



Report and Recommendations  
Of the 2014 Provincial Court  
Commission of Saskatchewan

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

December 2014

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## I. INTRODUCTION

### A. The Commission and its Mandate

1. The 2014 Provincial Court 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) Douglas C. Hodson, Q.C. – Chairperson, appointed by the two members
- ii) Doug Frondall – Appointee of the Saskatchewan Provincial Court Judges Association
- iii) Michelle J. Ouellette, Q.C. – Appointee of the Minister of Justice

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.]

3. 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, 2015 and submit it to the Minister and the Association by December 31, 2014. (s. 41 of the Act)

## **B. Commission Proceedings**

4. The Commission published newspaper advertisements in Regina, Saskatoon and Prince Albert on September 20, 2014 and notice on its website calling for submissions to the Commission.
5. The Commission received written and oral submissions from the following:
  - i) Saskatchewan Provincial Court Judges' Association (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 (the "SCDLA")
  - v) Chief Judge C.A. Snell
6. These documents and other materials can be found on the Commission website at <http://www.justice.gov.sk.ca/provcourtcomm>.
7. The Commission conducted public hearings in Saskatoon on November 4, 2014 and in Regina on November 6, 2014. In addition to hearing submissions from those noted above, the Commission heard evidence from Doug Kalesnikoff (called by the Association) and David Larsen and Jim Marshall (called by the Government).

## **II. PREVIOUS COMMISSIONS**

8. There have been seven 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
9. In the report of the Hood Commission, a detailed report of the work of previous Commissions was provided, and is set out below:

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 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.

### **Hood Commission 2011**

10. 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 and 2014/2015 \$260,819.



11. 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.
12. 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.

### **III. PRINCIPLES TO BE APPLIED BY THE COMMISSION**

#### **A. Jurisprudence**

13. The work of this Commission is founded upon the principle of judicial independence.
14. The principle of judicial independence and the role of this Commission is defined by the Supreme Court of Canada in two key decisions:
  - 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. Judicial independence has three characteristics: (i) security of tenure; (ii) financial security; and (iii) administrative independence. Financial security embodies three requirements:
  - i) Judicial Salaries can be maintained or changed only by recourse to an independent commission;
  - ii) No negotiations are permitted between the judiciary and the government; and
  - iii) Salaries may not fall below a minimum acceptable level.
16. Provincial Court salary commissions must be independent, effective and objective. "They must make recommendations on judges' remuneration by reference to objective criteria, not political expediencies. The goal is to present "an objective and fair set of recommendations dictated by the public interest"...." (*Provincial Judges Reference* – para. 173).

17. In the *New Brunswick Reference*, the Court described the Commission process as follows:

The process is neither 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)

**B. Relevant Factors to be Considered**

18. Unlike similar legislation in other provinces, the Act does not specify factors for this Commission to consider in formulating its recommendations. The Vicq Commission 2002 set out a list of factors, which have been followed by subsequent Commissions (p. 8 and 9):

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. [*Judges Reference*, paragraph 172] 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.

#### **IV. POSITIONS AND ISSUES**

##### **A. Current Salary and Benefits**

19. The salary of Judges for the current year (April 1, 2014 – March 31, 2015) is \$260,819.
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  $\frac{1}{3}$  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%.
  - vi) 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.

**B. Position of the Association and Government**

22. As part of the Commission process, the Association and Government provided the Commission with the following proposed changes to Judges' salary and benefits for the April 1, 2015 to March 31, 2018 period:

**(1) Salary**

23. The Association and Government proposed increases in base salary in each year as follows:

	<b>Association</b>	<b>Government</b>
2015-16	SCPI <sup>1</sup> + 4%	1.95 % <sup>2</sup>
2016-17	SCPI + 2%	1.95%
2017-18	SCPI + 2%	1.95%

**(2) Vacation Days**

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

**(3) Professional Allowance**

25. The Association proposes an increase from \$3,650 to \$4,000 annually. The Government proposes no change.

**(4) Post-Retirement Benefits**

26. The Association proposes that the existing extended health care and dental benefits provided to Judge's continue into retirement. The Government disputes the

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

<sup>2</sup> The Government's projection of future cost of living increases.

Commission's statutory authority to make recommendations in relation to retired Judges, and does not otherwise agree the benefits should be extended.

**(5) Chief Judge Sabbatical**

27. Chief Judge Snell made a submission to the Commission proposing a paid sabbatical of three months for a Chief Judge who has completed his or her term and who plans to continue to sit on the Court after a new Chief Judge is appointed. The sabbatical policy would be in effect as of April 1, 2015 and therefore not available to Chief Judge Snell.
28. The Association supports this proposal. The Government does not.

**(6) Agreement on Incremental Salary**

29. The Association and Government agree there should be no change to the incremental salary paid to the Chief Judge (7.5% of base salary), Associate Chief Judge (5%) and Administrative Judge (2.5%), as well as the allowance paid to judges who reside in the Northern Saskatchewan Administration District (5%). They also agree there should be no change to the amount paid to temporary judges (1/220) subject to any adjustment necessary if the number of vacation days is increased.

**V. SUBMISSIONS OF THE PARTIES**

30. The Commission had the benefit of receiving excellent written and oral submissions from legal counsel for the Association and the Government. Gordon J. Kuski, Q.C. and Holli A. Kuski Bassett presented the submissions on behalf of the Association. Tom Irvine and Charita Ohashi presented the submissions on behalf of the Government. The Commission compliments the Association, the Government and their respective legal counsel for these presentations, which have greatly assisted the Commission in its review and recommendations. The Association and Government very ably presented their respective positions and fully and fairly responded to the submissions of the other.
31. The Commission also acknowledges the helpful submissions from the CBA, the SCDLA and Chief Judge Snell.
32. The submissions and replies are available on the Commission website. The Commission has summarized the key submissions below.

**A. Association**

**(1) Judicial Salaries**

33. The Association identified five factors to be considered by the Commission in relation to salary.

**a) Judicial Independence**

34. The Association set out the requisite elements of judicial independence and noted that it exists "for the benefit of the judged, not the judges."

**b) Economic Climate and Fiscal Conditions of Saskatchewan**

35. According to the Association, the economic conditions of the province are an important factor for the Commission to consider. An adverse or underperforming economic climate can be a factor in limiting Judges' salaries. The Association noted the Government took this position before the Vicq Commission in 2002, when the economic conditions in Saskatchewan were somewhat grim. Therefore, the Association submits, when the economic climate of the province is strong, as it is now, an increase in salaries is warranted.
36. The Association filed a number of reports from sources including the Conference Board of Canada and Services Canada, which praised Saskatchewan's economic performance, fiscal position and growing economy. The Association also provided a number of publications and pronouncements by the Government touting Saskatchewan's strong and growing economy, as well as the Government's forecasts for continued strong growth of the economy.
37. The Association referenced Saskatchewan's sound fiscal position and budgetary surplus, as well as record high job market increases and low unemployment rates noting that since 2011, Saskatchewan has had one of the strongest economies in the country.
38. The Association's submission stated:
- (39) The jurisprudence makes it clear that judicial salaries are appropriately determined based upon the health of a particular economy, including how it compares to other provinces in Canada. The fact that Saskatchewan has been, and is forecast to continue to be, among the leaders across the nation with its strong and steady economy is a convincing reason to increase the salaries of PCJs to a level that similarly leads the nation. There is no doubt that the opposite will be true, and that in the event of difficult financial times in Saskatchewan the PCJs will be called upon to share the associated burden.
39. The Association claimed that the salaries earned by Judges since the Hood Commission report, do not reflect the substantial improvement in Saskatchewan's economy since 2011. This presumably explains the Association's request for a higher percentage increase (4%) in 2015-2016 compared to its request in the following two years (2%).

**c) Workload**

40. The Provincial Court is the "face of justice" in Saskatchewan, with jurisdiction over a broad array of youth and adult criminal law, regulatory offences, municipal bylaws, family law and civil litigation.
41. The Association noted the findings of previous Commissions which have uniformly recognized the important work of the Court and the often difficult and stressful work environment faced by Judges.
42. The Association noted the many sacrifices of a personal and professional nature required of Judges and referenced the Hood Commission report, which concluded:

As has previous Commissions, this Commission fully appreciates and acknowledges that judicial duty involves exceptional sacrifices of the personal and professional nature. Unlike others, Judges are not permitted to engage in other work so income is limited to judicial salary, a Judge's freedom of speech is limited, and conduct in and out of the courtroom is strictly monitored and subject to complaint. Actions and behavior in practice and in the public arena have always come under scrutiny and comment, and we would be remiss if we did not observe that in our current age of technology and instant information sharing the concept of scrutiny and accountability has taken on whole new dimensions. As has been stated by others, Judges occupy "a place apart" in our society and they pay a social, emotional and economic price for the privilege of their position. (para. 216)

43. The Association pointed out that the number of judges (49) has remained relatively constant since 1979, yet workload has increased due to a number of factors including:
  - i) New offences and sentencing requirements;
  - ii) Increased number of citizens without legal representation;
  - iii) Sittings in over 80 court locations around the province;
  - iv) Increases in crime rates;
  - v) Increase in number of dangerous offender hearings being run.
44. The Association cited statistics showing increases in the number of court appearances and published judgments. In addition to increases in the province's population, the number of police officers and prosecutors has increased, yet the number of Judges has remained constant.

45. Reference was made to the Provincial Auditor's report of April 21, 2014, where it was noted that "the Provincial Court has experienced a significant increase in its workload over the past 10 years".
46. Despite increased workload, the Association noted that Judges have no opportunity to enjoy the compensation incentives that are typical in the private sector. Regardless of seniority, salary for all Judges is the same.
47. The Association submits that "an increase in annual salary is an appropriate mechanism to recognize and compensate PCJs for their continuing management of the ever-increasing demands placed upon them."

**d) Recruitment and Retention**

48. The Association submits that judicial salaries must be set at a level that continues to attract highly qualified lawyers from both the private bar and the public service.
49. The Association noted that the Commission process itself, conducted every three years, arguably attracts more applicants due to "the legitimate expectation that remuneration will be regularly, meaningfully and effectively reviewed, and ultimately adjusted by the Government acting in good faith".
50. The Association said there is no concern with the number of applicants, however there is a concern they may not be the most highly qualified applicants best suited for the role of a Judge. According to the Association, counting of the number of applicants is not meaningful nor helpful.
51. The Association noted the Provincial Court must compete with the Queen's Bench and Court of Appeal for applicants and identified a risk of "self-exclusion" from applicants to the Provincial Court if the gap in remuneration is "significant".

**e) Salaries of Comparator Groups**

52. The Association does not advocate for salary parity with Queen's Bench judges, however it submits the Commission's recommendation should recognize the importance of minimizing the disparity between the two Courts as the salary differential puts the Provincial Court at a disadvantage in the recruitment of applicants.
53. As of April 1, 2014, Queen's Bench judges earn \$300,800, a 13% differential with Provincial Court Judges. Although not seeking parity, the Association says that the salary earned by Queen's Bench judges is an appropriate comparator to consider.
54. Salaries paid to provincial and territorial judges elsewhere in Canada are also a relevant factor but the Association expressed caution in using the comparators due to disparity in the economic climates in these jurisdictions.



55. The Association provided salaries for March 31, 2014 (the last day of the previous year) which showed Saskatchewan (\$254,458) at the fourth highest in Canada behind Ontario (\$274,574), Alberta (\$263,731) and Yukon (\$257,606).
56. The Association suggested the most notable comparators are provinces in a similar economic position to Saskatchewan, namely Alberta.
57. The Association also noted that based upon a number of objective indicators, Ontario's economy was lagging far behind Saskatchewan's, yet Ontario judges continue to earn a higher salary.
58. Due to Saskatchewan's economic performance since the Hood Commission report in 2011 and anticipated continued growth in 2015 compared to the rest of Canada, the Association contends Judges warrant a salary level that places them "in the top tier" relative to other Provincial Court judges across Canada.

**(2) Professional Allowance**

59. The Judges receive a professional allowance each year to cover reasonable incidental expenses. The allowance is administered pursuant to a protocol administered by the Chief Judge's office. In 2006, the allowance was \$3,500. This amount, adjusted for inflation, is approximately \$4,006.83 in today's dollars. The Hood Commission Report recommended a \$150 increase from \$3,500 to \$3,650.
60. The Association requests the professional allowance be increased to \$4,000 to ensure it has not been eroded by inflation.

**(3) Vacation Days**

61. The Association requests that Judges' vacation days be increased from 30 to 40. In support, the Association noted that members of the Saskatchewan public service receive 30 days with an additional 12 days available as "scheduled days off" for a total of 42 days. The Association also noted that Ontario judges have eight weeks of vacation, Yukon judges have seven weeks and federally appointed judges have eight weeks of vacation.

**(4) Additional Retirement Benefits**

62. The Association proposes that the existing level of extended health care and dental benefits continue into retirement for judges as "additional retirement benefits". The Association noted that this recommendation would not apply to currently retired Judges. Rather, it would apply to Judges who are currently working who would receive this benefit upon their retirement.

## **B. Government**

### **(1) Judicial Salaries**

63. The Government submits that the compensation package currently provided to Judges exceeds the minimum degree of financial security required by the constitutional principle of judicial independence. The salary is above the national average, the pension and additional retirement benefits are very generous, exceeding what is available in the private and public sectors, and the total amount of compensation paid to Judges meets or exceeds the goals of recruitment from the bar and retention of Judges on the Court.
64. The Government acknowledges that judicial compensation is not static and, therefore, the Government recommends an increase in the salary of judges over the next three years of 1.95 percent each year, based on the Government's projected increases in the cost of living in Saskatchewan.
65. The Government submits that the salary for Judges cannot be considered in isolation of their very generous pension and it is the total compensation package which is highly relevant to both recruitment and retention of individuals to the Court.
66. With its initial submission, the Government filed an April 29, 2014 report from AON Hewitt titled "Report on the Actuarial Valuation for Accounting Purposes in Accordance with PS 3250 and Section 4600 of the CPA Canada Handbook as at March 31, 2014 - The Judges of the Provincial Court Superannuation Plan".
67. This report is prepared annually by AON Hewitt for the Government to determine the necessary financial information for inclusion in the financial statements of the Government and the Pension Plan. In the report, AON determined the Government's "estimated current period benefit cost" for the Judges' pension plan at \$7,415,000 representing 60.7% of the Judges' estimated pensionable earnings.
68. On the basis of this report, the Government submitted that the current service cost of a Judge's pension, as at March 31, 2014, was \$158,317. In addition, the Government valued its total cost for the Dental Plan, Sick Leave and Health Plan at an additional 7.52% of a Judge's salary, namely \$19,613.58. The Government submitted the total annual cost to the Government for the benefits provided to each Judge is therefore \$177,930.72, all of which must be taken into account in assessing the total dollar value of the compensation system.
69. The Government noted that the Hood Commission accepted this point:
  229. We should point out at this juncture that we agree with previous commissions that what is an appropriate salary is not a determination made in isolation of the other benefits, especially in this case considering the value of the Judges' pension. The Association acknowledged that the pension for Provincial Court Judges is very generous. The present salary that was recommended by the Zakreski Commission and accepted by the

Government is currently \$238,943. The current service cost of the pension is \$107,285. We do not accept the Association's position that the service cost is not the value of the pension to the Provincial Court Judges. The service cost is the actuarial valuation, a notional valuation based on reasoned assumptions of what one would have to pay, in this case, the Judge, to buy the pension provided by the Government to the Judges. The final value of the remuneration package, after including dental, sick and health plan, is \$366,204 per year. This does not include the value of all benefits.

70. The Government submitted that the following factors should be considered by the Commission in determining its salary recommendation:
- (a) the history of judicial remuneration in Saskatchewan;
  - (b) changes in the cost of living;
  - (c) prevailing economic and fiscal conditions in Saskatchewan;
  - (d) public and private comparators both within and outside Saskatchewan;
  - (e) recruitment and retention;
  - (f) the unique responsibilities and work environment of Provincial Court Judges.

**a) History of Judicial Remuneration**

71. The Government reviewed the judicial remuneration recommended by previous Commissions and the increases over and above inflation. The Government noted that the Hood Commission held that there was no longer a need to "catch up" on salaries.
72. The Government submits that the "current level of judicial remuneration greatly exceeds the constitutionally acceptable minimum".

**b) Changes in the Cost of Living**

73. The Government agrees that projected increases in the cost of living are a relevant consideration for the Commission. The Government submits that the fact that salary increases outpaced cost of living increases over the past six years is an additional factor which the Commission should take into account.
74. The Government proposes that the Commission should use the projected increase in the cost of living used by Saskatchewan for budget purposes, namely 1.95% in each year.

**c) Prevailing Economic and Fiscal Conditions**

75. The Government acknowledges that the state of the Saskatchewan economy is a relevant consideration for purposes of setting the appropriate levels of judicial remuneration for the next three years. The Government acknowledges that the "Saskatchewan economy continues to grow" and is "well positioned to remain financially strong", however it cautions how long it is sustainable at its current level due to considerable uncertainties in the United States and global economies.
76. The Government advocates for a "made in Saskatchewan" compensation package which takes into account and is sensitive to local economic conditions and realities, as well as the widely divergent but meritorious demands upon the provincial treasury.

**d) Salary Comparators**

77. The Government provided a survey showing the salary and pension benefits of judges of all the provincial and territorial Courts across the country effective April 1, 2014 (current year).
78. The Government argued that national comparatives are not the only basis upon which to determine salaries for Saskatchewan Judges; however, the chart shows that, in terms of base salary alone, Saskatchewan ranks fourth behind Ontario, Alberta and Yukon. Saskatchewan is approximately \$14,000 behind the leading salary in Ontario and is approximately \$20,000 over the "simple average less Saskatchewan".
79. When both the judicial salary and the annual pension service costs are taken into account, Saskatchewan ranks first amongst provinces and territories.
80. With respect to comparison to compensation paid to Provincial Court Judges in other provinces, the Government submitted it is only one factor to take into account. The Government noted that, from a practical perspective, the "national average" is an elusive standard and it is exceedingly difficult to obtain an accurate picture of the average judicial salary across Canada due to the various stages of provincial compensation commissions.
81. The Government submits that comparisons with salaries paid to federally appointed judges "can have no bearing" on an appropriate level of remuneration that should be paid to Provincial Court Judges in Saskatchewan.
82. The Government also made submissions regarding other salary comparatives and identified four groups as relevant:
- i) Senior Crown counsel employed in Saskatchewan public service;
  - ii) Senior defence counsel employed by Saskatchewan Legal Aid;
  - iii) Senior federal Crown counsel;
  - iv) Senior lawyers engaged in private practice with an emphasis on criminal law.

83. The Government identified the top of the range salary for senior Crown counsel as of April 1, 2014, as being \$149,880 to a high of \$164,868. The Government submitted that the substantially higher salary for Provincial Court Judges compared to senior Crown counsel such as Crown prosecutors is an attractive inducement for senior lawyers. Similarly, the Government made the same submissions with respect to counsel for Legal Aid and federal Crown prosecutors.
84. The Government acknowledged the difficulty in obtaining current and accurate information respecting the earning capacity of senior lawyers in private practice in Saskatchewan. However, the Government submitted that the value of the judicial pension in attracting excellent candidates has been recognized by previous Commissions.

**e) Recruitment and Retention of Provincial Court Judges**

85. The Government submitted that the recruitment and retention of judges is the most important factor to be weighed and by every objective criteria, the current salary and benefit package is more than sufficient to attract competent and committed individuals to the Court.
86. The Government noted two factors to be considered by the Commission. The first is that the bulk of the Provincial Court workload is in the area of criminal law and, therefore, the target pool for the most qualified candidates is senior counsel with experience in criminal law, on either the Crown or defence side, or both. Crown counsel and Legal Aid counsel are thus an obvious component, as are private counsel with substantial criminal practices, who may not necessarily be found in the largest firms in the province.
87. The second point is the diversity of experience in terms of practice area, geographic area and social factors.
88. The Government pointed out that it has no difficulty in selecting highly qualified individuals to serve as Provincial Court Judges. At the date of the Government's submissions, there are 35 individuals whose qualifications the Judicial Council has reviewed and recommended for appointment. This is similar to numbers in past years. The Government reviewed the qualifications of those candidates appointed to the Provincial Court since November 2011, which it says confirms that there has been no difficulty recruiting excellent Judges.
89. Similarly, the Government says retention of Judges in Saskatchewan is not a problem.

**C. The CBA**

90. Gail Wartman, Q.C. president of the Canadian Bar Association Saskatchewan Branch, presented written and oral submissions on behalf of the Saskatchewan Branch of the CBA. The CBA represents over 37,000 lawyers, judges, notaries, law teachers and students across Canada. The Saskatchewan Branch consists of approximately 1,200 members.

91. The CBA's core interest is to ensure that judicial compensation and benefits are such to fulfill two purposes:
- i) Protecting and promoting independence of the judiciary; and
  - ii) Strengthening and advancing the judiciary through sufficient financial independence and adequate compensation to attract the best and most qualified candidates.
92. The CBA's submissions urged the Commission to consider a number of factors including recruitment and retention of the best judges, the workload of the court, public perception, pensions and other benefits and market conditions/financial constraints.

**D. Saskatoon Criminal Defence Lawyers Association**

93. Andrew Mason, Mark Vanstone and Mark Brayford, Q.C. presented the written and oral submission on behalf of the SCDLA.
94. The SCDLA was established in 1979 as a non-profit corporation and is made up primarily of criminal defence practitioners in the Saskatoon area, including legal aid lawyers and private defence counsel.
95. The focus of their submission related to the disparity between the salary of Provincial Court Judges and the salary of federally appointed Queen's Bench judges.
96. The Association submitted that the qualifications and workloads do not justify a different treatment and identified the risk of a "two tier" justice system with different judges being paid different amounts based on the level of court. The Association urged the Commission to establish a salary schedule for the next three years that will further reduce or eliminate the disparity.

**E. Chief Judge Snell**

97. Chief Judge Snell made a written and oral submission to the Commission requesting that the office of the Chief Judge be granted a paid sabbatical for a period of three months to be taken after completion of his or her term as Chief Judge on the understanding that he or she will be returning to the position of a puisne judge. Chief Judge Snell noted that any recommendation of this Commission would not apply to her since her term as Chief Judge ends on December 31, 2014. She also noted that the sabbatical will also not apply to the incoming Chief Judge, Jim Plemel, unless he elects to serve less than the maximum seven year term and return to the Court as a puisne Judge during that time.
98. Chief Judge Snell submitted that a sabbatical is required to create separation between the administrations of the new and former Chief Judge so that the Judges of the court will not feel inhibited in their support of the new Chief by loyalty to the former Chief. As well, she feels it is important that the incoming Chief Judge will not feel inhibited in what he or she pursues in the early stages of their term.

99. In addition to making submissions on the sabbatical request, Chief Judge Snell also provided an overview of the work of the Court in the last number of years highlighting a number of significant initiatives successfully implemented by the Court, as well as some of the difficult conditions faced by Judges in carrying out their duties.

**F. Government Reply**

100. The Government provided a reply to the submissions of the Association, the CBA, the SCDLA and Chief Judge Snell.

**(1) Judicial Salaries**

101. The Government reiterated there is no need to increase Judge's salaries over and above the rate of inflation. Judges are not always entitled to increases which outpace inflation. Absent compelling evidence that the current salary is falling behind, the Government submits that an increase based on the anticipated rate of inflation is sufficient to meet the constitutional requirements for financial security.
102. The Government's reply also included submissions with respect to a report prepared by Mr. Jim Marshall dated October 10, 2014. Mr. Marshall, a Senior Policy Fellow at the Johnson-Shoyama Graduate School of Public Policy of Regina, was retained by the Government to prepare a report for the Commission. His report dealt with the following matters:
- i) Review of the work of previous Commissions.
  - ii) A section titled "Volume of Production Indicators", wherein Mr. Marshall seeks to measure the "productivity" and workload of Judges on the basis of statistical information.
  - iii) A section titled "Value of Production Indicators" wherein Mr. Marshall seeks to value the "production" of the Judges by reference to "overall economic output valuations as proxies for the value of product of the justice system". Mr. Marshall also compared the rate of growth of Judges' salaries with various economic indicators.
  - iv) Review of the Government's "ability to pay", based on a review of various Government financial data and statements.
  - v) Comparison of Saskatchewan Judges' salaries with salaries of Provincial Court Judges across Canada, as well as wage rates in other selected occupations and industries.
103. In his report, Mr. Marshall included a table providing a comparison of the base salaries for Saskatchewan Judges compared to judges in other provinces and territories as of April 1, 2014. The table is set out below.

**Table 16: Basic Salaries for Judges in Saskatchewan in Comparison to Other Canadian Provinces and Territories, 2014**

	Actual as of April 1/14	Saskatchewan as a Percentage of each Jurisdiction
British Columbia	\$236,950	110.1%
Alberta	\$263,731 <sup>1</sup>	98.9%
Saskatchewan	<b>\$260,819</b>	<b>100.0%</b>
Manitoba	\$230,155 <sup>2</sup>	113.3%
Ontario	\$274,574 <sup>3</sup>	95.0%
Quebec	\$238,379	109.4%
New Brunswick	\$204,700 <sup>4</sup>	127.4%
Nova Scotia	\$222,993 <sup>5</sup>	117.0%
Prince Edward Island	\$239,472	108.9%
Newfoundland & Labrador	\$216,124 <sup>6</sup>	120.7%
Northwest Territories	\$256,055	101.7%
Yukon	\$262,758	99.3%
Simple Average Salary	<b>\$242,191</b>	<b>107.7%</b>
Simple Average Excluding Saskatchewan	<b>\$240,536</b>	<b>108.4%</b>

<sup>1</sup> 2012 salary. 2013 to 2017 under review. Report expected February, 2017.

<sup>2</sup> 2013 salary. 2014 review completed July, 2014. Report expected in Fall, 2014.

<sup>3</sup> 2013 salary. It is anticipated that the Ninth Provincial Judges Remuneration Commission will convene in the near future to make recommendations for the period starting on April 1, 2014 to March 31, 2018.

<sup>4</sup> Salary for 2010 to 2012. 2012 to 2016 under review. Report expected Spring, 2015.

<sup>5</sup> 2013 salary. 2014 review completed and report expected Fall, 2014.

<sup>6</sup> 2013 salary.

Source: Saskatchewan Ministry of Justice and Attorney General.

104. The Government made a number of submissions relying upon the Marshall report and its findings.
105. The Government disagrees with the Association's emphasis on national comparators, and submits that Saskatchewan salary comparators are therefore most useful and significant.
106. The Government takes issue with the reliability and relevance of the data on private practitioner salaries filed by the Association.
107. The Government favoured using the 2014 rather than the 2013 Judges' salary for the Canada wide comparison, and acknowledged the challenge in determining a national average. Regardless of the date chosen, Saskatchewan salaries are at the upper ranks compared to other Provinces and when taking pension into consideration, Saskatchewan leads the nation.



108. The Government submits that workload issues are not a matter for the Commission to consider as a salary issue rather it is a matter of court administration. The Government acknowledges the complexity and demands of Judges' work, however, regular changes to the law are not the type of changes which warrant increases in salary.
109. The Government disputes that a higher salary would attract better candidates. The Government cited other factors which motivate applicants such as, nature of work, prestige, security of position and desire for public service.
110. The current salary is well above the salary for Crown and Legal Aid defence lawyers, which strongly indicates the current salary is appropriate for attracting the most experienced criminal lawyers.
111. The Government also included a section in its reply titled: "Economic Factors: Volatility in the Oil and Stock Markets" wherein it described "a major development in the economic outlook for the province" in the two weeks since the filing of the Government's original submission.
112. The Government made note of the "extreme volatility in the oil and stock markets, and particularly the plunge in oil prices." The Government submitted that "even though the economic prospects for the Saskatchewan economy still remain strong, it is important to remember that government revenues in Saskatchewan are highly dependent on the commodities and resource markets". The Government noted a "major drop in oil prices can have a dramatic effect on government revenues, even if the provincial economy as a whole remains strong."

**(2) Professional Allowance**

113. The Government submitted there is no need to change the professional allowance and disputes that it has not kept pace with inflation. The Government noted it was increased by \$150 in 2012 and secondly, the Government now pays for the cost of court robes as an expense directly.

**(3) Vacation Days**

114. The Government objects to any increase in the annual vacation days as requested by the Association. The Government notes that previous Commissions have considered this issue and consistently held that 30 days of vacation are adequate. The Government also notes the significant cost that would result as two additional full time judges would be required as well as additional relief work from temporary judges to cover the extended vacation days.
115. The Government notes that with a few exceptions 30 days is generally consistent with the vacation entitlements for provincial and territorial courts across the country.

**(4) Extension of Health Benefits**

116. The Government does not agree with the proposal that it should fund extended health care benefits for retired Judges. The Government noted it does not pay the premiums for public employees in retirement and can see no reason to create a benefit for Judges that is greater than provided to other individuals working for the public.
117. The Government also takes the position that Judges who are retired are no longer Provincial Court Judges as defined in the Act and as consequence, the Commission lacks statutory authority to make any recommendations in relation to them. Furthermore, the proposed extension would not fit within the advisory jurisdiction of the Commission under s. 38(2) and s. 65(d) of the Act.
118. Finally, the Government disagrees with the Association's rationale for requesting the additional benefit.

**(5) Sabbatical for Chief Judge**

119. The Government respectfully disagrees with the proposal from Chief Judge Snell regarding a sabbatical for a retired Chief Judge. The Government also noted that this proposal fits within the category of advisory recommendations under s. 38(2) and s. 65(d) of the Act rather than the compulsory list in s. 38(1) of the Act.

**G. Association Reply**

120. The Association took issue with the Government's reliance upon setting the cost-of-living increase at 1.95 percent and the uncertainty of this projection rather than using actual CPI.
121. The Association "fully endorsed" the Government's view that the compensation for Saskatchewan Judges must be a made-in-Saskatchewan package specifically tailored in the context of our strong and steadily growing economy, which is among the leaders across Canada.
122. The Association took issue with the Government's argument that the salary paid to Court of Queen's Bench judges should have no bearing.
123. The Association submitted that the four groups of lawyers in Saskatchewan used as comparators (Crown counsel, Deputy Minister of Justice, Legal Aid lawyers and federal prosecutors) are not reasonable or logical comparators. In particular, the Association submits that there is nothing in the skill set or responsibilities of any of these four proposed comparator groups to suggest they have a similar role to that of Provincial Court Judges.
124. The Association took issue with the Government's use of the current service cost of the Judges' pension. In particular, the Association objected to:

- i) The current service cost (\$158,317) being added to the Judge's salary to arrive at a total compensation package of \$434,785 (including the Government's valuation of the cost of the Dental Plan, Health Plan and sick leave).
  - ii) The current service cost being used as a comparator with the pension plans of other Provincial Courts across Canada.
125. The Association acknowledged the pension plan is generous and an attractive feature of the compensation package. However, the Association noted that the pension service cost is dependent upon a host of assumptions determined by different actuaries employing different economic and demographic assumptions.
126. The Association filed two expert reports (October 1 and October 22, 2014) from Doug Kalesnikoff, a chartered accountant and professor at the Edwards School of Business, University of Saskatchewan.
127. In his reports, Mr. Kalesnikoff provided his opinion that the "current period benefit cost" is based upon the estimated costs of funding the group plan collectively and is not a current benefit to a particular judge. Mr. Kalesnikoff also commented on the "current period benefit cost" determined by AON Hewitt in both 2011 (\$107,285) and 2014 (\$158,317). He noted that the increase was due to changing assumptions of future events, most notably mortality rates and discount rates.
128. Even though the pension entitlements to Judges were identical in 2011 and 2014, the current service cost increased from \$107,285 to \$158,317 due to the change in the actuary's assumptions. If the current service cost is added to salary to determine the "total compensation" package in each of 2011 and 2014, the increase in the pension cost from \$107,285 to \$158,317 results in an increase from \$346,228 in 2011 (salary of \$238,943 plus pension cost of \$107,285) to \$419,136 (salary of \$260,819 plus pension cost of \$158,317).
129. Mr. Kalesnikoff summarized his conclusion as follows:

The Government's inclusion of the pension cost as part of the annual total compensation gives the impression that the judges received a 47.6% increase in their future pension benefit from 2011 to 2014. However, the large increase in calculated cost, due to changing actuarial assumptions, has not resulted in an enhanced pension plan. Rather, the judges' pension plan has not changed from 2011 to 2014.

...

The variability of the current pension cost actuarial calculation provides additional concern for adding this cost to the annual salary to arrive at a total annual compensation amount. This variability, which largely results from changing assumptions about long term economic factors, further supports my opinion that the

addition of the actuarially calculated current service pension cost, and the cost of other benefits, to the Judges' current salary is flawed and produces an unreliable figure.

130. The Association also objected to the Government's use of the AON 2014 current service cost in comparison to the pension plans of Provincial Court judges in other provinces. The Association noted the evidence of David Larsen, the AON Hewitt actuary, provided to the Barnard Commission in 2005, that the pension plans in all of the provinces are "very comparable".

#### **H. Witnesses at Hearings**

131. On November 4, 2014, the Commission heard evidence from Mr. Kalesnikoff and Mr. David Larson (AON Hewitt). Mr. Kalesnikoff was called by counsel for the Association and cross-examined by Government counsel. Mr. Larson was called by the Government and cross-examined by counsel for the Association.
132. Mr. Kalesnikoff reviewed his two expert reports and was questioned with respect to the proper use of the current service cost of the pension.
133. In Mr. Larson's evidence, he explained, in more detail, the different assumptions used in his 2014 current service cost determination compared to 2011. He testified that between 2011 and 2014, there was a change in the mortality table recommended by the Canadian Institute of Actuaries, which increased the liability for the plan by 5%. Mr. Larson also testified regarding the changes in discount rate, which again had a significant impact on the liability.
134. In his evidence, Mr. Larson confirmed, as he did before the Barnard Commission that the current pension plan for Judges in Saskatchewan is very comparable to pension plans of Provincial Court Judges in other provinces.
135. On November 6, 2014, Mr. Marshall testified before the Commission and was cross-examined by counsel for the Association. Mr. Marshall went through, in some detail, the analysis and conclusions in his report.
136. Mr. Marshall was questioned about the April 1, 2014 salaries listed in his Table 16 (Comparison of Judges Salaries to Other Canadian Provinces and Territories). Mr. Marshall confirmed that the salaries listed for six of the twelve provinces/territories are in fact 2012 or 2013 salaries. These salaries, as Mr. Marshall noted in the footnotes to his Table, are under review by various Provincial Commissions and therefore may be subject to retroactive adjustment.

## VI. COMMISSION ANALYSIS AND RECOMMENDATIONS

### A. Judicial Salary

#### (1) Judicial Independence – Role and Mandate of the Commission

137. The Commission has carefully considered the submissions of the Association, the Government and the interested parties. We have reviewed the reports of previous Commissions and the jurisprudence setting out the principles which are to guide our review and analysis.
138. We are particularly mindful of the direction provided by the Supreme Court in the *New Brunswick Reference*, that the focus of the Commission process is "**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 Commissions report. However, in the absence of reasons to the contrary, the starting point should be the date of the previous Commission's report." [Emphasis added.]
139. As a starting point, we find that the Judges' current remuneration exceeds the constitutional "minimum acceptable level" as required in the *Provincial Judges Reference* and the *New Brunswick Reference*. However, we do not accept the Government's position that since the "constitutional minimum" is met, only a cost of living increase is warranted.
140. The "minimum acceptable level" was described by Chief Justice Lamer in the *Provincial Judges Reference* case as a threshold below which "there is always the danger, however speculative, that members of the judiciary could be tempted to adjudicate cases in a particular way in order to secure a higher salary from the executive or the legislature or to receive benefits from one of the litigants. Perhaps more importantly, in the context of section 11(d), there is the perception that this could happen."
141. Chief Justice Lamer did not define what or how the minimum acceptable level of judicial remuneration is determined, noting the Court would answer that question if and when the need arises.
142. 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.
143. In the *New Brunswick Reference*, the Court stated:
- ... Therefore, the Commission's mandate cannot, as the Government asserts be viewed as being to protect against a reduction of judges' salaries below the adequate minimum required to guarantee judicial independence. The Commission's aim is neither to determine the minimum remuneration nor to achieve

maximal conditions. Its role is to recommend an appropriate level of remuneration. (Para. 67)

144. Judicial independence requires that an independent commission inquire, review and recommend an **appropriate** judicial salary. It is this independent, objective and effective review process and the proper consideration of the recommendations which flow from it, which ensures judicial independence is met.
145. The Commission's task is to review all relevant factors and recommend the appropriate salary.
146. Before the Barnard Commission 2005, the Government's position was that the current level of judicial remuneration greatly exceeded the constitutionally acceptable minimum and only minor adjustments were warranted. The Barnard Commission responded as follows:

With respect to the first point, the Commission agrees that the current level of remuneration exceeds the constitutionally acceptable minimum. The constitutionally acceptable minimum (a non-defined lowest acceptable standard) is only one of the myriad of factors that the Commission should take in to account in determining **an appropriate level of compensation**. [Emphasis added].

147. Similarly, the Zakreski Commission 2008 concluded that it "does not subscribe to the practice of allowing salary adjustments based solely on a Cost of Living factor." Lastly, the Hood Commission 2011 also concluded that despite the fact that current judicial salaries met the constitutionally acceptable minimum, an increase reflecting more than a cost of living increase was appropriate.

**(2) The Pension Plan**

148. The Commission agrees with the submission of the Government that the Judges' pension is a very generous plan and that its value must be considered by the Commission in determining the appropriate salary level.
149. The AON Hewitt report provides a reliable estimate of the annual cost to the Government to provide this pension benefit. However, the Judges' pension benefit itself did not change from 2011 to 2014. Accordingly, the change in the Government's current service cost 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 in 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.

**(3) Review and Analysis of Relevant Factors**

150. In determining our recommendations on the appropriate salary, we have considered a number of factors, including those set out below.

**a) Economic Climate and Fiscal Conditions in Saskatchewan**

151. Both the Association and Government agree that the economic conditions of the province are an important factor for the Commission to consider. The Association noted that in difficult financial times, Judges have been asked to share the burden (Vicq Commission 2002). Therefore, during times of prosperity the Judges should share in the resulting benefits.

152. The Association contends that the salaries earned by Judges pursuant to the Hood Commission do not, with the benefit of hindsight, reflect the substantial growth in Saskatchewan's economy during this same time period (2012-2014). Interestingly, the bulk of supporting information relied upon by the Association to support this point emanates from Government publications.

153. The Government acknowledges that Saskatchewan's economic and fiscal conditions are a relevant consideration for the Commission. However, the Government expressed caution about the future and the considerable uncertainty in how long the economy is sustainable at its current level.

154. On November 27, 2014, the Government published its Mid-Year Report providing an update on its 2014-2015 Budget. Counsel for the Government advised the Commission at the hearing on November 6, 2014, that updated financial projections would be published later in the month, which would take into account recent changes in the oil prices. Permission was sought to file the update, however the Association expressed concern with the filing of supplemental materials. The Commission suggested that once published, the Government should seek agreement with the Association to file the update, or seek leave from the Commission. The Commission received nothing further from the parties. The Mid-Year Report is a matter of public record and updates information previously filed with the Commission. The Report is relevant to the Commission's work and the Commission has therefore considered it.

155. In the Mid-Year Report, the Government confirms that Saskatchewan remains on track to post its projected budget surplus of \$70.9 million, despite the drop in oil prices. In releasing the report, the Finance Minister stated that the Saskatchewan economy remains strong despite the impact of falling oil prices on government revenues. The Mid-Year Report indicates that 2014 real GDP growth is expected to be 0.9 % as a result of a smaller 2014 crop. However, Saskatchewan's real GDP growth is forecast to improve to 2.3 % in 2015.

156. The Hood Commission concluded that the prevailing economic and fiscal conditions in Saskatchewan are a relevant factor and described them, in 2011, as good economic times for Saskatchewan.

157. We agree that Saskatchewan's economic conditions are a relevant and significant factor in determining appropriate remuneration for Judges. Compared to other provinces across Canada, Saskatchewan has enjoyed significant economic growth and, according to a number of Government and other pronouncements, it is expected that Saskatchewan's economy will continue to be one of the best in Canada.
158. We do not think that Judges have some "entitlement" to the economic benefits of a thriving economy and increased government revenue. Rather, the salary recommended for Judges should take into account the fact that the level and growth of salaries during strong economic times are generally greater than during poor economic times.
159. The Commission acknowledges the caution expressed by Government that there may be some uncertainty regarding future economic growth, particularly in light of the "plunge in oil prices" noted by the Government in its reply. However, this must be tempered by the numerous Government pronouncements cited to us regarding our province's future economic prospects. There has been no suggestion by Government that our province will be returning to the difficult economic times faced more than a decade ago, which would require curtailment of otherwise warranted salary increases due to the Province's dire fiscal situation.

**b) Provincial court workload**

160. The Association and the Government were in agreement that the current membership of the Provincial Court is extremely hard working and efficient.
161. The Association made a number of submissions regarding the difficult and stressful task of Judges and the increasing workload of Judges.
162. The Government's position is that increasing salary does not relieve a workload question. This should be an issue addressed by the Government and the Chief Judge by having more adequate resources. With respect to the increased complexity of work, the Government's position is that this is part of all aspects of the legal system and does not warrant increased salary.
163. The Hood Commission, as did previous Commissions, took note of the workload of the Provincial Court and acknowledged the work of dedicated Judges.
164. This Commission agrees 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.
165. The failure to consider Judges' efforts over time in determining the appropriate level of salary could prove to be a disincentive to Judges.



166. The Commission notes that the Provincial Auditor has made specific mention of the workload of the Court. We do not view the Association's request to consider workload as a substitute for dealing with resources but rather to reflect and reward a job well done.

**c) Recruitment and Retention**

167. Both the Association and Government agree that judicial salaries must be set at a level that will continue to attract highly qualified lawyers from both the private bar and the public service. Recruiting the best and brightest was mentioned by both the Association and the Government and there seemed to be no disagreement that this was one of the most important factors.

168. The Hood Commission concluded that there was, at that time, no difficulty in attracting the most qualified candidates with the existing compensation package, which includes a very generous pension. The Hood Commission found the Provincial Court Judges are not vacating their positions for greener pastures before retirement and there are no retention issues that result from the compensation package.

169. Salary is only one factor that attracts candidates to seek an appointment. Previous Commissions have noted five factors: (i) nature of work; (ii) prestige associated with being a Judge; (iii) security of position; (iv) desire for public office; and (v) the compensation and benefits package, which might influence applicants.

170. We agree with the Hood Commission that the current salary and remuneration package is and has been sufficient to recruit and retain the best and brightest applicants to the Court. The Commission agrees with the submissions of both the Association and the Government that the current Court has exceptional candidates from diverse backgrounds. We conclude that there has been no difficulty in ensuring an adequate number of applicants. The Commission cannot comment on the quality of applicants on the list, which is confidential. However, given the high quality of appointments in the last number of years, we conclude that there are sufficient high quality candidates applying for appointment to the Provincial Court.

171. It is also less than clear to the Commission, the extent to which an increase in salary will influence an applicant to apply.

172. Although we conclude that the salary does not need to be increased to address recruitment and retention concerns, we acknowledge the point made by the Association of the importance of ensuring that this Commission does a meaningful review and that prospective applicants are aware that judicial salaries are properly reviewed. One factor that will attract candidates is the legitimate expectation that the remuneration will be "regularly, meaningfully and effectively reviewed, and ultimately adjusted by the Government acting in good faith".

173. We do not necessarily agree that the primary consideration for recruitment and retention is to focus on crown lawyers, legal aid lawyers and private bar lawyers engaging in criminal law. The Government's submission is those practitioners are the prime pool of candidates for the Provincial Court. It is our view that the broader base of lawyers is the

appropriate pool. The difficulty is that there is no reliable evidence as to the salary levels of private practitioners outside of Legal Aid and Government.

174. The Commission concludes that it is important that salaries be meaningfully reviewed and adjusted to ensure confidence by prospective applicants that the independent commission process will properly adjust salaries as and when required. However, the Commission does not believe that any out of the ordinary adjustments are necessary to address the recruitment and retention issue.

**d) Salary Comparisons**

175. Both the Association and Government provided submissions on various salary comparators. Both expressed caution about relying too heavily upon Provincial Court salaries in other provinces. Rather, it is one factor to be considered and should be considered in light of the local economic and labour market realities. The Commission was urged not to rubber stamp national averages as that would be an abrogation of its responsibility. Also, both agreed that determining a national average is an elusive standard.
176. The Commission reviewed the submissions of both the Association and the Government with respect to Provincial Court comparators. We share the concerns that this is a difficult process given the different time frames and the ongoing reviews by other Provincial Commissions. The Commission is being asked to recommend salaries to 2018.
177. We note that a number of figures from other provinces are dated and subject to change. They do not provide much guidance for our recommendations for the years 2015-2018. We also note the differing conditions in the various provinces. Some provinces have different vacation days and workloads and as a result the annual salary does not necessarily reflect a proper comparator.
178. We conclude that there is no concern that the current salary enjoyed by Saskatchewan Judges requires a specific increase to ensure that it is in the appropriate range of salaries. We also conclude that the level of salaries of Judges of other Provinces and Territories does not preclude an otherwise justified salary increase in Saskatchewan.
179. We agree with the comments expressed by the Hood Commission regarding the challenges of making a salary recommendation that is prospective (in our case to 2018) on the basis of "static" national average information. As noted by the Hood Commission, given the fact that Judges' salaries in other provinces are a moving target due to the timing of commissions, the Commission ought to focus on projected salaries, rather than static salaries today. One of the factors mentioned by the Hood Commission as supporting an increase above the cost of living was to ensure that salaries did not fall behind the salaries of Judges in other Provinces.
180. In our view, if the salary increase for 2015 to 2018 was limited to a cost of living adjustment, there is a risk that by 2018, the salaries of Saskatchewan judges would fall behind the salaries of other judges across Canada.

181. We agree with the conclusion reached by the Hood Commission relating to the relevance of the remuneration of federally appointed judges. The Hood Commission found that these salaries are a factor that should be taken into consideration, not for the purposes 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 Provincial Court Judges.
182. As far as comparators of the Judges' salary to other industries, the Commission did not find the report or evidence of Mr. Marshall on this issue to be of any assistance.

**(4) Recommended Salary Increase**

183. The Commission recommends a salary increase in the amount of SCPI + 2% for each of the next three years. The Commission concludes that in addition to an adjustment for cost of living, an increase in the salary of judges is warranted. In our view, this will provide Judges with the appropriate salary taking into account all of the factors considered by the Commission and set out in this report. The Commission notes the following factors which it considered in arriving at this conclusion and in determining the appropriate level of increase:

- (a) 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;
- (b) The significant economic prosperity enjoyed by Saskatchewan since the date of the last Commission report (December 30, 2011) supports a salary increase. Saskatchewan has had one of the strongest economies in Canada, and has been a leader in many economic and growth measurements. Although economic growth slowed somewhat in 2014, it is forecasted to improve in 2015.
- (c) The recent strong growth of Saskatchewan's economy and the positive economic outlook must be tempered somewhat by the effects of the volatility of commodity prices and the uncertainties of the global economy. In making its recommendation, the Commission has taken into account the fact that the recent significant drop in oil prices will likely have some negative effect on Saskatchewan's economy.
- (d) An increase above the cost of living is warranted to ensure that the salary of Saskatchewan Judges continues to be in the top tier compared to other provinces and territories.

**B. Vacation Days**

184. The vacation entitlement for Provincial Court Judges has been set at 30 days since the first Provincial Court Commission in 1998.

185. The Association asked the Vicq Commission (2002) and the Zakreski Commission (2008) to increase the vacation days from 30 to 40.

186. In 2002, the Vicq Commission rejected the proposal stating:

The Commission is of the view that the current annual leave is appropriate when compared to National Provincial Standards and does not recommend an increase in the number of days.

187. In 2008, the Zakreski Commission again rejected the proposal stating:

The Commission was not persuaded to recommend any change in the vacation leave and believes that the current process of 30 days is fair and reasonable.

188. The Association did not make the request to the Hood Commission in 2011.

189. This Commission is not persuaded that there is a demonstrated need to increase vacation days as requested by the Association. We agree with the conclusions reached by the Vicq Commission in 2002 and the Zakreski Commission in 2008.

#### **C. Professional Allowance**

190. The Association has requested an increase of the professional allowance from \$3,650 to \$4,000 annually to keep it in line with inflation. The Government objects to the increase primarily on the grounds that the Government now pays for the cost of court robes as an expense directly.

191. This Commission agrees that the allowance should be increased to keep pace with the inflation notwithstanding the fact that the Government has covered an expense directly. This Commission recommends an increase to \$4,000 annually.

#### **D. Post-Retirement Benefits**

192. We note that the Vicq Commission (2002), the Barnard Commission (2005) and the Hood Commission (2011) all declined to recommend extension of health benefits.

193. This Commission concludes that it does not have the jurisdiction to recommend that current health benefits enjoyed by Judges be extended and payable upon their retirement.

194. Even if this Commission had the jurisdiction to do so, we are not convinced that this request is warranted.

## **E. Chief Judge Sabbatical**


195. This Commission does not recommend a sabbatical for the office of the Chief Judge. We note that this issue was raised before the Hood Commission (2011) which reached the same conclusion.

## **VII. SUMMARY OF RECOMMENDATIONS**

196. In summary, this Commission recommends as follows:
- i) For the period April 1, 2015 – March 31, 2016, the base salary of \$260,819 be adjusted by the increase in the All Items Saskatchewan Consumer Price Index (SCPI) as measured by the average annual increase between January 1, 2014 and December 31, 2014, that this adjustment not be less than zero and the resulting figure be further adjusted upward by an additional 2%.
  - ii) For the period April 1, 2016 – March 31, 2017, 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, 2015 and December 31, 2015, that this adjustment not be less than zero and the resulting figure be further adjusted upward by an additional 2%.
  - iii) For the period April 1, 2017 – March 31, 2018, 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, 2016 and December 31, 2016, that this adjustment not be less than zero and the resulting figure be further adjusted upward by an additional 2%.
  - iv) The administrative allowances for the Chief Judge, the Associated Chief Judge and the Judges with administrative duties remain the same as currently set out in the Provincial Court Compensation Regulations, namely Chief Judge (7.5%), Associate Chief Judge (5%) and Administrative Judge (2.5%) and Northern Judge (5%).
  - v) The remuneration for temporary Judges remain at a daily rate of 1/220 of the base salary of a judge.
  - vi) The professional allowance be increased from \$3,650 to \$4,000.
  - vii) There be no sabbatical for the office of the Chief Judge.
  - viii) There be no changes to the extended health care benefits provided to Judges.
  - ix) There be no change to the number of days of Judges' vacation leave.

This report contains the unanimous recommendations of this Commission.

DATED at Saskatoon, this 23<sup>rd</sup> day of December, 2014.



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Douglas C. Hodson, Q.C., Chairperson



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Michelle J. Ouellette, Q.C.

"Doug Frondall"

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Doug Frondall