.

21. In addition, Judges are also eligible for the following additional benefits:

- i) Disability Benefits - 100% of salary for temporary disability (up to 1 year); 70% for permanent disability. On recommendation of Judicial Council. No premiums.
- ii) Annual Vacation - 30 days
- iii) Annual Professional Allowance - \$3,650
- iv) Group Life Insurance - Minimum 2 times salary with optional coverage up to \$500,000, the first \$25,000 of coverage being paid for by the province.
- v) Dental Plan - Same dental plan as public service employees; premiums are paid by the Government.
- vi) Extended Health Plan - The extended health plan provides comparable benefits to the plan provided to public service management. Premiums are paid by the Government.

22. As regards those benefits outlined in the immediately preceding para. 21, the only issue before the Hodson Commission to be determined was that of the annual professional allowance. In its report, the Hodson Commission recommended an increase in the professional allowance from \$3,650 to \$4,000 annually.

23. Neither the Association nor the Government has requested any revision to the aforesaid benefits outlined in paras. 21 and 22, above.

24. Based on the submissions received from the Association and the Government, the outstanding issues which require a recommendation from this Commission are:

- i) judicial salaries; and
- ii) vacation days.

B. THE POSITIONS OF THE ASSOCIATION AND THE GOVERNMENT IN RESPECT OF THOSE ISSUES TO BE DETERMINED

25. The position of the Association and Government as regards an increase to the base salary in each of the applicable years is as follows:

(1) JUDGES' SALARY

	Association	Government
2018/19	SCPI ¹	0
2019/20	SCPI + 1%	0
2020/21	SCPI + 2%	0

(2) VACATION DAYS

26. The Association proposes the Judge's annual vacation days be increased from 30 to 40 days. The Government proposes no change to vacation days.

VI. SUBMISSIONS OF THE PARTIES

A. THE ASSOCIATION'S SUBMISSION

(1) JUDGES' SALARIES

27. The Association has identified a number of relevant factors to be considered by the Commission in considering its recommendation on judicial salaries. They are as follows:

(a) Judicial Independence

28. The Association has endorsed the statement from the Hodson Commission Report that an independent judiciary is the "life blood of constitutionalism in democratic societies". (para. 196, Hodson Report)

29. The Association submits that the judiciary must not only be independent but also must be seen to be independent.

30. The Association further commented on the principles confirmed by the Supreme Court of Canada that:

[j]udicial independence exists for the benefit of the judged not the

¹ SCPI – All items Saskatchewan Consumer Price Index as measured by the average annual increase between January 1 and December 31 of the previous year.

Judges. (Ell v. Alberta, 2003 SCC35 at para. 29)

The primary purpose of the constitutional protection afforded to the financial security of the judiciary is not to benefit judges generally, but rather to ensure public confidence in the impartiality of the judiciary, reinforce the perception that justice will be done in individual cases, and maintain the rule of law”. (paras. 9 and 10, Provincial Court Judges Reference)

31. The Association acknowledges that the current compensation for Provincial Court Judges exceeds the constitutional “minimum acceptable level” as required by the Supreme Court of Canada. However, it has further endorsed the statement made by the Hodson Commission at para. 142 of its report that:

We do not see the Commission’s role as simply ensuring that the current judicial salary meets this “minimum acceptable level”, and if so then to adjust the “acceptable” salary for inflation. This would, in our view, be an abdication of our responsibilities and require us to ignore the relevant factors to be considered.

(b) Economic Climate and Fiscal Conditions of Saskatchewan

32. The Association acknowledges that the economic condition of a province is an important factor for the Commission to consider. The Association has endorsed the statements made by the Hodson Commission that “the salary recommended for Judges should take into account the fact that the level and growth of the salaries during strong economic times are generally greater than during poor economic times”. (para. 158, Hodson Report)
33. While the Association acknowledges that Saskatchewan’s economy has been challenged by the persistently low oil and potash prices in 2015 and 2016, the Association also pointed out that in Government’s budget the PST base was broadly expanded, yet personal and corporate income tax rates were lower and new growth incentives were introduced to “keep our economy strong” (extract at p. 3 from the Saskatchewan Provincial Budget (the “Budget”)) and that despite the down turn in the economy in 2015 and 2016 “Saskatchewan’s economy is poised for growth in 2017” (p. 7, Budget).
34. The Association emphasizes that it is important to recognize and differentiate between the Budget on one hand and the prevailing economic conditions, on the other. The Association states that the Budget reflects how the Government intends to manage its resources and it is infused with political and social policy. It is not solely an economic

instrument.

35. The Association quoted from the 2008 Judicial Compensation and Benefits Commission Report on compensation for federally appointed judges, which includes Queen's Bench Judges in Saskatchewan (paras. 57 and 58, Commission Report):
57. We agree with the views expressed by the Canadian Bar Association. The Government's contention that the Commission must consider the economic and social priorities of the Government's mandate in recommending judicial compensation would add a constitutionally questionable political dimension to the inquiry, one that would not be acceptable to the Supreme Court, which has warned that commissions must make their recommendations on the basis of "objective criteria, not political expediencies" [...]
58. With regard to the Government's contention that any increases in judicial compensation must be reasonable and justifiable in light of the expenditure priority that the Government has accorded to attracting and retaining professionals of similarly high qualities and capacity within the federal public sector, we find no such requirement in the statutory criteria that the Commission must consider. In fact, were the Commission required to justify compensation increases in this way, it would make the Commission accountable to the Government and allow the Government to set the standard against which increases must be measured. This would be an infringement on the Commission's independence. Since the maintenance of the financial security of the judiciary requires that judicial salaries be modified only following recourse to an independent commission, any measure that would have the effect of threatening or diminishing the Commission's independence would conflict with this constitutional requirement.
36. Commencing at para. 46ff of its report, the Association referred to a number of statements within the Budget which indicated that the economy of the Province is strengthening and tabled a number of reports from sources including the Conference Board of Canada, the Assistant Chief Economist of RBC Economics and statements made by the Finance Minister for the Province of Saskatchewan to support the Association's view that the Province of Saskatchewan enjoys a strong fiscal position and a growing economy. The Association pointed to a number of the Government's own announcements, such as the increase in building permits, growth in manufacturing sales, growth in retail trade and

growth in provincial wholesale trade during 2017, which has placed Saskatchewan in a strong position relative to other provinces in Canada.

37. In concluding its comments on the economic climate and fiscal conditions of Saskatchewan, the Association, in its submission stated: (para. 53)

The jurisprudence makes it clear that judicial salaries are appropriately determined based upon the health of a particular provincial economy. While the Saskatchewan economy lagged behind in 2015 and 2016, it is turning around in 2017 with promising indicators and forecasts. A view of Saskatchewan's economic climate cannot ignore the past two years of poor results, but it must be balanced with the present positive outlook and the compelling forecasts of future economic growth.

(c) Role, Responsibilities and Workload of the Provincial Court

38. The Association submits, that although the responsibilities and workload of Provincial Court Judges have increased significantly; nevertheless, the number of Judges has remained relatively stable since 1979. The increased jurisdiction and workload of the Court are due to a number of significant factors including:

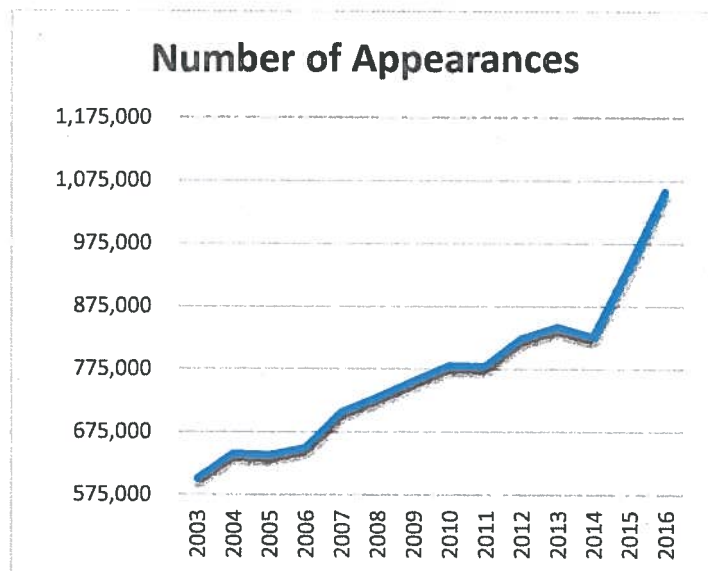
- i) new initiatives such as therapeutic courts designed specifically to address issues such as domestic violence, mental illness and drug abuse;
- ii) case management initiatives;
- iii) the Regina Mental Health Disposition Court based on a collaborative model created to coordinate treatment and criminal justice needs for criminal offenders with mental health, Fetal Alcohol Syndrome Disorder or cognitive issues;
- iv) the settlement-orientated "robust case management" project implemented to facilitate the resolution or significant streamlining of any and all trial or preliminary hearing issues; and
- v) specialty courts in the northern areas of the Province that conduct hearings in Cree and/or Dene and incorporate traditional restorative processes into sentencing.

39. The Association further points out that the Provincial Court and Queen's Bench Court share responsibility for the Province's workload of child apprehension cases under *The Child and Family Services Act*, with the Provincial Court handling the majority of such

cases in communities outside of Regina, Saskatoon and Prince Albert.

40. The Association emphasizes that Saskatoon and Regina have had the highest Crime Severity Index in 2014, 2015 and 2016 among Canada's census metropolitan areas. In addition to that, in those years Saskatchewan has had the highest rates among the ten provinces in Canada of violent crime, total youth crime, Crime Severity Index, Non-violent Crime Severity Index, and Youth Crime Severity Index; breaking and entering and impaired driving. Further, the Association points out that 99.6 of all criminal matters in Canada were heard and decided by Provincial Courts. At para. 104 of its submission, the Association states:

For the ten-year period from 2003 to 2012, the annual total "appearances" in the Provincial Court increased by more than 37%, rising from approximately 600,000 to over 800,000 throughout this time-frame. In 2013, the number of appearances further increased by almost 20,000 to 818,802 and in 2014 to 836,564. However, in 2016, there were 1,057,951 appearances - which is a substantial increase of more than 230,000, or almost 30%, in a three-year period.



These statistics were extracted from the 2014 Report of the Provincial Auditor of Saskatchewan, Vol. 1 Chap 10; as reproduced under Tabs 39 and 40 of the Appendix to the Association's submission.

41. In addition, the monetary jurisdiction of the civil division of the Provincial Court increased from \$20,000 to \$30,000 in 2016. The Association in its submission points out

that the civil division is a “dynamic, multi-purpose court which serves a wide variety of matters that range in value and complexity”. Of the cases handled by the civil division of the Provincial Court, the Association states that the vast majority of plaintiffs, defendants, counter-claimants and third party claimants are unrepresented by counsel. In addition, the Court focuses on dispute resolution in advance of trial.

42. The Association further emphasizes that the Provincial Auditor of Saskatchewan in its 2014 report confirmed that the “Provincial Court has experienced a significant increase in its workload over the past ten years. This observation was based on the Ministry’s [of Justice] information system which tracks a number of factors related to Court workloads, including:

- i) the length of time to conclude (i.e. the number of days between the first court appearance and the final concluding court appearance);
- ii) the number of appearances;
- iii) the number of charges laid; and
- iv) the number of charges concluded.”

43. As an additional factor contributing to the aforesaid increases in numbers, the Association in its submission points out that since 2011, the Saskatchewan population has grown at an annual rate of 1.2% per year which is the third highest growth rate among the provinces. (p.1, SaskTrends Monitor, January 2017).

44. The Association points out that previous commissions have recognized the increased workload and innovative efforts of Provincial Court Judges and, in particular, noted the comments of the Hodson Commission are as follows:

133. [...] Rewarding Judges for being efficient, hardworking and innovative is appropriate.

The failure to consider Judges’ efforts over time in determining the appropriate level of salary could prove to be a disincentive to Judges. (paras. 164-165)

[...]

The increased workload of Judges, as confirmed by the Provincial Auditor, and the efficient and effective efforts of the Judges as a collective whole to address this challenge merits

recognition in the form of a salary increase above the cost of living adjustment. (para. 183(a))

45. The Association notes that Provincial Court Judges have no opportunity to enjoy the compensation incentives that are typical in the private sector, such as the opportunity to profit share, own stock options, or be rewarded recruitment and performance bonuses. There is no real prospect of promotion. All Provincial Court Judges receive the same salary.
46. In recognition of these efforts and personal and financial sacrifices, the Association submits that they should not be taken lightly in the determination of an appropriate salary, which must be sufficiently generous to offset the financial and social restrictions which Provincial Court Judges live with, in addition to their ever expanding workload, as a cost of ensuring their independence.

(d) Recruitment and Retention of Judges

47. The Association submits that judicial compensation is a key component of the Province's ability to attract and retain highly qualified lawyers to the Bench. The Association cites comments from the Canadian Bar Association in relation to its submission to the 2005 Commission in which it echoed the remarks of then Chief Justice Bayda to the 1993 Commission:

Society is demanding not merely judges but judges about whom its members should never need to complain. Society is demanding the 'best'. [...] Therefore, as you engage yourself in the task of determining what is the appropriate salary for the judges of the Provincial bench during the next short while, I strongly urge you to do so not on the footing of what it takes to attract a long list of judicial candidates but rather on the footing of what it takes to attract a short list of the 'best' candidates. [emphasis added]

48. The Association further submits that as compensation of Judges is a key factor in attracting highly qualified lawyers from both the private bar and the public service, there is a need to be mindful that the salaries and benefits available to members of the Court of Queen's Bench and the Court of Appeal are likewise relevant and stipulates that "[t]he Saskatchewan public is not well-served by a Provincial Court that may be overlooked for financial reasons by those lawyers who might be best suited for it, or by a Provincial

Court whose PCJs transfer to the federal courts which enjoy a higher pay scale. In fact, since 2013, three PCJs have transferred to the Court of Queen's Bench ...". (para. 146)

49. The Association suggests that with the transfer of these three Judges to the Court of Queen's Bench that "this is the first time a Commission has been required to address the retention issue". (para. 147)
50. The Association states that there will always be lawyers who apply for an appointment to the Provincial Court Bench because it would result in a significant increase in their remuneration. There are other lawyers for whom "the opportunity to exercise power and control, or the prestige of the office, makes the prospect of becoming a Provincial Court Judge attractive". These factors do not alone ensure that the most highly qualified applicants for the position have put their names forward.
51. The Association argues that the Provincial Court must compete with the Court of Queen's Bench and the Court of Appeal and that recruits for all of these positions come from the same pool of applicants, being the practicing lawyers in Saskatchewan. The Association further submits that the Commission should recognize that senior practitioners from the private bar are desirable candidates for the position of PCJ.

(e) Salaries of Comparator Groups

52. The Association's submission outlines in detail salaries of those comparative groups which it considers relevant to the Commission's consideration of compensation for Provincial Court Judges. Those comparators include:
 - i) Queen's Bench Judges in Saskatchewan;
 - ii) salaries for PCJs across Canada; and
 - ii) salaries for private practitioners.

(i) Salaries for Queen's Bench Judges

53. The Association emphasizes that the Commission in making its recommendations "should recognize the importance of minimizing the wages disparity between these two levels of Court". The Commission was referring here to the disparity between salaries of the Provincial Court and Court of Queen's Bench. The Association referred to the statements

by the Supreme Court of Canada that:

the Commission can consider the remuneration of federally appointed judges as a factor when making its recommendations, [but] this factor alone cannot be determinative.” (para. 72, New Brunswick Reference)

54. The Association points out that the salaries of Queen’s Bench Judges in Saskatchewan are the same as those for the Judges of the Court of Appeal. The Government of Canada in its response to the 2011 Judicial Compensation and Benefits Commission, which is included at Tab 43 of the appendix to the Association’s submission, has stated that:

The question of whether judges of appellate courts should be paid more than judges of trial courts raises difficult issues regarding public perception of the quality of justice received from those courts as well as issues of equity and collegiality within the judiciary. It is an issue that has historically been the subject of considerable controversy within the judiciary. [...]

[...]

[...][A] very persuasive case would have to be made to depart from the present regime which assumes that the burden of judicial office, while different in nature as between the trial and appellate court levels of our courts, nonetheless requires an equivalent discipline and dedication on the part of the judges at both court levels. The cultural impact on the system in the event of such differentiation would have to be very carefully weighed.

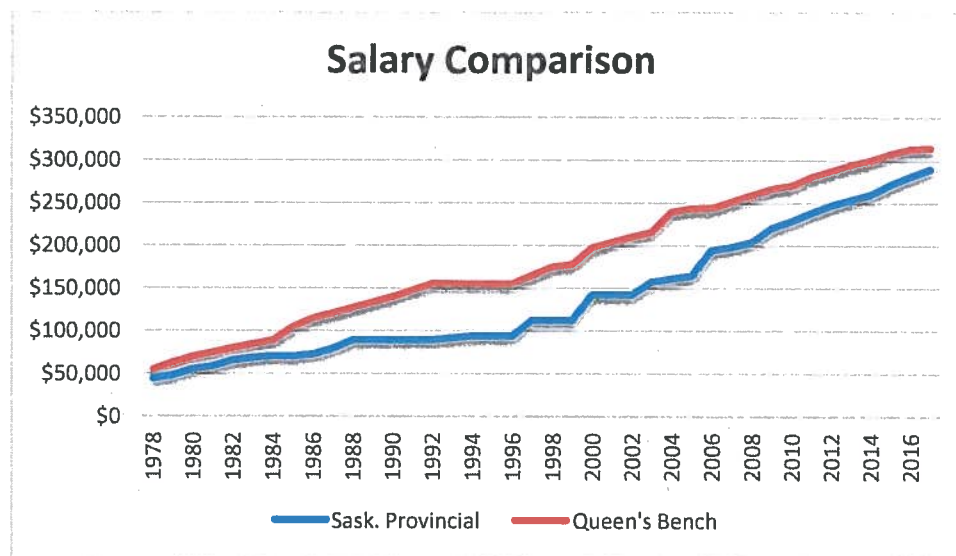
[...]

The roles of trial and appellate judges are different in nature, but not in importance. Judges of courts of appeal make final decisions on questions of law, subject to appeal to the Supreme Court of Canada. Trial judges have the primary role in determining questions of fact, and while their determinations of law are subject to appeal, in the vast majority of cases they are not appealed. Trial judges have a much greater role in interacting directly with litigants, including non-represented litigants and have the difficult task of assessing the credibility of witnesses. [...] There is a hierarchy of judicial decisions and courts but the responsibilities of individual judges, whether trial or appellate, are equivalent in terms of their obligations to fairly, impartially and independently decide each case. [...] The Government is of the view that the work of judges of the trial courts is, and should be perceived by the public to be, of equal importance to that of appellate court judges. [emphasis added]

The Association suggests that those reasons apply *mutatis mutandis* when examining the

role of the Provincial Court Judges in relation to those in the Court of Queen's Bench and the Court of Appeal, and undermine any basis for the lower salary earned by PCJs. (para. 166(c)).

55. The Association submits that the salary differential between Provincial Court Judges and Queen's Bench Judges puts the Provincial Court at a disadvantage and that the gap in those salaries must be reduced by appropriately increasing the salaries of the Provincial Court Judges. The graph below at p. 54 of the Association's submission is illustrative of the disparity.



56. The Association observes that as of April 1, 2017 Queen's Bench Judges are earning an annual salary of \$315,300 a year, whereas Provincial Court Judges are earning \$290,848 and further suggests that the approximately \$25,000 disparity is not justifiable and "it is very likely a factor that potential applicants consider when they determine to which Court they seek an appointment".
57. The Association then goes on to compare the pension benefits of Queen's Bench Judges with those of Provincial Court Judges and appoints out that the pension income earned by federally appointed judges (including Queen's Bench Judges) may be "split with their spouse or common-law partner, with the result that a retired QBJ pays significantly lower taxes than it would otherwise be required to pay if it could not engage in income splitting. Unlike federally-appointed judges, there is no forum for the PCJs across Canada to

achieve the same treatment related to income tax on their pension earnings, as the provincial commissions do not have the jurisdiction to make recommendations on matters within the exclusive jurisdiction of parliament which the Federal Judicial Commission and Benefits Commission does". (para. 169, Association Submission)

(ii) Salaries for Provincial Court Judges Across Canada

58. The Association, in its submission and the data contained therein, acknowledges that Provincial Court Judges in Saskatchewan earn the third highest level of salaries among the provinces and territories. However, it should be noted that in the information provided, not all salaries relate to the same time frame. In some instances, the decisions of Provincial Court Commissions have either been rejected or are pending. The Association suggests that, given the economic forecasts for Saskatchewan, which indicates a stronger rate of growth for the Province than in many of the other provinces and territories, the salaries of Provincial Court Judges in Saskatchewan should, accordingly, be among the top salaries of Provincial Court Judges in Canada.

(iii) Salaries of Private Practitioners

59. The Association, in its submission at paras. 175 – 178, inclusive, provides data which it submits, demonstrates that in comparing the salaries of Provincial Court Judges to senior self-employed lawyers (in the 44 - 56 age group) in the top ten Census Metropolitan Areas of Canada ("CMAs") with an appropriate adjustment for inflation, there is a considerable disparity between the salary for Provincial Court Judges and those of senior self-employed lawyers. The Association suggests that this comparison is appropriate since the age of 52 remains the average age of appointment for Provincial Court Judges and a majority of the judges reside in the top ten CMAs. In arriving at this conclusion, the Association has used the data for self-employed lawyers at the 75th percentile and excluded those with incomes below \$60,000 per annum. In fact the Association suggests that it would be appropriate to exclude incomes below \$80,000 which would then demonstrate a greater disparity between the two groups. The Association further points out that the difference becomes even greater when consideration is given to the fact that self-employed lawyers are able to enjoy income splitting vehicles, such as family trusts and the use of professional corporations.

The data contained in the Association's submission in respect of income for self-employed lawyers is from 2014 and the Association submits that after making the appropriate adjustment for inflation, the 2017 values of the private practitioner salary range is \$387,554.51 to \$421,072.73 (para. 176). With those figures, the maximum salary differential is approximately \$130,000 per year when compared to salaries earned by Provincial Court Judges as of April 1, 2017.

(2) VACATION DAYS

60. The Association submits that the vacation days for Provincial Court Judges should be increased from 30 to 40 days per year when the following factors are taken into account:

(a) Improved Health and Well-being

61. The significant demands and psychological stress on Provincial Court Judges due to the circumstances of their responsibilities make it "vital that PCJs have the opportunity to take time away from their demanding roles and responsibilities at the Court in order to obtain respite from work". (para. 186, Association Submission)

(b) Recruit and Retain Senior Members of the Bar

62. Senior practitioners in private practice have the flexibility to take extended periods of vacation. This flexibility is not available to Provincial Court Judges.
63. The Association submits that senior lawyers employed by the Government are entitled to 30 days of annual vacation and have an additional 12 days available as "scheduled days off" for a total of 42 days. This difference in vacation entitlement, in the submission of the Association, "militate(s) against attracting the best candidates from the legal profession". Senior Crown practitioners should not suffer a loss of vacation time in order to accept an appointment to the Provincial Court.

(c) Queen's Bench Judges

64. Currently Queen's Bench Judges enjoy the following vacation time:
- a) 20 vacation days (4 weeks) per year;
 - b) for the 9-week period of July and August, QBJs are only required to sit for 2 weeks; and
 - c) the remaining 7 weeks is regarded as time for judgment writing,

but if a QBJ does not have any reserves, this time is vacation.

(para. 191, Association Submission)

65. Given the above, the Association submits that Queen's Bench Judges potentially enjoy up to 11 weeks of vacation each year. The Association further submits that there is no reason that such a significant difference should continue to exist between PCJs and QBJs.

(d) Provincial Courts Across Canada

66. The Association in its submission points out that Ontario PCJs have 40 days of vacation, Alberta PCJs have 30 days of vacation plus an additional 10 days off for "writing time", and to the extent that such writing time is not required, Alberta PCJs may take the additional unused writing time as vacation. In the Northwest Territories, PCJs enjoy increased vacation time as PCJs acquire seniority. Yukon PCJs enjoy a total of 45 days of time off, comprised of 35 days of vacation leave plus an additional 10 days which are referred to as "managers' leave entitlement".

(e) Potential Increased Costs

67. The Association submits that an increase in annual vacation from 30 to 40 days will not have a significant associated increased cost to the Government. The Association calculates that there would be some additional costs associated with additional days being required for temporary relief judges; however, it is expected that Provincial Court Judges would assume extra responsibilities "to ensure that the Court continues to operate effectively and efficiently if one of their members is away temporarily".

B. THE GOVERNMENT'S SUBMISSION

(1) JUDICIAL SALARIES

(a) Judicial Independence

68. The Government confirms its commitment to the constitutional principle of judicial independence and recognizes the role which judicial compensation commissions play as one component of the constitutional guarantee of judicial independence in Canada.
69. The Government further acknowledges that the Province is fortunate to have "highly qualified, highly motivated, and highly esteemed individuals serving the public interest"

and states that the Government is “committed to retaining those judges on the Bench, and to ensuring that future appointees to the Provincial Court are of the same caliber. An attractive compensation package, composed of both salary and pension benefits, is essential to meeting those goals”. Nevertheless, the Government submits that the local economic conditions must be taken into account in assessing what qualifies as a constitutionally adequate level of judicial remuneration.

70. The current financial and budgetary position of the Government is a significant factor that the Commission should take into account. The Government submits that the financial policy of reducing public sector compensation by 3.5% across the board is a significant factor for the Commission to consider, although the Government is not recommending such a salary decrease for Provincial Court Judges. The Government recognizes that the Act would not permit such, or for that matter any, reduction.
71. In its submission, the Government takes the position that the two previous Commissions; i.e., the Hodson Commission and the Hood Commission, “over compensated for the effects of inflation in awarding salary increases based on the Saskatchewan Consumer Price Index plus an additional percentage increase each year”. The Government submits that “the methodology used to compensate for inflation was flawed, as the actual experience with inflation over the past six years demonstrates. Increases which were said to be necessary to keep pace with inflation, in fact over compensated resulting in real salary increases, not simply increases to keep pace with inflation”.
72. The Government points out that the Hodson Commission expressed a need to keep the Saskatchewan Provincial Court Judges among the best paid in the country, which lead that Commission to recommend a real salary increase. The Government submits that that concern or consideration is beyond the mandate of the Commission.
73. As a result, the Government submits that no further increase to the salaries of Provincial Court Judges over the next three years is necessary or warranted and that “judges will continue to keep pace with the cost of living in Saskatchewan and maintain their current high levels of salary, which will ensure that the Provincial Court continues to attract and keep high quality candidates for the Bench”. (para. 9, Government Submission)
74. The Government further submits that the Commission must take into account the total

compensation package, not just the salary of Provincial Court Judges in assessing the adequacy of judicial remuneration for the purpose of ensuring judicial independence. The Government's submission therefore focuses primarily on the salary and the combined pension and retirement benefits in its main submission and states that in the event other matters as outlined in the Act are raised by the Association in its submission, the Government will respond to those proposals in its reply. The Government acknowledges that while the recommendations of this compensation commission must be based on objective criteria and follow upon fair and open public hearings, the report and recommendations of the Commission which follows must "fully explain the basis and justification for, the recommendations presented". (para. 173, Provincial Judges Reference)

75. In addition, the Government's submission outlines three factors which will ensure that judicial compensation commissions are "effective" for constitutional purposes.

First, governments cannot alter judicial remuneration in any way without prior recourse to such a commission. Second, these tribunals must be convened regularly to receive representations and must make recommendations respecting judicial remuneration. Third, the recommendations made by these tribunals must have a "meaningful effect" on the process of determining the level of remuneration ultimately paid by the government to the judiciary. (paras. 174 – 175, Provincial Judges Reference).

76. Moreover, the Government's submission acknowledges that "if a government chooses not to accept the salary recommendations of a judicial compensation commission, it must explain publicly why it is departing from those recommendations and may even be called upon to defend its response to the commission's recommendations in a Court of Law. A reviewing court must scrutinize the government's reasons to determine if they satisfy a standard of "simple rationality". (para. 182, Provincial Judges Reference)

77. The Government submits that this Commission should take into account the report and recommendations of predecessor commissions and "should build upon the foundations set by previous commissions". However, the Government cautions that this Commission must also be mindful of the Supreme Court of Canada's comments in the New Brunswick Reference as follows:

The reports of previous commissions and their outcomes form part of the background and context that a new compensation committee should consider. A new commission may very well decide that, in the circumstances, its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary. If on the other hand, it considers that previous reports failed to set compensation and benefits at the appropriate level due to particular circumstances, the new commission may legitimately go beyond the findings of the previous commission, and after a careful review, make its own recommendations on that issue. (para. 15, New Brunswick Reference) [emphasis added]

78. The Government stipulates that the salary of Provincial Court Judges has more than doubled in the past 21 years and included the table below to demonstrate the dollar and percentage increases during that period of time:

Annual Salary Increases
1997 – 2017

YEAR (April 1)	SALARY	INCREASE: DOLLAR	INCREASE: PERCENTAGE
1996	\$ 94,556	-	--
1997	\$112,961	\$18,405	19.5%
1998	\$112,961	0	0.0%
1999	\$112,961	0	0.0%
2000	\$143,000	\$30,039	26.6%
2001	\$143,000	0	0.0%
2002	\$143,000	0	0.0%
2003	\$158,000	\$15,000	10.5%
2004	\$161,634	\$3,634	2.3%
2005	\$165,190	\$3,556	2.2%
2006	\$195,000	\$29,810	18.0%
2007	\$198,900	\$3,900	2.0%
2008	\$204,552	\$5,652	2.8%
2009	\$220,916	\$16,364	7.9%
2010	\$229,753	\$8,837	4.0%
2011	\$238,943	\$9,190	3.9%
2012	\$248,010	\$9,067	3.8%
2013	\$254,458	\$6,448	2.6%
2014	\$260,819	\$6,361	2.5%
2015	\$272,295	\$11,476	4.4%
2016	\$282,184	\$9,889	3.6%
2017	\$290,848	\$8,664	3.1%

79. The Government emphasized that in the eight years from April 1, 2009 to April 1, 2017 average salary increases had amounted to \$8,741.50 per year as a result of the formulas used by the Zakreski, Hood and Hodson Commissions, which all relied on the percentages set by the commission, or a combination of Saskatchewan Consumer Price Index

("SCPT") plus an additional percentage amount.

80. The Government referenced the comment from the Hood Commission that the judges have "caught up" from alleged salary stagnation in the 1980s and 1990s. (para. 253, Hood Commission Report)
81. The Government goes on to submit that there is a "danger in relying on percentage increases, because the value of the percentage increase depends on the starting point of the salary being increased. An increase of 1% may appear to be a consistent increase, but in fact masks the reality that the value of 1% increase has itself increased significantly over the past eight years". (para. 73, Government Submission)
82. The Government, in its submission, does not anticipate requests from the Association for changes to the pension plan (and, in fact, none were made). Nevertheless, the Government submits that the pension plan is part of the total compensation package and is relevant to the goals of ensuring judicial independence and recruiting and retaining highly qualified applicants to the Bench.
83. The Government emphasized that each of the Hodson Commission, the Hood Commission and the Zakreski Commission accepted that it is the total compensation package which must be considered by the Commission in assessing the overall position of the Judges.
84. In addition, the Government reiterated that all three of those Commissions concluded that the current retirement package is very generous and stated as follows:

[...] The Hodson Commission stated that "... the Judges' pension plan is a very generous plan". The Hood Commission commented that few lawyers in private practice have a pension plan at all, and added: "... even in the public sector, few, if any, would have a pension as generous as the plan for Provincial Court Judges." The Zakreski Commission noted that the combined pension and additional retirement benefits "... far exceeds this type of benefit in other private and public sectors." (para. 85, Government Submission)
85. The Government's submission outlined in considerable detail the pension and additional retirement benefits and the statutory and regulatory framework of the pension plan. (p. 44 - 47 of the Government Submission)

86. While the Act requires each judge to contribute 5% of his or her salary to the “Judges of the Court Superannuation Fund” (s. 28(1) of the Act) and any interest earned on money in the fund is credited to the fund, the Government, while it does not contribute periodic matching contributions directly to the fund, is obligated to pay its share of the pension and all the additional retirement benefits set out in the Act. Such obligations constitute a charge on the General Revenue Fund of the Province are to be paid out of the General Revenue Fund.
87. Accordingly, the Government stipulates that the salaries and pensions of Provincial Court Judges are “guaranteed by statute and they do not need to be debated in the assembly each year in the budget process. This second point meets the goals set out by the Supreme Court of ‘depoliticizing’ the issue of judicial salaries”. (para. 100, Government Submission)
88. The Government states that, “the Government does not contribute directly to the Fund with respect to future payments, but rather makes up the necessary difference as needed to meet the Fund’s obligations to retired judges. The cost of future benefits is shown on the Government’s books as an accrued liability. The most recent actuarial valuation of the cost of the pension plan is 74.2% of a Judge’s salary. When the Judge’s 5% contribution is deleted, the Government’s share of the plan is 69.2% of a Judge’s salary or 1,385% of the Judge’s contributions”. The Government presents this information from a report prepared by Aon Hewitt cited at para. 102 of the Government Submission.
89. The Government further submits that the total annual accrued cost to the Government for pension and additional retirement benefits is \$201,266. While this cost is not paid immediately, it is shown on the Government’s books as an accrued liability. In addition to these benefits; the Government is also liable for other benefits to the amount of \$21,871. The Government emphasizes that these costs are in addition to the base salary cost of \$290,848 per judge.
90. In summary, the Government stresses that both salary and pensions benefits are components of compensation and reiterates the statement from the Hood Commission that “the present pension is a very generous pension”. (para. 229, Hood Commission)
91. The Government, at para. 121 of its submission, sets out a table of the provincial and

territorial judges' salaries as of April 1, 2017 (except as otherwise noted therein) to demonstrate that Provincial Court Judges in Saskatchewan "are very well remunerated, especially when compared to their counterparts in other jurisdictions". In terms of base salary alone, Saskatchewan ranks third, closely behind Alberta and Ontario.

92. The Government further submits that the comparative table "demonstrates that the level of financial benefits currently enjoyed by judges of the Provincial Court of Saskatchewan greatly exceeds the minimum level of remuneration required for judicial office" and therefore concludes that the salary level of judges in Saskatchewan is "considerably more than is needed to protect the judiciary from political interference through economic manipulation". (para. 123, Government Submission)

(b) Recruitment and Retention of Provincial Court Judges

93. It is the Government's submission that the compensation package currently offered to Provincial Court Judges is "by every objective criteria . . . more than sufficient to attract competent and committed individuals to seek appointments to the Provincial Court and to remain on the Court once appointed". (para. 125, Government Submission)
94. The Government submits that there are two factors to be considered in any discussion concerning the recruitment of judges for the Provincial Court. The first is to recognize that the bulk of the Court's work is in the area of criminal law and, therefore, the most qualified candidates will come from senior counsel who have substantial experience in criminal law, either on the Crown side, the defense side, or both. Private counsel who have a significant practice in the area of criminal law may not necessarily come from the largest law firms in Saskatchewan.
95. A second important factor, the Government submits, is "diversity of experience, in terms of practice area, geographic area and social factors". In this regard, the Government states that the objective is not necessarily to attract the highest income earners, but rather those lawyers who are highly qualified to serve as Provincial Court Judges. The Government submits that based on the information available to it, there are currently 23 individuals who have been recommended for appointment by the Judicial Council, after review of their qualifications. The Government concludes that this number of applicants demonstrates that the current level of judicial remuneration encourages applicants who are

willing to submit themselves to the “vigorous screening process and scrutiny by the Judicial Council”. (para. 130, Government Submission)

96. The Government refers to the nine appointments which have been made to the Provincial Court since November, 2014, subsequent to the Government’s submission to the Hodson Commission. The Government points out the varied and successful careers among those applicants, four being former Crown prosecutors, four from private law firms and one who had been practicing with the Saskatchewan Legal Aid Commission. In addition, the appointees included lawyers from Saskatoon, Regina, Wadena, Yorkton, Meadow Lake and La Ronge. This demonstrates, in the Government’s view, that recent appointments from the Provincial Court have come from a variety of experiences, both criminal and general practice, from Government and private practice, and from large firms and small, throughout the Province.
97. The Government further submits that the retention of Provincial Courts Judges is not an issue and that only 15 Provincial Court Judges have left the Court prior to the date they were eligible for retirement. Nine were appointed to the Court of Queen’s Bench, one resigned to take a position as an Associate Deputy Minister in the Government of Saskatchewan, three have resigned and two have taken leaves of absence for other positions. The Government submits that the Provincial Court of Saskatchewan is a “stable bench”.

(c) Salaries of Comparator Groups

(i) Comparison with Other Judges

98. In the Government’s submission, the level of remuneration for Provincial Court Judges in Saskatchewan should be ascertained by reviewing and weighing local economic realities. Compensation paid to senior lawyers in the public service and lawyers in the private bar are relevant considerations. While the Commission can consider the remuneration paid to Provincial Court Judges in other jurisdictions, the conditions in Saskatchewan are most prevalent.
99. As previous Commissions have noted, the information provided for salaries of Provincial Court Judges in other provinces and the territories are not always up-to-date and,

accordingly, not directly comparable to the current salaries of Saskatchewan Provincial Court Judges. Nor should the Commission base its finding on the average salary paid to Provincial Court Judges across the country without regard for local economic and labor market realities.

100. The Government has specifically rejected one of comparative factors identified by the Hodson Commission that “an increase above the cost of living is warranted to ensure that the salary of Saskatchewan judges continue to be in the top tier of the provinces and territories”. (para. 183(d), Hodson Report) The Government submits that there is no constitutional basis warranting such a factor.
101. The Government further submits that compensation payable to federally-appointed judges “does not have much relevance to the appropriate level of remuneration that should be paid to Provincial Court Judges in Saskatchewan”. While the salary for federally-appointed judges applies across the country, such is not the case for Provincial Court Judges and the Government notes the statement of the New Brunswick Court of Appeal in the New Brunswick Reference (para. 162) as follows:

The 1997 tax data supplied to the 2000 Federal Commission revealed that lawyers in Ontario who fell into the comparator population, and whose income fell within the 75th percentile, earned \$260,000. For lawyers in Toronto that figure climbed to \$343,000. By contract, New Brunswick lawyers falling within the 75th percentile of the comparator population earned \$177,000. Given that the federal judicial salary is driven, in part, by the salary expectations of those practicing in the larger metropolitan areas of Canada, it is clear that the salary expectations of those seeking a federal judicial appointment in New Brunswick are more easily satisfied than those seeking appointments in a province such as Ontario. This reality stems from the fact that the federal salary fails to take into account pronounced regional disparities in the income of those practitioners considered, at least by the judiciary, to form the group of lawyers most likely to generate outstanding candidates for judicial appointment. (para. 162, New Brunswick Reference) [emphasis added]

The New Brunswick Court of Appeal went on to conclude:

... the Government of New Brunswick is justified in its contention that the Association’s claim to salary parity with federally appointed puisne judges is misguided. The federal salary is fixed by reference to factors that have no application in the provincial context. Specifically, the fact that the federal salary is uniform, so as not to reflect regional

differences, and that it is set at a level that is capable of attracting qualified candidates in major metropolitan areas throughout Canada, where salary levels are much higher than in the small urban centres, are factors that need not concern provincial remuneration commissions. Thus, the Government has identified a “factor” that justifies the existence of a salary differential between provincially and federally appointed judges. (para. 163, New Brunswick Reference) [emphasis added]

102. The Government notes that the Supreme Court of Canada affirmed the New Brunswick Court of Appeal on this point.

103. In addition, the Government submits that it would be a mistake to simply compare the salaries of the Provincial Court Judges to the salaries of the Queen’s Bench Judges, without taking into account the respective pension plans of both Courts.

(ii) Comparisons with Practicing Lawyers

104. The Government submits that in comparing Provincial Court Judges’ compensation to the incomes of lawyers in the bar, there are four relevant comparator groups to consider:

- i) senior Crown counsel, including the Deputy Minister of Justice;
- ii) senior defense counsel employed by the Saskatchewan Legal Aid Commission;
- iii) senior Crown counsel employed by the Federal Department of Justice and Public Prosecution Service; and
- iv) senior lawyers engaged in the private practice of law in Saskatchewan, with particular emphasis on criminal law.

105. Lawyers in these comparative groups possess the skill set which a desirable candidate can bring to the Court.

106. The Government notes in its submission that the current salaries for Provincial Court Judges is well in excess of those persons in the first three comparator groups noted above and emphasizes that the pension and benefits package for Provincial Court Judges is superior to those for Crown counsel. The Government further concludes that when the compensation package for Provincial Court Judges is compared to that of senior Crown counsel, that factor alone is an attractive inducement for someone in that comparator group to apply for an appointment to the Provincial Court Bench.

107. Similarly, senior counsel from the Saskatchewan Legal Aid Commission and federal Crown prosecutors employed by the Public Prosecution Service of Canada have substantially lower salaries and benefits than those of Provincial Court Judges and would be similarly attracted to apply for a position on the Court.
108. While it is difficult to obtain information regarding the income levels of lawyers in private practice in Saskatchewan, the Government submits that they will be attracted to apply for a position on the Provincial Court due to the pension and benefits package since private practitioners must save for their retirement from their own resources.
109. The Provincial Court pension plan is therefore a very attractive component for recruitment from the private bar as has been recognized by the New Brunswick Reference (para.168) and the Hood Commission (paras. 225 and 230).

(d) Prevailing Economic and Fiscal Conditions in Saskatchewan

110. The Government submits that the prevailing economic and fiscal conditions in Saskatchewan must be considered by the Commission and that the judiciary, as one of the three branches of Government is not immune from the effects of the projected budget deficit of \$685,000,000 for fiscal year 2017 – 18.
111. The Saskatchewan Budget projects a smaller deficit in 2018 – 19 and a return to a surplus position in 2019 – 20 and 2020 – 21.
112. While the Government acknowledges that Saskatchewan's economy is "forecasted to grow by 0.8% in 2017 to an average of 1.9% for the remaining forecast period . . . [n]onetheless, it is the current situation which the Government is facing which affects its position on spending and taxes. As well, it must be remembered that resource royalties are one of the major sources of provincial revenue. Even if other sectors of the economy are showing signs of recovery, the current resource prices can have a significant effect on Government revenues". (paras. 187 and 188, Government Submission) In making this submission, the Government has taken these statements from the Saskatchewan Provincial Budget, 2017.
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113. The Government's submission states that being faced with this financial situation, the Government has responded in three ways:

- i) raising taxes;
 - ii) cutting back on services to the public; and
 - iii) implementing a policy of across-the-board cuts to public sector compensation averaging 3.5%, including both the legislative and executive branches of Government. (para. 189, Government Submission)
114. In addressing the third initiative noted above; i.e. that of cuts to the public sector compensation averaging 3.5%, the Government points out that Government ministers and MLAs will take a 3.5% wage rollback and staff in the Premier's Office, caucus' offices and ministers' offices will take 9 unpaid days off – equivalent to a reduction of about 3.5%. (para. 196, Government Submission)
115. The Government submits that the judiciary is not immune from these financial challenges which the Government is facing. The Government further suggests that “when the people of Saskatchewan are feeling the effects of the fiscal restraint measures, it would be difficult to argue that the judiciary is nonetheless unaffected”.
116. In the New Brunswick Reference, the Supreme Court of Canada confirmed that there is no automatic entitlement to a salary increase every year. (para. 76, New Brunswick Reference)
117. In the Provincial Judges Reference, Lamer C.J.C. stated:
- Finally, I want to emphasize that the guarantee of a minimum acceptable level of judicial remuneration is not a device to shield the courts from the effects of deficit reduction. Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of burden in difficult economic times. Rather, as I said above, financial security is one of the means whereby the independence of an organ of the Constitution is ensured. Judges are officers of the Constitution, and hence their remuneration must have some constitutional status. (para 196, Provincial Judges Reference) [emphasis added]
118. In the Government's view, a three year period of no salary increases does not affect judicial independence.

(e) **Increases in the Cost-of-Living**

119. While the Government acknowledges that projected increases in the cost-of-living can be a relevant consideration, the Government also notes that increases recommended by the Zakreski Commission, the Hood Commission and the Hodson Commission all exceeded the increases in the SCPI for the three year periods covered by each of those three reports. The fact that the salary increases recommended by those commissions outpaced the cost of living over the past nine years is “a significant factor which this Commission should take into account in approaching the questions of salaries”.
120. The Government notes that “[c]ommissions try to predict what may happen in the future, and take that into account in setting a cost-of-living component for salary increase”. However, the Government suggests that it is also appropriate to “look backwards from time to time, to see if the methodology used to calculate a cost-of-living component was accurate. The Government respectfully submits that doing so now indicates that the salary increases awarded to the judiciary over the past three commissions cycles have over-compensated for inflation”.
121. The Government suggests that the information presented demonstrates that judges’ salaries have consistently outpaced SCPI and that the rate of divergence is steadily growing.
122. While the Government acknowledges that, based on data presented to the Commission, SCPI is marginally greater than the national average and other provinces, the Government submits that there are real offsetting factors identified in the *Budget 2017* data which demonstrates that Saskatchewan individuals and families pay provincial taxes with a ranking of second or third lowest in Canada for numerous represented family situations.
123. Finally, the Government submits that the public’s respect for the judiciary, like other public institutions, can be affected by the perceptions of large salary increases from the public purse, when other people in the public service are asked to take reductions and salaries are not increasing in the private sector.

C. CHIEF JUDGE JAMES A. PLEMEL

124. Chief Judge Plemel made a written submission to the Commission in which he

commented on the large number of diverse locations and circuit points that the judges of the Provincial Court and its staff are required to service, which requires judges and staff to fly or drive to such locations as often as four or five times a month, or as seldom as once every two months, depending on the workload in the area.

125. The number of Administrative Judges has been reduced from eight to five and there is now one Associate Chief Judge rather than two. Administrative Judges are involved in such matters as court scheduling, chairing chambers meetings as well as meeting and liaising with the Crown and Defence Bar, including Legal Aid, court managers and staff, trial coordinators and Deputy Sheriffs who are involved in court security.
126. Chief Judge Plemel commented on the various ways in which the Court has been able to handle a significantly increased workload through the use of available technology, telephone appearances by counsel, the development of a protocol for video appearances which has reduced the expense and difficulties of transporting prisoners in some cases and also provides a convenient alternative for counsel and witnesses, including expert witnesses, to appear in Court. Efficiencies have been created through the use of more civil and criminal case management hearings. Other innovations include Therapeutic Courts.
127. Chief Judge Plemel reiterated the Provincial Court's major role in criminal proceedings and, in addition, applications under *The Youth Drug Detoxification and Stabilization Act* and under *The Mental Health Services Act*.
128. Chief Judge Plemel stated "I reference the workload and innovation of our Court to demonstrate that we need to encourage applicants to our Court who are not only extremely well qualified, but who are also dedicated to public service and are willing and able to innovate".
129. Chief Judge Plemel stressed that Provincial Courts "are Courts of law and justice where decisions are made by Judges with the same qualifications as those who sit in designated court facilities at every level of Court in Saskatchewan". The brightest and best lawyers must be attracted to the Provincial Court. Members of the public who appear in Provincial Court and the lawyers who apply for judicial appointment to it, must know that "ours is a Court of extremely high standards of excellence, equivalent to those same

standards found in other Courts in Saskatchewan and Canada”.

D. SASKATOON CRIMINAL DEFENCE LAWYERS ASSOCIATION

130. Andrew Mason, President of Saskatoon Criminal Defence Lawyers Association Inc. (“SCDLA”) and Mark Brayford, Q.C. presented the written and oral submissions on behalf of the SCDLA.

131. The principle submission of the SCDLA is captured in the following statement:

We submit that it is in the public’s interest to ensure that the hierarchy of the Canadian court system does not create a perception that there is a hierarchy in the quality of justice being delivered. For this reason, it [is] [sic] very much in the public interest to ensure that there is not a significant disparity between the compensation paid to judges of Superior Court and to Provincial Court judges.

132. The Association referenced the fact that the disparity between the level of compensation paid to Provincial Court Judges and those of the federally-appointed judges has continuously been narrowed since 1985 to the point where the salary of Provincial Court Judges in Saskatchewan is 92.24% of the salary of a Court of Queen’s Bench Judge for 2017. The SCDLA urges this Commission to establish a salary schedule for the next three years that will continue to reduce or eliminate this disparity.

133. The submission of the SCDLA highlights the heavy workload of the Provincial Court, including the number and diversity of cases being heard by it. The submission reviewed the numerous and diverse initiatives and matters which come within the Provincial Court’s jurisdiction and the considerable expertise of the Provincial Court Judges in being able to effectively carry out their ever increasing work responsibilities.

134. The SCDLA emphasized that the work done by the Provincial Court is of the same importance as the work being handled in the Court of Queen’s Bench and that there should not be a perception of a “two-tiered” court system which somehow suggests that judges of the Provincial Court are inferior to those of Court of Queen’s Bench or that the value of the work done in that Court is inferior to that being done in the Court of Queen’s Bench.

135. The SCDLA in its submission also emphasized the need to attract and retain qualified, respected and dedicated judges. There must be a recognition that sacrifices are made by

lawyers who decide to accept a position on the Provincial Court, including the possibility of a financial sacrifice as well. Accordingly, the compensation and benefits accorded to a Provincial Court Judge should recognize this reality.

136. The SCDLA in its submission suggests, in commenting on the economic capacity of Saskatchewan to compensate Provincial Court Judges, a distinction must be made between a province's fiscal capacity as measured by the province's gross domestic product (GDP) per capita and the provincial government's fiscal state. The government's fiscal state follows from the decisions which the government makes, and they may also be the result of deliberate policies of governments.
137. The SCDLA suggests that the fiscal capacity of Saskatchewan is strong, in fact, only second to that of Alberta, as of 2016.

E. THE CANADIAN BAR ASSOCIATION

138. The Canadian Bar Association, Saskatchewan Branch ("CBA") presented a written submission and Evatt Merchant, President of the CBA, made an oral presentation to the Commission.
139. The CBA stated its core interest is to ensure that judicial compensation and benefits are structured and maintained to fulfil a dual purpose:
- i) protecting and promoting the independence of the judiciary through the institution and maintenance of appropriate financial safeguards for its members; and
 - ii) strengthening and advancing the judiciary through sufficient financial independence of its members and adequate compensation to attract the best and most qualified candidates for appointment.
140. In its submission, the CBA reviewed a number of significant factors which it urged the Commission to consider, including:
- i) the workload of the Court;
 - ii) the number of permanent locations and circuit points being served;
 - iii) the public perception of citizens to ensure that there is never a "two-tiered" perception with respect to the level of competence or quality of the judiciary

between the Provincial Court and the Court of Queen's Bench;

- iv) the need to attract the best qualified candidates from the private bar to seek judicial appointment;
- v) the need to ensure not only attractive salaries, but also attractive pension and other benefits for judges of the Provincial Court; and
- vi) the need to recognize that the preservation of judicial independence is not just a Government priority but rather a "constitutional imperative".

141. The CBA suggests that "the Government must show conclusive evidence of other pressing Government fiscal obligations of similar importance to judicial independence" before the Government can suggest that such competing priorities are appropriate in support of a rationale to reduce "what the Commission concludes to be appropriate compensation for judges".

F. GOVERNMENT REPLY

142. The Government provided a reply to the submission of the Association.

(1) JUDICIAL SALARIES

143. The Government restated its position that there should be no increase in judges' salaries during the three year period commencing April 1, 2018 and ending March 31, 2021.
144. The Government reiterated that the key issue is the current financial situation of the Province. Overall economic indicators are relevant, but the financial constraints which the Government is currently facing remains the most significant factor.
145. The Government further reiterated that the Court is subject to the same budgetary constraints as the other two branches of Government and that judicial independence is not meant to shield the judiciary from budgetary restraint measures taken by the legislative and executive branches.
146. The Government submits that the Commission should be mindful of the fact that the Government is engaged in the negotiations with public service employees through the collective bargaining process and is still seeking negotiated pay reductions in public sector compensation.

147. Projections from the Saskatchewan Bureau of Statistics for the SCPI for the next three years are as follows:

2017	1.2%
2018	1.9%
2019	1.8%

(These projections were supplied by the Government subsequent to the hearings with the concurrence of the Association.)

148. Using these projections, if the proposal of the Association is accepted, starting with the current salary of \$290,848, the resulting salary increases would be follows:

Proposed Increase	Percentage	Projected Dollar Value of the Increase	Resulting Salary
2017 Sask CPI Projected to be 1.2%		$\$290,848 * 0.012 = \$3,491$	2018: \$294,339
2018 Sask CPI + 1% Projected to be 1.9% 1.9% + 1% = 2.9%		$\$294,339 * 0.029 = \$8,536$	2019: \$302,875
2019 Sask CPI +2% Projected to be 1.8% 1.8% + 2% = 3.8 %		$\$302,875 * 0.038 = \$11,510$	2020: \$314,385
Estimated Increase			\$23,537

The Government submits that this salary increase is not justifiable given the economic circumstances of the Province.

149. The Government submits that all persons working within the criminal justice system face significant stresses which are not unique to the judiciary. Granting a salary increase of approximately \$23,257 “to the already highly paid judiciary, simply does not seem fair”.
150. When looking at comparators with other judges, in particular Queen’s Bench Judges, the Government submits that those salaries should not be a major comparator.
151. Data presented by the Association citing income levels for the private bar are not particularly relevant when one considers that no Saskatchewan city was included in the ten largest CMA’s and that the salaries of Queen’s Bench Judges are not “particularly relevant to the determination of the salary which is needed to attract good candidates to the Provincial Court of Saskatchewan”.

152. The Government submits that the inability of Provincial Court Judges to split their income with spouses is the result of the application of federal income tax policy and, as such, is not an appropriate factor for the Commission to take into account.
153. The Government also discounts the 2014 data presented by the Association prepared by Canada Revenue Agency for salaries of members of the private bar since no Saskatchewan city is in the top ten CMA's where much of that data originated.
154. The Government also noted that the three Chief Executive Officers of SaskTel, SaskPower and Crown Investment Corporation have taken a 3.5% salary cut, as has the Chief Executive Officer of every other Crown corporation. In addition, unlike those Chief Executive Officers, judges have security of tenure.
155. The Government reiterated its submission that salary is only one of the factors inducing a person to apply for a position on the Provincial Court Bench. Other factors include the nature of the work, public status, the desire to serve the public and the attractiveness of the pension.

(2) VACATION DAYS

156. The Government submits that there should be no increase in the vacation time for judges. The current 30 day vacation allowance was first set by the Bundon Report in 1998 based on a settlement agreement between the judges and the Government. Previous commissions, namely, the Vicq Commission, the Zakreski Commission and the Hodson Commission each rejected a similar request from the Association. The Government submits that there would have to be a significant change in circumstances to warrant overturning those previous recommendations.
157. The Government points out that notwithstanding the fact that judges in some other provinces and territories receive a greater number of vacation days, the overall compensation package of which vacation entitlement is only one factor, needs to be considered so that a comparison between vacation entitlements in isolation is not appropriate.
158. The Government further submits that contrary to the submission of the Association, the cost of providing an additional 10 days of vacation is not insignificant. It would "likely

require the equivalent of two additional judges, which would cost the Government over half a million dollars more per year in salaries, to ensure that the work of the court carried on, without being affected by the increase in the vacation days”. (para. 61, Government Reply)

159. Ten additional vacation days would mean that there would be 480 sitting days which would be taken as vacations.
160. While the Government appreciates and commends the efforts of the judges to ensure that coverage is maintained while a judge is on vacation, an increase in vacation days to 480 days per year is very substantial and in the submission of the Government, would have an adverse impact on the administration of justice.
161. Finally, in its reply the Government pointed out that neither the Government nor the Association has raised any issues respecting the advisory matters set in s. 38(2) of the Act. Accordingly, the Commission need not review any of those items and should not make any recommendations with respect to those items.

G. ASSOCIATION REPLY

(1) JUDICIAL SALARIES

162. The Association rejects the assertion by the Government that this Commission should “reconsider the methodology used to consider cost-of-living increases” so as to justify a “three year period of restraint [to] reduce the wide gap between inflation and real salary increases”. The Association submits that this is contrary to the mandate of the Commission process unless the Commission is satisfied that previous commissions have “failed to set compensation and benefits at the appropriate level due to particular circumstances”. (para. 15, New Brunswick Reference)
163. The Association submits that there has been nothing to indicate that the previous commissions set Provincial Court Judges’ compensation and benefits at an inappropriate level so as to justify this Commission’s “going beyond the findings of the previous commission”. (para. 15, New Brunswick Reference)
164. In fact, the Association submits that increases recommended by the previous commissions

were “the result of due consideration and analysis of each of the relevant, objective factors that were properly considered, as conceded by the Government at paras. 112 and 113 of its Submission”.

165. Furthermore, the Association contends that the Government has implemented the recommendation of each commission and it therefore “belies logic for the Government to now assert that compensation has been too high because it exceeds the SCPI. That was exactly the intended result”.
166. The Association points out that at para. 7 of the Government’s Submission, the Government has acknowledged the Supreme Court’s direction that “while there is no guarantee of automatic salary increases, judicial salaries cannot be allowed to stagnate”. In recommending no salary increase for Provincial Court Judges over the next three years, the Association submits that the Government is, in fact, asking this Commission to allow Provincial Court Judges salaries to stagnate.
167. The Association notes that “[t]he 2011 Commission confirmed the Supreme Court’s direction that the appropriate salary should take into consideration increases in the cost-of-living”, and stated that “if the salary is appropriate today, then the salary that is recommended should not go backward, but be a salary that is appropriate over the next three years”. (paras. 251 and 255, 2011 Commission Report)
168. In replying to the Government’s position that the annual cost to the Government of the pension and retirement benefits for Provincial Court Judges is an appropriate consideration, the Association disagrees and refers to the 2014 Commission’s conclusion that the total annual accrued cost to the Government of the pension and additional retirement benefits should not influence any recommendation on salary:

The AON Hewitt report provides a reliable estimate of the annual cost to the Government to provide this pension benefit. However, the Judge’s pension benefit itself did not change from 2011 to 2014. Accordingly, the change in the Government’s current service costs to provide this same pension benefit is of little significance. The change in Government’s estimated cost is due to a change in actuarial assumptions and not a change to the benefit received. Accordingly, the Commission does not consider the change in annual service cost to be a factor that should influence any recommendation with respect to salary. (para. 149, 2014 Report) [emphasis added]

169. The Association disagrees with the Government's Submission that the compensation of Court of Queen's Bench Judges is not an appropriate comparator for the Commission to consider. The Association refers to the commentary from the 2014 Commission Report:

We agree with the conclusion of the [2011] Commission relating to the relevance of the remuneration of federally appointed judges. The [2011] Commission found that these salaries are a factor that should be taken into consideration, not for the purpose of parity or an analysis premised on a percentage ratio between the two, but rather the rationale is that federally appointed judges are recruited from the same talent pool as [PCJs]. (para. 181, 2014 Commission Report)

170. The Association considers that the current approximate \$25,000 salary gap between Provincial Court Judges and Court of Queen's Bench Judges does raise the spectre that the public perception of the quality of justice received from the Provincial Court is of less import than in the Queen's Bench Court. The Association submits that "[t]he work of PCJs is, and should be perceived by the public to be, of equal importance to that of the federally appointed judges. With a significantly lagging salary level, there is a real risk that this is not the case".
171. The Association further disagrees with the Government's Submission that Crown counsel, Legal Aid lawyers, prosecutors and, the Deputy Minister of Justice and Deputy Attorney General are relevant salary comparators for the Commission to consider.
172. At para. 45 of its reply submission, the Association states:

At paragraph 159 of its submission, the Government concedes that the role and duties of a Crown prosecutor are 'not necessarily comparable to the duties of a judge'. At paragraph 242 of the 2011 Commission Report, the Commission stated that it placed little, if any weight on the salary of the Deputy Minister of Justice and the Deputy Attorney General as a comparable as the 'role of the Deputy Minister is quite different that [sic] the role of a judge'

VII. COMMISSION'S ANALYSIS

A. SALARIES

(1) Starting Point and Analysis

173. As previous commissions have stated, we are of the view that it is important to consider

and utilize as a foundation for our report the work and recommendations of previous commissions and, in particular, to use as a starting point the Report of the 2014 Hodson Commission.

174. We endorse the principle as stated by the Supreme Court of Canada in the New Brunswick Reference that:

All relevant issues may be addressed. The process is to be flexible and its purpose is not simply to “update” the previous commission’s report. **However, in the absence of reasons to the contrary, the starting point should be the date of the previous commission’s report.** (para. 14, New Brunswick Reference) [emphasis added]

175. Also, as acknowledged by both the Association and the Government, this Commission accepts that the current remuneration of Provincial Court Judges exceeds the constitutional “minimum acceptable level”.
176. While we also accept the Government’s submission that it is appropriate for a compensation commission to “look backwards from time to time”, we do not agree that simply because economic conditions and other influencing factors may have evolved differently from those projected by the previous commission or commissions, that this Commission should second guess or make “corrections” to adjust for such resulting differences.
177. We do not see the function of this Commission as attempting to predict with certainty what economic conditions may exist in the future, but rather to judiciously consider the evidence presented to us by the parties and make reasoned recommendations to the best of our ability taking into account such evidence.
178. It is the view of this Commission that the Hodson Commission, the Hood Commission and other commissions before them have made reasonable salary recommendations based on all evidence available and presented to them.
179. Notwithstanding the submission of the Government, we are not convinced, on the basis of the evidence provided to us, that “salary increase awarded to the judiciary over the past three commission cycles have overcompensated for inflation” (para. 215, Government Submission) or that previous commissions have in any respect “failed to set compensation

and benefits at the appropriate level due to particular circumstances” within the context of that statement made by the Supreme Court of Canada. (para. 15, New Brunswick Reference)

180. In fact, if this Commission is satisfied that predecessor commissions have conducted a thorough review of judicial compensation and in the absence of demonstrated change, only minor adjustments may be necessary, as indicated by the Supreme Court of Canada in the same Reference.
181. Notwithstanding the foregoing however, we do not suggest nor do we accept that this Commission is simply to “rubber stamp” the recommendations of previous commissions, and most recently the Hodson Commission.
182. As stated in the Report of the Hood Commission:
- “this would abdicate our responsibility under the Act and wrongfully ignore the jurisprudence. The mandate of this Commission is to ‘inquire into and make recommendations’ regarding the matters set out in the Act. This means that this Commission cannot rest on the laurels of its predecessors. Rather this Commission must complete a full analysis of the issues before it. To this extent, there is ‘fresh analysis’, but it is made against the backdrop of building upon the work, rationale and recommendations of previous commissions. (para. 202, Hood Commission)
183. The role of this Commission is to consider all relevant factors and make a recommendation on what we consider to be an appropriate salary for Provincial Court Judges in Saskatchewan for the next three year period commencing April 1, 2018.
184. We have noted earlier in this Report at para. 161, the Association has suggested that the Government has conceded at paras. 112 and 113 of its submission “that previous commissions had given due consideration and analysis to each of the relevant, objective factors that were properly considered”. However, we note that in paras. 112 and 113 of its submission, the Government simply outlined a number of factors identified by the Vicq Commission in 2002 and has urged this Commission to rely on such factors as have subsequent commissions. To clarify, the Government was simply outlining those factors to be considered and did not go so far as to concede that the previous commissions had given those factors “due consideration and analysis”.

185. This Commission does endorse the factors outlined by the Vicq Commission.

(a) Judicial Independence

186. As acknowledged by both the Association and the Government, an independent judiciary is a critical and fundamental component within the context of a democracy and the financial security of judges is a significant factor necessary to ensure judicial independence.

187. Each of the Association and the Government in their respective submissions has acknowledged, and this Commission recognizes, that financial security of the judiciary is a critical component of judicial independence, as noted by Major J. of the Supreme Court of Canada in *Ell v. Alberta*:

Judicial independence serves not as an end in itself, but as a means to safeguard our constitutional order and to maintain public confidence in the administration of justice: see *Provincial Court Judges Reference*, *supra*, at para 9. The principle exists for the benefit of the judged, not the judges. If the conditions of independence are not “interpreted in light of the public interests they were intended to serve, there is a danger that their application will wind up hurting rather than enhancing public confidence in the courts. (Mackin, *supra*, at para. 116, per Binnie J., in his dissent. (*Ell v. Alberta*, [2003], 1 SCR 857, 2003 SCC 35 at para. 29) [emphasis added]

188. Based on the submissions made to the Commission and the evidence presented to us, we conclude that the constitutional minimum acceptable level of compensation for Provincial Court Judges in Saskatchewan has been exceeded and therefore we are satisfied, at this point, to turn to an examination of other relevant factors.

(b) Economic Climate and Fiscal Conditions in Saskatchewan

189. Both the Association and the Government acknowledge that the economic condition of the Province is an important factor for this Commission to consider. Both the Association and the Government accept that Saskatchewan’s economy has been subject to pressure and adverse conditions, particularly in 2015 and 2016.

190. The Commission is mindful of the Government’s submission that the Government of Saskatchewan is faced with economic challenges, has undertaken measures to deal with its deficit position and that the Judiciary, as one of the branches of Government, is not

immune from those financial challenges and the financial constraints facing the Province.

191. This Commission agrees that judges are not immune from the financial pressures and constraints of the Province at any particular time. The Association accepts this principle as well and argues that its recommendations on judicial salaries for the next three years has taken these factors into account.
192. While the Commission accepts that the Province has been faced with significant fiscal challenges over the past few years; nevertheless, by the Government's own pronouncements in its 2017 Budget and reports from other sources such as the Conference Board of Canada, RBC Economics and others, the Province of Saskatchewan is in a strong fiscal position with an economy projected to grow in 2017 and thereafter.
193. Earlier in this Report at para. 139, we referred to the CBA's Submission that the Government "must show conclusive evidence of other pressing Government fiscal obligations . . ." before this Commission may take such competing priorities into account in support of a reduction in what the "Commission concludes to be an appropriate compensation for judges".
194. The members of this Commission respectfully disagree with this submission by the CBA and would suggest that it is an overreach of a principle enunciated by Lamer C.J.C. in the Provincial Judges Reference noted at para. 115 of this Report that "the guarantee of a minimum acceptable level of judicial remuneration is not a device to shield the courts from the effects of deficit reduction. Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of burden in difficult economic times".
195. While the Commission is mindful of the Province's fiscal position, it is equally mindful of its responsibility to determine an appropriate level of remuneration for judges over the next three years and to analyze, to the best of its ability, the economic conditions that might prevail in the Province during that time.
196. The Commission is also of the view that it is appropriate to distinguish between the economic conditions in the Province and the provisions of the Provincial Budget, which is based on the Government's plan to manage its resources and is significantly impacted by

its political and social policies.

(c) Provincial Court Workload

197. The submissions from the Association, the Government, the SCDLA and the CBA all recognized and acknowledged the excellent quality and strong work ethic exemplified by the Judges of the Provincial Court of Saskatchewan.
198. The Association presented significant detail concerning the greatly expanded initiatives which have been undertaken by the Provincial Court, particularly in relation to criminal court matters, but in numerous other areas as well, all of which have been extensively reviewed earlier in this Report.
199. This Commission agrees with the statement made by the Hodson Commission that:

“increasing salary does not address insufficient resources on the Court. However, this does not mean that the Commission cannot take increased workload and complexity of work into account when determining appropriate salary. This factor would be meaningless unless the Commission can consider whether the efforts of Judges can or should influence the ‘appropriate’ salary level. The role of the Commission is to consider this factor and determine the extent to which it should influence salary. Rewarding Judges for being efficient, hardworking and innovative is appropriate”. (para. 128, Hodson Report)

(d) Recruitment and Retention of Provincial Court Judges

200. Both the Association and the Government acknowledge that the remuneration received by Provincial Court Judges must be such that highly qualified persons will be motivated to apply for the position and to ensure that the “brightest and best” would seriously consider applying for the position.
201. However, while the Government submits that the compensation package currently offered to Provincial Court Judges is “by every objective criteria . . . more than sufficient to attract competent and committed individuals to seek appointments to the Provincial Court and to remain on the Court once appointed”, the Association has expressed its concern that the movement of three Provincial Court Judges to the Court of Queen’s Bench since 2013 may suggest that the Provincial Court is currently faced with a retention issue.
202. This Commission also recognizes that compensation is only one factor which will attract

prospective candidates to apply for a position on the Court. Other factors include:

- i) the nature of the work;
- ii) the prestige associated with being a judge;
- iii) the security offered by tenure; and
- iv) the attractive pension benefits.

203. However, there can be no doubt that remuneration is a very significant factor. While the Government submits that the current waiting list of applicants for a judicial appointment, which have been approved by the Judicial Council, is a strong indication that the current compensation being offered is a significant incentive to attract the brightest and best, the Association suggests that this Commission must consider the salary and compensation levels of comparator groups in assessing whether this is really the case.
204. In the oral presentation made on behalf of the SCDLA, similar concerns and observations were expressed.
205. In its consideration of all of these factors, this Commission is mindful of the persuasive comments of the Chief Justice Bayda to the 1993 Commission. When discussing the appropriate salary for judges of the Provincial Court, he encouraged the commission “as you engage yourself in the task of determining what is the appropriate salary for the judges of the Provincial Bench during the next short while, I strongly urge you to do so not on the footing of what it takes to attract a long list of judicial candidates, but rather on the footing of what it takes to attract a short list of the ‘best candidates’” [emphasis added]
206. We also have reservations regarding the Government’s submission that the primary pool of candidates for appointment to the Provincial Court Bench is comprised of Crown Prosecutors, Legal Aid lawyers and other members of the private bar primarily practicing in the criminal law area. We note from recent appointments to the Bench that the candidate pool extends beyond this group to practitioners practicing in private law firms with practices not limited to the area of criminal law. In the view of this Commission, these private practitioners must also be kept in mind when considering the pool of prospective candidates. However, the Commission acknowledges that it is difficult to

assess, on the information available to it, whether the current compensation being offered to Provincial Court Judges is a disincentive to senior practitioners in the private bar.

207. Nevertheless, we are mindful of the statements from the Association and the SCDLA that senior practitioners from the private bar whose practices are not necessarily restricted to the practice of criminal law, are potentially strong candidates for appointment to the Provincial Court bench. An attractive compensation package for Provincial Court Judges is an important factor in efforts to attract such potential candidates to apply for an appointment.

(e) Salaries of Comparator Groups

208. The Commission received submissions from both the Association and the Government detailing a number of comparator groups. The Association's submission focused primarily on the compensation of other provincial court judges in Canada, the Court of Queen's Bench judges in Saskatchewan and salaries for private practitioners, whereas the Government suggested that additional relevant comparator groups include senior Crown Counsel, including the Deputy Minister of Justice, senior Legal Aid lawyers and senior Crown Counsel employed by the Federal Department of Justice and Public Prosecution Service.
209. The Association and Government both recognized certain difficulties associated with the compensation information available for Provincial Court Judges outside of Saskatchewan, noting that the applicable times for which salary figures were published were not uniform. In some cases, Provincial Court Judges' salaries had not yet been finalized due to either challenges by governments in other jurisdictions which had not as yet been resolved or settled. In other cases, commissions had not yet been rendered their reports and recommendations.
210. Considerable information was presented to the Commission by both the Association and the Government in respect of the judges' pension and benefits plan which, this Commission accepts, is a very significant factor to consider when making recommendations on judges' salaries for the next three year period. These considerations add further complexity when attempting to compare Saskatchewan Provincial Court Judges' compensation with not only provincial court judges' compensation elsewhere in

Canada, but also with the compensation of federally-appointed judges of the Court of Queen's Bench and Court of Appeal in Saskatchewan.

211. This Commission accepts the submission by the Government that it should not simply base its finding on the average salary paid to Provincial Court Judges across Canada without regard to local economic and labor market realities.
212. However, this Commission also accepts the principle that we should not simply be focused on national provincial court judges' compensation information available to us today. We must also consider and recognize the level of Saskatchewan's Provincial Court Judges' compensation relative to Saskatchewan's economic position in Canada which, notwithstanding, the statements made in the Government's submission, remains competitive relative to other provinces and territories.
213. Accordingly, this Commission is of the view that the salaries of Saskatchewan Provincial Court Judges should reflect that economic reality. We are certainly mindful of the concern expressed by the Government with respect to the proposition stated by the Hodson Commission that "an increase above the cost-of-living is warranted to ensure that the salary of Saskatchewan judges continue to be in the top tier of the provinces and territories".
214. This Commission acknowledges that while it is not the mandate of this Commission to ensure that judges' salaries remain "in the top tier", we are of the view that it is appropriate to recognize Saskatchewan's relative economic position in relation to other provinces and territories.
215. This Commission also takes the position that the salaries of Queen's Bench Judges are an important factor to consider, not only in the context of the disparity between the salary levels of the two Courts, but also on the basis of the relative workload and responsibilities of the two Courts. This Commission accepts the proposition that the role of the Provincial Court of Saskatchewan in dispensing justice to the citizens of the Province is equally important to that of the Court of Queen's Bench and the Saskatchewan Court of Appeal.
216. In considering this factor, this Commission must also be aware of the fact that the Court of Queen's Bench and the Saskatchewan Provincial Court attract candidates for

appointment from the same talent pool of lawyers.

217. The Commission does not accept the proposition that it has a responsibility to close the gap between salaries of Provincial Court Judges and those of the Court of Queen's Bench and the Saskatchewan Court of Appeal within a finite period of time. Having stated this, however, we recognize that this is not a matter within this Commission's direct control, in any event.
218. This Commission also recognizes that the pension and other benefits available to Provincial Court Judges is a major factor which it should bear in mind when making any recommendations on salary. All parties agree that the pension and benefits package in place for Provincial Court Judges is very attractive and this Commission has taken due consideration of that factor into account.

B. VACATION DAYS

219. The Association submits that the number of vacation days for Judges be increased from 30 days to 40 days. As summarized extensively in this Commission's Report, the Association has cited a number of factors in support of its submission, including the need to ensure the improved health and well-being of Provincial Court Judges due to the stressful circumstances in which they operate and the ability to recruit and retain senior members of the Bar.
220. The Association further points to the vacation entitlements for Judges of the Court of Queen's Bench and other Provincial Court Judges in Canada and suggests that the potential increased costs to the Government due to an increase in vacation days will not be significant.
221. While the members of this Commission are sympathetic to those concerns voiced by the Association and acknowledges the stressful circumstances within which Provincial Court Judges perform their duties, this Commission is not convinced, based on the evidence presented to it, that the costs associated with such an increase in vacation entitlement would be as insignificant as the Association has suggested.
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222. The Government, in its submission, has suggested that the increased direct costs to the Province, should this Commission accept the Association's request, would be

approximately equal to the cost of two full-time Provincial Court Judges' salary or in the range of \$600,000 per year based on the 2017 salary of Judges.

223. The Commission accepts that the Government's estimate of increased cost as being more accurate.
224. The Commission has also noted that similar requests have been made by the Association to the Vicq Commission, the Zakreski Commission and the Hodson Commission. Each of those commissions concluded that there was not any demonstrated need to increase the annual vacation days from 30.
225. This Commission agrees with the conclusions reached by the previous commissions and in the circumstances, based on the evidence presented to us, is not prepared to recommend any changes to the current vacation days entitlement.

VIII. RECOMMENDATIONS OF THE COMMISSION

A. SALARIES

226. Based on the Commission's analysis and review of those factors which we have identified herein, the Commission's recommendations on Judges' salaries are as follows:
 - i) for the period April 1, 2018 to March 31, 2019 the base salary of \$290,848 be adjusted by the increase in the All Items Saskatchewan Consumer Price Index ("SCPI") as measured by the average annual increase between January 1, 2017 and December 31, 2017, that this adjustment not be less than zero;
 - ii) for the period April 1, 2019 to March 31, 2020 the base salary of the preceding period be adjusted by the increase in the SCPI as measured by the average annual increase between January 1, 2018 and December 31, 2018, that this adjustment not be less than zero and the resulting figure be further adjusted upward by an additional 0.5%;
 - iii) for the period April 1, 2020 to March 31, 2021 the base salary of the preceding period be adjusted by the increase in the SCPI as measured by the average annual increase between January 1, 2019 and December 31, 2019, that this adjustment not be less than zero and the resulting figure be further adjusted upward by an additional 1.0%;
 - iv) the administrative allowances for the Chief Judge, the Associate Chief Judge and

Judges with administrative duties remain the same as is currently set out in the Provincial Court Compensation Regulations, namely:

Chief Judge	7.5%
Associate Chief Judge	5.0%
Administrative Judge	2.5%


- v) the remuneration for Temporary Judges remain at a daily rate of 1/220 of the base salary of a Judge;
- vi) there be no change to the Professional Allowance;
- vii) there be no changes to the pension benefits and additional retirement benefits; and
- viii) there be no increase to the number of Judges' vacation days.

IX. CLOSING REMARKS

227. This Commission wishes to express its sincere appreciation and gratitude to all parties who have made submissions to the Commission. In particular, we wish to acknowledge the exemplary work of legal counsel on behalf of the Association and the Government in relation to the quality and comprehensiveness of both their written submissions and oral presentations at the Commission Hearings.

This report contains the unanimous recommendations of this Commission.

DATED at Saskatoon, Saskatchewan effective this 29th day of December, 2017.



Leslie W. Prosser, Q.C., Chairperson



Paul S. Jaspar FCPA FCA



Merlis M.R. Belsher FCPA FCA LLB



Province of Saskatchewan

Commission Order

The Provincial Court Commission, pursuant to Part IV of *The Provincial Court Act, 1998*, makes *The Provincial Court Compensation Amendment Regulations, 2018* in accordance with the attached Schedule.

Dated at the City of Saskatoon, the 29th day of December, 2017.

A handwritten signature in blue ink, appearing to read "Hossein", written over a horizontal line.

Chairperson
The Provincial Court Commission

(For administrative purposes only)

Authority: *The Provincial Court Act, 1998 - Part IV*

SCHEDULE

Title

1 These regulations may be cited as *The Provincial Court Compensation Amendment Regulations, 2018*.

RRS c-P-30.11 Reg 2 amended

2 *The Provincial Court Compensation Regulations* are amended in the manner set forth in these regulations.

New section 2

3 Section 2 is repealed and the following substituted:

“Definitions

2 In these regulations:

‘Act’ means *The Provincial Court Act, 1998*;

‘annual period’ means the period commencing on April 1 in one year and ending on March 31 of the following year;

‘consumer price index’ means the annual average of the all-items Consumer Price Index for Saskatchewan for a calendar year, as released by Statistics Canada;

‘judge’ does not include a temporary judge unless otherwise provided;

‘retired judge’ means a person who has been a judge, on and from the day on which he or she ceases to be a judge”.

Section 3 amended

4 Subsection 3(3) is repealed and the following substituted:

“(3) A judge is entitled to be paid an annual salary in the amount of:

(a) for the annual period commencing on April 1, 2017, \$290,848;

(b) for the annual period commencing on April 1, 2018, the sum of the following rounded up to the nearest dollar:

(i) the salary mentioned in clause (a); and

(ii) the product of:

- (A) the salary mentioned in clause (a); and
- (B) the annual increase in the consumer price index for the 2017 calendar year;
- (c) for the annual period commencing on April 1, 2019, the sum of the following rounded up to the nearest dollar:
 - (i) the salary determined pursuant to clause (b); and
 - (ii) the product of:
 - (A) the salary determined pursuant to clause (b); and
 - (B) the annual increase in the consumer price index for the 2018 calendar year plus 0.005;
- (d) for each annual period commencing on or after April 1, 2020, the sum of the following rounded up to the nearest dollar:
 - (i) the salary determined pursuant to clause (c); and
 - (ii) the product of:
 - (A) the salary determined pursuant to clause (c); and
 - (B) the annual increase in the consumer price index for the 2019 calendar year plus 0.01”.

New section 6

5 Section 6 is repealed and the following substituted:

“Professional allowance

6 For each annual period commencing on or after April 1, 2015, a judge is entitled to be paid an accountable professional allowance of \$4,000”.

Section 7 amended

6 Subsection 7(3) is amended by striking out “from one year to the next” and substituting “from one annual period to the next”.

Coming into force

7 These regulations come into force on the day that is determined in accordance with Part IV of *The Provincial Court Act, 1998*.

