



**REPORT AND RECOMMENDATIONS OF THE
2013 SASKATCHEWAN JUSTICE OF THE
PEACE COMPENSATION COMMISSION**

**PRESENTED TO
THE MINISTER OF JUSTICE AND ATTORNEY GENERAL AND
THE SASKATCHEWAN JUSTICE OF THE PEACE ASSOCIATION**

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**SASKATCHEWAN JUSTICE OF THE PEACE COMPENSATION
COMMISSION REPORT
DECEMBER 2013**

I. INTRODUCTION

A. Provincial Legislation

1. The current Justice of the Peace Compensation Commission (the “Commission”) was established pursuant to sections 10.1 to 10.8 of *The Justice of the Peace Act, 1988*, SS 1988-89, c J-5.1 (the “Act”), the recent amendments of which became effective July 15, 2013. This is the first Commission established pursuant to this legislation.

2. The mandate of the Commission is set out in ss. 10.1 to 10.3 of the Act, which authorizes the Commission to make two types of recommendations, some of which are compulsory and some permissive. Under s. 10.3(1)(a), this Commission is required to recommend the salary of a justice of the peace, the formula to calculate *pro rata* portions of that salary, and the amount of the government contribution to the pension plan. This Commission may also make recommendations with regard to benefits, but is not required to do so, as per s. 10.3(1)(b).

Interpretation

10.1 In sections 10.2 to 10.8:

“**association**” means the Saskatchewan Justice of the Peace Association; (« *association* »)

“**commission**” means the chairperson of a commission established pursuant to section 36 of *The Provincial Court Act, 1998*; (« *commission* »)

“**justice of the peace**” does not include a justice of the peace who is a court official; (« *juge de paix* »)

“**senior justice of the peace**” means a justice of the peace who is designated a senior justice of the peace in his or her order of appointment. (« *juge de paix supérieur* »)

Salary and pension benefits

10.2(1) Subject to subsections (4) and (5), the annual salary of a justice of the peace is the percentage of the annual salary of a judge of the Provincial Court of Saskatchewan that is prescribed in the regulations made by the commission.

(2) The annual salary of a justice of the peace is to be adjusted on April 1 of each year.

(3) The annual salary of a judge of the Provincial Court of Saskatchewan that is to be used to calculate and adjust the annual salary of a justice of the peace mentioned in subsection (1) is the annual salary of a judge of the Provincial Court as of April 1 of the year that precedes the year in which the calculation is being made.

(4) A Senior justice of the peace is to be paid a *pro rata* portion of the annual salary of a justice of the peace mentioned in subsection (1) for each day or half-day in which the Senior justice of the peace is engaged in his or her duties as a justice of the peace.

(5) A justice of the peace other than a Senior justice of the peace is to be paid a *pro rata* portion of the annual salary of a justice of the peace mentioned in subsection (1) for each hour in which the justice of the peace is engaged in his or her duties as a justice of the peace.

(6) Subject to subsection 10.8(4), the Public Employees Pension Plan established pursuant to *The Public Employees Pension Plan Act* applies to a Senior justice of the peace.

10.3(1) A commission:

- (a) shall inquire into and make recommendations with respect to:
 - (i) the annual salary of a justice of the peace mentioned in subsection 10.2(1);
 - (ii) the method of calculating the *pro rata* portions of the annual salary mentioned in subsections 10.2(4) and (5); and
 - (iii) the contributions to be made to the pension plan mentioned in subsection 10.2(6); and
- (b) may inquire into and make recommendations with respect to benefits to be provided to justices of the peace pursuant to regulations made pursuant to clause 15(d).

(2) A commission's recommendation with respect to the percentage mentioned in subsection 10.2(1) cannot result in an annual salary amount for justices of the peace that is less than the annual salary being received by justices of the peace on the day on which the report containing the recommendation is submitted to the minister.

...

Transitional

10.8

...

(4) A Senior justice of the peace who is a Senior justice of the peace on the day on which the first regulation enacted pursuant to section 10.7 comes into force becomes a member of the Public Employees Pension Plan on the day on which that regulation comes into force.

...

Regulations

15 The Lieutenant Governor in Council may make regulations:

...

(d) prescribing the benefits and fees to which justices of the peace are entitled;

...

3. These provisions, taken as a whole, provide the following instructions to this Commission. First, the annual salary of a justice of the peace (“JP”) is to be expressed as a percentage of the previous year’s annual salary of a judge of the Provincial Court of Saskatchewan. It will be adjusted each year to mirror the salary increases, if any, of Provincial Court judges (“PCJs”). Second, the method of calculating the *pro rata* portions of the annual salary as it applies to Senior justices of the peace (“Senior JPs”), and justices of the peace who are not court officials (“Junior JPs”), are also required. Third, pension contributions for Senior JPs must be determined, who will be enrolled in the Public Employees Pension Plan when the regulations come into effect. Last, this Commission may, but is not required to, make benefits recommendations. The difference between Senior and Junior JPs will be explained further in this report, but this Commission will refer to both groups as “JPs” unless the distinction is required to ensure clarity.

4. A preliminary point of clarification is also required. The Act also provides for the appointment of a supervising justice of the peace (the “Supervising JP”) by the Lieutenant Governor in Council, who sets this position’s remuneration and benefits by regulation, as per s. 3:

Supervising justice of the peace

3(1) The Lieutenant Governor in Council may appoint a justice of the peace as the supervising justice of the peace.

(1.1) A supervising justice of the peace appointed after the day this subsection comes into force holds office for a term of five years.

(2) Where the Lieutenant Governor in Council appoints a supervising justice of the peace, the Lieutenant Governor in Council shall make regulations prescribing the remuneration and benefits to which the supervising justice of the peace is entitled.

5. These sections have not been amended. The Supervising JP is not an included position under the new sections of Act and is therefore not under the purview of this Commission. It follows that this position's salary and benefits will continue to be prescribed according to s. 3 of the Act.

B. Membership of the Commission

6. The Commission is defined under section 10.1 of the Act:

“commission” means the chairperson of a commission established pursuant to section 36 of *The Provincial Court Act, 1998*; (« *commission* »)

7. Accordingly, the Justice of the Peace Compensation Commission is made up of one member, William F.J. Hood, Q.C., who is the current Chairperson of the Provincial Court Commission.

8. The term of this Commission expires on June 30, 2014.

C. Process

9. Advertisements calling for submissions to the Commission were placed in the Regina *LeaderPost* and the Saskatoon *StarPhoenix* on September 7, 2013. The advertisements indicated that the Commission would be receiving written submissions from interested parties in order to conduct an independent review of salaries and pensions of Justices of the Peace, retroactive to April 1, 2013.

10. The Commission was assisted by written submissions received from:

- Deputy Minister of Justice and Deputy Attorney General, on behalf of the Government of Saskatchewan (the “Government”);
- Chairperson of Compensation Subcommittee, on behalf of the Saskatchewan Justice of the Peace Association (the “Association”); and
- Neil Robertson, Q.C., private citizen.

11. Replies to the submissions were received from:

- the Government; and
- the Association.

12. The Commission was permitted to submit written questions to the Government and the Association after review of the above materials, as per s. 10.5 of the Act. On December 6, 2013, this Commission requested more information regarding pension, in particular with regard to the contributions to pension plans made by governments in the comparator jurisdictions. The Association replied on December 12, 2013. The Government replied on December 21, 2013.

13. These documents and other material can be found at: <http://www.jpcompensationcommission.ca>.

14. The Commission is required to provide its recommendations to the Minister of Justice within six months from the date the amendments to the Act were proclaimed in force (July 15, 2013). This report and corresponding proposed regulations to implement those recommendations are thus due on January 15, 2014, and applicable to the period commencing on April 1, 2013, as per s. 10.4(1) of the Act:

Commission reports

10.4(1) Within six months after the day on which this section comes into force, the commission shall prepare and submit to the minister and the association a report containing:

- (a) its recommendations with respect to the matters mentioned in clause 10.3(1)(a) for the period commencing on April 1, 2013; and
- (b) proposed regulations to implement those recommendations.

15. Further to the effective date of the Regulations, the Act contains a significant transitional provision in s. 10.8. The remuneration of JPs will be retroactively applied to the period between

April 1, 2013, and the coming into force of the new Regulations. Senior JPs will become a member of the Public Employees Pension Plan on the day the Regulation comes into force.

Transitional

10.8(1) In this section, “**transition period**” means the period commencing on April 1, 2013, and ending on the day on which the first regulation enacted pursuant to section 10.7 comes into force.

(2) During the transition period, a justice of the peace shall continue to be paid the fees and allowances set out in *The Justices of the Peace Regulations, 1989* in force on March 31, 2013.

(3) On the expiration of the transition period, each justice of the peace shall be paid an amount that is equal to the difference between:

- (a) the annual salary he or she would have earned during the transition period if the first regulation enacted pursuant to section 10.7 had come into force at the beginning of the transition period; and
- (b) the fees and allowances paid to that justice of the peace pursuant to subsection (2).

(4) A senior justice of the peace who is a senior justice of the peace on the day on which the first regulation enacted pursuant to section 10.7 comes into force becomes a member of the Public Employees Pension Plan on the day on which that regulation comes into force.

II. BACKGROUND AND CONTEXT

A. History

16. The office of the justice of the peace was created by 14th century English statutes (1326, 1 Edw. 3, st. 2, c. XVI; 1344, 18 Edw. 3, st. 2, c. II; and 1360, 34 Edw. III, c. I), and is therefore one of the most ancient judicial offices in the Anglo-Canadian legal system. As “keepers of the peace,” these appointees performed police, prosecutorial, and decision-maker roles. In later years, only the latter decision-maker function would be preserved. Adopted into Canadian law in the 18th century, the appointment of JPs was thereafter provided for by a string of provincial and territorial statutes, the current permutation of which is *The Justices of the Peace Act* in Saskatchewan.

17. Over the years, the authority wielded by the office of JPs has waxed and waned. In the 1960s, with the creation of the Provincial Court system, the powers of JPs were significantly

broadened. By the early-1980s, jurisdiction over traffic and municipal bylaw offences were also transferred from the Provincial Court judges to JPs. Thereafter, Supervision became the responsibility of the Chief Judge of the Provincial Court rather than Court Services in 1988, in recognition of the need to preserve their independent status from the executive and legislative branches of government.

18. This independent compensation commission is the latest development in Saskatchewan regarding the preservation of judicial independence as it applies to justices of the peace.

B. Jurisprudence

19. The Saskatchewan Provincial Court Judicial Compensation Commission Report, released in December 2011 (the “2011 Hood Commission Report”), acknowledged at considerable length the jurisprudence regarding the constitutional imperative of judicial independence. This Commission has referred to the explanation of the Supreme Court of Canada case law provided therein and provides a brief summary in this Report. Following the summary, the applicability of these principles to the office of JPs is discussed at length.

i. Judicial Independence and Compensation Commissions

20. In 1985, the Supreme Court of Canada, explained the right to an “independent tribunal” within the meaning of s. 11(d) of the *Canadian Charter of Rights and Freedoms* in *R v Valente*, [1985] 2 SCR 673. The Court concluded that the constitutional imperative of judicial independence, comprised of both individual and institutional aspects, demands that three essential components be present: security of tenure, financial security, and administrative independence.

21. The guarantee of judicial independence redounds “to the benefit of the judged, not the judges” (see La Forest J., dissenting, in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 SCR 3 at para 329). The benefits enuring to the members of the courts are purely secondary to the primary goal of ensuring that accused persons receive fair trials (*PEI Provincial Court Judges Reference*, *supra* at paras 9-10). The Supreme Court confirmed this point in *Ell v Alberta*, 2003 SCC 35 at para 29, and explained that the

components of judicial independence must be “interpreted in light of the public interests they were intended to serve.” Therefore, the test is whether “a reasonable and informed person, viewing the relevant statutory provisions in their full historical context, would conclude that the court or tribunal is independent” (*Ell, supra*, at para 32).

22. In *Valente, supra*, the Court focused on the financial security of individual judges, while in *PEI Provincial Court Judges Reference, supra*, the institutional dimension of independence was considered. In this regard, the Court determined that three components are necessary: an independent commission to enact changes in compensation, a strict prohibition against negotiation between the judiciary and the government, and a basic minimum level of remuneration to ensure public confidence. These requirements were confirmed again in *Provincial Court Judges Association of New Brunswick v New Brunswick (Minister of Justice)*, 2005 SCC 44 at para 8 (“*Bodner*”).

23. Judicial compensation commissions are therefore a constitutional imperative, providing the “institutional sieve which protects the courts from political interference through economic manipulation” (*PEI Provincial Court Judges Reference, supra* at para 189). This depoliticizing is achieved by ensuring that commissions are “independent, objective and effective” (*ibid* at para 147). Independence requires that members must be appointed by the judiciary and the government for a fixed term. Objectivity requires that recommendations must be based on submissions by the judiciary and the government. In order to ensure an effective process, the commission must be required, regularly convened, and have “a meaningful effect on the determination of judicial salaries” (*ibid* at para 174).

ii. Application to Justices of the Peace

24. The jurisprudence summarized above was primarily developed in the context of considering the remuneration of PCJs. However, for some time now, courts in Canada have also recognized that JPs exercise judicial functions that demand independence from the executive and legislative branches of government. As a result, the remuneration of JPs in many Canadian jurisdictions is now being handled by independent commissions mandated to make recommendations to their respective governments.

25. Whether JPs were entitled to the same level of protection as other judicial offices was a question that first arose before the courts in British Columbia, in *Re Independence of the Provincial Court of British Columbia Justices of the Peace*, 2000 BCSC 1470. Justice Sigurdson concluded that because JPs are the “face of the court” for many people charged with offences, a JP’s financial security must be protected by an independent, objective, and effective process.

26. The Supreme Court of Canada later commented on the important role of JPs in many Canadian jurisdictions in *Ell v Alberta, supra*. In this case, the Court considered a statutory amendment by the Alberta legislature which required a minimum qualification of five years related experience in order to hold office as a presiding JP in Alberta. As a result, certain JPs were removed from office owing to their lack of qualifications and subsequently brought an application alleging that the amendments interfered with the principles of judicial independence, particularly with regard to security of tenure. In the course of his judgment, Justice Major commented on the importance of the role of JPs in general:

5 The powers and authority of justices of the peace have waxed and waned over time and across the country. In many provinces, they have come to occupy a critical role as the point of entry into the criminal justice system, with jurisdiction over bail hearings and the issuance of search warrants. As a result of an increased recognition of their important functions, numerous commissions have issued reports describing problems with the office and making recommendations for change: see Hon. J. C. McRuer, *Royal Commission Inquiry Into Civil Rights* (1968), Report No. 1, vol. 2, c. 38 (“McRuer Commission”); A. W. Mewett, *Report to the Attorney General of Ontario on the Office and Function of Justices of the Peace in Ontario* (1981) (“Mewett Report”); J. E. Klinck, *Report of the Justice of the Peace Committee* (1986); the Manitoba Law Reform Commission, *The Independence of Justices of the Peace and Magistrates* (1991), Report No. 75 (“Manitoba Report”); and A. N. Doob, P. M. Baranek and S. M. Addario, *Understanding Justices: A Study of Canadian Justices of the Peace* (1991) (“Doob Report”).

6 These reports have invariably indicated a pressing need to improve both the independence and qualifications of justices of the peace. The McRuer Commission concluded, at p. 524, with regard to Ontario’s justices of the peace:

... the whole concept, that the office should stand as a safeguard of the civil rights of the individual against the exercise of arbitrary police power, is in many cases, and probably in most cases, little more than a sham. In saying this we do not want to be taken as condemning individuals. We are condemning a system under which many conscientious and dedicated individuals are required to work.

27. And later, Justice Major concluded that the principle of judicial independence applies to the office of justices of the peace:

24 In light of these bases of judicial independence -- impartiality in adjudication, preservation of our constitutional order, and public confidence in the administration of justice -- it is clear that the principle extends its protection to the judicial office held by the respondents. Alberta's non-sitting justices of the peace exercised judicial functions directly related to the enforcement of law in the court system. They served on the front line of the criminal justice process, and performed numerous judicial functions that significantly affected the rights and liberties of individuals. Of singular importance was their jurisdiction over bail hearings. Justices of the peace are included in the definition of "justice" under s. 2 of the *Criminal Code*, R.S.C. 1985, c. C-46, and the respondents were thereby authorized to determine judicial interim release pursuant to s. 515 of the *Code*. Decisions on judicial interim release impact upon the right to security of the person under s. 7 of the *Charter* and the right not to be denied reasonable bail without just cause under s. 11(e). Professor Friedland commented upon the importance of bail hearings in *Detention before Trial: A Study of Criminal Cases Tried in the Toronto Magistrates' Courts* (1965), at p. 172:

The period before trial is too important to be left to guess-work and caprice. At stake in the process is the value of individual liberty. Custody during the period before trial not only affects the mental, social, and physical life of the accused and his family, but also may have a substantial impact on the result of the trial itself. The law should abhor any unnecessary deprivation of liberty and positive steps should be taken to ensure that detention before trial is kept to a minimum.

The respondents were required to exercise significant judicial discretion in adjudicating on these matters.

25 The respondents also had the authority to issue search warrants, which impact upon the right to be secure from unreasonable search and seizure under s. 8 of the *Charter*. Sopinka J. described the effect of search warrants on the right to privacy in *Baron v. Canada*, [1993] 1 S.C.R. 416, at pp. 444-45:

Physical search of private premises ... is the greatest intrusion of privacy short of a violation of bodily integrity... .

Warrants for the search of any premises constitute a significant intrusion on the privacy of an individual that is both upsetting and disruptive.

In that case, the Court concluded at p. 439 that the issuance of search warrants constitutionally required discretion to be exercised by a judicial officer who remains independent from the state and its agents.

26 Each of the above judicial responsibilities makes clear that the respondents played an important role in assisting the provincial and superior courts in fulfilling the judiciary's constitutional mandate. The following conclusion of Professor Mewett on Ontario's justices of the peace is equally applicable to the respondents (Mewett Report, at p. 39):

... the Justice of the Peace is the very person who stands between the individual and the arbitrary exercise of power by the state or its officials. It is essential that an independent person be the one to determine whether process should issue, whether a search warrant

should be granted, whether and on what terms an accused should be released on bail and so on. This is a fundamental principle ... [that] must be zealously preserved.

28. While Justice Major did not comment specifically on the necessity of independent remuneration commissions for JPs, the requirement was later confirmed in *Bodner, supra*. This case involved four separate appeals, one of which arose in Alberta and had to do with a commission's recommendations for JPs. The Government of Alberta had argued that independent commissions were not necessary for JPs. Relying on the decision in *Ell, supra*, this argument was flatly rejected:

121 It was submitted by Alberta that the judicial independence of Justices of the Peace does not warrant the same degree of constitutional protection that is provided by an independent, objective commission. We disagree. As recognized in the Commission's report, at pp. 7-18, Justices of the Peace in Alberta exercise an important judicial role. Their function has expanded over the years and requires constitutional protection. See *Ell*, at paras. 17-27, *per* Major J. In any event, Alberta has already provided an independent commission process through the *Justices of the Peace Compensation Commission Regulation*. This process must be followed.

29. The latest debate involving JP remuneration has occurred very recently in Nova Scotia, where the Supreme Court of Nova Scotia considered provincial regulations that set the salary for JPs at 50% of the annual salary of PCJs: *Nova Scotia Presiding Justices of the Peace Assn v Nova Scotia (Attorney General)*, 2013 NSSC 40. Since an independent commission was in place for PCJs in Nova Scotia, it was anticipated that a regulation creating a link between the two groups of judicial decision-makers would release the province from the requirement of a separate independent commission for the remuneration of JPs. The issue for the Court was whether this approach was constitutionally adequate. The Court did not agree that such a percentage could be set by regulation without an independent process:

111 If not since the *Provincial Court Judges' Reference*, then since *Provincial Court Judges' Association of New Brunswick*, it is clear that a commission process of some kind was, to use Justice MacPherson's word, the lynchpin for judicial independence in relation to judicial remuneration. There is no lynchpin connecting the required independence of the presiding justices of the peace and their remuneration. However the exact mechanism is shaped by government, the commission process was "to become the forum for discussions, review and recommendations on issues of judicial compensation": *Provincial Court Judges' Association of New Brunswick*, para. 11.

112 A forum exclusively for one facet of the judiciary, such as the judges of the Provincial Court of Nova Scotia, cannot be the forum for a separate facet, the justices, except in peculiar circumstances, such as those of the two grandfathered masters in *Masters'*

Association of Ontario. We have a forum for discussions, review, and recommendations on issues of Provincial Court judges remuneration. We have no forum for discussions, review, and recommendation on issues of justices' remuneration.

113 The Provincial Court Judges' Remuneration Tribunal has no authority to, and does not, make recommendations on justices' remuneration. Their process may be independent, objective, and effective as regards the judges. However, it is not "representative" as regards the justices because they are not involved, it does not "objectively consider ... submissions" about the justices' remuneration because it has no authority to do so, and its work is not "effective" as regards the justices' remuneration because there is no consultative report on that subject.

114 There is no report to government about justices' remuneration. There is, therefore, no response from government on justices' remuneration and no opportunity to compel a response or to challenge an irrational response.

115 In short, the lynchpin is missing. Consequently, the independence of the justices is not assured. Therefore, the regulation setting remuneration for Nova Scotia's presiding justices of the peace is unconstitutional.

30. As per the newly enacted legislation in Saskatchewan, this Commission is mandated to express the salary of JPs in Saskatchewan as a percentage of the previous year's PCJ salary, and to consider the input of the Association and the Government. The process must be independent, objective, and effective.

iii. Factors for Consideration and Statutory Directions

31. Saskatchewan's legislation does not enumerate the factors that this Commission should consider. The only direction contained in the Act is in section 10.3(2), which is a prohibition against making a recommendation that would reduce the annual salary for JPs to an amount that is less than the annual salary being received by JPs on the day this recommendation is submitted to the Minister.

32. The Supreme Court of Canada has provided further guidance in this respect. In *Bodner, supra*, the Court elaborated on the function and role of judicial remuneration commissions, emphasizing the importance of a flexible process and contextual analysis. The work of previous commissions should be considered as part of that context. At para 17, the Court stated:

The commission must objectively consider the submissions of all parties and any relevant factors identified in the enabling statute and regulations. Its recommendations must result from a fair and objective hearing. Its report must explain and justify its position.

33. In *PEI Provincial Court Judges Reference*, *supra* at para 173, the Supreme Court suggested that “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” might be among those factors considered.

34. While previous commission reports usually provide specific guidance to current commissions, this Commission does not have the benefit of same because it is the first commission to consider JP salaries in Saskatchewan. Fortunately, several other jurisdictions in Canada have similarly mandated commissions for the remuneration of JPs. The following summary is a brief overview of the factors each commission considered, and the resulting salaries in terms of the relationship to PCJ salaries in that jurisdiction.

35. The latest compensation process for JPs in British Columbia was completed in 2010, and a process for 2013 is now underway. The British Columbia Judicial Justices Compensation Commission (the “2010 BC Commission”) is statutorily obligated by the *Judicial Compensation Act*, SBC 2003, c 59, s 5(5), to consider certain factors, including:

- (a) the current financial position of the government;
- (b) the need to provide reasonable compensation to the judges or judicial justices;
- (c) the need to maintain a strong court by attracting qualified applicants;
- (d) the laws of British Columbia;
- (e) any other matter the commission considers relevant.

36. In considering the second factor - the need to provide reasonable compensation - the 2010 BC Commission commented on salary comparisons of Judicial Justices of the Peace (“JJs”) to PCJs. In this regard, the Commission stated at paragraph 82:

The JJA’s [Judicial Justices Association of British Columbia’s] current proposal for remuneration would take the JJs salary in 3 years’ time to 56%, up from the present 43%, of the current PCJ pay, compared to the high water mark of 65% in 1978. A table of comparisons included by the JJA in their submission (p.11) showed that the relationship since 2000 has ranged between 38% and 48%. The JJ compensation increases recommended by the 2007 Commission were directly related, *inter alia*, to the Commission’s

concern to arrest what it concluded (p.38) was “the widening disparity between their pay and that of the judges of the Provincial Court, the only other persons who can perform their function”. In expressing its concern, the 2007 Commission confirmed the significance of the relationship between the salaries of the JJs and the PCJs. That relationship may be defined in percentage terms which will vary over time in the JJPCC [Judicial Justices of the Peace Compensation Commission] process, as we have noted. The ebbs and flows of the figures confirm the absence of a fixed or tied relationship, reflective of the duty of each Commission to consider the weight and relevance of the evidentiary factors dictated by s.5(5) of the Act.

37. In the result, the 2010 BC Commission’s recommendations mirrored the recommendations of the commission for PCJs in British Columbia. They recommended a two-year salary freeze (at 43% of the PCJ salary), with an 8% increase in the third year. However, the Government of BC rejected all of the 2010 BC Commission’s recommendations that would result in any increase to the remuneration or benefits of JPs, with the exception that full-time judges would eventually be enrolled in the flexible benefits program available to other public service employees. Essentially, the compensation of JPs in British Columbia was not changed for the period between 2010 and 2014. Therefore the actual salary paid to JPs in BC was \$99,525.00 in 2013/2014, or 43% of the previous year’s salary of a PCJ.

38. In Alberta, the Justice of the Peace Compensation Commission is also statutorily mandated to consider certain factors under the *Justices of the Peace 2009 Compensation Commission Regulation*, Alta Reg 111/2012, s 13:

- (a) the constitutional law of Canada;
- (b) the need to maintain the independence of the justices;
- (c) the unique nature of the role of justices;
- (d) the need to attract qualified applicants;
- (e) the compensation other justices of the peace in Canada receive;
- (f) the growth or decline, or both, in real per capita income;

- (g) the need to provide fair and reasonable compensation for justices in light of prevailing economic conditions in Alberta and the overall state of the economy, including the financial position of the Government;
- (h) the Alberta cost of living index and the position of the justices relative to its increases or decreases, or both;
- (i) the nature of the jurisdiction of justices;
- (j) the level of increases or decreases, or both, provided to other programs and persons funded by the Government;
- (k) any other factors considered by the Commission to be relevant to the matters in issue.

39. In 2000, the Alberta Justice of the Peace Compensation Commission recommended that compensation for JPs should be set at two-thirds of a PCJ salary, but the Government set it much lower than this recommendation, at closer to 50% of a PCJ salary. Thereafter, the 2006 Alberta Commission recommended salary increase that mirrored the increases given to PCJs. That recommendation was accepted by the Government with the result that the 50% (or thereabouts) relationship was maintained until 2008. The 2009 Compensation Commission process in Alberta is currently pending and its latest report, which will recommend salaries for JPs that are retroactive to 2008, has not yet been released to the public at the time of writing this report.

40. The Province of Ontario also has also established an independent compensation commission for JPs. Statutorily mandated considerations in that jurisdiction under the *Justices of the Peace Remuneration Commission*, O Reg 319/00, s 7, include:

- (a) The laws of Ontario.
- (b) The need to provide fair and reasonable remuneration to justices of the peace.
- (c) The economic conditions in the province, as demonstrated by indicators such as the provincial inflation rate.

- (d) Recent Ontario public sector compensation trends.
- (e) The growth or decline in per capita income.
- (f) The financial policies and priorities of the Government of Ontario.
- (g) The principles of compensation theory and practice in Canada.
- (h) The parameters set by any joint working committees established by the parties.
- (i) Any other factor the Commission considers relevant.

41. The most recent commission in Ontario (2007) noted that the current salary for PCJs was three times that of a presiding JP. While the importance of the work of JPs was acknowledged, that commission emphasized the “very real difference” between the qualifications and work performed by JPs and PCJs (see page 4 of the 2007 Report). In 2010/2011, a JP in Ontario made 46.8% of the salary received by a PCJ the previous year.

42. Quebec’s remuneration of JPs represents the high watermark in Canada. Recently, the Comité de la rémunération des juges released their latest report on October 30, 2013, with recommendations for salaries for 2013/2014. The committee recommended a 15.7% increase to \$140,100.00 for the annual salary of a JP. PCJs also received an increase to \$238,337.00. When compared with the previous year’s salary of a PCJ (\$230,723.00), the rate reflects a 60.7% relationship. It must be remembered that this is a recommendation only and has not been implemented by the Government of Quebec. In 2012/2013, JPs received a salary of \$121,091.00 or 53.2% of the salary of a PCJ in the previous year.

43. The remaining jurisdiction in Canada that currently has an independent commission for the compensation of JPs is the Yukon. In addition to many of the above-noted factors, the Yukon Commission is statutorily mandated to consider the “unique nature of the Yukon” (*Territorial Court Act*, RSY 2002, c 217, s. 19(d)). Further, the statute cites certain provinces and territories as specific comparators, namely Northwest Territories, British Columbia, Alberta, and Saskatchewan (*ibid*, s. 19(e)). Yukon JPs received a salary of \$126,941.00 in 2012/2013, which was 52.3% of the PCJ salary in 2011/2012.

44. In short, Commissions setting the remuneration of JPs have focused on the overall objective of protecting judicial independence, a component of which is financial security. Factors for consideration have included economic trends and realities, the need to recruit and retain qualified applicants, comparisons to public sector employees and other JPs in Canada, the unique role of JPs, the financial situation of the government, and any other factor deemed relevant by the Commission. The relationship between JP and PCJ salaries in Canada appears to range from 43% to 53% in jurisdictions where independent commissions have been established.

45. Even in jurisdictions where independent commissions have not been established, remuneration of JPs has been set within this range. In Nova Scotia, the percentage was set at 50% by the *Justices of the Peace Regulations*, NS REg 51/2002, s 10. In Manitoba, the JP salary has been set at 43% by the *Justice of the Peace Regulation*, Man Reg 117/2006, s 3. As noted above in the jurisprudence section, the approach in these jurisdictions has recently been questioned by the courts.

46. Remaining jurisdictions in Canada include New Brunswick, Newfoundland & Labrador, Prince Edward Island, Northwest Territories, and Nunavut. These provinces and territories do not provide useful comparators because they either do not have similarly empowered JPs at all, or they appoint a small number of part-time JPs on a fee-for-service or hourly basis, which is set by regulation by their respective governments.

C. Justices of the Peace in Saskatchewan

47. There are approximately 142 JPs located in communities throughout the Province of Saskatchewan at present. Their average age is 57 years, with 80% of JPs being 50 years or older. Approximately 44% of JPs are female. JPs come from a variety of backgrounds, including business owners, accountants, financial planners, teachers, university professors, social workers, pharmacists, lawyers, firefighters, police officers, and conservation officers.

i. Qualifications and Appointment Process

48. Under the Act, only residents of Saskatchewan can be appointed as a JP in Saskatchewan (s. 4). The Act also provides that certain persons are not eligible, including employees of the

Government of Saskatchewan or a Crown corporation, employees and members of the Royal Canadian Mounted Police or any municipal police service, members of a board of police commissioners, members of the Corps of Commissionaires, and elected members of municipal councils (see s. 6 of the Act). During the term of office of a JP, they are restricted from practicing criminal law, from acting as legal counsel for or against the Government of Saskatchewan or Government of Canada, and from being in a position of conflict generally (see s. 5). A JP in Saskatchewan may resign his or her office at any time, but is required to retire at age 70, according to s. 8 of the Act.

49. There is no formal requirement for legal qualifications under the Act. In practice, however, certain Senior JPs are only appointed if they have a law degree and preference is given to candidates with significant knowledge of and experience within the judicial system. This generally means that lawyers are the prime candidate group for Senior JPs.

50. The selection process is based on an interview process before a hiring panel and a practical skills assessment. According to the website of the Office of the Supervising JP, who is responsible for identifying suitable candidates to the Minister for appointment, applicants must have the ability to exercise sound, independent judgment and uphold the rule of law. They must have strong analytical and conceptual skills, excellent communication skills, and the ability to accurately reference and appropriately apply a variety of provincial and federal legislation.

ii. Classifications and Duties

51. According to *The Justices of the Peace Regulations, 1989*, RRS c J-5.1 Reg 1 (the “Regulations”), there are four categories of JPs.

52. The Supervising JP is a full-time position, responsible for the administration of all matters relating to JPs, including identifying applicants for appointment, training, complaints and conduct issues, management of the central hub in Regina (the “Regina Hub”), as well as handling budget matters and policy development. The Lieutenant Governor in Council appoints the Supervising JP, and prescribes remuneration and benefits by regulation. This position’s salary and benefits are not under the purview of this Commission, as noted at the outset of this Report.

53. The other three categories of JPs in Saskatchewan, as stipulated by the Regulations in s. 10(1), include:

- (a) senior justices of the peace;
- (b) justices of the peace who are not court officials; and
- (c) justices of the peace who are court officials.

54. Notwithstanding that this Commission's mandate is only to determine the salaries of JPs who fall into categories (a) and (b), an explanation of the duties of each category is necessary to understand their respective roles. The Regulations are helpful in this regard.

55. Sections 11 and 12 of the Regulations prescribe the duties and functions of each category of JPs. Those with restricted powers are referred to in the Regulations as justices of the peace who are court officials ("Court Officials"). Justices of the peace who are not court officials (defined above as "Junior JPs") have a wider scope of power, and senior justices of the peace (defined above as "Senior JPs") have the broadest authority.

56. Court Officials, who do not perform judicial functions, are expressly restricted to the duties and powers prescribed under the Regulations. Their powers are enumerated in the Regulations in section 12. The duties mostly involve issuing and endorsing orders of the court, administering oaths and swearing informations. It is important to note that they do not perform judicial decision-making duties. Salary recommendations for them do not form part of this Commission's mandate.

57. Junior JPs are granted their authority under section 11 of the Regulations (reproduced below), which state that they are permitted to perform duties conferred on them by the common law, provincial and federal legislation, and municipal bylaws. The Regulations also permit them to grant adjournments for any proceeding, and they may accept guilty pleas and impose sentencing on summary conviction offences. However, they are not permitted to preside at trials of offences under provincial and federal statutes and regulations, nor are they permitted to conduct preliminary inquiries under the *Criminal Code*, RSC 1985, c C-46. If the competency of

an accused to conduct a defence or their fitness to stand trial is at issue, a Junior JP may not exercise any jurisdiction over the matter.

58. In terms of duties under the *Criminal Code*, Junior JPs are granted a variety of powers affecting the constitutional rights of individuals. For example, after an information is filed, a Junior JP is permitted to issue process to summon or arrest an accused (ss. 504, 507 & 788). They also frequently decide bail applications (s. 515) and issue search warrants (ss. 487 – 490). Similar powers of arrest warrants, bail applications, and search warrants can be found in *The Summary Offences Procedure Act, 1990*, SS 1990-91, c S-63.1, which provide support for the investigation and prosecution of offences under provincial laws.

59. Junior JPs are also empowered to provide emergency protection to vulnerable persons under *The Victims of Domestic Violence Act*, SS 1994, c V-6.02, and *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*, SS 2002, c E-8.2. They may make release decisions for impounded motor vehicles where there is suspicion of involvement with offences related to prostitution (see *The Traffic Safety Act, 1988*, SS 1988-89, c T-19.1, ss. 180-81). One rather antiquated common law power is the ability of a JP to bind an individual to keep the peace (see *Stevenson v Saskatchewan (Minister of Justice)* (1987), 61 Sask R 91 (SKQB)).

60. A Senior JP is empowered to perform all of the above functions, but is also permitted to preside at trials pursuant to provincial and federal acts and regulations, with the exception of proceedings under the *Criminal Code*. One such example is the power to conduct trials under *The Traffic Safety Court of Saskatchewan Act, 1988*, SS 1988-89, c T-19.1, ss. 7-8, or under a municipal by-law. Another is the ability to conduct small claims trials under *The Small Claims Act, 1997*, SS 1997, c S-50.11, s 2.

61. Section 11 of the Regulations prescribe the duties as outlined and differentiated in the above paragraphs:

Duties of a justice of the peace

11(1) Subject to subsection (2), a justice of the peace who is not a court official may perform the duties and exercise the powers that have been conferred on a justice of the peace by:

- (a) common law;

- (b) an Act or regulations;
 - (c) an Act of the Parliament of Canada or any regulations made pursuant to an Act of the Parliament of Canada; or
 - (d) a municipal bylaw.
- (2) A justice of the peace shall not:
- (a) subject to subsection (4), preside at a trial of an offence pursuant to an Act, regulation, Act of the Parliament of Canada or regulation made pursuant to an Act of the Parliament of Canada;
 - (b) conduct a preliminary inquiry pursuant to the *Criminal Code*; or
 - (c) exercise any jurisdiction pursuant to the *Criminal Code* if the competency of the accused to conduct a defence or his or her fitness to stand trial is at issue.
- (3) Subsection (2) does not preclude a justice of the peace from:
- (a) granting an adjournment of any of the proceedings mentioned in subsection (2); or
 - (b) accepting a guilty plea from and sentencing an accused charged with an offence punishable on summary conviction.
- (4) A Senior justice of the peace may, in addition to performing the duties and exercising the powers of a justice of the peace who is not a court official, preside at a trial or other proceeding pursuant to:
- (a) an Act;
 - (b) a regulation made pursuant to an Act;
 - (c) an Act of the Parliament of Canada, other than the *Criminal Code*; or
 - (d) a regulation made pursuant to an Act of the Parliament of Canada.

iii. Current Salaries

62. Presently, there is considerable variation with regard to how JPs are remunerated in Saskatchewan. Some JPs are salaried, and some receive stipends or are paid by the hour. Most are paid on a fee-for-service model. Additionally, certain groups of JPs are referred to in practice with terminology that does not obviously correspond with the general categories enumerated in the Regulations. The following is a summary of the current categories of JPs, the

remuneration models that apply, and the way in which these groups correspond with the categories in the Regulations.

63. The great majority of JPs, approximately 104 in number, are paid on a fee-for-service basis, prescribed in detail in the Regulations (see s. 6(1)) as follows:

- (a) for swearing an information, \$2.00;
- (b) for confirming or cancelling an appearance notice, promise to appear or recognizance, \$2.00;
- (c) for considering an information to obtain a search warrant, \$6.00;
- (d) for hearing and determining proceedings, including a charge, adjournment, adjudication or interdiction, \$6.00;
- (e) for considering each summons, affidavit of service, subpoena to a witness, warrant for arrest, warrant of committal on conviction, undertaking given to a justice, recognizance, report to a justice, probation order or notice to parent, \$2.00;
- (f) for hearing and determining a remand for a show cause hearing, \$10.00;
- (g) for hearing and determining a bail application during the period commencing at 6 a.m. and ending at 6 p.m. on the same day, \$10.00;
- (h) for hearing and determining a bail application during the period commencing at 6 p.m. on one day and ending at 6 a.m. the following day, \$20.00;
- (i) for considering an information to obtain a warrant pursuant to section 11 of *The Victims of Domestic Violence Act*, \$6;
- (j) \$10 for hearing and determining an application for an order that authorizes substitutional service of an emergency intervention order pursuant to:
 - (i) section 13 of *The Victims of Domestic Violence Regulations*; or
 - (ii) section 9 of *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*.

64. These JPs may also perform work that is paid by the hour. When covering Provincial Court for non-criminal matters in circuit locations, they receive \$25.00 per hour (s. 7(a)):

Fee for summary jurisdiction matters

7 The fee payable to a justice of the peace who hears and determines guilty pleas and other summary jurisdiction matters:

(a) in the place of a provincial court judge because that provincial court judge is unable to appear at the hearing is \$25 for each hour or part of an hour that the justice of the peace performs these functions; and

...

65. Whether working on a fee-for-service basis or covering Provincial Court on an hourly rate of pay, these JPs are commonly referred to as Community JPs and reside mostly in smaller communities in Saskatchewan. Community JPs are Junior JPs and are empowered accordingly.

66. There are also 26 Junior JPs, most of whom are referred to as Stipend JPs and work on a call-in basis in five major communities (Regina, Saskatoon, Prince Albert, Moose Jaw, and North Battleford). They are on call around the clock for one week at a time on rotations. Some of these Stipend JPs are further classified as VDVA Justices because they handle emergency intervention orders under *The Victims of Domestic Violence Act, supra*, and *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act, supra*. Stipend JPs are paid a weekly stipend of \$400.00 for each week they are on call (or \$57.00 per day), according to the Regulations (s. 6(4)):

(4) Notwithstanding subsection (1), a justice of the peace performing duties in Prince Albert, North Battleford, Moose Jaw, Regina or Saskatoon in accordance with the duty roster is to be paid either:

(a) a weekly stipend of \$400.00; or

(b) \$57.00 for each day or part of a day duties are performed.

67. Other Junior JPs perform shift-work at the Regina Hub and are referred to as Hub JPs when working in this capacity. They provide services by telecommunication to forty-six communities in Saskatchewan. In some of these communities, the Hub JPs are the primary method of service provision, while in others they are the secondary method of service if a Community JP is unavailable. Hub JPs are available every day of the week, and throughout the night on a stand-by basis for urgent requests. Currently, two Hub JPs work the equivalent of

full-time hours. They work in eight-hour shifts (with a 1 hour lunch break) at a rate of \$25.00 per hour for day and evening shifts, and \$57.00 for an entire night shift on stand-by. It appears to this Commission that the rate of pay for Hub JPs is not specifically expressed in the Regulations, but combines the hourly rate and stipend daily rate of Community and Stipend JPs respectively.

68. Finally, there are 12 Senior JPs in Saskatchewan at the present time. The Supervising JP and the Assistant Supervising JP are paid for full-time work at \$100,268.00 and \$83,200.00 per year, respectively. In addition to their administrative duties, they also serve as back up for Senior JPs. As mentioned, the Supervising JP's salary is not under the purview of this Commission. However, the Assistant Supervising JP is a position that was created administratively, not by the Act. The Association informs this Commission, however, that this position is being filled by an existing Senior JP. It follows that this position's salary will be recommended by this Commission, unless an amendment is made to the Act.

69. Two full-time Traffic Safety Court JPs receive a salary of \$95,268.00 per year, as prescribed under the *Traffic Safety Court of Saskatchewan Regulations*, RRS c T-19.1 Reg 1, s 3. Working out of Regina, Saskatoon, and Prince Albert, they preside over provincial regulatory offences and municipal bylaw offences. Presently, these two positions are vacant and the duties are being back-filled by Senior JPs in an acting capacity, a situation that has been ongoing for several years.

70. Six Municipal Bylaw JPs, located in Regina and Saskatoon, preside over many violations under municipal bylaws (described as "non-moving" violations by the Association in their submission; e.g. noise control, building standards, and animal control). These JPs earn \$40.00 per hour. All work on a part-time basis.

71. Two part-time Case Management JPs conduct case management conferences in small claims proceedings in Regina, and are also paid at the hourly rate of \$40.00. They make pre-trial judicial orders for such things as production and discoveries, as well as issuing default and consent judgments, awarding costs, and dismissing claims when limitation periods have been exceeded.

72. It appears to this Commission that the rates paid to Municipal Bylaw and Case Management JPs flow from s. 7(b) of the Regulations:

Fee for summary jurisdiction matters

7 The fee payable to a justice of the peace who hears and determines guilty pleas and other summary jurisdiction matters:

...

- (b) in his or her capacity as a senior justice of the peace is \$40 for each hour or part of an hour that he or she performs these functions.

iv. Current Benefits

73. While this Commission is not authorized to recommend benefits received by the Supervising JP, the information is helpful to provide context. The Supervising JP is entitled to annual leaves, vacation time, 12 scheduled days off (“SDOs”), statutory holidays, sick leave, expenses away from home, as well as a pension plan, life and disability insurance, and extended health care and dental plans (see ss. 14.1 to 14.8 of the Regulations).

74. The Traffic Safety Court JP positions also have provisions that provide similar benefits. However, this Commission is informed that since the duties of these two positions are currently being performed by two Senior JPs in an acting capacity, they do not reap any of the benefits allocated to the positions.

75. Nonetheless, the benefits prescribed by these regulations are informative. The *Traffic Safety Court of Saskatchewan Regulations*, *supra*, ss. 3 – 14, stipulate vacation time, statutory holidays and 12 SDOs per year. Sick leave accrues at a rate of 15 days a year. These regulations provide for moving expenses, travel expenses, as well as group life insurance, extended health care, disability, and dental plans. Finally, a Traffic Safety Court JP would be enrolled in the Public Employees Pension Plan (“PEPP”).

76. Two provisions under the Regulations prescribe benefits for all JPs. They receive an allowance for travel in accordance with government employee rates (including reasonable accommodation and meal expenses), and a training allowance of \$50 per day of training (see ss. 5 & 5.1). This amounts to a rate of \$6.25 per hour of training.

77. With the exception of the provision for expenses away from home and the training allowance, Junior and Senior JPs in Saskatchewan generally do not receive additional benefits at present.

III. SUBMISSIONS

A. The Government

78. Kevin Fenwick, Q.C., Deputy Minister of Justice and Deputy Attorney General for the Government of Saskatchewan, made written submissions on behalf of the Government.

79. The Government made proposals on all compulsory recommendations, but did not make proposals on the advisory recommendations regarding benefits.

i. Jurisprudence

80. In addition to much of the jurisprudence cited and summarized above in this Report, the Government emphasized three additional observations about this process.

81. First, the Government emphasizes that recommendations of this Commission are not the equivalent of a compulsory directive (at 6). For this assertion, the Government cites Chief Justice Lamer (as he then was) in the *PEI Provincial Court Judges Reference*, *supra* at para 176, where he wrote:

My starting point is that s. 11(d) does not require that the reports of the commission be binding, because decisions about the allocation of public resources are generally within the realm of the legislature, and through it, the executive. The expenditure of public funds, as I said above, is an inherently political matter.

82. Second, the Government asserts that salary increases are not automatic (at 8). Relying on *Bodner*, *supra* at para 76, the Government argues that the Supreme Court appears to have accepted that the independent commission process does not necessarily mandate a salary increase.

83. Third, the Government asserts that this Commission's recommendations with regard to benefits are advisory only and, accordingly, the Government has complete discretion whether to

accept them or not (at page 15 of the Government's Submission). More on this assertion of the Government is included in this report's analysis section.

ii. Salary

84. The Government submits that 42% of the previous year's PCJ salary is more than enough to satisfy the requirements of financial security for Saskatchewan JPs, as it would result in a salary of \$104,164.00. Such an amount would ensure that JPs are not susceptible to financial influences from any litigant, would attract qualified applicants, and would retain experienced JPs.

(a) Full economic analysis not necessary

85. The Government submits that a thorough economic analysis, as it submitted to the 2011 Hood Commission, is not necessary for this Commission to consider. Since the salary for JPs will increase at the same rate as the salary for PCJs, there is no need for this Commission to consider factors such as the provincial GDP, inflation, and cost of living in Saskatchewan.

(b) Substantial increases

86. The new compensation model will result in a substantial increase for all JPs, but particularly for those JPs who were previously paid on a fee-for-service basis.

87. In the 2012-2013 fiscal years, the Government calculates that it paid 106 Community JPs serving at the time a total of \$155,000.00 for their services. On average, a Community JP earns \$122.00 per month, or \$1,462.00 per year. Of course, depending on the amount of work they do, this figure could vary significantly for each individual JP. While the Government acknowledged that it is impossible to determine the exact amount, it estimates that a seven-fold increase of expenditure will result if the Government's submission is implemented (approximately \$1.1 million, up from the current \$155,000.00 per year).

88. In addition, the Government estimates that JPs currently receiving stipends or hourly rates of pay will receive increases ranging between 9.3% for Traffic Safety JPs, 25.2% for the Assistant JP, and 47.5% for JPs who are paid on an hourly basis.

89. In total, the Government estimates that the shift to this salary-based remuneration structure will increase current expenditures in this area by \$1.9 million if the Government's proposal is implemented.

(c) Appropriate comparators: public sector employees

90. Referring to recruitment information on publicly accessible websites, the Government compares the proposed JP salary to police officers. In 2013, Royal Canadian Mounted Police (RCMP) officers received remuneration ranging from \$80,498.00 for a constable of two-year's experience to \$105,045.00 for staff sergeants, sergeant major, and corps sergeant majors. The Regina Police Service, since December 31, 2011, has paid salaries to constables ranging from \$50,190.00 to \$92,029.00, depending on their year of service. Pay-grades increase to a maximum of \$110,429.00 for staff sergeants. The Saskatoon Police Service is similarly situated, with first-year constables starting out at a salary of \$46,719.12, and increasing steadily by year of service to \$93,438 for constables of 17 years of service.

91. The salaries of lawyers who work for Saskatchewan's Ministry of Justice are also used as comparators in the Government's submission. Crown Counsel lawyers receive salaries that range between \$76,782.00 and \$120,858.00, according to their year of call. Normally, Crown Counsel lawyers would transition to Senior Crown Counsel after eight years from date of call, and would thereafter receive between \$119,695.00 and \$147,945.00.

92. Similarly, lawyers who work for the Saskatchewan Legal Aid Commission start at \$74,792.00 with increases to a maximum of \$134,923.00 after 12 years of service.

93. The Government suggests that the proposed salary for JPs (\$104,164.00) is appropriate when compared to these groups, given the position of JPs within the justice system. Since police officers appear before JPs, it is appropriate that JPs earn more than the majority of police officers. Since JPs are not required to have any legal qualifications, the similarity of the proposed salary to the median salary of government-employed lawyers is also comparatively appropriate.

(d) JP salaries in other jurisdictions

94. According to the Government, comparing JPs in Saskatchewan to JPs in other jurisdictions in Canada is not particularly helpful because there is considerable diversity with respect to duties and remuneration models.

95. For example, New Brunswick and Newfoundland & Labrador do not appoint JPs at all. Prince Edward Island has one salaried supervising JP, with the remainder paid on a fee-for-service basis. Nunavut and Northwest Territories employ JPs at an hourly rate only, which is set by regulation by the Commission in Executive Council.

96. There are also two provinces (Nova Scotia and Manitoba) that have regulations which set JP salaries as a percentage of PCJs, but neither province has done so by way of an independent commission process. As noted above in this report, Nova Scotia's unilaterally determined and enacted regulation was recently rejected as unconstitutional because the Nova Scotia Government did not refer the matter to an independent commission. Similarly, Manitoba JP salaries are set by regulation by the Lieutenant Governor in Council, although this approach has not been challenged formally in Manitoba. Nonetheless, the Government acknowledges that the decision out of Nova Scotia casts doubt on the approach in Manitoba.

97. British Columbia, Alberta, Ontario, Quebec, and Yukon all have independent commissions for the remuneration of JPs. However, the Government notes that the legal qualifications required in Alberta and British Columbia are somewhat higher than Saskatchewan. Alberta requires JPs to have a law degree and five years' experience at the bar. In British Columbia, the same qualifications are required of those JPs who preside over trials.

98. A chart was submitted by the Government, offering a comparison of current JP salaries to PCJ salaries in those provinces that have an independent commission, or use a set percentage. In presenting this chart, the Government acknowledges that there are ongoing commission processes in Alberta, Ontario, Quebec and Yukon, which may be released before this Commission is due to make its recommendations. Such recommendations may result in retroactive increases to these current salaries. In addition, the Government notes that Manitoba's percentage value is 44% in this chart rather than the 43% stipulated by regulation. This is

because the data has been shifted by one year to reflect the instruction in Saskatchewan's Act to compare the current JP salary with the previous year's PCJ salary.

COMPARATIVE TABLE OF JUSTICE OF THE PEACE SALARIES			
Province	JP Salary 2013-2014	JP Salary as % of Provincial Court Salary, as of April 1, 2012	Provincial Court Salary, as of April 1, 2012
Alberta	\$110,000	42%	\$263,731.20
British Columbia	\$99,525	43%	\$231,138
Manitoba	\$98,967	44%	\$224,104
Nova Scotia	\$108,091	50%	\$216,182.80
Ontario	\$116,123	43%	\$267,355
Quebec	\$121,091	52%	\$230,723
Yukon	\$126,941	51%	\$250,103
National Averages:	\$111,162	46%	\$240,477
Western Averages:	\$102,831	43%	\$239,658
Saskatchewan Proposal	\$104,164	42%	\$248,010

99. The Government makes two points with regard to these figures. First, Saskatchewan's PCJ salary is the fourth highest in Canada. Second, the Government's salary proposal for JPs would result in a salary that is the second highest in western Canada (i.e. compared to British Columbia, Alberta, and Manitoba). The Government perceives the western province comparator as particularly significant given the legal training and experience that is required in Alberta and British Columbia, but not in Saskatchewan.

iii. Calculation of Daily and Hourly Rates

100. With regard to the method of calculation for JPs paid on a daily or hourly rate, the Government submits a simple calculation based on the approximate number of working days in a year. It bases this calculation on that which was determined for Provincial Court temporary judges, as recommended by the Provincial Court Compensation Commissions of 2005, 2008 and 2011, and enacted in *The Provincial Court Compensation Regulations*, RRS c P-30.1 Reg 2, s. 3(5). The Government suggests that the recommendations of these previous commissions should be given considerable weight in keeping with the Supreme Court's instructions in *Bodner, supra* at para 15. The decision at issue, it says, is exactly the same.

101. The number of working days was arrived at by these previous Provincial Court Commissions by adding up the total of non-working and vacation days, and then subtracting that number from 366 (total days in a leap year):

- 104 weekend days;
- 10 public holidays;
- 2 additional Saskatchewan public service employee holidays; and
- 30 vacation days (based on the PCJ allocation).

Since there are a total of 146 non-working days in a year, there are 220 working days per year. The rates for half-days and hours, based on a standard 8-hour working day, follow suit.

iv. Pension Contributions for Senior JPs

102. Finally, the Government proposes pension contribution rates for Senior JPs that mirror contributions rates for out-of-scope public servants (e.g. Crown Counsel lawyers). The Government notes that, under the *Income Tax Act*, RSC, 1985, c 1 (5th Supp), the maximum contribution amount is 18% by the individual and the Government jointly. Out-of-scope public servants have a current contribution model whereby the employee contributes 5% and the employer contributes 7.25%. The employer contributions are scheduled to increase by .25% next year, and another .1% the following year.

103. As a frame of reference, the Government submits that in-scope public servants have a higher rate of contribution for the employee at 7.5% that matches employer contributions. Both of these rates are scheduled to rise to 7.6% in 2015.

v. Summary

104. Therefore, the proposals from the Government include the following:

- A.** The appropriate percentage is 42% of the previous year's annual salary of a PCJ, resulting in a JP annual salary of \$104,164.00 for 2013-2014;
- B.** The daily and half-day rates for Senior JPs should be 1/220 and 1/440, respectively, of the annual salary, resulting in rates of \$473.47 per day and \$236.74 per half-day;

- C. The hourly rate for Junior JPs should be 1/8 of the daily rate, resulting in an hourly rate of \$59.18; and
- D. Senior JPs should contribute 5% of their salary to the Public Employee's Pension Plan, while the Government should contribute the following amounts:
 - a. From the date the regulation comes into force to March 31, 2014, an amount equal to 7.25% of the salary of the Senior JPs;
 - b. Beginning April 1, 2014 to March 31, 2015, an amount equal to 7.5% of the salary; and
 - c. Beginning April 1, 2015, an amount equal to 7.6% of the salary.

B. The Association

105. Jacob Lichtenwald, Chairperson of the Compensation Subcommittee, made written submissions on behalf of the Saskatchewan Justice of the Peace Association (the "Association").

106. The Association submits that this Commission must be careful to specify the effective date of the recommendations, to whom the recommendations apply, and the details of each aspect of the recommendation. In the past, it says, Commission reports have sometimes led to confusion and periods of uncertainty for those affected by the recommendations, but also for those who are charged with implementing the changes.

i. The Need for Full Transformational Change

107. The Association submits that the current compensation received by JPs in Saskatchewan is not fair and reasonable, and does not achieve the requirements of judicial independence in terms of financial security. It submits that full transformational change is necessary.

(a) Significant role of JPs

108. The Association emphasizes the significant role that JPs fulfill in the justice system, noting that their daily decisions impact the liberty, security, and privacy of Saskatchewan

residents. Often the only judicial decision-maker an individual may encounter in terms of regulatory offences, they are also the first face of the court that many charged with criminal offences will typically come before.

109. The cases heard by JPs range from those relating to minor parking infractions to serious violations involving injuries and fatalities. At the most serious end of the spectrum, Senior JPs have broad powers. Traffic Safety JPs, for example, have the authority to impose terms of incarceration, which are rare for provincial offences but have been imposed. The Association notes that an 18-month term of incarceration has been imposed by a JP, and many more have imposed substantial fines. To date, the maximum fine that has been levied by a JP was \$300,000.00 for a serious occupational health and safety offence. When dealing with emergency protection orders, JPs may impose non-contact or removal orders against individuals on an ex parte basis, as well as provide for the exclusive possession of residences regardless of ownership, and any other necessary imposition to provide for the immediate protection of a victim.

110. The Association notes that, as compared to JPs in other Canadian jurisdictions, the breadth of a Saskatchewan JP's authority is as wide or wider. For example, only JPs in Saskatchewan and Quebec preside over trials involving fatalities. As well, Saskatchewan is the only jurisdiction in which periods of incarceration up to 2 years less a day can be imposed by a JP.

(b) Difficult working conditions

111. According to the Association, JPs often work under difficult conditions. Those that work on a call-in or shift basis may be working evenings, nights, weekends, and holidays. Their duties are often performed in detention areas on police premises rather than court rooms. Frequently, according to the Association, this informal environment causes confusion over the role of the JP and the legal function they are performing. Even police officers occasionally make comments or act in ways that are inconsistent with the formalities required for the proper administration of justice.

112. Documents and photographs presented to JPs in certain circumstances can be of a graphic nature relating to serious offences such as murder and sexual assault, or traumas caused by accidents. The Association identifies this as a source of significant stress.

113. In addition, unrepresented persons appear frequently before JPs, who must ensure that they comprehend the proceedings. These interactions can be especially difficult where persons do not speak English as a first language, or where they are impaired or suffering from withdrawal. The safety of a JP can also be threatened because of their close proximity to individuals in custody, who typically appear before a JP with only one officer in attendance as the Crown's representative.

114. The Association included the personal testimonies of two JPs who have experienced situations where their safety was threatened. Justice Charlene Lavalley, a Community JP out of La Ronge, reports that at least 5 fights have erupted between a person held in custody and the holding officer in the hallway outside the hearing room where she was seated less than 10 feet away. She has been yelled at, ignored, threatened, and even approached by an individual who tried to crawl under the table she was seated at. She described herself as a front-line worker who should be entitled to preventative and protective measures, such as inoculation for bacterial infections that are sometimes administered to all front-line staff in response to a perceived threat. At this time, Community JPs do not receive the same protections.

115. Justice Jacob Lichtenwald, a Stipend Justice working out of the Regina Hub, describes the "court room" in which his duties are performed. A small office in the basement, close to the detention cells and next to the gun range, is set aside for JPs. Hearings take place with the sound of gunfire in the background. Justice Lichtenwald describes individuals in custody as being under a great deal of stress, often behaving inappropriately and suffering from substance abuse issues and withdrawal symptoms. He also recalls one hearing that took place in an accused's hospital room, where he was required to wear a mask and latex gloves to prevent exposure to a medical hazard that was unknown to him for privacy reasons. On another occasion, an accused had relieved himself on the floor and walls of his cell shortly before the hearing. Justice Lichtenwald describes these kinds of situations as psychologically and emotionally stressful, but also potentially physically dangerous. He notes that most JPs do not receive medical benefits.

(c) Increasing workload

116. The Association notes that, in addition to the broad authority that JPs wield over serious matters and the difficult conditions in which they perform them, JPs handle an ever-expanding volume of work. In particular, the creation of the Regina Hub evidences the high demand for JP services. Since its establishment, the volume of work has risen dramatically. Currently, the Hub is operating at near maximum capacity but, as these positions only pay \$25.00 per hour, recruitment of qualified applicants is difficult.

117. The Association acknowledges that the Hub has addressed a significant problem related to the availability of JPs in remote communities and has done so with high administrative efficiency. A relatively small group of JPs are required in order to serve a large number of communities. The telecommunication delivery method also addresses security and working condition concerns. Considering that the hub model in Saskatchewan is already set for a planned expansion, the Association proposes that recruiting JPs to these positions is critical to the model's continued success.

(d) Fee-for-service model is inherently problematic

118. With regard to the current compensation of the majority of JPs who work on a fee-for-service basis, the Association submits that these JPs earn not only the lowest rate in Canada, but also a rate that can result in earnings that are below Saskatchewan's minimum hourly wage requirement. The fee schedule has not been adjusted since 1994 and remains a controversial method of compensation for JPs because it links income with judicial decisions, thereby creating commercial motivation. The Association notes the following comments of the Manitoba Law Reform Commission in 1991 (from *Report on the independence of the justices of the peace and magistrates* (Winnipeg: Queen's Printer, August 1991) at 63):

The major difficulty associated with payment on a fee-for-service basis is the inherent potential in such a system for linking income to judicial decisions. The problem, simply stated, is that any system of remuneration based on volume of work done may be perceived as encouraging judicial officers to attract more business by cooperating with police requests. This potential link has been identified and criticized by several commentators concerned with the unique role of justices of the peace.

In 1968, the McRuer report called Ontario's fee-for-service system "subversive to the administration of justice".⁵ The potential for abuse in such a system was reiterated in 1973

by the Ontario Law Reform Commission⁶ and, again, in 1982 in Alan Mewett's report to the Attorney General of Ontario.⁷ Moreover, the results of a 1990 survey showed that many justices of the peace in Ontario believed that the method of payment could influence decisions in individual cases.⁸

⁵ Ontario (J.C. McRuer), *Royal Commission Inquiry into Civil Rights*, Report No. 1, vol. 2 (1968) 523.

⁶ Ontario Law Reform Commission, *Report on the Administration of Ontario Courts, Part II* (1973) 18.

⁷ A.W. Mewett, *The Office and Function of Justices of the Peace in Ontario* (1982).

⁸ A.N. Doob, P.M. Baranek and S.M. Addanio, *Understanding Justices: A Study of Canadian Justices of the Peace* (draft) (1991) 112.

(e) Healthy economy in Saskatchewan

119. Given the healthy economy in Saskatchewan, the Association submits that this Commission must recommend a salary and benefits package that is commensurate with these current conditions. Referring to the recent 2011 Hood Commission Report, the Association reiterates the positive current and future economic situation in Saskatchewan. In particular, the Association noted the Government of Saskatchewan's 2012-2013 Budget Summary ("Keeping the Saskatchewan Advantage") where it was stated that we are "a 'have' province with record population growth and opportunities unprecedented in our history."

120. While cost of living adjustments are usually a significant factor for commissions such as this, the Association states that no submission regarding this fact is necessary at this time. The 2011 Hood Commission Report considered this factor in depth and the Act stipulates that JP salaries will automatically rise in step with PCJ salaries. However, the Association acknowledges that cost of living adjustments may be relevant for future commissions once the base salary has been set.

(f) Challenges in recruitment and retention

121. Suitable, qualified, and committed individuals are required to fill JP positions but, unless appropriate compensation is available to JPs, such candidates are unlikely to apply. The Association emphasizes that applicants are few, and qualified applicants are even fewer (less than a third of those who apply). In addition, the interview and appointment process can take up to 6 months to complete. Under such circumstances, it is not uncommon for candidates to decline the appointment after having found more preferable work at higher rates of pay in the

meantime. The Association notes that the mandatory age of retirement for JPs was raised in 2010 from 65 to 70 years of age partly in order to address recruitment and retention challenges.

122. According to the Association, Community JPs are the hardest positions to fill, given the demand for on-call and shift work. Many of these positions are based in smaller communities, so the candidate pool is quite small and the modest fees provided do not make the positions very attractive. For example, a search warrant usually takes about 45 minutes to an hour to review, but the fee paid for this service is only \$6.00. In addition, the Association reports that Community JPs working in small communities experience frequent conflicts of interest and they sometimes fear for their safety given that their identity and place of residence are generally a matter of common knowledge.

123. The Association reports the results of the four most recent Community JP job postings in smaller communities:

Estevan: 1 Applicant (did not pass the interview);
Big River: 1 Applicant (did not pass the interview);
Southend: 1 Applicant (did not pass the interview); and
Nipawin: 2 Applicants (1 did not pass the interview, 1 appointed).

124. Stipend JPs can also be difficult to recruit because of the high volume of work they often handle in detention areas, as well as the demands of evening, weekend, and on-call shifts. A \$400.00 weekly stipend for an estimated 25 to 35 hours of work results in compensation of \$11.00 to \$16.00 per hour.

125. The Association reports the outcomes of a recent competition for a Stipend JP position in Saskatoon. Twenty-one applicants responded, but only 6 had the requisite qualifications. Only 1 candidate passed the interview, but resigned before he commenced work because he had found higher paying work elsewhere.

126. Owing to the current remuneration structure, the work of Community and Stipend JPs are currently being performed by dedicated individuals who hold strong values about serving their community. The Association submits that these individuals are difficult to find.

127. Senior JPs in Saskatchewan, on the other hand, are generally a group of well-qualified individuals. There are some Senior JPs who do not have formal legal education or training, but have obtained the skill set required through experience and on-the-job training. However, the Association notes that it is extremely time-consuming for lay people to acquire the skills needed to preside over a trial, for example. Therefore, future planning for Senior JP positions include a directive from the Supervising JP that only candidates with legal training will be considered.

128. In the last two years, several Senior JP appointments have been made including 6 retired or semi-retired lawyers. The mandatory retirement age, however, means that a frequent turnover rate will occur for these positions. Younger lawyers are understandably not attracted to this work because of current compensation levels. The Association notes that a recent competition for a Senior JP position in Prince Albert was cancelled because only one individual applied.

ii. Salary

129. The Association submits that the annual salary of a JP in Saskatchewan should be set at 50% of the previous year's PCJ salary.

(a) Appropriate comparator: JPs in other jurisdictions

130. In determining this percentage, the Association submits that several factors might be considered but the comparison to the compensation received by JPs in other jurisdictions is the most appropriate. While there are variations in duties, their basic functions are substantially similar and are the closest comparators in this regard. The Association submitted a chart (at page 40 of its Submission) that compares the duties of JPs in 5 jurisdictions: British Columbia, Alberta, Ontario, Quebec, and Yukon. Notably, there is considerable similarity of overall authority and areas where JPs in Saskatchewan have more authority than other jurisdictions.

131. Using JP salaries in other jurisdictions as a comparator will require this Commission to consider PCJ salaries in those jurisdictions as well. A direct comparison of JP salaries across jurisdictions is not helpful, according to the Association, given the variations in cost of living and strength of provincial economies. Therefore, the relevant comparator is the ratio that exists between JP salaries and their PCJ counterparts in the same jurisdiction.

132. The salary data that was circulated to the Association and to the Government was used by the Association in their submission. Of the 7 jurisdictions that were included in the data chart, only 5 represent jurisdictions where compensation is set through an independent commission. The Association submits that only the latter should be used in this analysis (i.e. British Columbia, Alberta, Ontario, Quebec, and Yukon) because the remaining 2 jurisdictions reflect compensation levels that were set arbitrarily by provincial governments (i.e. Nova Scotia and Manitoba).

133. The Association also submits that the average ratio should be calculated with reference to the most recent 6 year time period since this Commission will review salaries every 6 years. Further, only the most recent time period reflects the most helpful trends and patterns. Therefore, the Association's table of salary comparisons includes only data from 2007 onwards.

134. In accordance with these suggested adjustments, the Association presents data that it says reveals remarkably consistent ratio relationships over the last six years in each jurisdiction, despite no formal tie between JP and PCJ salaries. The Association's data includes two separate entries for Alberta, which reflect the proposed salaries to the 2009 Alberta Justices of the Peace Compensation Commission from the Association of JPs and the Government. This was done because that Commission has yet to release its recommendations for the period between 2008 and 2012. The following table was submitted:

PCJ to JP Differential	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
British Columbia - PCJ	202,356	220,000,	225,500	231,138	231,138	231,138
British Columbia – JP	78,654	94,730	97,100	99,525	99,525	99,525
% Differential	38.9%	43.1%	43.1 %	43.1%	43.1%	43.1%
Alberta – PCJ	220,000	220,000	250,000	255,000	257,550	263,731
Alberta – JP	110,000	135,000	141,000	144,000	146,000	154,000
Recommendations						
% Differential	50.0%	61.4%	56.4%	56.5%	56.7%	58.4%
Alberta – PCJ	220,000	220,000	250,000	255,000	257,550	263,731
Alberta – Gov't	110,000	117,480	125,000	127,500	128,760	131,866
Recommendations						
% Differential	50.0%	53.4%	50.0%	50.0%	50.0%	50.0%
Ontario – PCJ	234,503	242,007	248,057	252,274	262,113	267,355
Ontario – JP	109,000	112,488	115,300	116,123	120,652	123,053
% Differential	46.5%	46.5%	46.5%	46.0%	46.0%	46.0%
Quebec – PCJ	220,731	224,211	221,270	225,737	227,488	230,723
Quebec – JP	110,000	110,000	110,000	119,000	119,895	121,091
% Differential	49.8%	49.1%	49.7%	52.7%	52.7%	52.5%
Yukon – PCJ	215,742	222,214	228,880	235,746	242,819	250,103
Yukon – JP	109,500	112,785	116,169	119,654	123,244	126,941
% Differential	50.8%	50.8%	50.8%	50.8%	50.8%	50.8%

135. With regard to the salaries set in British Columbia, the Association notes that the recommendations of the British Columbia 2010 Justice of the Peace Compensation Commission (which suggested an 8% increase) were not implemented by their government. The Government of British Columbia had reasoned that economic hardships in the province prevented them from implementing the recommended increase. The same was true for the Commission respecting PCJ compensation. The PCJs in British Columbia have since initiated court action.

136. Of the 5 comparator jurisdictions, the Association emphasizes that 3 have implemented salary ranges at or above a 50% ratio in 2012-2013. Averaging these amounts from all 5 jurisdictions reveal either a 48.5% average ratio using the Alberta Government submission, or 50.3% using the Alberta JP Association's submission.

137. The Association also notes that the comparisons in the above table depict same-year comparisons (a PCJ salary in 2008 is compared with a JP salary in 2008). However, the Act requires that a JP's salary be fixed at a percentage of the *previous* year's PCJ salary. When the salaries are off-set by one year, the average ratios also shift to 50.4% using the Alberta Government position, or 52.3% using the Alberta JP Association's position.

138. Given these comparisons and calculations, the Association submits that a 50% benchmark should be adopted and recommended by this Commission.

(b) Comparison with national average

139. A further reason to accept this method of calculation is submitted by the Association. Saskatchewan's PCJs, as compared with the average salary of PCJs in the same comparator jurisdictions, achieved parity with the average in 2013. That is, Saskatchewan PCJ's salary increased from 91% of the average salary in 2007, to 100% of the average salary in 2013. The Association suggests that JP salaries should mirror this trend. The average salary of JPs in appropriate comparator jurisdictions for the 2012-2013 fiscal year is between \$120,495.00 and \$124,922.00. Should this Commission accept the Association's submission, the resulting salary for a JP would be set at \$124,045.00.

(c) Salary enhancements for senior and administrative JPs

140. The Association submits that the duties and functions of Junior JPs, Senior JPs, the Assistant Supervising JP, and the Supervising JP vary significantly. Therefore, the compensation structure should reflect these differences. If the base rate is set at 50% for Junior JPs, a Senior JP should receive an additional 5% of the base, the Assistant JP should receive an additional 10%, and the Supervising JP an additional 15%.

141. In support of this suggested structure, the Association notes that this is the method used by the Saskatchewan Provincial Court to recognize those judges who have additional administrative duties (+ 2.5%), as well as to recognize the Associate Chief Judge (+ 5%), and the Chief Judge (+ 7.5%). It is also used in Ontario for JPs in that jurisdiction: Regional Senior JPs receive an additional 5% of the base salary and Senior Advisory JPs receive an additional 10%.

142. The Association says that the historical relationship between the Supervising JP's salary and the Traffic Court JP's salary also supports this enhancement structure. According to the Regulations (s. 14(1.1)), which were enacted for the period commencing in 2004, the Supervising JP salary was set at \$5,000.00 above the salary of a Traffic Court JP, which is set by *The Traffic Safety Court of Saskatchewan Regulations, supra*, s 3. Previous to this, however, the salaries were not so connected. Each was set separately under their respective regulations. In 2000, for example, the salary for the Supervising JP was 16% higher than a Traffic Court JP. After 2004, however, that difference has gradually decreased so that today, the Supervising JP earns only an additional 5.2% of the salary of a Traffic Court Justice.

143. Last, the Association suggests that the Supervising JP's salary should be commensurate with other senior legal positions in the province (e.g. Senior Crown Counsel and Saskatchewan Legal Aid Commission Senior lawyers). The above enhancement structure would place the Supervising JP at a salary that is comparable to these salaries.

144. The resulting salaries for 2013 when this structure is applied are as follows:

(a) JP base salary	\$124,045.00;
(b) Senior JPs	\$130,247.00 (base + 5%);
(c) Assistant Supervising JP	\$136,450.00 (base + 10%); and
(d) Supervising JP	\$142,652.00 (base + 15%).

iii. Pension Contributions

145. The Association submits that all full-time JPs should participate in the pension plan, not merely Senior JPs. The applicable rate of contribution on behalf of the government should be set at 10% of the annual salary of JPs, while the individual contribution should be set at 5%. In support, the Association notes that the Government contributes substantially more for PCJs in Saskatchewan.

146. The Association also refers to data from British Columbia and Ontario, where the average contribution rates flowing from the government to the defined benefit plans for JPs are currently at 10.2% and 8%, respectively. In Alberta, both the Government and the Association have proposed a 13.1% payment to JPs in lieu of pension. Yukon JPs are enrolled in the PCJ pension

plan. The Association indicates that the government contribution rate to this defined benefit plan is more than 40%. Evidently, information from other comparator jurisdictions was not available to the Association at the time of their submission.

147. As an alternative to membership in the plan for part-time JPs, the Association suggests that the 10% government contribution should be added as an additional payment, calculated in addition to their daily or hourly rate of pay, as outlined below. This is the approach in British Columbia and Alberta.

iv. Benefits

(a) The need to make recommendations

148. This Commission is not required to make recommendations with regard to benefits received by JPs. However, the Association urges this Commission to make such recommendations for five reasons.

149. First, it is an opportune time to incorporate recommendations on benefits, as changes to the regulations will be required in any case. Second, in the near future, the Government will need to assess the CPP and Employment Insurance contributions, and possibly other benefits, for full-time JPs working at the Regina Hub because these JPs have employee characteristics. Third, the Association's compensation formula for per diem JPs includes a simple calculation that will provide efficiency for the administration of benefits for these JPs. This Commission is asked to assess the model proposed. Fourth, the next commission process will not take place until 2018 and, given current recruitment concerns, competitive benefits is of pressing importance. Since the Government will be making key decisions on benefits, this Commission should have some input. Last, addressing the benefits issue for some JPs, but not all, diminishes the value of part-time JPs who should be remunerated on an equivalent basis.

(b) Insured Benefits: Group Life, Disability, Health and Dental

150. The Association submits that a benefits package, consisting of group life, disability, health, and dental, should be made available to all full-time JPs in the same manner that permanent, non-unionized employees of the Saskatchewan Public Service Commission currently

receive them. Part-time JPs should receive a benefits factor in addition to their pro rata salary calculation, according to the calculation in the next section.

151. In support, the Association offers that full-time JPs in British Columbia, Alberta, Ontario, and Quebec receive similar benefits. Further, part-time JPs in British Columbia and Alberta receive a benefits factor in their per diem calculation.

(c) Vacation, Statutory Holidays, SDOs, and Sick Leave

152. The following benefits were submitted by the Association as applicable to all full-time JPs:

- Schedules days off (SDOs) = 12 days;
- Statutory holidays or days in lieu;
- Sick leave = calculated at a rate of 1 ¼ days per full month of service; and
- Vacation = 30 days per year.

153. In support, the Association submits that SDOs are currently being provided to the Traffic Court JPs and out-of-scope Government of Saskatchewan employees. Statutory holidays are received by all Government of Saskatchewan employees and PCJs, as is a similar sick leave benefit. In particular, the Supervising JP and the Traffic Safety Court JP positions currently receive a sick leave benefit at the rate of 1 ¼ days per full month of service (or 15 days per fiscal year).

154. In terms of vacation, the Association notes that this is the same benefit currently received by the Supervising JP and by PCJs in Saskatchewan. JPs in British Columbia, Alberta, and Quebec receive 30 days as well. In Ontario, JPs receive 22-35 days depending on years of service (8 – 26 years) and in the Yukon, the Senior Presiding JP receives 35 days of vacation.

(d) Other benefits

155. Certain benefits should be received by all JPs, according to the Association. These include:

- Professional development and training at regular rate of pay when offered in-house;

- Professional development and training at 50% regular rate of pay when offered from external sources;
- Stand-by pay (on-call) at 1 hour of pay for every 24 hours of stand-by;
- Travel time compensation at regular rate of pay;
- Expenses away from home at actual and reasonable travel and meal costs;
- Legal resources for disciplinary proceedings by approval of the Association; and
- Counseling services at current PCJ provision.

Each of these benefits are addressed in the following paragraphs.

156. The Association notes that other comparator jurisdictions have allowances for professional development. In Saskatchewan, training for JPs is provided in-house at no cost to the individual because relevant external resources are difficult to come by. Therefore, the Association proposes that where a JP is engaged in training activities within their normal work schedule, they should be paid their regular compensation rate. When the training is received from external sources, a 50% rate of pay should be received.

157. Since JPs are often required to be “on-call,” the remuneration structure should reflect this reality. During these periods, JPs must be available to report to work within a reasonable period of time. The Association notes several examples of “on-call” groups that are remunerated in a similar manner, including JPs in Northwest Territories (1 hr. pay per 24 hrs. stand-by) and Nova Scotia (1 hr. pay per 3 hrs. stand-by). The RCMP remunerates at two levels of responsiveness: operational readiness (1 hr. pay per 4 hrs. stand-by) and operational availability (1 hr. pay per 8 hrs. stand-by). The Treasury Board of Canada/Public Service Alliance Canada, and Saskatchewan Public Services have similar policies regarding stand-by services.

158. In terms of travel time for circuit locations, the Association notes that JPs are currently not paid for time spent traveling to alternate locations. PCJs, on the other hand, include these hours as working hours. The Association proposes that JPs should also be remunerated appropriately for this time spent in order to perform their duties.

159. Reasonable expenses for travel, accommodation, and meals are currently provided for under the Regulations and should remain an accessible allowance for all JPs who are required to travel away from home for work. The Association suggests that a change should be made so the rates are set by the Office of the Supervising JP.

160. Although rare, a JP may be subject to disciplinary proceedings. The Association submits that such a proceeding can be very expensive and lead to a removal from office. Currently, there is no mechanism that allows JPs to apply for counsel appointment on their behalf. The Association notes that several jurisdictions have a mechanism whereby a judge can apply for financial assistance when they become the subject of disciplinary proceedings. In British Columbia, the policy provides for JPs as well. The Association proposes that an application to the Association for financial assistance within prescribed fee parameters for private counsel should be permitted where a JP is facing disciplinary proceedings before the JP Review Council pursuant to the Act (s. 12), except where the proceedings relate to a criminal charge.

161. Counselling services are currently provided to PCJs through the Judges Counselling Program for unlimited sessions at no cost. Government of Saskatchewan employees have access to the Employee and Family Assistance Program, which is limited to 6 sessions per issue. The Association submits that JPs are often placed in extremely stressful situations, yet they receive no medical services in this regard. According to the Association, one JP recently resigned because of stress disorders triggered by their work and the lack of resources available to them.

v. Calculation of Daily and Hourly Rates

162. In terms of part-time JPs, the Association proposes that the base rate + enhancement amount should be used to calculate days, half-days, and hourly rates. The 220 divisor, which represents the number of actual working days in a year, is also submitted by the Association in the same fashion outlined above by the Government. However, a pension and benefits amount should be added to this calculation as well. The Association emphasizes that such an approach is consistent with the principle of equal pay for equal work.

163. Although Saskatchewan PCJs who work part-time do not receive any additional benefits amount in the calculation of their salary, the Association notes that only retired PCJs work on a part-time basis. They receive a pension from their previous full-time assignments. This is also the case in Quebec, where no additional amounts are added to the JP part-time salary.

164. The Association submits that the approach taken in British Columbia and Alberta should be adopted in Saskatchewan. In British Columbia, a 20% pension/benefits amount and \$80 per

day is added to a part-time JPs daily rate of remuneration. In Alberta, both the Association and the Government proposed that a 13.1% amount for pension and \$5000 for insured benefits, plus a 20% overhead allowance is appropriate.

165. Incorporating the government contribution to pension (at the proposed 10%), plus percentages for insured benefits and sick leave (at an estimated 9.09%), the Association suggests the following formula be adopted:

$$\frac{\text{Base annual salary} + \text{Enhancement}}{220 \text{ days}} + 19.09\% \text{ pension/benefits}$$

166. For a Junior JP, the result is a rate of \$661.00 per day, or \$82.63 per hour.

167. The Association suggests one further adjustment for those JPs who will not have source deductions on their payment schedule. The reasoning appears to be that a Canadian Pension Plan contribution (and possibly others) will form part of the payment schedule of some JPs who work at the Regina Hub. Both employee and employer contributions will be made. The Association suggests that the employer contribution is an additional benefit received by full-time JPs that should be considered in the calculation for part-time JPs.

168. Therefore, for JPs who are not subject to source deductions, which the Association values at 4.95%, the following formula should be adopted:

$$\frac{\text{Base annual salary} + \text{Enhancement}}{220 \text{ days}} + 19.09\% \text{ pension/benefits} + 4.95\% \text{ source deductions}$$

169. For a Junior JP, the result is a rate of \$689.00 per day, or \$86.13 per hour.

vi. Costs

170. The Association also requests for permission to file an additional brief on the matter of costs for participating in this Commission process, although they note that this may be resolved outside of the Commission process.

C. Community Submission

171. The Commission also received a submission from Neil Robertson, Q.C., in response to its public invitation. Mr. Robertson has thirty years of experience as a lawyer and has appeared before all levels of court in Canada, including much experience with traffic, municipal bylaw, and provincial offences. JPs, he says, are an integral part of the judicial branch and entitled to the same respect and treatment as other members.

172. Mr. Robertson calls the current compensation structure “abysmal” and notes that the fee schedule, stipend, and hourly rates have not changed since 1994. This state of affairs combined with the lack of employment benefits is “indefensible, not only from a constitutional perspective, but also from a sense of economic fairness.”

173. Over the course of his career, Mr. Robertson has observed that JPs constitute and preside over almost the entire Provincial Offences Division of the Provincial Court. In his estimation, this division hears more charges than the Criminal division, and many charges proceed more expeditiously than in the criminal domain. He notes that some charges are very complex and involve serious matters of community standards and public safety. Members of the public are much more likely to encounter the court on such matters and therefore JPs are likely to have a significant influence on the public’s perception of the justice system. Citizens are frequently unrepresented in these courts and require special consideration by judicial decision-makers in this regard.

174. Mr. Robertson also notes that his “model of a good judge” is Stanley Freestone, the Supervising JP who first presided over the Regina bylaw court. While he notes the trend of hiring lawyers to fill positions of presiding JPs, Mr. Robertson notes that legal training is not a necessity provided they are given proper training and “bring to the bench the personal attributes required in any judge, including respect for the office, intelligence, good character, and empathy for others.”

175. Mr. Robertson addresses the Regina Hub development, which he sees as an opportunity for significant reform. By reducing the number of JPs, greater professionalism and standardized practice will follow. Nonetheless, he notes that the need for Community JPs remains since a

“one size fits all” model will not necessarily fulfill the needs of all rural and remote Saskatchewan communities.

176. With regard to compensation rates, Mr. Robertson notes in particular that if Alberta is to be used as a comparator, this Commission should turn its mind to the projected compensation levels in Alberta as opposed to the current state of compensation. The disparity between the two provinces requires correction now – not in 6 years. Mr. Robertson is also in favour of a 50% compensation level, since it coincides with comparator jurisdictions set out by the Association.

177. While noting that the new compensation structure will result in a substantial increase, Mr. Robertson nonetheless suggests that this should not concern this Commission because of the “obvious inadequacy of the current compensation.”

178. However, Mr. Robertson does not view the upward adjustment for Senior JPs as a necessary differentiation. While he notes the difference in duties, the adverse working conditions of Junior JPs must also be considered. From a management perspective, Mr. Robertson suggests that this will create an obstacle in reducing categories and reassigning duties of JPs according to their respective aptitudes.

179. With regard to benefits, Mr. Robertson opines that the Association’s proposals are reasonable and would bring JPs in line with other public employees. In particular, he notes that lack of compensation for travel time is “a glaring deficiency.” The need for professional development and training is also highlighted, and he suggests that the Provincial Court Judges Association could provide some support in this regard since JPs relieve judges from work they would otherwise be required to perform.

IV. RESPONSES

A. The Government’s Reply

180. The Government submitted its response on November 1, 2013.

i. Factual Issues

181. The Government raises some concerns with some of the facts presented in the Association's submission. In particular, the Government notes that the service delivery model in Saskatchewan is entering a period of significant transition, as the Community JP positions are gradually phased out and replaced with JPs working out of the Regina Hub. This period of transition necessarily means that by the time this Commission sits again in 2018, there will be considerable experience gained under the new system and that changes to the compensation structure could be made at that time. The Government notes again that the plan is to gradually eliminate the Community JP positions unless there is a significant continuing need for these positions. It submits that the plan for compensation compliments this period of transition and the Commission's present mandate.

182. The Government also clarifies that, at present, there are no Traffic Safety Court JPs appointed under *The Traffic Safety Court Act* and none have been appointed for several years. Senior JPs who currently sit on traffic safety matters do so under the combined authority of the JP Act and Regulations, and *The Summary Offences Procedure Act, 1990*, SS 1990-91, c S-63.1. Therefore, the salary and benefits currently provided for under *The Traffic Safety Court Act* are not relevant and should not be applied to Senior JPs sitting on traffic matters because these positions do not currently exist. The Government notes that this confusion is a good example of the need for a uniform system of compensation for JPs.

183. The summary of the salaries paid to PCJs over the last 6 years used in one table of the Association's submission (at page 56) contained some errors. The correct salaries are:

2007/08 – should be \$198,900, not \$191,900
 2008/09 – should be \$204,552, not \$201,552
 2009/10 – \$220,916
 2010/11 – should be \$229,753 not \$229,8943 [sic]
 2011/12 – \$238,943
 2012/13 – should be \$248,010 not \$248,098.

184. The Government also responds to Mr. Neil Robertson's community submission and takes issue with the representation that JPs constitute a Provincial Offences Division of the Provincial Court, as well as the claim that JPs deal with more charges than the Criminal division. In

addition, the claim that a 50% figure coincides with the median level of compensation across jurisdictions is also challenged. The Government stresses that these claims are inaccurate and unsubstantiated.

ii. Recent Developments in Quebec

185. In the time between initial submissions and responses, Quebec's latest commission for judicial salaries released its recommendation on October 30, 2013. The Quebec Commission recommended a 15.7% increase for JP salaries to \$140,100.00 in 2013/2014. However, the Government notes that these recommendations should not be used for the purposes of a comparative national average because the report is not binding on Quebec's government.

iii. Salary

(a) Salary Enhancements

186. The Government stresses in its response that the Association's approach to salaries as a tiered structure that distinguishes between Junior, Senior, Assistant, and Supervising JP positions is not aligned with the Act's provisions and the mandate set for this Commission. It is proposed that the Act establishes a single salary for all JPs, and does not permit this Commission to recommend the salary for the Supervising JP at all.

187. In contrast to the Act under which this Commission derives its authority, the Government notes that *The Provincial Court Act, 1998*, SS 1998, c P-30.11, s 38, instructs the PCJ Compensation Commission to set separate salaries for the different classifications of judges (the chief judge, associate chief judges, judges, and temporary judges). The difference between these two acts demonstrates the intent of the legislature to set a single salary rate applicable to all JPs. Had they intended to instruct otherwise, the legislature would have included an allowance to set separate salaries.

188. In addition to the lack of legislative authority to set a tiered system of remuneration, the Government stresses that a hierarchy of salaries is not necessary: the duties of JPs are all important and should not be assessed on a subjective basis. While some JPs are empowered to try offences under provincial laws, others make equally important decisions regarding the

constitutional rights of many individuals on a daily basis. The Government points to bail hearings, arrest warrants, and search warrants in this regard. On the other hand, Case Management Conferences, although within the purview of Senior JPs only, do not deal with constitutional rights at all since they are civil proceedings. The Government notes also that PCJs are not classified for salary purposes according to their duties, and other jurisdictions do not make these distinctions between JPs either.

189. In the alternative, the Government takes issue with the amounts of the salary enhancements suggested by the Association, as they are double the rate of enhancement currently received by PCJs.

190. In short, the Government opposes any distinction based on the varying duties of JPs and suggests that the expertise and seniority of Senior JPs have been adequately recognized by their full-time status.

191. With regard to the Supervising JP, the Government anticipates that the salary and benefits will continue to be set by Regulation by the Lieutenant Governor in Council. This position's salary and benefits are not under the purview of this Commission. While the current approach of adding \$5000.00 to the base salary of a JP will likely continue to apply, the Regulations will need to be adjusted for clarity. This is because the current wording compares the salary to a Traffic Safety Court JP which, as noted above, are positions that are not filled at present.

192. With regard to the Assistant Supervising JP, the Government suggests that this individual should be paid at the same rate as all JPs because there is no statutory authority for the creation of this position. The Government points again to *The Provincial Court Act, supra*, and its regulations, which provide that the Chief Judge may assign administrative tasks to judges, who will be compensated at a rate of 2.5%. There are no such provisions in the Act or Regulations relating to JPs. This Commission, according to the Government, therefore lacks the jurisdiction to make any recommendations on this issue. Administrative duties could be adequately accommodated through scheduling, by reducing the work load in order to free up time to perform administrative tasks.

(b) Recruitment and Retention Challenges

193. Recruitment challenges are acknowledged by the Government, but it is also stressed that past experiences should not be relied upon too much by this Commission. Significant increases in salaries will occur if the Government's proposal is accepted and recruitment will likely become much easier in the future.

(c) Appropriate Comparators

194. As noted above, the Government disagrees with the comparator jurisdictions used by the Association. It maintains that western provinces should be used as the most appropriate comparators. Relying on a simple average of all jurisdictions is not the correct approach.

195. In particular, the Government notes that Ontario and Quebec should not be used as comparisons because of their population size and extent of the legal community, primarily with regard to the economic difference these facts create. Similarly, the Yukon experience is very different because of its low population density and high living expenses.

196. On the other hand, the Government urges this Commission to include Nova Scotia and Manitoba in its comparisons because those are the salaries currently being paid, regardless of how they are determined. In support, the Government refers to the 2011 Hood Commission Report, wherein the Commission expressed reluctance to eliminate data from Manitoba because of its proximity to and similar size as Saskatchewan.

197. The Government disagrees that Alberta should be given special prominence in this comparator assessment. It emphasizes again the legal qualifications required in Alberta, and the fact that compensation commissions in Alberta have tended to set increases commensurate with those implemented in Ontario. That is, there is a historical link between Alberta and Ontario that has influenced the recommendations of commissions in Alberta.

198. Further, the actual salary currently being paid to JPs in Alberta should be used, not projections. While it is acknowledged that national comparators are somewhat elusive, the Government submits that previous commissions have rejected the use of projected figures, the

clearest statement of which was noted by the 2008 Saskatchewan Provincial Court Judicial Compensation Commission at page 39:

This Commission, although it was noted, does not subscribe to allowing future potential national adjustments in the calculation of a national average due to the speculative nature of this consideration. Projections can prove to be a slippery slope.

iv. Calculation of Work Time

199. The Government clarifies that many of the Association's submissions with regard to benefits are actually administrative decisions and do not need to be addressed specifically by regulation. These include travel time compensation, on-call rates, and professional development and training time. In any case, the Government supports all of these proposals.

200. The Government agrees with the Association's submission that travel time should be included in what constitutes work time, and that a rate of 1 hour of pay for every 24 hour-period of on-call status is acceptable.

201. Finally, the Government agrees with the submission that a regular rate of pay should apply while engaged in training and professional development activities offered in-house, and 50% of that rate if offered from an external source. The Government clarifies, however, that only time actually spent in training should be included in the calculation of time.

v. Pension only for Senior JPs

202. The Government responds to the suggestion that all JPs, both full-time and part-time, should receive consideration for pension by proposing that the Act does not permit this Commission to make such a recommendation. The Act does not distinguish between full-time and part-time JPs. While the Association's submission may be appropriate, the Government proposes that making this change would require a legislative amendment.

203. With regard to the amount of government contribution, the Government notes that 10% would be higher than any other group of public servants contributing to the Public Employees Pension Plan. Since Crown Counsel is an appropriate comparator group, the same rate should apply to JPs.

vi. Benefits

(a) Insured benefit programs

204. The Government provided some helpful information as to the costs of benefit plans for full-time employees:

Group Life	\$5.50 per month
Disability	1.96% of salary
Dental	1.15% of salary
Enhanced Dental	0.4% of salary additional
Extended Health	\$50.13 monthly for single employees \$97.39 monthly for married employees \$120.15 monthly for family coverage.

205. These costs would result in amounts of \$5,163.93 or \$5,861.78, using the salary proposals of the Government and the Association, respectively. The Government suggests that this is a considerable additional cost. While the enrolment of full-time JPs in these plans is not rejected by the Government *per se*, it is proposed that the cost should be absorbed into the overall compensation package. That is, the salary that is implemented should be viewed as already including the costs of enrolment in these benefit plans.

206. In addition, the Government notes an administrative issue with respect to the enrolment of those JPs who do not work full-time. These benefit plans require a minimum number of hours worked in order to qualify, roughly 1/3 of a full-time position. The Government suggests that a considerable administrative burden would result if all JPs were enrolled in these plans given the variable hours that many JPs work from month to month.

(b) Vacation, statutory holidays, SDOs, and sick leave

207. With respect to vacation, the Government agrees that full-time Senior JPs should receive 30 days of vacation time annually and that if such a full-time Senior JP should work less than a full year, the entitlement would be calculated at a rate of 2.5 working days for each month of service. In support, the Government offers that this is the current rate received by PCJs, and is a substantial package given that the maximum entitlement under *The Labour Standards Act*, RSS 1978, c L-1, s 30(1)(b), is 4 weeks for employees of 10 years or more. In addition, the

Government recognizes that a 30-day allocation to all full-time Senior JPs no matter their years of accumulated service is appropriate since suitable JPs would most likely have reached the mid-point or higher in their careers.

208. Statutory holiday pay in excess of the regular hourly rate paid should not be recommended. The Government's position on this issue is that working outside normal working hours is simply a job requirement of a JP.

209. In addition, the Government does not agree that 12 SDOs should be granted to JPs in addition to vacation. PCJs do not receive such an entitlement.

210. Nonetheless, the Government acknowledges that eliminating the current SDO entitlement that has been granted to the Supervising JP and those Senior JPs who sit in Traffic Safety Court would be unfair. It is suggested that these individuals be "grandfathered" into the new structure, but future appointments to these positions would not receive such an allocation.

211. The Government accepts that sick leave should be provided to Senior JPs at the same rate as the Supervising JP, which is 1 ¼ days per full month of service (or 15 days per fiscal year). However, sick leave should not be accrued where a JP is compensated on an hourly basis.

(c) Other benefits

212. With regard to travel and meal expenses, the Government points out that the Regulations already provide for these benefits, and agrees that it should continue. It appears that the point of disagreement has to do with the authority to set applicable rates. In response to the Association's suggestion that the Supervising JP should set these rates, the Government denies that there is a need to change the current regulations, which have set rates that mirror those applicable to employees in government public service.

213. The need for access to counseling services is acknowledged by the Government in light of the stressful nature of some of their work. As a potential solution, the Government suggests that expansion of the program currently available to PCJs to provide for all JPs may be a possibility and one that the Government is willing to explore. Noting that the program currently

runs without statutory authority under *The Provincial Court Act, supra*, the Government requests a recommendation by this Commission on this issue.

214. The Government also recognizes that legal services support should be provided to JPs in relation to their judicial capacity in the same way as PCJs currently receive this service. On a case-by-case basis, the Deputy Minister of Justice can “authorize such services on the recommendation of the ... Chair of the Justices of the Peace Council.” The Government notes that a recommendation by this Commission to this effect would be sufficient and no regulation is required in this respect.

vii. Calculation of Daily and Hourly Rates

215. The Government submits that an additional rate to account for benefits and pensions in the calculation of salary for part-time JPs does not accord with the instructions under the Act. This Commission, they propose, has no jurisdiction to recommend such a calculation.

viii. Costs

216. Finally, the Government notes that an understanding had been reached to cover the Association’s costs and therefore this Commission does not need to reserve jurisdiction over costs associated with this process.

B. The Association’s Reply

217. The Association submitted its reply on November 1, 2013.

218. In response to the Government’s assertions that this Commission’s recommendations are not compulsory directives, the Association notes that the Supreme Court of Canada also commented that a commission’s recommendations should not be “set aside lightly” and that departure from them requires the Government to “justify its decision—if need be, in a court of law” (see *PEI Provincial Court Judges Reference, supra* at para 133).

219. The Association summarizes that the main points of difference between the submissions can be categorized into five main areas: appropriate comparators, recommended percentages,

benefits consideration, budget implications, and operations information. Each of these are summarized in turn.

i. Appropriate Comparators

(a) Public servants in Saskatchewan

220. The Association reiterates its submission that there are no exact comparators within Saskatchewan and notes that the Government acknowledges this fact. Salary ranges of public servants should be used as an indication of the relative range of salaries rather than to target a precise salary amount. In support, the Association notes that the 2011 Hood Commission, at paragraph 12, accepted that “salaries of senior public servants are pertinent” but that relying on them is problematic because their salaries are set by the executive branch of government. Providing insulation from political factors that may drive these determinations is a primary purpose of an independent commission. Therefore, comparisons to senior public servants must be treated with caution.

221. Nonetheless, the Association acknowledges that Crown Counsel’s salary ranges are helpful and, if they are relied upon, advises that the appropriate comparators are the salaries allocated to senior positions. In support, the Association notes that Senior Crown Counsel salaries were used as appropriate comparators by the Society of JPs and the Government of Alberta in their submissions to the 2009 Justices of the Peace Compensation Commission.

222. Additionally, the Association points out that most Senior JPs and the majority of Stipend and Community JPs are senior members of their communities. Comparing these professionals to the ranges of salaries set for junior counsel is not appropriate, since experience is a significant quality for JPs who conduct trial and detention hearing processes. The Association’s proposed salary would place JPs at the salary currently received by Senior Crown Counsel at 8 years after date of call. Further, the Association notes that full benefits packages accompany these positions.

223. Comparisons to police officers are problematic, according to the Association, because the positions are not similar in terms of duties and functions. According to the Association,

compensation commissions in Saskatchewan and other jurisdictions have never suggested that police officer salaries are useful for comparison purposes. While JPs deal with police officers and attend police facilities during the course of their duties, this alone does not establish a relevant connection. If that were true, says the Association, it is curious that police officers are not used as a comparator for PCJ salaries, a group that also has a significant level of interaction with police officers.

224. Police officer salary comparisons are also problematic because the salary information referred to by the Government is either out-of-date or has been interrupted by budget freezes. Further, the range of salaries for city police officers and RCMP officers varies considerably depending on their rank and years of service. If police officers are used as comparators by this Commission, the Association submits that only senior ranks are a comparable subset, and that additional amounts for service pay, source deductions, pension, and full benefits should also be considered. The Association suggests that taking all these factors into consideration results in a range of approximately \$130,000.00 to \$136,000.00.

(b) JPs in other jurisdictions

225. The Association disagrees that national comparators are problematic because the duties and responsibilities of JPs in Canada vary. The Association refers again to their table of comparisons in this regard (at page 40 of the Association's submission). Further, JP salaries in other jurisdictions are used extensively across the country by independent commissions for the determination of appropriate JP salaries.

(c) Use of salary projections

226. With regard to the use of projections for Alberta JP salaries, the Association proposes that these are an important source of data. In the 2005 Provincial Court Judicial Compensation Commission Report (the "2005 Barnard Commission"), there was agreement that data was "more helpful" where it included salaries that will be in place if the recommendations of other Commissions are adopted (at 4.1). The 2005 Barnard Commission relied upon Saskatchewan's 2002 Vicq Commission Report and 1999 Bundon Commission Report, wherein projections were also used in the calculation of national averages.

227. As per this approach, the Association identifies that commission processes are currently underway in Alberta, Ontario, Quebec, and the Yukon. Very recently, Quebec's recommendations have been released and included a salary increase to \$140,000.00. Alberta's process will likely result in a significant raise in salary to over \$130,000.00 per year.

228. The Association expressed disagreement with adjustments made by the Government to the JP salary data from other jurisdictions. These disagreements relate to five jurisdictions: Alberta, Ontario, British Columbia, Manitoba, and Nova Scotia.

229. In Alberta, where the current commission process is nearing completion, the Association submits that it is highly unlikely that the commission will recommend a salary that is less than the lowest proposed increase submitted by the Alberta Government. The \$110,000.00 figure is five years out of date and will be retroactively applied to April 1, 2008. The conservative projection is therefore that Alberta's JPs will be paid \$133,866.00 in 2012/2013. This amounts to 51.2% of the previous year's PCJ salary in Alberta. The Association submits that even if this Commission does not consider the Alberta JP Association's proposal, the Alberta Government's submission is still a significant increase.

230. With regard to Ontario, the Association notes that the salary information used by the Government in its submission is inaccurate because the Industrial Aggregate Index for the year 2012 has not been accounted for in the Government's noted JP salary for 2013-2014. The 2013-2014 salary for JPs in Ontario is therefore \$123,053.00 and not \$116,123.00, as recorded by the Government. A commission process is currently underway in Ontario as well.

231. British Columbia comparators are also problematic, according to the Association, because the implementation of increases recommended by its commission process has been halted by economic difficulties in the province. Although the commission recommended an 8% salary increase, the salary levels for JPs in British Columbia remain artificially fixed at 43% of a PCJ's salary.

232. The Association reiterates that this commission should eliminate Nova Scotia and Manitoba from comparator jurisdictions because they lack an independent commission process. The unilateral approach adopted in these jurisdictions is constitutionally questionable.

(d) National average comparison

233. In its initial submission, the Association had compared Saskatchewan PCJ salaries with the national average of PCJ salaries in 5 comparator jurisdictions, and suggested that it achieved parity with the national average in 2012/2013. The Association calculated the national average as being \$248,610.00 (see the summary of this initial submission, above). In reply, the Association embarks upon a similar comparison, this time using the Government's calculation of the PCJ national salary average (\$240,477.00), which is slightly lower than it had calculated. This is because the Government includes Nova Scotia and Manitoba in its table of comparisons.

234. Thus, the Association points out in reply that, by the Government's own calculations, Saskatchewan's PCJ salary is higher than the PCJ national salary average (at 3.17%). When JP salaries in all 7 comparator jurisdictions are used to calculate a national average, the Association demonstrates that its proposal corresponds closely to a figure that is slightly above the national average.

235. Regardless, the Association stresses that both methods of calculation result in a salary that is very close to 50%. And, if the Government's proposed 42% was adopted, the Association calculates that a JP salary would be set at 93.7% of the national average from all 7 jurisdictions, using the Government's data.

236. Given the similarity of JP duties across Canada, the Association submits that setting JP salaries at less than the national average cannot be justified. In response to the fact that some jurisdictions require legal training and experience, the Association notes that although most JPs in Saskatchewan do not have formal law school training, they amass a great deal of legal experience over their tenure as JPs. Regardless, when they are performing the same work as JPs who are also lawyers, they deserve comparable compensation.

(e) The western comparison

237. The Association identifies problems with the "western province comparison" approach taken by the Government. It was proposed that the proximity of Saskatchewan to British Columbia, Alberta, and Manitoba naturally results in a conclusion that those jurisdictions should be given more weight than a national comparison. The Association responds by reiterating

previously made comments: British Columbia's salaries are a reflection of adverse economic conditions, Alberta's salaries are significantly out-of-date, and Manitoba's salaries were unilaterally set by the Government with no independent commission. A "western comparison" is deeply problematic.

238. The Association also points out that this Government is contradicting itself since it had previously proposed to the 2011 Hood Commission that salaries from across Canada should be used, not just select jurisdictions.

ii. Recommended Percentages

239. The Association takes issue in its response with the Government's arbitrarily selected percentage value of 42%, stating that the Government did not establish an objective basis. Since the primary consideration in this process is to safeguard judicial independence, the appropriate approach is to compare salaries to other JPs in Canada. The Government's submission does not ground its proposal with reference to this comparative data.

240. In addition, the Association submits that the "one amount fits all" approach of the Government does not adequately acknowledge variations of responsibilities that coincide with different JP positions. The Act, according to the Association, does not restrict this Commission to only one salary recommendation.

iii. Benefits Considerations

241. The Association submits that the Government's choice to not comment at all on benefits in their main submission does not serve the Commission process well. It is detrimental because the Association has no opportunity to respond to the Government's position on these matters.

242. Given this situation, the Association simply reiterates the importance of benefits or proportionate compensation in lieu of benefits for all JPs in Saskatchewan.

iv. Budget Implications

243. The current budget implications for Saskatchewan are an important consideration, according to the Association, but the amount in issue between the Government and the Association is only a fraction of the total budget of the Ministry of Justice for 2013/2014. The Association calculates that the difference between 42% and 50% is roughly 0.13% of the Ministry of Justice's total budget.

244. While acknowledging that additional benefits and pensions will increase this budget projection even further, the Association urges this Commission to not focus on budget implications. This Commission is making its first recommendations to the Government for a system that is in the process of full transformational change. That is, the elimination of the fee-for-service model, lack of increases to those standards since 1994, and the establishment of this Commission all contribute to the substantial increases. When considering the "public purse," one must also consider the significant savings that redounded to the Government over the last twenty-five years since the fee-for-service approach has become increasingly inadequate.

245. The Association also argues that the impact on the majority of Community JPs has been overemphasized by the Government since most of these JPs currently work minimal hours. If it is estimated that 59 out of 104 Community JPs work approximately 3 hours per week, the compensation received will increase from \$125.00 to \$761.00 per month, based on the Government's proposal. The Association submits that this is not a substantial amount on an individual level. In addition, the increase is a temporary cost because most Community JPs will not be replaced in the future.

246. References to the strain on the "public purse" should be avoided in general, according to the Association, because the objective of this Commission is to protect judicial independence, not to accommodate government budgets. Even if the budget were a main focus, the Government of Saskatchewan allocates a significant portion of its budget to core services, particularly with regard to front line services in the criminal justice system. The Association suggests that JPs fulfill an important role and appropriate budget choices should thus be made.

v. *Operations Information*

247. The Association clarifies some factual errors, some of which have been incorporated into the factual information of this Report outlined in the above section on JPs in Saskatchewan. For example, there was some discrepancies and confusion with regard to the number of currently-serving JPs, the rate at which they are paid, and the benefits they receive.

248. Two clarifications are of particular note because they relate to arguments specifically presented by the Association and the Government.

249. The Association says that while the age of retirement will dictate that many JPs will retire by 2018, the majority of Community JPs will not have reached the mandatory age of retirement at that point (approximately 3/4s of existing JPs). In addition, there will still be a need for some Community JPs to remain available in select locations.

250. The Association also corrects the assumption that none of the JP positions require legal education or experience. In practice, some JP positions are designated for lawyers, although it is not an official regulation. Currently, the Supervising JP and the Case Management JPs are required to be lawyers. Six out of ten JPs presiding over trials are lawyers, and future planning is for all such JPs to be lawyers. The Association argues that the effect is the same, regardless of whether these qualifications are implemented through regulation or through hiring policies.

V. RESPONSES TO WRITTEN QUESTION

A. The Government's Response

251. The Government's Response to this Commission's request for more information on pension contributions was submitted on December 21, 2013. The Government agrees with the information supplied by the Association with regard to pension for JPs in Alberta, Ontario, Quebec, Nova Scotia, British Columbia, and Manitoba. However, the Government comments that comparing contributions without a full analysis of each plan does not provide sufficient information on which to determine the issue. Further, the plans in these jurisdictions are defined benefit plans, not defined contribution plans. The differences between these types of plans make

direct comparisons questionable. The Government adds that JPs in other jurisdictions are enrolled in pension plans similar to that of public servants in those jurisdictions.

B. The Association's Response

252. The Association also supplies more information with regard to pension plans in other jurisdictions for JPs. In addition to the information about British Columbia, Alberta, Ontario, and Yukon, the Association adds that Quebec's government contributed 12.3% to the defined benefit plan for JPs in 2012. Manitoba JPs are also enrolled in a defined benefit plan, at an approximate 7.5% government contribution rate. Nova Scotia JPs do not receive a pension.

253. The Association also places more emphasis on the pension plan that is provided to PCJs in Saskatchewan, this time noting that the government contributes 44.8% to a defined benefit plan on their behalf. PCJs in Saskatchewan receive a pension that is similar or greater than other PCJs in Canada. Due to the tie that has now been created by statute between JP and PCJ salaries, the Association suggests that JPs should be treated in a similar manner.

254. Recognizing that a defined pension plan is not administered in the same way as a defined contribution plan, the Association notes that these plans have had difficulty remaining solvent in recent years because of market instability. In a defined benefit plan, the employer is liable for any underfunding of these plans. Notwithstanding this difference, the Association suggests that the rate of contribution it proposes (10%) would establish a set amount, one that would not be subject to the same liability if the plan became underfunded in the future.

VI. ANALYSIS

A. Fresh Analysis and Full Transformation

255. First and foremost, this Commission's focus is on the level of the appropriate remuneration to achieve the financial security of JPs in furtherance of the goal of judicial independence. However, this focus is not primarily on benefits enuring to judges, but rather to the judged. The public must have confidence in JPs who are entrusted with judicial decision-making responsibilities. This Commission's process is not akin to an arbitration, nor is it a negotiation between adversarial parties. Its purpose is rather to recommend an *appropriate* level

of remuneration, subject to its mandate under the Act. This Commission must strive to recommend a remuneration scheme that ensures that the JP position is appropriately compensated to attract and retain qualified and committed individuals. A JP is a JP and should be seen to be a JP. It should make no difference to the judged whether before a full-time JP or part-time JP. It is therefore the view of this Commission that the remuneration should differentiate as little as possible between full-time and part-time JPs. JPs should be compensated in a uniform, fair, and adequate manner.

256. In its submission, the Government commented about its responsibilities regarding implementation of the recommendations, emphasizing that these recommendations are not compulsory directives. In response, the Association pointed out that recommendations should not be set aside lightly by the Government. These are both accurate statements of applicable constitutional principles, but they apply to the implementation process, not to this Commission's process.

257. Again, the mandate of this Commission is to make *appropriate* recommendations, not to compose a report that advocates on behalf of the Association, or that justifies the budget constraints of the Government. Nor is it the responsibility of this Commission to convince the Government to affirm and implement these recommendations. Compliance with constitutional standards is a responsibility that falls on this Commission and the Government. In particular, this Commission must be objective and non-biased to produce a fair analysis, based on review and consideration of relevant factors. However, this Commission cannot ensure that the process is effective in terms of implementing these recommendations. It is the Government's duty to ensure that the Commission's recommendations produce meaningful results. This does not mean that the Government must implement all recommendations of this Commission, but the Government must not set them aside lightly and may be required to justify departures from them.

258. Since the remuneration model is completely new, the central focus of this Commission has differed somewhat from previous commissions in Saskatchewan. For example, the submissions presented significantly different proposals with regard to the Act's instructions and the jurisdiction of this Commission to make recommendations on specific matters. In addition, the different classifications of JPs and how they correspond with the legislation was an area of

confusion that required clarification of the current state of affairs in order to understand the need for and the implications of the new model.

259. Usually a commission is tasked with making relatively minor adjustments to ensure that the established rates of remuneration continue to preserve judicial independence. Commissions generally have the benefit of previous recommendations and reports specific to their legislated mandate and respecting their own jurisdiction. This Commission, however, is making foundational recommendations, which will no doubt require adjustments once the benefits of experience and hindsight are added to the acquired knowledge of this process. It is a work-in-progress.

260. Recruitment and retention of qualified applicants appear to be the greatest historical challenges for the Office of the Supervising Justice of the Peace. Improving recruitment and retention is an important aspect of this Commission's mandate to achieve financial security, as one component of judicial independence. It is anticipated that the new remuneration model will alleviate this concern to a significant degree.

261. The 2011 Hood Commission Report commented on the importance of recruiting and retaining qualified applicants, referring to the state of affairs in New York as an example of a system that was in dire need of reform. As described in that report, judicial independence would be lost if the financial security of judges were in a similar state. The 2011 Hood Commission stated at paragraph 209 that the same dangers did not exist in Saskatchewan with regard to PCJs:

We refer to the issue facing the justice system in the State of New York that was brought to our attention by the Association. The point is that in the State of New York salaries have become so inappropriate that Judges are leaving the Bench in relatively large numbers, one in ten annually, not to retire, but to return to practice. We are of the view that if this was the state of affairs in the Provincial Court in Saskatchewan, which it is not, but rather the antithesis, the perception and reality of judicial independence would be severely fractured if not lost completely.

262. However, this Commission has been presented with a very different set of facts than what was before the 2011 Hood Commission. The information submitted by the Association has depicted a group of public servants who have been overlooked and underpaid for many years. In short, the current compensation structure for JPs in Saskatchewan is inappropriate. For a group of individuals who fulfill judicial roles in this province, sometimes in difficult working

conditions at non-traditional working hours, the inadequate and non-uniform rates of pay as well as the lack of benefits are realities that require corrective measures. When compared with other jurisdictions in Canada that have established a commission for JP remuneration as far back as 1998 (in Alberta, for example), the establishment of an independent commission in Saskatchewan appears to be long overdue. The current Government of Saskatchewan is to be commended for enacting these changes in response to the need for full transformational change.

B. Jurisdiction of this Commission

263. According to the Regulations, this Commission is required to do the following:

- recommend the percentage to determine the annual salary of a justice of the peace, the definition of which includes Senior and Junior JPs;
- recommend the method of *pro rata* portions of the annual salary in terms of days, half-days, and hours;
- recommend the pension contributions of Senior JPs, who will be enrolled in the Public Employees Pension Plan as per s. 10.2(6);

and is permitted to:

- inquire into and recommend the benefits to which JPs are entitled.

264. It is important to note at the outset that the Association makes proposals regarding some items that this Commission has no legislated mandate to consider. As noted in the first section of this report, the Supervising JP is a separate position, appointed separately from Senior JPs and provided with a salary and benefits set by the Lieutenant Governor. In addition, the Assistant Supervising JP is not a position created by the Act, but the Association proposes that this position's salary should be set at a higher rate than Senior JPs. It is also suggested that Senior JPs receive an enhanced amount above the base salary of a Junior JP.

265. Notwithstanding that there may be reasonable arguments supporting a tiered salary structure (and reasonable arguments against), this Commission cannot recommend any of these proposals. It is not empowered to do so. The Act is clear in its singular instruction that "the annual salary of a justice of the peace is the percentage of the annual salary of a judge of the Provincial Court of Saskatchewan" (s 10.2(1)). The definitions in sections 2 and 10.1 confirm

that this single percentage does not apply to the Supervising JP, nor does it apply to JPs who are Court Officials. It applies to Senior and Junior JPs.

266. In support of this conclusion, the Government rightly points to legislation that provides for a tiered system for PCJ salaries. If the legislature had intended multiple tiers of annual salaries applicable to different classifications of JPs, it would have provided for such differences in the Act as it did for PCJs. It did not do so.

267. In the same way, there is no legislated mandate to consider separately the salary of a position that was created and distinguished from other JPs for administrative purposes. The Act does not distinguish between JPs who perform administrative functions.

268. As a result, the following report does not include recommendations on the salary and benefits of the Supervising JP, nor does it recommend that salary enhancements be received by the Assistant Supervising JP or Senior JPs. The salary recommendation applies equally to Senior and Junior JPs.

C. Issues Raised and Areas of Disagreement

269. As is to be anticipated, the Government and the Association made submissions on matters not addressed by the other, or only in its response to the other. There is also disagreement on several issues. These areas are each discussed in turn.

i. The Nature of the Work

270. The Association supplied this Commission with a wealth of information regarding the functions JPs perform and the work conditions they experience.

271. In terms of duties and functions, JPs perform a variety of judicial functions and alleviate a substantial portion of the Provincial Court's workload. A JP's authority is quite wide in terms of their ability to impose significant fines and imprisonment, and appears to be comparable if not broader than JPs in other jurisdictions in Canada. At times dealing with graphic subject material and matters of serious consequence to victims and offenders alike, the duties can be stressful. JPs often deal with unrepresented individuals and are tasked with ensuring comprehension and

fairness in their dealings. While many tasks are often routine in nature, JPs frequently affect the basic civil rights of Saskatchewan residents (e.g. search warrants and production orders). As this reports summarizes in the above sections, these public servants are making significant contributions to the administration of justice in this province.

272. In terms of difficult working conditions, this Commission accepts the Association's assertion that some JPs are "front-line workers" who are sometimes subject to security and health risks in the normal course of their duties. The testimonials depict JPs who are presently dealing with the kinds of work environments and risks most people would associate with police officer and prison guard positions.

273. However, it is also apparent from the materials that those JPs who work out of the Regina Hub and deliver their services through telecommunication tools are shielded from many of these risks. According to the Government, the expansion of the Hub is an ongoing project and the number of JPs delivering services from this location will continue to increase. This will surely result in an increase of JPs whose security and health risks are minimized when they perform their duties. JPs who perform their duties in court rooms also benefit from heightened security and the formality of procedure that those forums offer.

274. It is also suggested that the number of Community JPs performing this kind of work will decrease and eventually be eliminated completely as they retire. This transition period may prove to be lengthy and the need for Community JPs may not be eliminated completely even with the availability of Regina Hub services. In any case, the present situation of the majority of Community JPs cannot be overlooked at this time in anticipation that work environments might be improved sometime in the future. It will be the duty of the next commission to reassess work environments. For now, it is sufficient to observe that many if not most JPs are often called upon to perform their duties in stressful, demanding, and sometimes risky environments.

ii. Recruitment and Retention

275. Recruitment and retention of qualified applicants appears to be a great challenge for the Office of the Supervising Justice of the Peace at this time. As noted above, the Regina Hub has been an efficient solution to many issues facing the province, including the difficulty of

recruiting and retaining qualified Community JPs in rural and remote communities. This Commission acknowledges the difficulties faced by the Association and notes that adequate remuneration would go a long way to alleviate these concerns. The Association's summary of recent competitions evidences the fact that these positions generate low interest and the majority of applicants do not meet qualification standards. Further, those applicants that do "make the cut" appear to sometimes quit before they start. To say that recruitment and retention of JPs has been a challenge appears to be an understatement.

276. It is not a leap of logic to connect recruitment and retention challenges with the low remuneration currently provided to JPs in Saskatchewan. In addition, a fee-for-service model can pose an inherent danger to judicial independence. Any judicial compensation scheme must ensure that decision-makers perform their duties within a system that is above reproach: a system that creates commercial motivation by its very nature poses a threat. The model's elimination is thus long overdue.

277. In addition to the danger posed by the fee-for-service model, the schedule has not been adjusted since 1994. The great majority of Community JPs likely offer their services out of a desire for public service rather than for adequate remuneration. Inflation rates and minimum wage increases demonstrate the inadequacy of having no increases since 1994. The Bank of Canada inflation calculator reveals that a general increase of 43.54% has occurred (e.g. \$10.00 in 1994 would be worth \$14.35 today). Likewise, minimum wage in Saskatchewan has increased from \$5.35 in 1994 to \$10.00 today, which is an increase more than double the rate of inflation (a 99.25% increase).

278. The current remuneration of many Stipend JPs is slightly higher than their Community JP counterparts. On a weekly stipend of \$400.00 for 7 days of on-call work that involves evenings and weekends, a Stipend JP can expect to work between 25-35 hours a week, according to the Association. As a result, their compensation for actual hours worked (not to mention the on-call status required of them) is likely somewhere between \$11.00 and \$16.00 per hour.

279. JPs who staff the Regina Hub are also paid on a different basis, at \$25.00 an hour for day and evening shifts, and \$57.00 per shift for stand-by services during the night. Given the strong

accolades that the new service delivery approach has been receiving, it is imperative that JP positions are able to be filled as the Hub expands.

280. Senior JPs are currently remunerated at a rate of \$40.00 per hour. At this rate, a JP could earn \$70,400.00 per year, if one assumes an 8-hour day and 220 working days each year. Of course, if Traffic Safety Court JPs were to be appointed, they would earn a higher salary of approximately \$95,000.00, and receive a pension and a full benefits package, under the current regulations.

281. As this brief overview demonstrates, one of the deficiencies of the current system is a lack of uniformity. It is understandable that different remuneration schemes were implemented to accommodate variable schedules and stand-by responsibilities, but the result is that some JPs are paid very differently than other JPs for performing the same duties. It also appears that a great majority of currently serving JPs receive remuneration that has fallen far below an acceptable level. Only a small percentage of JPs receive rates of pay that resemble closer to adequate compensation. Symptomatic of a remuneration model that has been overlooked and forgotten, these long term problems are about to be corrected by this Government so that JPs in this province will receive fair, competitive, and uniform salaries.

iii. Increased Government Expenditures

282. The Government emphasizes that its proposal will increase Government expenditures seven-fold in terms of JPs currently paid on a fee-for-service model. It also estimates that all JPs, no matter their current remuneration status, will experience a substantial increase if the Government's proposal is recommended and implemented. These expenditures will obviously be more if the Association's proposal are implemented.

283. For its part, the Association replies that the difference in the submitted proposals amounts to a fraction of the total budget of the Ministry of Justice for 2013/2014. Further, it argues that budget implications are not of primary importance to the commission process.

284. Indeed, the new compensation structure will pose some budget challenges, but not without the Government's anticipation of the transformation about to occur. Moreover,

projected expenditure increases relative to the rates of remuneration for many groups of JPs in the past several years is plainly going to result in a significant increase in expenses. The Government has acknowledged the need for extreme corrective measures.

285. In any case, it is difficult for this Commission to comment meaningfully on budget implications. The Government has submitted that a full economic analysis is not necessary, but it also wishes to have its budget considered by this Commission. The Government cannot approbate and reprobate: a review of budget constraints would require specific and contextual economic information.

iv. Comparator Groups

(a) Public sector employees in Saskatchewan

286. Direct comparisons to other public sector employees in Saskatchewan primarily informed the Government's choice of 42% as the appropriate percentage. It is heavily reliant upon the salaries received by RCMP and City Police Officers, as well as Crown Counsel and Legal Aid Commission lawyer salaries.

287. Use of these comparator groups is somewhat problematic because the salaries are set by the executive branch of government. Relying solely on public sector salaries does not adequately preserve the independence of the judiciary. Nonetheless, certain salary ranges can provide helpful barometers.

288. Comparing JP salaries to police officers may be less helpful than comparisons to government employed lawyers, not only because other commissions with similar mandates have not referred to police officer groups as useful comparators but also because the positions are not at all similar in terms of duties and functions. In addition, the information used by the Government was gleaned from a website, which the Association says is out-of-date.

289. Last, the Government says nothing about the significant pension plan received by these groups and appears to make these comparisons without regard for this aspect of compensation.

(b) JP salaries in other jurisdictions

290. Both the Government and the Association supplied numerous charts and various methods of calculation with regard to the salary data circulated. This circulated data summarized JP salaries across Canada in jurisdictions where an independent commission has been established or where salaries are set by regulation.

291. This Commission makes the following observations about the circulated data:

- The data was supplied by the Government of Saskatchewan;
- The data included 7 jurisdictions: British Columbia, Alberta, Manitoba, Ontario, Quebec, Nova Scotia, and Yukon;
- There were significant “gaps” in the data due to ongoing commission processes. These gaps include:
 - Alberta after 2007/2008;
 - Ontario after 2010/2011;
 - Quebec for 2013/2014; and
 - Yukon for 2013/2014.

292. The following table (see Table 1) was compiled by this Commission, using only the JP salary data supplied to it with no projections to fill these noted “gaps.” The salaries of PCJs in other jurisdictions for the same years were gleaned from the Association’s submission on page 46, which was supplied by the Government of Saskatchewan. The salary amounts for PCJs across other jurisdictions in Canada do not appear to be at issue between the parties.

293. The data in Table 1 is presented in chronological fashion using all the data available to this Commission (going back to 2003) and compares each year to the previous year’s PCJ salary. For example, JP salaries that existed in Alberta in 2007/2008 are compared with Alberta PCJ salaries in 2006/2007. Both the Association and the Government adjusted the data by one year in order to comply with the Regulation’s instruction that the JP salary should be a percentage of the previous year’s PCJ salary. This Commission accepts that this is the proper approach.

294. Adjustments were made to this data by the Government and the Association, and can be categorized into three areas of disagreement: ratio comparisons vs. direct comparisons; elimination of certain jurisdictions; historical trends and use of projections; and legal qualifications.

1) Ratio comparisons vs. Direct comparisons

295. The Association and the Government approach this data in different ways. The Association suggests that the relationship or ratio between JP and PCJ salaries in each jurisdiction provides the most relevant comparison. The Government notes these comparisons as well, but focuses on direct comparisons of monetary values of JPs in each jurisdiction.

296. This Commission is inclined to think that the ratio comparison approach of the Association is more appropriate. In particular, the relationship between JP and PCJ salaries in each jurisdiction appears fairly consistent over the last 9 years, suggesting that this is a prominent factor to which past commissions have been mindful. While this may be the first commission in Canada that has an express mandate to set a percentage in relation to PCJ salaries rather than a specific dollar amount, it appears that past commissions have been ensuring that the relationship established between PCJ and JP salaries is consistently maintained.

297. In addition, the ratio comparison approach automatically incorporates factors such as provincial economies and cost of living indicia, which are not accounted for through direct comparisons. The insufficiency of a direct comparison can be demonstrated with reference to the mandate of the Yukon Commission, which is obligated to consider specifically the cost of northern living to acknowledge the unique situation of JPs in the Yukon. It also appears that British Columbia's most recent commission recommendations were heavily influenced by difficult economic times in the province. Direct comparisons were also questioned by the 2011 Hood Commission since they do not reflect the dynamics of provincial economic realities.

2) Elimination of certain jurisdictions

298. Both the Government and the Association suggest that certain jurisdictions should be eliminated completely from the comparison data. The Government urges this Commission to eliminate the eastern jurisdictions due to lack of proximity to Saskatchewan. The Yukon should also be dismissed because of its high cost of living and northern allowance considerations. Ontario and Quebec in particular should be eliminated because of their population size and extent of the legal community. Taking aim at the high rates of compensation in Alberta, the Government refers to Alberta's historical "link" with Ontario and suggests that because Saskatchewan has no such link with Ontario, comparing salaries to Alberta would not be appropriate. By default, the Government would have this Commission focus on two jurisdictions: Manitoba and British Columbia.

299. The Association makes similar suggestions for elimination, but not for Ontario, Quebec, and Yukon salary comparisons. However, it suggests that data from Manitoba be eliminated because an independent commission process is not in place there. Such is also the case in Nova Scotia. Likewise, the Association takes aim at the low rates in British Columbia, which it says were implemented to curb a difficult economic situation in that province. Alberta's salaries should be considered, but only if projected salaries are used.

300. Not surprisingly and depending upon the approach taken, the Association's method is that an appropriate percentage is 50%, while the Government's method suggests that 42% is adequate.

301. If this Commission acceded to the suggestions of both the Government and the Association, every jurisdiction in the country would be omitted from consideration for one reason or another. Obviously these suggestions were made in part because making the respective eliminations would support a shift in the data favourable to the proposals of each perspective. This Commission, however, is wary to ignore data from other jurisdictions for precisely this reason.

302. Elimination of data from certain jurisdictions was also suggested to the 2011 Hood Commission. At that time, the argument was tendered that the salaries in "have" provinces

should be given more weight than others. However, the 2011 Hood Commission expressed reluctance to ignore certain provincial data from consideration. At paragraphs 244 and 245 of its report, the Commission reasoned that higher salaries in certain provinces are relative to the economic realities that surround the talent pool that is being attracted. Empirical, reliable, and current information about these economic realities in other provinces would be required in order to exclude certain jurisdictions from the calculation of the national average.

303. In the course of this discussion, the 2011 Hood Commission also commented specifically that salaries from Manitoba should not be eliminated because of its similar size and proximity to Saskatchewan. The Government quotes this statement in support of its position that Manitoba's JP salary amounts should not be eliminated from comparator jurisdictions. It should be noted, however, that the 2011 Hood Commission made these comments with reference to PCJ salaries. While Manitoba does not have an independent commission for JP remuneration, it certainly has one for PCJs. The 2011 Hood Commission was simply not commenting on the same issue. Nonetheless, the conclusion of the 2011 Hood Commission is that eliminating some comparator jurisdictions is generally not a helpful approach.

304. This Commission is therefore also wary to eliminate data from certain jurisdictions, with one notable exception under these circumstances. A lack of an independent commission process is a significant difference between Saskatchewan and Manitoba (as well as Nova Scotia). If the salaries in these two provinces were dramatically out of step with the rest of the country, their inclusion in the national average calculations would perhaps be unwise. In these circumstances, however, the salaries in these two provinces are not outside the overall range so the issue appears less pertinent.

3) Historical trends and data projections

305. In addition to the above suggestions to eliminate certain jurisdictions, both submissions suggest that only certain years of data should be used as comparisons. The Government focuses on only the present year because this represents the actual present situation in each jurisdiction. The Association proposes that an average calculation should include salaries from the last 6 years because this will ensure consideration of recent trends as well as present realities, and it

reflects the same period of time for which this Commission will make its recommendations. Data that precedes 2007 was thus excluded in the Association's chart.

306. This Commission views the historical data in other jurisdictions since 2003/2004 as helpful contextual information. In particular, it is notable that the average percentage relationship between JP and PCJ salaries has not varied significantly over the years.

307. Both of these approaches required that the Association and the Government provide values to "fill in the gaps" in the data provided to them. This proved to be an area of contention, in particular as it pertained to Alberta.

308. As of the date of this writing, Alberta's Commission has yet to release their recommendations, and increases will be applied retroactively to salaries received in 2007/2008 onwards. The last salary set and implemented through an independent commission process was \$110,000.00 for the years 2005/2006 through 2007/2008. It is this Commission's understanding that JPs in Alberta have continued to receive this salary by default without any increases up to the present year.

309. Despite the out-of-date salary data from Alberta, the Government used \$110,000.00 as the actual 2013/2014 salary of JPs in Alberta. This JP salary was compared to the actual salary of PCJs in Alberta in 2012/2013, which has increased steadily over the last 6 years from \$220,000.00 to \$263,731.00. Thus, the Government represents that the percentage relationship in 2013/2014 is 42% in Alberta. As Table 1 demonstrates, this is far from the truth: the salaries for 2008 and beyond have simply not been recommended, approved, or implemented. It is a "gap" in the data. The Government's approach in comparing a 2007/2008 JP salary to a 2012/2013 PCJ salary does not represent the historical approach in Alberta, which has set JP salaries quite consistently at 50% or more of an Alberta PCJ between 2003 and 2008.

310. The Association, however, presents its data with projected salary increases for the Alberta "gaps." It says that the proposed salary increases from both the Government and Association of Alberta can be used successfully to anticipate the likely increases that will be implemented in Alberta.

311. It is true that even if this Commission had the advantage of the final recommendations from Alberta, the Government of Alberta will be required to affirm (or reject) and implement new salaries, so it is not possible to anticipate what the exact outcome will be. Both the Government and the Association addressed the issue of using projections in their replies. Both cited previous Commissions in this province that commented on the use of projections in similar circumstances. One commission appears to have accepted that projections should not be included in the data of salaries used for jurisdictional comparisons. Others appear to have come to the opposite conclusion.

312. In these circumstances, it is highly unlikely that the Government of Alberta will not implement any increases at all. In addition, the \$110,000.00 salary figure will be adjusted retroactively back to 2007/2008. A significant increase for 2013/2014 is virtually inevitable. This Commission therefore accepts that a conservative estimate of the likely increase is acceptable and helpful under these circumstances. Such an estimate can be readily identified: the submission of the Alberta Government represents the low watermark and appears to be a reasonable projection for that reason. The Alberta Government submitted a salary increase to \$117,480.00 for 2008, rising to \$131,866.00 in 2012. Expressed as a percentage of the previous year's PCJ salary, a JP salary in 2012/2013 will likely be adjusted to at least 51.2%.

313. Despite the fact that the use of projections was a contentious issue, it is interesting to note that if these projected salaries are added to Table 1, the overall percentage average is not affected to a great degree (48.91% rises to 49.22%). See Table 2 below.

4) Legal qualifications

314. The Government raises a salient point with regard to the qualifications required of JPs in Alberta and British Columbia. A law degree and five years of legal experience are required in Alberta, and also required of JPs in British Columbia who preside over trials. Alberta's remuneration of JPs may partly reflect this high qualification standard.

315. However, as the Association notes, Saskatchewan is also moving towards a policy that only individuals with legal training will be eligible for Senior JP positions (those JPs who preside over trials), and some of these positions are already designated as such. The situation in British Columbia is thus more comparable to Saskatchewan JPs than the Government suggests, or at least will be in the near future. In addition, remuneration that is comparable to public sector lawyers will no doubt attract candidates with legal qualifications in the future.

316. A further point on this issue is that this Commission is not mandated to make distinctions between Junior and Senior JPs in terms of salary. As such, Senior JPs should not earn less than they deserve simply because the Act does not contemplate this distinction. That is, it is preferable for Junior JPs to earn a higher salary by default rather than for Senior JPs to be penalized. If a recruitment goal is to attract the best and the brightest to judicial decision-making positions, compensation must be comparable to other positions requiring a legal education.

(c) PCJ salaries and the PCJ national average

317. Determination of the PCJ national average salary might also provide helpful information. If a PCJ salary in Saskatchewan is lower or higher than the national average salary of PCJs, it may follow that JP salaries in Saskatchewan should mirror that relationship. However, determining national average salaries is not a straightforward task.

318. The difficulty stems from the elusive nature of the national average salary of JPs and PCJs in Canada at any given time. With regard to JP salaries, it has been noted that litigation is pending in British Columbia and commission processes are currently underway in Alberta, Ontario, and Yukon. Quebec has recently released its latest recommendations, but is awaiting approval by their government. In addition, it was apparent from British Columbia's latest compensation commission that its government had frozen salaries due to difficult economic

times in the province. Alberta's commission process is currently determining salaries that will be retroactive all the way back to 2008/2009. If projections are used for Alberta and Ontario salaries, the national average for 2012/2013 increases. If Manitoba and Nova Scotia are eliminated from the calculation due to their lack of an independent commission process, the figure rises even more.

319. The PCJ national average is equally elusive, and also depends upon how many jurisdictions are included in this calculation. For example, using the Association's initial calculation, Saskatchewan is at least on par with the national average for PCJ salaries in 5 comparator jurisdictions. According to the Government's calculation, Saskatchewan's PCJ salary for 2013/2014 is currently 3.17% above the national average of PCJ salaries, using 7 comparator jurisdictions.

320. By way of further demonstration, if all 12 provinces and territories (excluding Saskatchewan) are included in the calculation, the PCJ national average is possibly even higher. For example, the Government had submitted to the 2011 Hood Commission that Saskatchewan's PCJs earned 7.1% above the national average of PCJ salaries as of April 1, 2011 (see page 38 of the 2011 Hood Commission Report). In the result, the 2011 Hood Commission accepted that Saskatchewan PCJs earn more than the national average, but did not adopt an exact figure.

321. These difficulties do not mean that national average data is meaningless. It does mean, however, that the data must be used with caution and with appropriate consideration of the method used to calculate it. Owing to this, it would appear appropriate to express the national average benchmark as an approximate range, rather than an exact amount. The national average JP salary is therefore approximately between \$110,400.00 and \$120,500.00, depending on whether the projections and/or eliminations are applied to these calculations or not. That is, if the "gaps" in the data are not filled at all, but Nova Scotia and Manitoba salaries are included in the calculation, the current national average JP salary is \$110,400.00. However, if projections are used to fill in the gaps for Alberta and Ontario salaries, but Nova Scotia and Manitoba salaries are eliminated completely, the figure rises to \$120,500.00. Since Saskatchewan PCJs earn a salary that is at least on par with or slightly more than the national average, it would not

be unreasonable to suggest that JP salaries in Saskatchewan should also reflect this relationship to the approximate national average.

D. Required Recommendations

i. Salary

322. If the Association's proposal of 50% were accepted, the resulting JP salary for 2013/2014 would be approximately \$124,000.00. This suggestion is well within the range of Senior Crown Counsel in Saskatchewan and the percentage value is only slightly higher than the average percentage relationship in all 7 jurisdictions (48.91%), according to Table 1. However, as it compares to the national average salary of JPs, it appears a little high.

323. If the Government's proposal of 42% were accepted, the resulting JP salary for 2013/2014 would be approximately \$104,000.00. The Government attempted to show that 42% is similar to 4 of the 7 comparator jurisdictions in Canada (see para 112 of the Government's submission, or the table of data reproduced above in this Report at page 25). The Government represents that this table compares 2013/2014 JP salaries with 2012/2013 PCJ salaries. However, as noted and explained above, the Alberta JP salary amount used in this table was set for the period between 2005 and 2008. Comparing this 2005 salary with the 2012 salary for PCJ judges in Alberta, the Government suggests that JP salaries are being set and implemented at a rate of 42% of the PCJ salary in Alberta. In the same way, the Government uses the Ontario JP salary from 2010 and compares it with the PCJ salary for 2012/2013. As a result, this table misrepresents the situation in these comparator jurisdictions. The reality is that these two provinces have historically set salaries consistently at 50% or above (in Alberta) and at 47% or 48% (in Ontario).

324. In addition, the Government has referred to its proposal as "the second-highest salary for Justices of the Peace in western Canada" but omits the fact that the salary proposal is also the third-lowest salary among 7 jurisdictions and represents an amount that is well below the national average salary of JPs. Even by the Government's method of calculating the national average in terms of amounts and percentages (according to the method pointed out above), this is well below an appropriate level. The national average salary was calculated by the Government

as \$111,162.00, or 46% of the average PCJ salary in 2012 (see page 42 of the Government's submission).

325. The Government's proposal of 42% is also the absolute lowest percentage rate compared to JPs in every other comparator jurisdiction, including Manitoba and British Columbia, where JPs earn 43% of the PCJ salary. These two jurisdictions reflect Canada's low watermark, and also includes a jurisdiction that does not have an independent commission process.

326. According to this Commission's calculations in Table 1 and Table 2, the national average JP salary, when expressed as a percentage of PCJ salaries, has consistently hovered around 49% since 2003. This average percentage has remained remarkably steady over the years, differing by less than 1.2 percentage points in either direction. Applying this percentage to Saskatchewan's PCJ salary in 2012/2013 (\$248,010.00), an annual JP salary of \$121,254.90 would result. This salary is commensurate with the national average JP salary expressed as a percentage of the previous year's PCJ salary, and is slightly above the national average salary of JPs expressed in monetary terms. It is also comparable to the low-end of the salary range of Senior Crown Counsel lawyers and in the mid- to high-end salary range of Legal Aid lawyers in Saskatchewan (i.e. lawyers with 8 years of experience).

327. Therefore, this Commission recommends that the JP salary for 2013/2014 in Saskatchewan be set at 49% of the previous year's PCJ salary, or \$121,524.90.

ii. Calculation of pro rata portions

328. As noted above, the Government and the Association agree that the *pro rata* calculation in terms of days, half-days, and hours worked should be based on the number of actual working days of a full-time JP. The 2011 Hood Commission and those that came before it also arrived at the same number with regard to PCJs. The 220 working days per year accounts for 146 non-working days in a 366 day leap year:

- 104 weekend days;
- 10 public holidays;
- 2 additional Saskatchewan public service employee holidays; and
- 30 vacation days (based on the PCJ allocation).

The rate for half-days and hours should be further divided by 1/2 and 1/8, respectively. For ease of reference, the 10 public holidays and 2 additional employee holidays will be referred to collectively in this Report as "holidays."

329. It is important to clarify at this juncture what the 220 working-day divisor means for JPs that are paid on a daily or hourly basis. The divisor has the effect of adding amounts to the daily or hourly rate in order to provide compensation for holidays and vacation days, which full-time JPs will receive on a paid basis as a matter of course. Part-time JPs will therefore not receive paid vacation or holidays. This is simply because the rate of pay they receive is higher in order to account for the paid vacation and holidays received by full-time JPs. In short, the 220 working-day divisor accounts for some of the benefits, namely vacation and holidays, that full-time JPs enjoy.

330. This Commission therefore recommends that the *pro rata* portion of the annual salary of a JP should be calculated as follows:

For daily rates: $\frac{\text{Annual salary}}{220 \text{ days}}$

For half-daily rates: $\frac{\text{Annual salary}}{440 \text{ half-days}}$

For hourly rates: $\frac{\text{Annual salary}}{1760 \text{ hours}}$

iii. Pension Contributions

331. The Association suggested that all full-time JPs should be enrolled in the pension plan. As it stands now, the Act stipulates that only Senior JPs will be enrolled in the Public Employees Pension Plan. It does not permit this Commission to make recommendations on who should be included in the plan, only the contribution rate that should be applied. In any case, there are only two Junior JPs who presently work full-time hours at the Regina Hub. This may change over time as the Hub expands and the demand for JPs at this location grows. The Government indicated a willingness to review the pension arrangement in the future. At this time, contributions will be made on behalf of a relatively few number of individuals, since there are currently 12 Senior JPs.

332. Neither the Government nor the Association submitted that the exclusion of Junior JPs from pension benefits is due to the higher status, broader authority, and greater responsibilities of Senior JPs. However, this Commission notes that a pension contribution is a significant benefit received by Senior JPs only, and constitutes a distinction between Junior and Senior JPs made by the legislation.

333. With regard to appropriate contributions, the Government and the Association agree that contributions flowing from the individual should be set at 5%.

334. However, the submissions regarding the government's contributions were not agreed upon. The Government submits that pension contributions for Senior JPs should mirror those of out-of-scope public servants (e.g. Crown Counsel). Thus, they submit that 7.25% is appropriate, with scheduled increases to 7.5% and 7.6% over the next two years. The Association suggests that 10% should be contributed by the Government which, it says, is an approximate average percentage gleaned from government contributions for JPs in Ontario, British Columbia, and Alberta.

335. In its response to this Commission's request for more information on pension plans, the Association focused more attention on the PCJ pension plan in Saskatchewan. However, using government contributions to this plan as a comparator is problematic. The pension plan benefiting PCJs is structured and administered very differently than the PEPP because it is a defined benefit plan rather than a defined contribution plan. The same issue arises with comparisons to the pension plans for JPs in British Columbia, Ontario, Quebec, Yukon, and Manitoba because these plans are also defined benefit plans, according to the Association.

336. Defined benefit plans are not appropriate comparators to the PEPP. A government may contribute regularly to a defined benefit plan on behalf of individuals, but the ultimate cost to a government may vary: the funds are subject to market forces, but the benefit provided to members is fixed. That is, the benefits flowing from a defined benefit plan are not directly connected to the amount of contributions made over the years. An accurate assessment of how these plans compare to each other would require much more information than this Commission has obtained. Such a comparison would require a complex analysis with expert assistance in

order to come to a meaningful conclusion on this issue. It is simply not realistic given the limited information available and the extensive inquiry that would be required.

337. It appears that Alberta's approach is significantly different, since JPs are not enrolled in a pension plan at all. Rather, JPs in this jurisdiction have received a 10% additional amount in lieu of pension. The 2009 proposals to the Alberta Commission both suggested an increase to 13.1%. According to the Government of Alberta Submission, this figure coincides with the percentage paid in lieu of pension to Deputy Ministers and other senior government officials in Alberta (see page 7 of the Government of Alberta's Submission). While this information is perhaps more relevant, it is not necessarily helpful since it is the only appropriate comparator jurisdiction.

338. Given the limited information on this issue, this Commission is inclined to recommend the contribution rates submitted by the Government. These pension contribution rates mirror those applicable to Crown Counsel and this does not appear to be an unreasonable comparison under the circumstances. As the commission process is a work-in-progress, future commissions may need to address this aspect anew.

339. Therefore, the Commission recommends that employee rates of contribution be set at 5%, while the Government contribution should be set at 7.25% for the period commencing on the day the new Regulations come into force. The contribution will increase to 7.5% for the period commencing on April 1, 2014, and to 7.6% for the period commencing on April 1, 2015. That is, the Government contribution rates for JPs should mirror those of out-of-scope public servants.

E. Permitted Recommendations: Benefits

i. Preliminary Issues

(a) Discretion to recommend

340. A recommendation regarding benefits is not a required task of this Commission, as per s. 10.3(1)(b) of the Act.

341. The Association placed heavy emphasis on the need to provide benefits for JPs considering their working conditions, recruitment challenges, and public service. This

Commission acknowledges the concerns presented to it regarding security and health risks, both physical and mental, that JPs encounter while performing their duties. It is also true that a benefits package is an attractive aspect of employment remuneration for any applicant. Further, public servants such as the RCMP and City Police officers, as well as Crown Counsel and Legal Aid Commission lawyers all receive substantial benefits packages.

342. It is therefore prudent to recommend that certain benefits be provided to JPs. Before doing so, one issue requires some commentary. The Government asserted that it enjoys even greater discretion when it comes to the implementation of benefits recommendations, since they are not mandatory recommendations under the Act. The Government described its position as being imbued with “complete discretion” whether to accept and implement them (at 15 of the Government’s Submission). Certainly the Act does create a distinction between compulsory areas of recommendations, and those that this Commission may choose to make.

343. The Government, however, has gone further by stating that because recommendations on benefits are optional, the Act has granted complete discretion and has released the Government from corresponding constitutional responsibilities. This Commission disagrees. The Act simply does not grant a greater level of discretion to the Government when considering permitted recommendations as opposed to required recommendations. As this Commission understands it, the constitutional imperative to ensure a meaningful and effective process continues to apply to these recommendations on benefits.

(b) Amounts in lieu of benefits

344. Another issue that requires commentary is the Government’s suggestion that this Commission lacks jurisdiction to recommend amounts in lieu of benefits for those JPs who are compensated on a daily or hourly basis. The Government says that the Act’s provisions regarding the *pro rata* calculation preclude adding further amounts in lieu of benefits.

345. The Act instructs that a recommendation must be made with regard to “the method of calculating the *pro rata* portions of the annual salary” of a JP (see s. 10.3(1)(a)(ii)). The Government insists that because benefits are not part of salary, the *pro rata* calculation cannot include additional amounts for benefits received by full-time JPs.

346. This Commission does not agree, primarily because there is no restriction about how recommended benefits must be delivered to JPs under s. 10.3(1)(b). Benefits form part of a total compensation package. Those JPs who earn their salary on an hourly basis but who do not receive additional benefits deserve to be compensated accordingly to ensure that JPs are being paid in a uniform and consistent manner. For example, under the new remuneration structure, a JP could accumulate hours amounting to 95% of a full-time JP. If no additional benefits amount was added, this JP would be paid much less for almost the same functions performed by a full-time JP earning an annual salary and receiving full benefits.

347. In addition, the actual working-day divisor already accounts for some benefits enjoyed by a full-time JP. Recall that the Government accepted that 30 vacation days and 12 holidays must be considered when determining the actual working days in a year. The practical implication of the actual working-day divisor is that some but not all benefits are embedded within this working day divisor and are therefore delivered to part-time JPs as a monetary amount in lieu of the benefit. It is therefore arbitrary to accept this method of compensation for vacation and holidays, but reject additional amounts in lieu of other benefits.

348. Therefore, an amount in lieu of benefits provided to JPs who are paid on a daily or hourly basis may be recommended by this Commission under s. 10.3(1)(b).

(c) Amounts in lieu of pension

349. The Association has submitted that Junior JPs should either be enrolled in the PEPP as well, or receive an amount in lieu. The Government opposes this submission and says that this Commission has no jurisdiction under the Act to make such a recommendation regarding pension.

350. It is commonplace to assert that pension is a benefit of employment and therefore conceivable that this Commission has jurisdiction under the Act to make recommendations for amounts in lieu of pension under s. 10.3(1)(b). However, doing so may also be contradictory to the spirit of the Act because the Act provides specifically that a certain group of JPs will be enrolled in the PEPP. It appears to have intentionally excluded Junior JPs from receiving pension benefits. Further, it is possible that the distinction made between Senior and Junior JPs

was deliberate in order to recognize the greater responsibilities and duties of a Senior JP, although the purpose of this distinction is not clear. Nonetheless, this Commission appreciates the Association's concern that this benefit is provided to some JPs, but not all.

351. These uncertainties have not been resolved to the satisfaction of this Commission. Therefore, this Commission is uncomfortable making any recommendation about amounts in lieu of pension for Junior JPs, and declines to do so. Moreover, the Government indicates a willingness in their Reply to review the pension provisions of the Act, so a recommendation at this time may be unnecessary. Future commissions may be required to revisit this question anew.

(d) Amounts in lieu of "source deductions"

352. The fourth issue that this Commission would like to address before making specific recommendations on benefits is with regard to the Association's submission that "source deduction" amounts should also be added.

353. According to the Association, it is anticipated that certain JPs will receive their remuneration in such a way that source deductions (e.g. CPP and EI) will be made, but such deductions will not be applied to all JPs. It is not clear to this Commission whether the new remuneration structure will effect this difference or not, or whether government contributions to these plans constitute a "benefit" as it is conceived of under the Act. Further, CPP and EI source deductions generally fall under federal legislation and regulation. In short, this Commission declines to make any recommendations on this issue for lack of information and/or lack of jurisdiction.

ii. *Vacation and Holidays*

354. The Association and the Government agree that full-time Senior JPs should receive 30 days of vacation and 12 holidays.

355. A point of clarification must be made regarding these benefits. It appears that the Government's submission proceeded on the assumption that these benefits would apply to Senior JPs only. The Association's submission, on the other hand, proceeds on the assumption that all

full-time JPs would receive them, whether they are Junior or Senior JPs. This difference was not specifically cited by either submission, and it may stem from an assumption that the only full-time positions that currently exist are Senior JP positions. The Association informs this Commission, however, that there are two Junior JPs who work at the Regina Hub that are full-time JPs. It is not clear whether they will be officially classified as full-time positions once this new remuneration structure is implemented. Nonetheless, the issue should be clarified.

356. There is no reason why all JPs classified as full-time (not just full-time Senior JPs) should not receive the same number of vacation days and holidays. The fairness of this can be demonstrated with reference to the working-day divisor used in the *pro rata* calculation for hourly and daily compensation, which accounts for 30 days of vacation and 12 holidays. If a full-time JP is classified as such and receives the annual salary set by the Regulations, but does not receive paid vacation and holidays, they would be receiving a much lower hourly rate than part-time JPs. This makes no sense at all.

357. Therefore, this Commission recommends that all full-time JPs receive 30 days of vacation and 12 holidays. It is also acknowledged that part-time JPs receive amounts in lieu for these benefits through the 220 working day divisor used in the calculation of *pro rata* portions of the annual salary.

iii. Scheduled Days Off (SDOs)

358. Both the Government and the Association rely solely on comparisons to other public servant positions on this issue. Some public servants receive SDOs, while others do not. Neither submission submitted information regarding the nature or purpose of SDOs. Therefore, this Commission is inclined to agree with the Government that SDOs should not be recommended since PCJs do not receive this benefit and the mandate of this Commission is specifically linked to the remuneration of PCJs in Saskatchewan. There are two additional reasons for this decision.

359. First, recommending 12 SDOs is tantamount to increasing the percentage of the JP annual salary. A salary of 49% of the annual salary of a PCJ, based on 220 working days in a year, has been recommended as appropriate by this Commission. However, if a further 12 days off were provided to JPs, this would effectively increase the percentage to 51.8%.

360. Second, and related to the first point, the working day divisor on which the *pro rata* calculations are based would no longer provide equal compensation to part-time JPs for equal work. A full-time JP would work 208 days out of the year if SDOs were granted to them, but a part-time JP would not receive any further compensation under the *pro rata* formula, which is based on a 220 working-day divisor. A remuneration scheme must be cohesively structured so that each aspect of compensation is accounted for adequately and fairly. Acceding to the Association's request on this issue would create a disparity elsewhere in the compensation scheme.

361. Therefore, this Commission does not recommend that SDOs be allocated to JPs.

iv. Sick Leave

362. The Association and the Government agree that full-time Senior JPs should accrue sick leave at the rate of 1 ¼ days per full month of service (or 15 days per fiscal year, as per the current regulations for the Supervising JP). The same discrepancy between the submissions arises here as it did with the allocation of vacation and statutory holiday benefits. That is, the Government appears to suggest that only full-time Senior JPs should receive this benefit, while the Association submits that it should apply to all full-time JPs. Neither submission addressed this difference. For the same reasons outlined in the above section on vacation and statutory holidays, this Commission clarifies and recommends that all full-time JPs should accrue sick leave at the rate agreed upon above (15 days per fiscal year).

363. The Association suggests further that 5.7% should be added to the salary of part-time JPs as an additional amount in lieu of sick leave. There are a few problems with this proposal.

364. First, there is an issue regarding calculation of this percentage. The Association has plucked this percentage out of the 2011 Hood Commission Report (on page 29), wherein the Government submitted that the sick leave benefit granted to PCJs is valued at 5.7% of their salary. However, the 2011 Hood Commission dealt with a PCJ accrual rate of 18 days per year. No information was submitted about how this percentage was calculated or whether it is appropriate to apply it to JPs. This figure should not be accepted at face value because it does not necessarily correspond to the cost of the sick leave benefit for JPs.

365. Having said that, accrual of sick leave is a significant benefit and these additional days are not accounted for in the calculation of working days used for the *pro rata* calculation of salary. At 15 days per year, sick leave could be valued at 6.8% of the annual salary of a JP. The actual cost to the Government, expressed as a percentage of the annual salary, should in all likelihood be less than this amount, since it is unlikely that all JPs will access the maximum sick leave.

366. It is appreciated that sick leave is a personal matter and will vary from JP to JP, and therefore the administration of sick leave for part-time JPs is more troublesome than full-time JPs. However, an additional amount to the salary in lieu of sick leave seems the only way to provide for this benefit in a fair manner. While this Commission does not agree with the 5.7% submitted by the Association, this Commission does agree that there should be a percentage added to the salary of part-time JPs in lieu of sick leave. The amount should reflect the actual cost to the Government, expressed as a percentage of the salary paid to all full-time JPs in a fiscal period.

367. In summary, this Commission recommends that full-time JPs should accrue sick leave at a rate of 15 days per year, in a manner that mirrors the regulations currently set for the Supervising JP. Part-time JPs should receive a percentage in lieu of sick leave benefits, in addition to their hourly or daily rates of pay.

v. *Insured Benefit Programs: Group Life, Disability, Health and Dental*

368. The Association submitted much anecdotal evidence supporting the need for enrolment in insured benefit programs due to the stressful and sometimes risky work environments of JPs. They suggest that all full-time JPs be enrolled in an insured benefit program, and that part-time JPs should receive an additional amount in lieu of these benefits.

369. The Government does not necessarily object to enrolling full-time JPs in insured benefit programs, but suggests that the amount of the plan should be considered as part of the total compensation package. It estimates that an insured benefit program is valued at approximately 5% of the Government's proposed salary. The effect of this proposal is that the annual salary would be reduced by 5% to accommodate the employer for the payment of these benefit plans. It

follows that no such additional amount would be added to the calculation of daily or hourly rates of compensation if the Government's approach is implemented.

370. This Commission does not accept that insured benefit programs should be subsumed within the annual salary amounts for full-time JPs. Other public sector groups in Saskatchewan (and noted by the Government as appropriate comparators) receive insured benefits *in addition* to their annual salary. Moreover, the term "benefits" implies an amount *in addition* to salary, and the legislation itself contemplates salary as a separate component from benefits. It is not part of salary but rather a benefit of employment. If the Government's proposal was followed, enrolment in an insured benefit program would not be a benefit at all. It would simply be a required enrolment at the expense of the individual.

371. The Government also raises an administrative issue that would arise if all JPs were enrolled in insured benefit programs. Because of the minimum amount of work hours required to qualify for some benefits under these programs (approximately 1/3 of a full-time position), the administrative work required to track hours for JPs would be considerable. Their accumulated working hours are variable, sporadic, and difficult to anticipate.

372. It is the understanding of this Commission, however, that the Association does not propose that part-time JPs be enrolled in an insured benefits program. Rather, the Association suggests an amount in lieu of benefits for part-time JPs, to adequately account for this additional form of compensation. Only full-time JPs should be enrolled in an insured benefits program. The Government's concern is thus moot since there would be no need to track hours to determine who is eligible and who is not.

373. In summary, this Commission recommends that all full-time JPs should be enrolled in the Government of Saskatchewan Group Life Insurance Plan, the Public Employees Dental Plan, the Government of Saskatchewan Disability Income Plan, and the Extended Health Care Plan, in a manner that mirrors those provided to the Supervising JP under the Regulations.

374. Part-time JPs who are paid on a daily or hourly rate should not be enrolled in these insured benefit plans. However, this Commission recommends that an amount in lieu of these insured benefit plans should be added to part-time JP hourly or daily rates of pay. The

percentage should reflect the actual cost to the Government, expressed as a percentage of the cost of insured benefit plans provided to full-time JPs in a fiscal period.

vi. *Other Benefits*

375. The Government and the Association agree that certain benefits should be available to all JPs: expenses away from home, legal resources for disciplinary proceedings, and counseling services.

(a) Expenses away from home

376. The Regulations already provide for reasonable travel and meal expenses, although the Association proposes that the rates should be set by the Supervising JP. The Government points out that the current rates are the same as other Government employees. This Commission sees no reason to interfere with the current Regulations and recommends no adjustment.

(b) Legal Resources for disciplinary proceedings

377. The Association proposes that legal resources should be available to all JPs on an approved application basis, and the Government agrees. This Commission agrees that a mechanism should be in place for a JP to receive support in the rare circumstance that disciplinary action is being taken against them for job-related actions, and recommends that the application and authorization process suggested by the Government in their reply be implemented.

(c) Counseling services

378. Given the nature of their duties, JPs should also have access to counseling services. The testimonials included in the Association's submissions portray individuals who are called upon to perform their duties in stressful and sometimes risky environments. As such, the mental health of JPs should be supported. The Government agrees with this proposal and offers to explore the option of expanding current resources available to PCJs in order to include JPs. Therefore, this Commission recommends that all JPs have access to the counseling program currently available to PCJs or a similar program in the same manner as PCJs.

vii. Calculation of “work time”

379. Some of the submissions made by the Association are not necessarily “benefits” *per se*. Rather, they have to do with how salary is calculated in terms of what constitutes “work time.” While the Government points this out, it nonetheless agrees with the approach of the Association on these areas, including a professional development and training allowance, stand-by pay, and travel time.

(a) Professional development and training allowance

380. Professional development opportunities should be encouraged in order to ensure consistency and competency in decision-making. In many compensation packages, an amount is set aside annually that is earmarked for professional development purposes. The Association informs this Commission that this approach would not be helpful for JPs since most of their training is provided “in-house” and appropriate external resources are rarely offered. A modified approach is suggested by the Association to which the Government agreed, whereby JPs would be paid their regular salary when engaged in training “in-house,” but only 50% of their regular salary when engaged in training from an external source. This Commission does not agree with this approach for two reasons.

381. First, it appears to this Commission that the suggested 50% rate would apply only to part-time JPs. That is, full-time JPs would simply attend professional development training in the normal course of their full-time duties, no matter where or by whom it is offered. This arrangement would therefore create an unnecessary disparity between part-time and full-time JPs. There is no reason why a part-time JP should be paid less for time spent in training than a full-time JP. Second, the significance of the distinction between internal and external sources is not apparent to this Commission, in so far as it would make any difference for an individual JP and time spent in such training. Therefore, this Commission recommends that where the Supervising JP requires or requests a JP to attend professional development and/or training sessions, the JP should be compensated at the JP’s regular salary.

(b) Stand-by pay

382. The nature of “on-call” duties is also significant in terms of calculation of work time. Availability is a duty in and of itself, the importance of which is compounded in smaller communities where the services of a JP would be more sporadically required. Availability to work demands that JPs stay close to home, carry a cell phone, abstain from drinking alcohol, and be able to make arrangements to report to work on a reasonably quick basis. This would likely mean that the individual have a car available and that they are free of other duties such as caregiving for dependents. When a person is on-call, they are not free to do as they please. As such, this Commission recommends that JPs receive 1 hour of pay for each 24 hours of stand-by, as proposed by the Association and accepted by the Government.

(c) Travel time

383. For many of the same reasons, all JPs should be entitled to claim time spent travelling as working hours. It is likely true that the need to travel may decrease as telecommunications services are increasingly being offered. Nonetheless, in the meantime, those JPs who take time to travel to other communities in order to provide services should be compensated accordingly. Again, a full-time JP would no doubt view travel time as time spent fulfilling work duties. The Association and the Government also agree in this regard.

VII. COSTS

384. The Association had submitted that this Commission should reserve jurisdiction over the issue of costs for participation in this process. However, the Government notified this Commission in their reply that an understanding has been reached. The Government also submits that this Commission has no jurisdiction to do so at any rate.

385. The 2011 Hood Commission determined that they did have jurisdiction to hear submissions regarding costs. This Commission adopts this reasoning and remains seized of the matter if a satisfactory agreement cannot be reached.

VIII. SUMMARY OF RECOMMENDATIONS

386. The Commission's required recommendations can be summarized as follows:

- A JP annual salary for 2013/2014 in Saskatchewan should be set at 49% of the previous year's PCJ salary, or \$121,524.90;
- *Pro rata* portions of this annual salary should be calculated using divisors equal to 220 working days, 440 half-days, and 1760 hours; and
- Pension contributions for individual Senior JPs enrolled in the PEPP should be set at 5% of their annual salary. The Government should contribute:
 - 7.25% for the period commencing on the day the new Regulations come into force, and ending on March 31, 2014;
 - 7.5% for the period commencing April 1, 2014, and ending on March 31, 2015; and
 - 7.6% for the period commencing April 1, 2015.

387. It is further recommended that the Lieutenant Governor in Council amend *The Justices of the Peace Regulations, 1989, supra*, to provide the following benefits:

- Senior and Junior JPs who are classified as full-time and who earn an annual salary set by the Regulations should receive:
 - Leave of absence with pay for 30 vacation days per fiscal year (or 2 ½ working days for each full month of service in a period that is less than a full fiscal year);
 - Leave of absence with pay for 10 public holidays and 2 Saskatchewan public service employee holidays;
 - Sick leave calculated at a rate of 1 ¼ days for each month of service (or 15 days per fiscal year), in the same manner as the Supervising JP;
 - Enrolment in the following insured benefit programs, in the same manner as the Supervising JP:
 - Government of Saskatchewan Group Life Insurance Plan;
 - Public Employees Dental Plan;

- Government of Saskatchewan Disability Income Plan; and
 - Extended Health Care Plan.
- Senior and Junior JPs who receive remuneration according to the *pro rata* calculation should receive an additional amount of compensation, expressed as a percentage of the annual salary:
 - in lieu of sick leave; and
 - in lieu of insured benefit programs.
 - Senior and Junior JPs, whether full-time or part-time, should all receive the following benefits:
 - Expenses away from home (actual and reasonable travel and meals), according to the existing Regulations;
 - Legal resources for disciplinary proceedings, subject to the approval of the Chair of the Justices of the Peace Council; and
 - Counseling services through the PCJ or similar program;

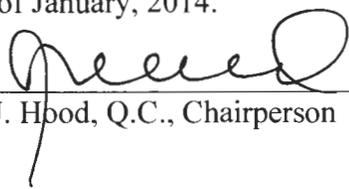
388. Although not technically benefits, the following adjustments to the calculation of “work time” are recommended:

- Professional development and training should be compensated for at a JP’s regular salary;
- Compensation for stand-by status should be paid at the rate of 1 hour per 24 hours; and
- Travel time should be compensated for at a JP’s regular salary.

IX. CLOSING

389. This Commission wishes to express a sincere thank you to those parties who made submissions in this process.

Dated at Saskatoon, Saskatchewan, this 13th day of January, 2014.



 William F.J. Hood, Q.C., Chairperson