



**Report and Recommendations of the  
2018 Saskatchewan Justice of the  
Peace Compensation Commission**

**Presented to the Minister of Justice and  
Attorney General and the Saskatchewan  
Justice of the Peace Association  
December, 2018**

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## **I. INTRODUCTION**

### **A. THE COMMISSION**

1. This 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 most recent amendments of which came into effect July 1, 2018. This is the second Commission established pursuant to the Act.

### **B. MEMBERSHIP OF THE COMMISSION**

2. The Commission is defined under section 10.1 of the Act as follows:

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

3. Accordingly, this Justice of the Peace Compensation Commission is made up of one member, Leslie W. Prosser, Q.C., who is the current Chairperson of the Provincial Court Commission (“2017 Provincial Court Commission”).

### **C. MANDATE OF THE COMMISSION**

4. Sections 10.1 to 10.3 of the Act stipulate the mandate of the Commission and provide as follows:

#### **10.1** In sections 10.2 to 10.3:

“**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* »)

- 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.

5. Under section 10.3(1)(a), this Commission is required to recommend the annual salary of a Justice of the Peace (referred to in this Report from time to time as "Justice of the Peace" or JP"), the method of calculating the *pro rata* portions of such annual salary, the method of calculating additional amounts to be paid to the Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace and the amount of the contributions to be made to the Public Employees Pension Plan by the Government of Saskatchewan for the benefit of Senior Justices of the Peace.

6. As provided for in section 10.3(1)(b), this Commission may also make recommendations with respect to benefits to be provided to Justices of the Peace.

**D. COMMISSION PROCESS AND PROCEEDINGS**

7. Advertisements calling for submissions to this Commission were placed in the Regina Leader Post and the Saskatoon Star Phoenix on September 8, 2018. The advertisements indicated that the Commission would be receiving written submissions from interested parties in order to conduct an independent review of salaries and pension for Justices of the Peace that will be effective April 1, 2019.
8. This Commission received written submissions from:
- (a) Deputy Minister of Justice and Deputy Attorney General, on behalf of the Government of Saskatchewan (the “Government”);
  - (b) Chairperson of the Compensation Subcommittee of the Saskatchewan Justice of the Peace Association (the “Association”); and
  - (c) the Canadian Bar Association, Saskatchewan Branch (the “CBA”).
9. Replies to the submissions were received from:
- (a) the Government; and
  - (b) the Association.
10. The Commission was permitted to submit written questions to the Government and the Association after review of the submissions referenced above, as provided for in section 10.5(b) of the Act. No questions were submitted by the Commission to the Government or the Association.
11. All submissions, replies and other documents can be reviewed at:  
<http://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/justices-of-the-peace-compensation-commission>.
12. The Commission is required to provide a report with its recommendations on the section 10.3(1)(a) matters for the six-year period commencing on April 1, 2019. The report is to be submitted to the Minister and the Association by December 31, 2018:

**10.4(2)** On or before December 31, 2018, a commission shall prepare and submit a report to the minister and the association containing:

- (a) its recommendations with respect to the matters mentioned in clause 10.3(1)(a) for the period commencing on April 1, 2019; and



- (b) proposed regulations to implement those recommendations.

## II. PREVIOUS COMMISSION

13. There has been one previous Justice of the Peace Commission in Saskatchewan, namely, the Hood Commission which reported on January 13, 2014 (the “Hood Commission”). A complete summary of the recommendations of the Hood Commission were set out in paras. 386 and 387 of its report (“Hood Commission Report”), as follows:

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.
14. The Commission's Report may also be accompanied by a report containing recommendations of the Commission with respect to matters mentioned in section 10.3(1)(b) which provides that the Commission:
- 10.3(1)(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)
15. In para. 388 of the Hood Commission Report, the following adjustments were also recommended:
- 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.
16. The Government of Saskatchewan responded to the recommendations of the Hood Commission. That response is summarized in the Government's Submission to this Commission at paras. 97 and 98 as follows:
- 97** The Minister of Justice responded to the recommendations of the 2013 JP Commission and advised that he accepted all of the required recommendations made under s. 10.3(a)(a) of the *JP Act*. Pursuant to

s. 10.7(1) of the *JP Act*, the Commission regulations came into force immediately, setting the 49% rate for the salary, the ancillary recommendations relating to calculation of time, the *pro rata* salaries and the pension contribution rates. The salary increases were retroactive to April 1, 2013, but the pension enrollment began from the date of the Regulation coming into force, to comply with federal pension rules under the *Income Tax Act*.

98 The Minister also advised that the Government would take the advisory recommendations under consideration, and would consult with the JP Association as to the extent they would be implemented. Ultimately, the Government implemented the advisory recommendation with respect to annual leave, statutory holidays, sick leave, life insurance disability and dental plan, and extended health care, but only for the Senior Justices of the Peace. The non-senior Justices of the Peace do not receive these benefits. The recommendations for expenses when away from home were implemented for all Justices of the Peace. The recommendations concerning legal defence and counselling were not implemented.

17. Since the submission of the Hood Commission Report and, in some instances, due to recommendations contained in it, there have been amendments to the Act and *The Justice of the Peace Regulations*, 1989 (the “Regulations”) which directly impact the mandate of this Commission. Such amendments will be addressed in more detail in this Report and have also been referred to in the submissions received by this Commission from the Government and the Association.

### **III. HISTORICAL BACKGROUND AND PRINCIPLES OF JUDICIAL INDEPENDENCE AS THEY APPLY TO JUSTICES OF THE PEACE**

#### **A. CONTEXT**

18. The historical origins of the role of the Justice of Peace in the administration of justice has been reviewed in great detail by the Government and the Association in their respective submissions. Rather than reproduce those submissions, this Commission considers it sufficient to reproduce a few comments from the Hood Commission at paras. 16 and 17 thereof which provide a brief overview of such history as follows:

16 The office of the justice of the peace was created by 14<sup>th</sup> 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 18<sup>th</sup> 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.

## **B. JUDICIAL INDEPENDENCE AND JURISPRUDENCE**

19. The 2017 Provincial Court Commission Report released in December 2017 (the “2017 Prosser Commission Report”) included a review of the principles of judicial independence as they apply to the Judges of the Provincial Court of Saskatchewan (the “PCJs”) and which are to be recognized and adhered to by the Provincial Court Compensation Commissions in their analysis and review of compensation for PCJs. The applicable provisions of the 2017 Prosser Commission Report state:

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

reasoned decisions from the Courts, decided solely on the merits of each case. Judicial independence also ensures that the public has confidence in the Court system and in Court decisions, confident that the Courts make their decisions without any external pressures or influences. Judicial independence is a crucial guarantee of the rule of law in a free and democratic society”.

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

**133** First, as a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class. However, any changes to or freezes in judicial remuneration require prior recourse to a special process, which is independent, effective, and objective, for determining judicial remunerations, to avoid the possibility of, or the appearance of, political interference through economic manipulation. What judicial independence requires is an independent body, along the lines of the bodies that exist in many provinces and at the federal level to set or recommend the levels of judicial remuneration. Those bodies are often referred to as commissions, and for the sake of convenience, we will refer to the independent body required by s. 11(d) as a commission as well. Governments are constitutionally bound to go through the commission process. The recommendations of the commission would not be binding on the executive or the legislature. Nevertheless, though those recommendations are non-binding, they should not be set aside lightly, and, if the executive or the legislature chooses to depart from them, it has to justify its decision - if need be, in a court of law. As I explain below, when governments propose to single out judges as a class for a pay reduction, the burden of justification will be heavy.

**134** Second, under no circumstances is it permissible for the judiciary - not only collectively through representative organizations, but also as individuals - to engage in negotiations over remuneration with the executive or representatives of the legislature. Any such negotiations would be fundamentally at odds with judicial independence. As I explain below, salary negotiations are indelibly political, because remuneration from the public purse is an inherently political issue. Moreover, negotiations would

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

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

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

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

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

The Commission was keenly aware throughout its deliberations of the foundation principle of judicial independence. The Commission's task – as Chief Justice Lamer made very clear – is to make recommendations based on *objective* factors, and it should be "fully informed" before doing so. (para. 172, Provincial Judges Reference) In our view, the interpretation of The *Provincial Court Act, 1998* which best meets these objectives is that the Commission has the jurisdiction to and should consider a broad range of "objective" factors. This approach is also consistent with Chief Justice Lamer's recommendation that legislation contain



a "non-exhaustive" list of relevant factors, and that the list might include the need for "adequate" salaries. The notion of "adequacy" is inherently flexible, and invites the Commission to consider all factors it considers relevant in the course of discharging its constitutionally mandated task.

[...]

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

20. Accordingly, the Supreme Court of Canada has clearly established the mandate and critical role to be played by compensation commissions in making recommendations for the compensation of Provincial Court Judges in Canada. Those principles clearly also now fully apply to Justice of the Peace Compensation Commissions. The Hood Commission reviewed the germane pronouncements of the Canadian Courts in this context in paras. 24 - 29, inclusive, of the Hood Commission Report:

- 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* [*Ell v Alberta*, 2003 SCC 35]. 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*. [*Provincial Court Judges Association of New Brunswick v New Brunswick (Minster of Justice)*, 2005 SCC44]. 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.

21. More recently, the Supreme Court of Canada in *Conférence des juges de paix magistrats du Québec v Quebec (Attorney General)*, 2016 SCC 39, [2016] 2 SCR 116 ("*Conférence des juges de paix magistrats*") confirmed that the independent commission process applies equally to Justices of the Peace. The Court, in a unanimous decision, confirmed the principles of judicial independence and the application of such principles to Justices of the Peace. Justices Karakatsanis, Wagner and Côté stated at paras. 32 and 33 of the decision:

- 32 The principle of judicial independence applies to all courts (*1997 Reference*, at para. 106). In *Ell*, this Court found that the principle extended to Alberta's justices of the peace because these justices performed numerous judicial functions --- most notably presiding at bail hearings and issuing search warrants --- that significantly affected the rights and liberties of individuals (paras. 20 - 26). There is no dispute in this case that judicial independence applies to Quebec's PJP's.
- 33 Judicial independence entails three objective guarantees: security of tenure, financial security, and administrative independence (*1997*

*Reference*, at para. 115; *Valente*, at pp 697 - 712). Each of these guarantees has both an individual and an institutional dimension (*1997 Reference*, at para. 118). The manner in which each of these guarantees may be satisfied varies with the context (*Ell*, at paras. 30 - 32). The ultimate question is whether a reasonable and informed person would perceive that the tribunal enjoys the objective guarantees (*Valente*, at p. 689, cited in *Ell*, at para. 32; see also *1997 Reference*, at para. 112). As such, judicial independence belongs not to judges, but to the public. The guarantees are not intended to be a means for judges to improve their working conditions (*1997 Reference*, at para. 9; *Ell*, at para. 29).

22. At para. 90 of the Decision, the Court confirmed that pensions form part of the remuneration for judges to be considered by a compensation commission:

90 Pensions are part of the judicial remuneration (*Valente*, at p. 704; *Beauregard*, at p. 75). Pensions must be examined with a view to their place in the overall compensation package for judges. For example, a less generous pension may be offset by more substantial salary and other benefits; viewed together, the overall remuneration might well meet the minimum constitutional threshold. This does not mean, however, that specific problems relating to pensions will never arise. For example, the total absence of a pension plan might raise concerns that overall remuneration cannot cure. And, of course, any proposed changes to the pension --- as any other changes to remuneration --- must be subject to prior review by a remuneration committee.

23. The Court then commented on the nature of the pension plan for judges at para. 91 of the decision:

91 Judicial independence does not require that a pension plan be exclusive or controlled by judges (*Valente*, at p. 708); nor does it require that all judges enjoy the same level of remuneration. Conversely, there is no reason in principle why a public service pension cannot apply to judges. There is also no reason in principle not to have a distinct and separate part of a pension plan specifically tailored for judges, although the absence of such a tailored plan does not automatically infringe judicial independence. ....

#### **IV. JUSTICES OF THE PEACE IN SASKATCHEWAN**

##### **A. CURRENT ORGANIZATION AND OPERATIONS OF JUSTICES OF THE PEACE**

24. There are currently 100 Justices of the Peace in Saskatchewan. As mentioned in the Association's Submission, there are 51 male and 49 female Justices of the Peace (para. 45) which have been characterized by the Association as follows:

- Supervising Justices of the Peace (Full Time)
- Assistant Supervising Justice of the Peace (Full Time)

- Three (3) Provincial Offence Justices (Full Time)
  - Five (5) Bylaw Justices (Part Time)
  - Four (4) Case Management Justices (Part Time)
  - Nineteen (19) Stipend Justices of the Peace; and
  - Sixty-seven (67) Community Justices of the Peace.
25. In its Submission, the Government states in para. 36 that “as the Government further transitions to a system of salaried Justices of Peace, significantly fewer Community Justices of the Peace will be appointed. It is anticipated that most Community Justices of the Peace will retire by the end of 2018, as they reach the end of their terms”.
26. The Act provides that the statutory retirement age for Justices of the Peace is age 70 (section 8(2)).
27. Appointments of Justices of the Peace are made under provincial law. In Saskatchewan, the Act provides the general appointment power and section 4 of the Act authorizes the Lieutenant Governor in Council to appoint residents of Saskatchewan as Justices of the Peace, who shall have jurisdiction in that capacity throughout Saskatchewan.
28. The Justices of the Peace Regulations, 1989, RRS c J-5.1 Reg 1 (the “Regulations”) enacted pursuant to the Act establish three categories of Justice of the Peace. Section 10(1) of the Regulations provide:
- 10(1)** The following categories of justices of the peace are established:
- (a) senior justice of the peace;
  - (b) justice of the peace who is not a court official;
  - (c) justice of the peace who is a court official.
29. Section 3(1) of the Act states that the Lieutenant Governor in Council may appoint a Justice of the Peace as the supervising justice of the peace. In addition, section 3(3) of the Act authorizes the Lieutenant Governor in Council to appoint a Justice of the Peace as the Assistant Supervising Justice of the Peace as well, subject to having received the consent of the Supervising Justice of the Peace.
30. Although this Commission’s mandate is limited to the determination of compensation for Justices of the Peace who are senior Justices of the Peace and Justices of the Peace who are not Court officials, as noted above, it is of assistance to review the roles and

duties of each category of Justices of the Peace in order to better understand the distinction among their various positions.

31. Although neither the Act nor the Regulations define or categorize Justices of the Peace, other than as noted in section 10(1) of the Regulations set out above, each of the Submissions received from the Government and Association refer, in great detail, to the various roles and functions performed by Justices of the Peace and often by reference to a specific title. To assist in distinguishing such “categories” of Justices of the Peace, the Government, in its submission, provided a summary of such categories in para. 7 as follows:

- “Justice of the Peace” is the general term for this judicial office. All Justices of the Peace who exercise judicial powers are authorised to issue process, such as arrest warrants and search warrants, and to determine initial bail applications. All Justices of the Peace are appointed by the provincial Cabinet.
- “Non-senior Justices of the Peace” are Justices of the Peace who have judicial powers, but are not “Senior Justices of the Peace”. The main distinction is that the non-senior Justices of the Peace do not conduct trials in summary offence cases, nor small claims matters.
- “Senior Justices of the Peace” have the same powers as other Justices of the Peace, and also have the power to conduct trials in small claims and some provincial and federal summary offences, other than *Criminal Code* offences.
- The “Supervising Justice of the Peace” is a Justice of the Peace who is charged with the overall administration of the JP program. The Supervising Justice of the Peace is normally designated as a Senior Justice of the Peace.
- The “Assistant Supervising Justice of the Peace” is a new statutory position, whose function is to assist the Supervising Justice of the Peace. The position was formally created by the 2016 amendments. Prior to those amendments, the position of Assistant Supervising Justice of the Peace had been created administratively, not by statute. The Assistant Supervising is normally designated as a Senior Justice of the Peace.
- “Stipend Justice of the Peace” is the administrative term used for Justices of the Peace who perform duties on a regular basis in a major centre and are typically non-senior Justices of the Peace.
- “Community Justice of the Peace” is the administrative term used for non-senior Justices of the Peace who perform duties in smaller communities on an as-needed basis.
- “Justice of the Peace who are court officials” exercise powers of an administrative nature. They are provincial public servants and do not



exercise any judicial functions. Their compensation is therefore not subject to review by the JP Commission.

32. In addition, both the Government and Association Submissions contain lengthy descriptions of the types of services provided by these categories of JPs. Again, for ease of reference and to provide a more complete context and framework within which to formulate the recommendations of this Commission, it is useful to reproduce in their entirety, paras. 48 - 63, inclusive, of the Association's Submission:

- 48 The Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace are located in Regina and are responsible for all aspects of the administration of JP operations. They develop and administer the training program for JPs, manage the JP Centre in Regina, handle human resources and budget matters, are responsible for policy development and research support, provide daily legal and policy guidance to Saskatchewan JPs and respond to numerous public inquiries. The Supervising Justice of the Peace is also responsible for daily supervision of all Justices of the Peace on a province-wide basis and serves as a back up to the Case Management Justices of the Peace, *Victims of Interpersonal Violence Act* (VIVA) JPs and the Provincial Offence and Bylaw JPs for small claims matters, regulatory docket and trial work, applications, and general document processing. The Assistant Supervising Justice of the Peace is also responsible for overseeing the daily operations of the Provincial JP Hub (the Hub) in Regina and serves as a backup for Hub staff.
- 49 Senior Justices preside over provincial regulatory proceedings in Regina, Saskatoon, Prince Albert, Estevan, Carlyle and Assiniboia. The court duties for these Provincial Offence JPs include docket and trials, reconsideration hearings, fine payment extension hearings and warrant of committal hearings. They handle a high volume of provincial regulatory offences including violations under *The Traffic Safety Act* and related moving violations under Municipal Bylaws as well as offences under other provincial statutes such as *The Alcohol and Gaming Regulation Act, 1997*, *The Cannabis Control Act*, *The Tobacco Control Act*, *The Parks Act*, *The Trespass to Property Act*, *The Wildlife Act, 1998*, *The Dangerous Goods Transportation Act*, *The Environmental Management and Protection Act, 2010*, *The Stray Animals Act*, *The Emergency 911 System Act* and *The Fisheries Act, 1994*, to name just a few.
- 50 Unlike JPs in many other jurisdictions in Canada, Saskatchewan Senior Justices of the Peace presiding over provincial regulatory proceedings hear cases involving serious injuries and fatalities and have the authority to impose terms of incarceration. The limits on the maximum sentence that can be imposed by these Justices of the Peace are those set out in the provincial statutes they deal with. Terms of imprisonment for provincial offences are rare but can be substantial with some types of offences carrying a potential term of imprisonment for up to two years. The lengthiest term of incarceration imposed by a

Senior Justice of the Peace presiding in a provincial regulatory matter to date is eighteen months for a serious set of driving offences.

- 51 As is the case with terms of imprisonment, there are no policy limitations on the maximum fine amount that can be imposed by a Senior Justice other than the limits set out in the statutes involved. Substantial fines can be imposed with maximums in the neighbourhood of \$300,000 for individuals and \$1,000,000 for corporations for certain types of offences. The highest fine imposed by a Senior Justice in a provincial regulatory matter to date is \$300,000 for a serious occupational health and safety offence involving significant safety violations and the death of an employee.
- 52 While not sitting in court, these Justices also conduct judicial interim release hearings, “back” out of province search and arrest warrants and conduct related identity hearings, process Reports and Returns to Justice, consider a variety of applications including property detention, extension, forfeiture, management and return applications, receive Informations, confirm or cancel police-issued process, consider applications for a variety of search warrants and production orders, approve and release sureties and handle a number of additional matters including peace bond Informations, private prosecution commencement, and requests for arrest warrants, summonses, and subpoenas. They also serve as a backup for Bylaw JPs.
- 53 The Senior Justices of the Peace presiding in Bylaw Court handle bylaw matters in Regina, Saskatoon, Kindersley and Lloydminster and parking proceedings in Moose Jaw and Prince Albert. On a part-time basis, they preside in court over all non-moving violations under a variety of bylaws such as building standards, fire prevention, noise control, animal control, and parking, and serve as a backup for the Provincial Offence JPs. The Bylaw Justices deal with cases that range from minor parking infractions with minimal fines to serious fire prevention and building standards cases involving injuries and fatalities. Substantial fines can be levied (fines of up to \$25,000) and terms of imprisonment imposed (up to 1 year in certain cases). While not sitting in court, Bylaw Justices assist the Provincial Offence JPs in conducting judicial interim release hearings, “backing” warrants, considering search warrant and production order applications, processing Reports to Justice and authorizing detention of property seized, receiving applications and conducting hearings relating to seized property, receiving Informations, confirming or cancelling police-issued process, and considering a variety of additional applications and related documents including arrest warrants, summonses, and subpoenas.
- 54 Senior Justices of the Peace assigned Case Management duties conduct pre-trial settlement discussions and case management processes for Small Claims proceedings in Regina, Estevan, Saskatoon and Prince Albert. These Justices are lawyers with a legislative designation as Judges for the purposes of Small Claims matters. This designation provides these JPs with the authority to make pre-trial judicial orders for the effective management of trial



processes such as the production and exchange of documents and expert reports. These JPs are also dispute resolution professionals with the authority to issue default and consent judgments and award costs.

- 55 Stipend Justices of the Peace are Regular Justices of the Peace providing Justice of the Peace services in each of the five (5) major communities in the province (Regina, Saskatoon, Prince Albert, Moose Jaw, and North Battleford). They carry cell phones and are required to be on call 24/7 for one week at a time on a rotational basis, resulting in 24/7 JP coverage 365 days of the year in these centres. These Justices follow regular schedules of attendances to police facilities in all Stipend locations with the exception of Saskatoon. They also attend to correctional institutions, the penitentiary, and hospitals as needed to conduct hearings and facilitate release processes. They conduct judicial interim release hearings, receive Informations, confirm or cancel process, and consider applications for and issue summons, warrants for arrest, subpoenas, search warrants and production orders.
- 56 In Saskatoon, Stipend Justices conduct evening and weekend court by video and audio link to Saskatoon Police Services detention as part of a Municipal JP Hub pilot project. Saskatoon Stipend JPs also attend City Hall to process court documents for Bylaw matters. Stipend JPs also preside over a parking bylaw docket in North Battleford.
- 57 Several of the Stipend Justices are specifically designated as *Victims of Interpersonal Violence Act* (VIVA) JPs for the purposes of conducting hearings and issuing Emergency Intervention and Protection Orders pursuant to *The Victims of Interpersonal Violence Act* and *The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Act*. These Justices carry cell phones and are on-call one week at a time. They are available province-wide to victims, the police and designated agencies who work in the areas of prevention of violence and child protection (i.e. Mobile Crisis, Victims Services).
- 58 VIVA Justices are required to conduct *ex parte* hearings to assess the level of immediate danger to alleged victims. They have significant authority in this area including the ability to impose non-contact orders, direct supervised removal of individuals and their property from residences, provide exclusive possession of a residence to a party for a period of time regardless of ownership of the residence, and any other provision they consider necessary for the immediate protection of a victim.
- 59 Regular Justices of the Peace providing Justice of the Peace services to smaller communities in Saskatchewan are referred to as Community Justices. These Justices are located throughout the Province and work on a "call in" basis. Similar to Stipend Justices, Community JPs process a variety of court documents including Informations, confirm or cancel process, issue warrants for arrest, search warrants and production orders and conduct judicial interim release hearings. Community Justices also periodically handle docket court in circuit locations when the court party is unable to attend.

These Justices of the Peace have the authority to handle first appearances, adjournments, guilty pleas and sentencing on non-*Criminal Code* matters with all trials and *Criminal Code* matters being set over for a Provincial Court Judge to address. Community JPs also preside over a regulatory docket in Assiniboia and a parking docket in Moose Jaw.

- 60 Regular Justices of the Peace providing JP services by telecommunication to communities without a Justice of the Peace or as a back-up to a Community Justice are referred to as Provincial Hub Justices and perform the work of Stipend and Community Justices through a centralized service hub located in Regina. These Justices consider search warrant applications, conduct judicial interim release and remand hearings and process a variety of court documents by telecommunication for many smaller communities in the province.
- 61 The Telewarrant program provides for specially designated Justices to be available province-wide to the police for the purpose of issuing “Feeney” warrants when it is impracticable for the police to appear personally before a Justice to make an application. All Provincial Hub JPs have this designation. Informations to obtain these warrants are submitted to the Hub by telecommunication. This Telewarrant service currently operates 24/7 through the Hub. The Hub is staffed by two (2) full-time and four (4) part-time Regular Justices who work in eight-hour shifts – 7 am to 3 pm, 3 pm to 11 pm and 11 pm to 7 am (on call).
- 62 As is evident from this overview of JP operations, there is a significant variation in the titles and responsibilities for Saskatchewan Justices of the Peace. JPs have a variety of skill sets depending on the nature of their work assignment (i.e. JPs who are lawyers handling trial matters, JPs with prevention of child abuse and domestic violence training handling VIVA applications). Despite different titles, responsibilities and skill sets, all JPs are paid the same salary as they all perform work of equal value and importance to the justice system.
- 63 It is also important to note that despite differences in JP assignments, there is a broad area of overlapping work consisting primarily of two important judicial functions that all categories of JPs have responsibility to carry out, namely, warrant consideration and the conduct of hearings.

- 33. It is important to note and recognize that the Government in its Submission included a very detailed and substantively similar description of the wide variety of services provided by Justices of the Peace in Saskatchewan.
- 34. It is also of significance to note that in Saskatchewan, while there is no legal requirement that Senior Justices of the Peace have formal legal training, the Government in its Submission states that as a matter of administrative practice, prior

experience as a lawyer is now required to apply for a position as Senior Justice of the Peace.

35. It is also important to note that the system employed by the Province of Saskatchewan for the delivery of services provided by Justices of the Peace has continued to evolve significantly, most notably from a fee-based system to a salary based system for Senior Justices of the Peace and a uniform hourly rate structure for all Non-senior Justices of the Peace, as referred to in the Government's Submission at para. 33.
36. The current service delivery model also utilizes a centralized service Hub located in the City of Regina. The Hub has evolved from a pilot project commenced in 2009 to a full time operation.
37. A helpful description of the Hub history and services is found at paras. 64 - 70, inclusive, of the Association's Submission. Those paragraphs are repeated below, together with the related Figures referenced therein.

64 In the fall of 2009, a new operational model for Saskatchewan JPs was piloted in Regina, Saskatchewan with the opening of the Justice of the Peace Hub. This centralized service Hub enabled JPs to carry out their work by telecommunication for remote northern communities. The Hub was created to address challenges posed by recruitment and retention issues and limited availability of Justices of the Peace in northern Saskatchewan. As is evident in Figure 1, the Hub has made a substantial expansion into northern, central and southern Saskatchewan since it began operations for the communities of La Loche, Fond du Lac and Wollaston Lake in 2009.

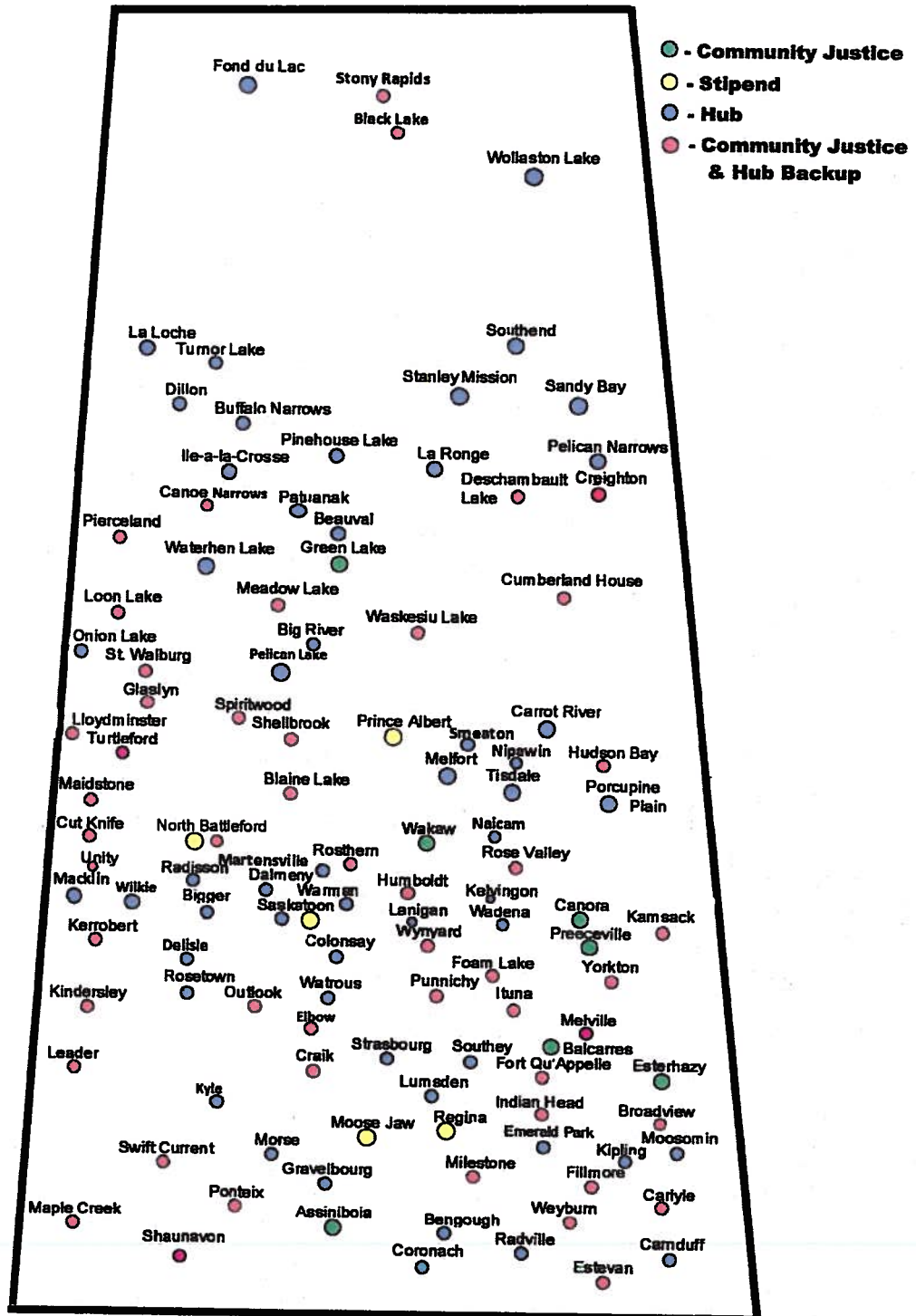
65 In 2017, the Hub provided centralized Justice of the Peace services by telecommunication to 102 communities and 134 agencies within the province. The primary services involved are judicial interim release hearings, search warrant consideration, and the processing of court documents. The Hub can be accessed by the participating agencies from 8:00 a.m. to 10:00 p.m. daily with an after hour's emergency service for urgent requests (i.e. Feeney Warrants, Blood Warrants).

66 In Figure 1, the legend identifies the type and location of all Justices of the Peace in the Province of Saskatchewan. The communities in which the Hub serves as the primary source for Justice of the Peace services are marked with a purple circle. The communities in which the primary source for Justice of the Peace services is a Community Justice with the Hub operating as a secondary "backup" as needed are marked with a red circle. Communities in which all Justice of the Peace services are provided by Community Justices located in that community are marked with a green circle and communities in which

Justice of the Peace services are provided by Stipend JPs are marked with a yellow circle.

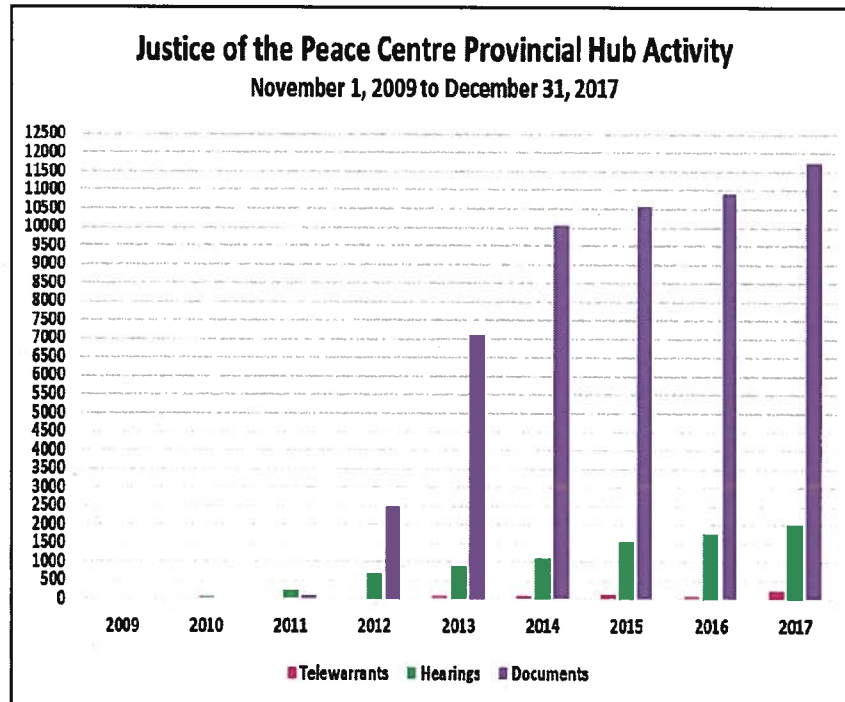
- 67** As is evident from Figure 1, the Hub has evolved far beyond its initial northern focus and has become a primary means of providing JP services on a province-wide basis.
- 68** The Hub currently provides JP services to the RCMP, Municipal Police, Combined Traffic Services of Saskatchewan, Saskatchewan Highway Patrol Officers, Ministry of Environment (Conservation Officers) and Saskatchewan Animal Protection Officers.

**Figure 1: Assigned Location of all Justices of the Peace in Saskatchewan**



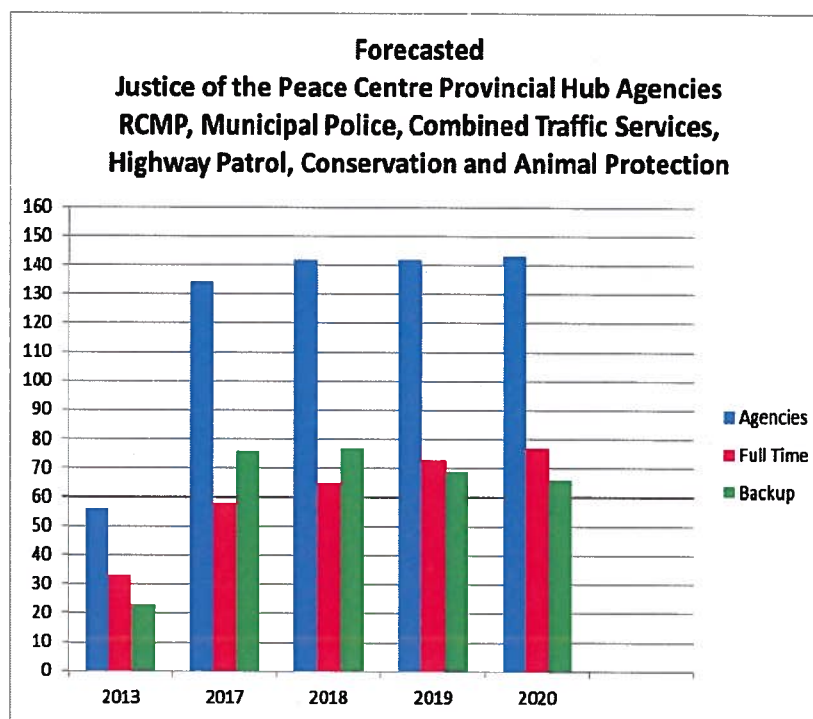
- 69 As noted in Figure 2, the volume of work handled by the Hub has risen dramatically during its operation period. In 2017, there were 11,737 documents processed, 2005 hearings held and 210 search warrant applications considered.

**Figure 2: Justice of the Peace Centre Provincial Hub Activity**



- 70 The Hub is currently operating at near maximum capacity given available resources and demand for access continues to be high. The Hub enables significant operations efficiencies, provides a high level of service consistency and requires a relatively small group of Justices to operate. It addresses security and many working condition concerns for JPs, and deals with challenging recruitment issues in smaller communities. Challenges for the Hub include the shift work involved which appeals to a narrower range of potential JP candidates than regular business hours, and managing the workload flow which can be unpredictable.
- 71 There will continue to be a transfer of JP services from communities with small volumes of work to the Hub as additional Community JPs retire or resign in these communities. There will also be a shift in the Hub providing back-up services to primary services in a number of locations. These anticipated changes are identified in Figure 3. Community JPs will remain in locations in which there is a significant volume of work. JP Hub operations will continue to evolve to address the changing needs for JP services across the Province of Saskatchewan.

**Figure 3: Forecasted Number of Associates using The Hub**



## **V. SUBMISSIONS OF THE PARTIES**

### **A. GENERAL COMMENTARY**

38. The preceding provisions of this Commission's Report have incorporated commentary from the written submissions received from the Government and the Association. This report will now outline, in summary form, those provisions of the submissions which focus on the required and advisory recommendations to be considered by this Commission.

### **B. GOVERNMENT SUBMISSION**

39. The Government in its Submission states that the mandate and process for this Commission is designed to be less complex than that established for the Provincial Court Compensation Commission. The main reason for this is that due to the provisions of the Act, as outlined above, the salary for Justices of the Peace is defined as a percentage of the salary for Provincial Court Judges for immediately preceding fiscal year of the Government. The latter review was completed in 2017 and the salaries for



Provincial Court Judges recommended by 2017 Provincial Court Commission in the 2017 Prosser Commission Report form the basis upon which salaries for Justices of the Peace will be recommended commencing on April 1, 2019.

40. Due to this process, a detailed review of economic factors in the Province of Saskatchewan are not necessary since the salary for Justices of the Peace will automatically increase proportionately with the salary of the Provincial Court Judges, based on the assessment and recommendations made by this Commission, just one year earlier. (para. 70, Government Submission)
41. In its submission, the Government states that since the Provincial Court salary will increase each year, the salary of the Justices of the Peace will also automatically increase each year since it is based on a percentage of the salary of Provincial Court Judges from the previous fiscal year. This Commission is therefore required to review the JP salary and make a recommendation in respect of the appropriate percentage of the Provincial Court Judges' salary that is to be the basis for the salary for the Justices of the Peace for the next six years. (para. 79, Government Submission)
42. This Commission is then also to recommend the *pro rata* salaries to be paid to Justices of the Peace who do not work full time. Senior Justices of the Peace who do not work full time receive a *pro rata* salary based on half days or full days worked (section 10.2(4) of the Act). Non-senior Justices of the Peace are to be paid a *pro rata* hourly rate (section 10.2(5) of the Act).
43. Subsequent to the Hood Commission Report, and as a result of the 2016 amendments to the Act as found in section 10.2(5.1) thereof, this Commission is required to recommend an additional amount to be paid annually to the Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace. The base salary of the Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace are to be the same as the annual salary as the other Justices of the Peace, established under section 10.2(1) of the Act.
44. Finally, this Commission is required to recommend the contribution rates payable by the Government and Senior Justices of the Peace to *The Public Employees Pension Plan Act* ("PEPP"). At present, only Senior Justices of the Peace are enrolled in PEPP.



45. The Government, in its Submission, acknowledges that this Commission may, in addition to the required recommendations noted herein, make advisory recommendations with regard to benefits for Justices of the Peace (section 10.3(1)(b) of the Act), to be implemented by an ordinary regulation of Cabinet (section 15(d) of the Act). However, the Government's position is that it has the discretion whether or not to implement the advisory recommendations. (para. 85, Government Submission)

**(1) GOVERNMENT PROPOSAL AND ANALYSIS ON REQUIRED RECOMMENDATIONS**

**(a) Salary**

46. The Government submits that the salary of Justices of the Peace should remain at 49% of the salary of Provincial Court Judges. Since the regular salary increases for Provincial Court Judges exceed the projected rate of inflation, the resulting salary for Justices of the Peace will continue to meet the requirements for judicial independence, recruitment and retention.
47. At para. 115 of its Submission, the Government outlines the major factors in support of its position:

**115** The Government submits that there are five factors in favour of maintaining the percentage at 49%:

- (1) the 49% rate automatically includes a cost-of-living-adjustment as a result of linking to Provincial Court Judges, maintaining the salary at an amount necessary to meet judicial independence;
- (2) there has not been any significant economic change since last year, when the PC Commission recommended the current salary for the Provincial Court Judges;
- (3) the rate of increase for the JP salary over the past four years outpaces average cost-of-living, as well as wage growth across all industries in Saskatchewan, Crown counsel, and Legal Aid;
- (4) the 49% rate will keep the Saskatchewan JP salary on par with the other JPs in other provinces;
- (5) extending PEPP to the non-senior Justices of the Peace is itself a major compensation increase for the majority of the Justices of the Peace, over 7% annually for the next three years, with the additional benefit of being tax-deferred.

48. The 49% ratio for the salaries of Justices of the Peace in relation to the salary of Provincial Court Judges formed the basis of the salary recommendation of the Hood Commission. The Government refers to the Supreme Court of Canada's pronouncements that while this Commission is not bound by the recommendations of its predecessor, there should be a good, demonstrable reason to depart from those prior recommendations. (*New Brunswick Reference*, paras. 14 and 15)
49. The Government further submits that since the Provincial Court Commissions in 2014 and 2017, respectively, recommended annual salary increases for Provincial Court Judges, which recommendations were accepted by the Government, these recommendations have resulted in annual salary increases for Justices of the Peace. Accordingly, there is no good and demonstrable reason to depart from the recommendations of the Hood Commission.
50. Applying the 49% rate, the salary increases for the next three years for Justices of the Peace are estimated by the Government to be as follows, as noted in Table 1 of its Submission at p. 49:

**Table 1: Estimated JP Salary Increases for the Next Three Fiscal Years**

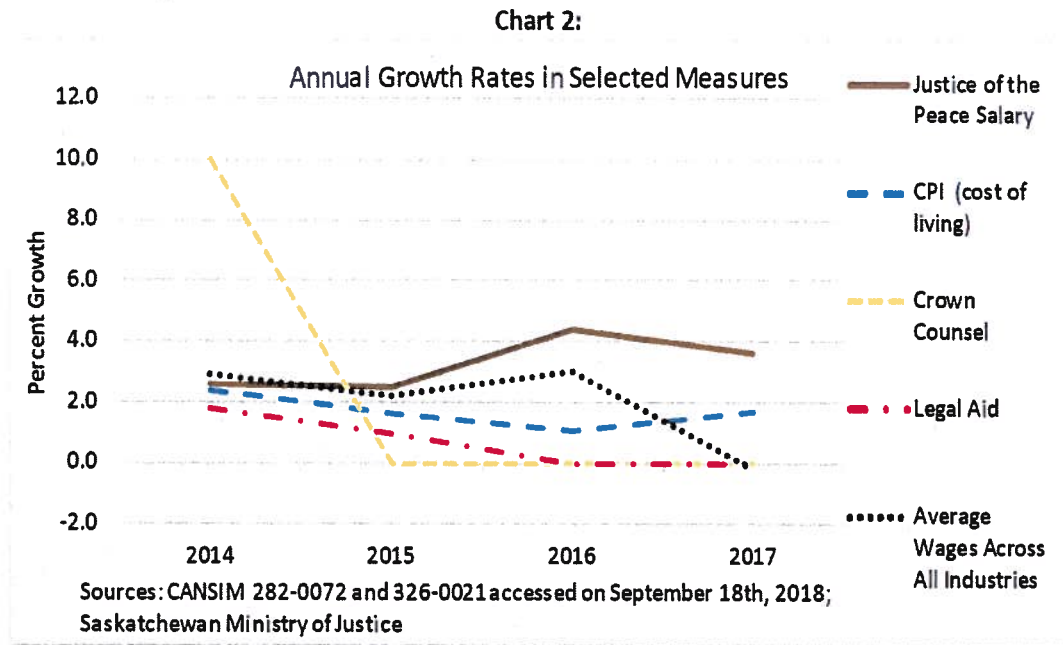
<b>Fiscal Year</b>	<b>Salary (estimated salaries in <i>italics</i>)</b>	<b>Dollar Increase (estimated increments in <i>italic</i>)</b>	<b>% Increase (rounded to one decimal place)</b>
2019-20	\$144,939 <sup>121</sup>	\$ 2,423	1.7%
2020-21	\$148,997 <sup>122</sup>	\$ 4,058	2.8%
2021-22	\$153,169 <sup>123</sup>	\$ 4,172	2.8%

Footnote 121 above indicates that the salary would be the actual amount if the Government's recommendation is adopted.

Footnotes 122 and 123 indicate the salaries are estimated based on the Government's projected Saskatchewan CPI increases for the relevant years.

51. In its Submission (paras. 121 and 122), the Government notes that as a result of the recommendations of the Hood Commission, there was a one time increase of close to \$30,000 in the salary for Justices of the Peace in 2013-14, followed by steady increases in each subsequent year resulting in an average annual salary increase of \$4,198 (3.2%) over the past five years which is a significant salary increase.

52. The Government further submits that those Justices of the Peace who work part time and, since 2013, are compensated on an hourly rate basis also saw a major increase in compensation in 2013 and have received regular increases in each year thereafter.
53. As a result of the compensation recommendations of the Provincial Court Commissions in 2011, 2014 and 2017, which have resulted in an annual increase for Provincial Court Judges of not less than the Saskatchewan CPI in each year plus, in most years, an additional percentage. Since 2013, Justices of the Peace have annually enjoyed a similar increase.
54. The Government submits that if this approach continues to be followed, increases in the Justices of the Peace salaries will consistently outpace inflation and that such regular substantial salary increases demonstrate “that the 49% rate continues to ensure that the Justices of the Peace are compensated in a manner sufficient to satisfy the requirement of financial security, necessary for the principle of judicial independence”. (para. 126, Government Submission)
55. The Government further submits that economic conditions in the Province of Saskatchewan have not changed substantively since the 2017 Prosser Provincial Court Commission Report and, accordingly, there is no need for this Commission to revisit those circumstances at this time. Similarly, based on current Saskatchewan CPI projections, the increases in Provincial Court Judges’ salaries will result in salaries for Justices of the Peace which will be sufficient to meet the test for maintaining judicial independence. Accordingly, no change to the 49% rate is required. (para. 131, Government Submission)
56. On a comparative basis, the Government submits that the rate of salary increases for Justices of the Peace has exceeded those for the Saskatchewan workforce generally. The Government submits that, on a comparative basis, rates of salaries increases for Justices of the Peace have exceeded those other salaries. At p. 55 of its Submission, the Government presented the following chart in support of that submission.



57. The Government submits that the above chart demonstrates that salaries for Justices of the Peace have been increasing at a faster rate than those salaries for lawyers in the public sector and, more generally, in relation to the provincial employment market which are identified by the dotted line “Average Wages Across All Industries”.
58. The Government’s Submission makes reference to salaries for Justices of the Peace in other Canadian jurisdictions for comparison purposes. However, the Government also cautions that “there is considerable diversity across Canada with respect to Justices of the Peace, which makes a straight comparison difficult”. (para. 135, Government Submission)
59. The Government indicates that there are no Justices of the Peace, as such, in New Brunswick and Newfoundland & Labrador; Nunavut and North-West Territories only have part time Justices of the Peace who are paid at an hourly rate prescribed by “Commissioners in Council”; Yukon has one vacant Justice of the Peace position that is not anticipated to be filled; Prince Edward Island does not have a Justice of the Peace Commission and only one position, which is the equivalent of a Supervising Justice of the Peace is paid a salary set by the Provincial Government. All other Justices of the Peace in that province are paid on a fee for service basis; Manitoba and Nova Scotia have previously used a percentage of the Provincial Court Judge’s salary without an

independent commission. In 2013, the process in Nova Scotia was called into question as a result of a decision of the Nova Scotia Supreme Court which deemed the process unconstitutional for failure to follow the process of an independent commission (*Nova Scotia Presiding Justices of the Peace Assn v Nova Scotia*, 2013 Carswell NS 80, 2013 NSSC 40, paras. 110 - 116). This decision also casts doubt on the unilateral approach which has been used in Manitoba.

60. The Government distinguishes the Justices of the Peace positions in Alberta, British Columbia and Quebec which require their Justices of the Peace to have some legal training, in some instances a law degree and a minimum of five years' experience at the bar. In Saskatchewan, only the Senior Justices of the Peace, as a matter of hiring policy only, are required to have prior experience as lawyers.

61. With this background and commentary, the Government has outlined the salaries for Justices of the Peace in those provinces which either have an independent commission, or use a set percentage as follows:

- Alberta: \$151,813 plus shift differentials (April 1, 2016, recommendation accepted but not yet implemented);
- British Columbia: \$120,000 (April 1, 2018);
- Manitoba: \$109,333 (April 1, 2016);
- Ontario: ranges from Non Presiding Justice of the Peace: \$96,637 to Presiding Justice of the Peace: \$132,828, up to Senior Advising Justice of the Peace: \$143,028 (April 1, 2017);
- Quebec: \$144,960 (July 1, 2018);
- Nova Scotia: JPs are paid an hourly wage of \$74.46. In April, 2017, the hour wage calculation was to be based on the CPI;
- Yukon: in 2015 had a sole JP with a salary of \$136,031. The position is currently vacant and future use is not anticipated.

(para. 142 , Government Submission)

62. The Government therefore submits that the proposed rate of 49% which will result in a salary of \$142,516 for 2018-19, and a salary of \$144,939 in 2019-20 is favorably in line with the above-mentioned comparators.

63. The Government provides a comparative table of Justice of the Peace salaries in western Canada at p. 59 of its Submission which is reproduced here:

**Table 3: Comparative Table of Justice of the Peace Salaries in Western Canada**

<b>Province</b>	<b>JP Salaries: 2016-2018</b>
Alberta	\$151,813 (2016)
Saskatchewan	\$142,516 (2018-19)
British Columbia	\$120,000 (2018)
Manitoba	\$109,333 (2016)
<b>Western Average (with Saskatchewan):</b>	<b>\$130,916</b>
<b>Western Average (without Saskatchewan)</b>	<b>\$127,049</b>

64. While acknowledging that the timeframes from province to province are not directly comparable in all cases, it suggests that “retaining the 49% would continue to give Saskatchewan the second highest salary for Justices of the Peace in western Canada”. (para. 145, Government Submission) The Government further submits that in light of the requirement for legal training in Alberta and British Columbia (for its Judicial Justices), Saskatchewan compares favourably with salaries in other provinces in Western Canada and would, in fact, provide them with a higher salary than those in British Columbia who are required to have legal training and experience.
65. The Government contends that based on the data it is provided, the salary for Provincial Court of Saskatchewan as of April 1, 2017 was the third highest in Canada. This factor is relevant when considering the combined effect of that salary and the percentage proposed for Justices of the Peace. The 49% rate will “continue to maintain the Saskatchewan Justice of the Peace salary near the top nationally and within western Canada. That is consistent with the ranking for the Provincial Court Judge salary. The

Government submits that this factor counts against any need to change the 49% rate”.  
(para. 148, Government Submission)

66. In its submission on the subject matter of salary, the Government also points to its proposal (which will hereafter be discussed in greater detail) to enrol Non-senior Justices of the Peace in PEPP. This proposal is, itself, a substantial compensation increase and is another reason why the 49% rate should not be changed. The enrollment of Non-senior Justices of the Peace in PEPP at the same contributions rate as for Senior Justices of the Peace will result in a 7.6% increase for Non-senior Justices of the Peace in each of the next three years. While the Government acknowledges that such compensation is deferred, so also will the tax on that compensation increase be deferred, as well as tax on any income earned from those contributions.
67. In making the foregoing submission, the Government refers to the decision in *Conférence des juges de paix magistrats du Québec*, in stipulating that the consideration of pension cannot be viewed in isolation from salary. Accordingly, the Government urges this Commission to recognize that the substantial increase in pension is a factor counting against any change to the formula to determine salary.
68. The Government further submits that there need be no change to the current methodology in the Regulations used to compensate Justices of the Peace for time spent in professional development and training, stand-by pay and travel time.
- (b) **Pro-Rata Rate for Part Time Salaries**
69. The Government refers to this Commission’s mandate as set out in sections 10.2(4) and (5) to determine certain *pro-rata* rates as flows:

10.2(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.

70. The Government submits that the rates recommended by the Hood Commission continue to be appropriate and should not be changed. Those rates are as follows:



1. for a full day for the Senior Justices of Peace, the rate should be 1/220 of the salary as determined under s. 102.(1);
2. for a half day for the senior Justices of the Peace, the rate should be one half of the amount determined for the full day under the 1/220 formula, namely 1/440 of the salary;
3. for the hourly rate for other Justices of the Peace, the rate should be one-eighth of the amount determined for the full day under the 1/220 formula, namely 1/1,760 of the salary.

(Hood Commission Report - paras. 328 - 330; JP (Commission) Regulations, s. 4

71. These are also the rates to determine daily and half-daily charges for Temporary Judges of the Provincial Court and constitute a fair approximation of the number of working days in the year and the need for consistency with the rates provided for temporary Provincial Court Judges. (para. 161, Government Submission)

**(c) Additional Amounts for Supervising Justice of the Peace and Assistant Supervising Justice of the Peace**

72. This Commission is also required to recommend additional amounts to be paid to the Supervising Justice of the Peace and Assistant Supervising Justice of the Peace pursuant to s. 10.2 and 10.3 of the Act. The provisions are as follows:

**10.2(5.1)** In addition to the annual salary for a justice of the peace mentioned in subsection (1), the supervising justice of the peace and the assistant supervising justice of the peace are to be paid annually an additional amount calculated in accordance with the regulations made by the commission.

**10.3(1)** A commission:

(a) shall inquire into and make recommendations with respect to:

...

(iii) the method of calculating the additional amounts mentioned in s. 10.2(5.1) for:

(A) the supervising justice of the peace; and

(B) the assistant supervising justice of the peace.

73. The Government submits that these additional amounts should be consistent with the model utilized for the Provincial Court. The Government points out that “[u]nder the *PC Compensation Regulations*, the Chief Judge is paid a further amount equal to 7.5% of the salary of a Provincial Court Judge for the administrative duties of the office, while the Associate Chief Judge is paid a further amount equal to 5% of the salary”.



These percentages, in the view of the Government, are appropriate percentages to be utilized for the Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace.

74. Using this approach of a 7.5% additional amount to the Supervising Justice of the Peace would result in an additional amount of \$10,870 based on the Justice of the Peace salary commencing April 1, 2019 in the amount of \$144,939, if the Government recommendation for salary is accepted. In the case of the Assistant Supervising Justice of the Peace, the additional amount at a 5% rate would equal \$7,247. (para. 177, Government Submission)

**(d) Pension Contributions for Senior Justices of the Peace**

75. The final required recommendation for this Commission, in the Government's Submission, is to determine pension contribution rates for Senior Justices of the Peace as required by s. 10.2(6) and 10.3(1) of the Act:

**10.2(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:

...

(iv) the contributions to be made to the pension plan mentioned in subsection 10.2(6).

76. The Hood Commission recommended that contributions from Senior Justices of the Peace should be set at 5% of their annual salary and that the Government's contribution would escalate, to a rate of 7.6% for the period commencing April 1, 2015. The Government accepted those recommendations which were then implemented in s. 8 of the *JP (Commission) Regulations*. (para. 181, Government Submission)

77. The Government submits that these existing contribution rates need not be changed and further submits that there are no known plans to change the contribution rates for out-of-scope public employees, which served as a comparative group in 2013. (para. 182, Government Submission)

## **(2) GOVERNMENT SUBMISSIONS ON THE ADVISORY MATTERS**

### **(a) Pension for Non-senior Justices of the Peace**

78. Currently, only Senior Justices of the Peace are enrolled in PEPP. As a result of the ruling of the Supreme Court of Canada in *Conférence des juges de paix magistrats du Québec*, the Government accepts that a pension should be considered a “benefit” for the purposes of the Commission process and therefore accepts that “benefit” in s. 15(d) of the Act now should be interpreted as extending to pensions. (para. 186, Government Submission)
79. The Government submits that this Commission only has the authority to make an advisory recommendation and not to include such recommendation in its Commission Regulations. In the Government’s Submission, this advisory recommendation would need to be implemented in the short term by regulations passed by Cabinet, and in the long term by a statutory amendment to s. 10.2(6) of the Act. (para. 187, Government Submission)
80. The Government submits that it is important to proceed in this manner in light of the number of cases requiring that the Commission process be followed which, in effect, precludes the Government from unilaterally changing the compensation for individuals holding judicial offices such as Justices of the Peace. Accordingly, it is the Government’s Submission that it cannot simply include the Non-senior Justices of the Peace in PEPP without first requesting a review of this proposed compensation increase by this Commission. (para. 188, Government Submission)
81. The Government undertakes that should this Commission make such an advisory recommendation to include all Non-senior Justices of the Peace in PEPP, the Government will take the necessary steps to implement it. The Government proposes that such pension enrollment would come into force on April 1, 2019 coincidentally with the next annual salary increase for Justices of the Peace.
82. In addition, the enrollment of Non-senior Justices of the Peace in PEPP would apply to all of them, whether they work full or part time. The Government advises that PEPP is structured so that the individual and Government make contributions for every hour

worked. Accordingly, all Non-senior Justices of the Peace would be enrolled under this proposal.

**(b) Scheduled Days Off for the Supervising Justice of the Peace**

83. The Supervising Justice of the Peace currently enjoys the benefit of 12 “scheduled days off” (“SDOs”). This benefit is specific to the Supervising Justice of the Peace only.
84. The Government submits that these SDOs are an historical nominally. Currently the benefit of SDOs are received by out-of-scope public employees, such as Crown Council.
85. In the Government’s Submission to the Hood Commission, the Government requested that the SDOs for the Supervising Justice of the Peace should be eliminated, but only upon the retirement of the current Supervising Justice of the Peace. The Hood Commission declined to make any recommendation in that regard, concluding that it did not have the jurisdiction to do so, in light of s. 3 of the Act as it existed at that time. (para. 5, Hood Commission Report)
86. The Government argues that because the Senior Justices of the Peace and the Supervising Justice of the Peace now receive the same salary and benefits, there is no reason for this additional benefit to be maintained for the Supervising Justice of the Peace. It submits that all Senior Justices of the Peace should be on an equal basis with respect to vacation time.
87. The Government also recognizes the constitutional and policy considerations that come into play in the event of a reduction or elimination of existing benefits and that “a strong rationale is needed to carry out a reduction”. (para. 197, Government Submission) Accordingly, the Government urges this Commission to make an advisory recommendation eliminating the SDO entitlement but only after the current Supervising Justice of the Peace leaves office. The Government submits that this recommendation would respect the principle of judicial independence and the Government would, in turn, implement that advisory recommendation by a prospective amendment to the *JP Regulations*. (para. 198, Government Submission).

**(c) Summary of Government Recommendations**

88. The Government has summarized its recommendations in paras. 204 and 205 of its Submission as follows:

**204** In summary, the Government makes the following recommendations on the required matters:

- no change to the 49% rate to determine the Justice of the Peace salary;
- no change to the *pro rata* salaries, namely 1/220 of the annual salary for a full day, 1/440 for a half day, and 1/1760 for the hourly rate;
- additional amounts of 7.5% of salary for the Supervising Justice of the Peace, replacing the current additional amount of \$5,000, and 5% for the Assistant Supervising Justice of the Peace;
- no change to the pension contribution rates, being 5% for the Senior Justices of the Peace and 7.6% for the Government.

**205** The Government also makes the following recommendations on two advisory matters:

- that all non-senior Justices of the Peace be enrolled in PEPP, with the same contribution rates of 5% for the Justices of the Peace, and 7.6% for the Government;
- that the current provision for SDOs for the Supervising Justice of the Peace be eliminated prospectively, to take effect when the current Supervising Justice of the Peace ceases to hold that office.

**C. ASSOCIATION SUBMISSION**

89. The Association acknowledged that the Government accepted those mandatory recommendations of the Hood Commission; that is, all those recommendations made under s. 10.3(1)(a) of the Act, as it existed at that time. The advisory recommendations under s. 10.3(1)(b) of the Act were taken under advisement by the Government and the Government indicated that it would consult with the Association as regards to those recommendations. (See Appendix A of the Association's Submission – correspondence dated February 11, 2014 from the Minister of Justice to Commissioner Hood and Jacob Lichtenwald, Chairperson of the Compensation Sub-committee of the Association)

90. In paras. 77 – 89, inclusive, of the Association's Submission, it outlines the current collateral benefits of Justices of the Peace as set out in the Regulations, as follows:

77. The following current Justice of the Peace benefits are set out in *The Justices of the Peace Regulations, 1989*.

**a. Vacation and Statutory Holidays**

78. Sections 14.1(1), 14.31 - All full time Senior JPs and the Supervising Justice of the Peace earn vacation entitlements. . The total vacation entitlement is 30 days per year and a leave of absence with pay for 12 designated statutory holidays. All Regular JPs and part-time Senior JPs earn vacation pay as part of the *pro rata* calculation of their payment amounts.

**b. Scheduled Days Off (SDO's)**

79. Section 14.3(1) - The Supervising Justice of the Peace is entitled to 12 days off annually as paid leave. For a period of less than a year, SDO's are pro-rated, based on the number of days actually worked.

**c. Sick Leave**

80. Section 14.4(1) - All Senior JPs (full and part-time) and the Supervising Justice of the Peace are entitled to sick leave benefits calculated at the rate of 1 ¼ days for each month of service (15 days a year). Section 14.41(1) and (2) - All Senior JPs (full and part-time) and the Supervising Justice of the Peace may carry over unused sick leave between fiscal years and use accumulated sick leave to a maximum of 12 consecutive months for each period of illness.

**d. Leave of Absence**

81. Section 14.5(1) - Leaves of absence may be granted by the Minister to the Supervising Justice of the Peace without pay, with pay or with partial pay.

**e. Pressing Necessity**

82. Section 14.51 - Subject to any guidelines established by the Chief Judge and with the Chief Judge's prior approval, the Supervising Justice of the Peace and Senior Justices of the Peace may use accumulated sick leave to take a leave of absence with pay for reasons of pressing necessity.

**f. Expenses Away from Home**

83. Section 14.7(1) - All Regular and Senior Justices of the Peace and the Supervising Justice of the Peace, if required to travel for the purposes of engaging in their duties or to attend a professional development or training session are entitled to be paid for travelling, accommodation and meal expenses in accordance with rates established for employees in the public service.

**g. Moving Expenses**

84. Section 14.7(2) - A Supervising Justice of the Peace who is required to move a permanent residence is entitled to moving expenses and reasonable relocation costs as if he or she were an employee in the public service.

**h. Group Life Insurance**

85. Section 14.71(1)(a) - All Senior (full and part-time) JPs and the Supervising Justice of the Peace participate in the Government of Saskatchewan Group Life Insurance Plan.

**i. Dental Plan**

86. Section 14.71(1)(c) - All Senior (full and part-time) JPs and the Supervising Justice of the Peace participate in the Public Employees Dental Plan.

**j. Pension Plan**

87. Section 14.71 (2) - All Senior (full and part-time) JPs and the Supervising Justice of the Peace participate in and contribute to the Public Employees Pension Plan. *The Justice of the Peace Commission Regulations*, Section 8, sets the JP contribution at a rate of 5% of salary and the Government contribution at 7.6%.

**k. Disability**

88. Section 14.71(1)(b) - All Senior (full and part-time) JPs and the Supervising Justice of the Peace participate in the Government of Saskatchewan Disability Income Plan.

**l. Health Plan**

89. Section 14.8 - All Senior (full and part-time) JPs (meeting a minimum threshold of 16 working hours per week) and the Supervising Justice of the Peace participate in the Justice of the Peace Extended Health Care Plan.

91. It is helpful to outline these benefits which are referred to in greater detail subsequently in the Association's Submission and also in the Government's Reply, which will be referred to in more detail below in this Report.
92. In its Submission, the Association emphasizes the many and varied locations within which many of the Justices of the Peace work throughout the Province, often in less than optimal conditions. Many Justices of the Peace do not work normal weekday hours, but often during the evenings, weekends and holidays. Many work predominantly during those times.
93. The Association cites specific incidents which have occurred and which pose safety and health concerns for Justices of the Peace in the performance of their services, particularly in those locations in which services are performed outside of official Court room settings. These are detailed by the Association in paras. 92 – 95, inclusive, of its Submission:

- 92 Justices of the Peace also face significant challenges in dealing with unrepresented people in such locations. They must ensure that the proceedings they conduct are fair in the absence of counsel for either party. They must also ensure the proceedings are understood by individuals appearing before them. Justices of the Peace must be alert to language and comprehension difficulties. They must also be sensitive to the realities of alcohol and drug related impairment and symptoms of withdrawal which frequently results in behavioural difficulties for accused persons in detention facilities at the time they are appearing before Stipend and Community Justices of the Peace (within 24 hours of the time of arrest).
- 93 Hearings in detention facilities pose significant security issues for Justices of the Peace as well. These Justices are in close proximity to individuals in custody, typically without the benefit of a security presence in the hearing room other than the officer serving as the Crown's representative in the process. Sometimes officers leave the room for periods of time, resulting in a complete lack of security for the JP. Security incidents involving volatile accused persons in these locations are not uncommon for Justices of the Peace. Exposure to infectious diseases such as Hepatitis C, AIDS, and Tuberculosis is also a concern both in detention and hospital settings.
- 94 There have been a significant number of problem occurrences for Justices of the Peace conducting hearings in police detention areas and hospital environments. Accused persons being held in these locations are generally under a great deal of stress. Fights between accused persons and officers have occasionally broken out in the presence of JPs with the JPs having to quickly find a safe location or exit to avoid a physical confrontation. Verbal threats have been made by accused persons to JPs in these settings. JPs have been faced with attempting to conduct a hearing while an accused person defecates or urinates or spits on the floor or at the JP. JPs have been requested to glove and gown in isolation wards in hospitals to deal with accused persons in these facilities when the JPs have been given no information about the medical situation they are being exposed to. These locations tend to have loud surroundings which add to the challenges and stress involved. Summaries of a few of these types of incidents providing examples of the working environment challenges that Community and Stipend Justices of the Peace experience in the daily performance of their duties were previously referenced in the SJP Submission to the 2013 Provincial Compensation Commission for Justices of the Peace (pages 30 - 32) and these working conditions have not changed.
- 95 Justices of the Peace are also occasionally exposed to significant sources of stress in the documents they deal with which include search warrant material containing graphic descriptions and images relating to serious offences such as murder, sexual assault, and photographs of accident trauma as examples.



(1) **COMPENSATION ASSESSMENT FACTORS**

94. The Association refers to the recommendations of the Hood Commission which, in the Association's assessment, if fully implemented by the Government, would have resulted in "equal pay for equal work". However, when the advisory recommendations of the Hood Commission were not fully implemented, the result was a significantly higher level of compensation for Senior Justices of the Peace than regular Justices of the Peace in an approximate amount of 19%. The Association argues that "[t]his percentage is based on the value of the benefit factors in place for Senior Justices of the Peace. The Association submits that while that 19% difference is substantial for Justices of the Peace, the amount of expenditure by the Government to achieve that result would involve a "relatively modest expense overall for the Provincial Government". (para. 96, Association Submission)
95. Part of this inequity, the Association submits, is the Government's assumption that Senior Justices of the Peace would typically work on a full-time basis with regular Justices of the Peace working only part-time. The Association refers to a written process summary provided to this Commission and SJPB on May 24, 2018 by legal counsel to the Government, in which he stated:
- when the JP programme was reorganized prior to the creation of the JPC in 2013, it was anticipated that Senior JPs would mainly work full-time while non-Senior JPs would mainly work part-time. The experience since 2013 has actually been that the division is not that clean and tidy. **Some Senior JPs work part-time, some full-time. Some non-Senior JPs work full-time, or close to it, while other non-Senior JPs work part-time. (emphasis added)**
96. The Association refers to a portion of the Government's Reply Submission to the Hood Commission in paras. 15, 20 and 41 which read in part as follows:
- 15 The challenge for the Government, and for this Commission, is to set out a fair system of compensation for the current Justices of the Peace, but also to anticipate that the service delivery system will develop over the next five years, by the time of the next Commission in 2018,
- 20 ... it should not be assumed that this Commission's recommendations at this time will become set in stone. By the time the Commission sits again, in 2018, there will be five years of experience with the new system. Issues relating to compensation may be re-visited at that time, in light of developments and experience with the new system.

41 Rather than having separate compensation systems for Justices of the Peace depending on the law they are administering, and their appointment under a specific statute, the compensation system for Justices of the Peace should be uniform, under the authority of the *JP Act*.

97. The Association argues that the compensation recommended by this Commission be conducive to the recruitment of the best candidates to the positions available, given the important responsibilities assumed by Justices of the Peace in Saskatchewan's judicial system. (para. 99, Association Submission) Similarly, such compensation package must be conducive to the retention of current Justices of the Peace.
98. As the Government recognized in its Submission, the Association also states that salary is one part of the compensation consideration and that salary and benefits together make up the total compensation that Justices of the Peace receive.
99. In light of the submissions made by the Government a detailed outline and analysis in the matter of pension benefits will be deferred in this Report and addressed subsequently in this Report when reviewing the Association's Reply Submission.
100. In referring to independent commissions in other jurisdictions in Canada, the recommendations of those commissions have been based on a variety of assessment criteria. The Association notes that neither the Act, nor the Regulations, contain express assessment criteria; however, the SJPA submits that compensation commissions in other jurisdictions and previous commission processes for Justices of the Peace and Provincial Court Judges may be looked to for guidance in this area. (para. 104, Association Submission)
101. While the Association recognizes that the economic conditions in the Province, as well as the cost of living, are significant assessment factors, it submits that there have been no significant changes in those factors since the date of the 2017 Prosser Commission Report. In any event, that report included cost of living adjustments which will automatically result in adjustments to Justices of Peace compensation tied to the salaries of the Provincial Court Judges.

(2) **COMPARISON OF JUSTICES OF THE PEACE COMPENSATION IN SASKATCHEWAN WITH OTHER JURISDICTIONS IN CANADA**

102. As a starting point, the Association compares the duties performed by Justices of the Peace in other jurisdictions with those performed by Saskatchewan Justices of the Peace. A helpful table outlining the comparison of Justices of the Peace duties in Saskatchewan with those in other selected jurisdictions is found at Table 1 of the Association's Submission (p. 38) and is reproduced below:

**Table 1: Comparison of Justice of the Peace Duties in selected Jurisdictions**

Duties	Saskatchewan	British Columbia	Alberta	Ontario	Quebec	Yukon
Trials for Provincial offences and/or Municipal Bylaws – non fatal accidents	X (2)	X	X (3)	X (4)	X (5)	X(6)
Trials for Provincial offences and/or Municipal Bylaws – fatal accidents	X(7)	-	-	X	X	
Sentencing with monetary fines	X(8)	X(9)	X	X	X	X
Sentencing with incarceration	X(10)	-	-	X	X	X
Case Management – Small Claims Mediation	X(11)	X(12)	-	X(13)	-	X
Emergency Protection Orders	X(14)	-	X	X	X	X(15)
Judicial Interim Release (Release and/or Remand) – not contested	X	X(16)	X	X	X	X(17)
Judicial Interim Release (Release and/or Remand) – contested	X	X	X	X	X	X
Teleconference/video link applications	X(18)	X	X(19)	X	X	X
Provincial Docket Court when PCJ is not available or at the PCJ request	X	X	-	-	-	-
Consider and Issue Search Warrants, Production Orders, Sealing Orders etc.	X	X	X(20)	X	X	X(21)
Issue Warrants for Arrest	X	X	X	X	X(22)	X
Committal Warrants	X	X	X	X	X	X
Swear and confirm Informations	X	X	X(23)	X	X	X
Oaths and Affirmations	X	X	X	X	X	X

103. The numerical notes within the Table above refer to descriptive commentary set out in Appendix D to the Association's Submission.
104. The Association submits that Table 1 demonstrates a high degree of similarity in overall authority exercised by Justices of the Peace in those jurisdictions identified in the Table.
105. The Association further points out that in Alberta and British Columbia, while there are two categories of Justices of the Peace in each Province, both categories of Justices of the Peace receive equal total compensation in each Province. The Association submits that a similar "evolution in consolidating Justices of the Peace levels [which] has resulted in equal total compensation for all jurisdictions in Ontario and Quebec. (paras. 117 – 119, inclusive, Association Submission)
106. With the trends developing in those jurisdictions noted above, the Association submits there is "little basis for any total compensation difference between these kinds of assigned duties, supporting the SJPA's position that all Saskatchewan Justices of the Peace **"receive equal total compensation"**. (para. 120, Association Submission)

### **(3) SALARY COMPARISONS**

#### **(a) Salary Comparison with Provincial Court Judges**

107. In the preparation of its Submission, the Association compiled from information supplied by the Government of Saskatchewan, details of salaries for Justices of the Peace from across Canada which are outlined in the Association's Submission.
108. The Association submits that the most relevant jurisdictions to be considered for comparison purposes with Saskatchewan are the five jurisdictions in which compensation is set through an independent compensation commission process. Those five jurisdictions are British Columbia, Alberta, Ontario, Quebec and the Yukon. (para. 123, Association Submission)
109. In the other Canadian jurisdictions, Justices of the Peace compensation levels have been set by Government without reference to an independent commission review necessary to meet institutional requirements for judicial decision-makers.

110. The statistics gathered by the Association covered a ten year period from 2007 to 2016. The Association acknowledges that more recent data since 2016 is either incomplete or subject to a legal challenge. However, the Association submits the ten year timeframe is sufficient in length to establish trends and salary compensation relationships. (para. 125, Association Submission)
111. Table 2 and Table 3 of the Association Submission contain the pertinent data on which the Association bases its main submission to this Commission for determining the appropriate percentage relationship between Justice of the Peace salaries in Saskatchewan to those of Provincial Court Judges in Saskatchewan. Those Tables are reproduced below:

**Table 2: Provincial Court Judges Salaries Across Canada**

<b>PCJ Salaries across Canada - 10 Yrs - 8 Jurisdictions</b>										
<u>Jurisdiction</u>	<u>2007/08</u>	<u>2008/09</u>	<u>2009/10</u>	<u>2010/11</u>	<u>2011/12</u>	<u>2012/13</u>	<u>2013/14</u>	<u>2014/15</u>	<u>2015/16</u>	<u>2016/17</u>
British Columbia	202,356	220,000	225,500	231,138	231,138	231,138	234,605	244,889	248,562	252,290
Alberta	220,000	220,000	250,000	255,000	257,550	263,731	273,000	279,825	286,821	293,991
Manitoba	178,230	192,166	201,774	211,862	218,000	224,104	230,155	239,000	249,277	254,263
Ontario	234,503	242,007	248,057	252,274	262,113	267,355	275,381	279,791	287,345	290,793
Québec	220,731	224,211	221,270	225,737	227,488	230,723	236,722	238,379	241,955	250,000
Nova Scotia	180,708	197,000	202,910	207,577	214,000	216,183	223,537	231,500	234,510	236,151
Yukon	215,742	222,214	228,880	235,746	242,819	250,103	257,606	262,759	268,014	271,498
Saskatchewan	198,900	204,552	220,916	229,753	238,943	248,090	254,458	260,819	272,295	282,184
Average PCJ Salary (without Saskatchewan)	207,467	216,800	225,484	231,333	236,158	240,477	247,287	253,735	259,498	264,141
% Differential SK PCJ to 7 Jurisdiction PCJ Ave Salary	0.959	0.944	0.980	0.993	1.012	1.032	1.029	1.028	1.049	1.068

\*notes to Table 2 appear in Appendix E

**Table 3: Justice of the Peace Salaries Across Canada**

<b>Justice of the Peace Salaries Across Canada - 10 Yrs -5 Jurisdictions with Independent Commission Processes</b>										
<u>Jurisdiction</u>	<u>2007/08</u>	<u>2008/09</u>	<u>2009/10</u>	<u>2010/11</u>	<u>2011/12</u>	<u>2012/13</u>	<u>2013/14</u>	<u>2014/15</u>	<u>2015/16</u>	<u>2016/17</u>
British Columbia	78,654	94,730	97,100	99,525	99,525	99,525	99,525	105,967	108,087	110,249
Alberta	110,000	117,480	125,000	129,375	134,550	139,932	144,830	148,089	150,310	151,813
Ontario	109,000	112,488	115,300	116,123	120,652	123,053	126,744	127,770	128,426	131,123
Québec	110,000	110,000	110,000	119,000	119,895	121,091	137,792	138,757	140,838	142,387
Yukon	109,500	112,785	116,169	119,654	123,244	126,941	130,749	133,364	136,031	137,799
Saskatchewan	-	-	-	-	-	-	121,525	124,685	127,801	133,425
Average JP Salary (without Saskatchewan)	103,431	109,497	112,714	116,735	119,573	122,108	127,928	130,789	132,738	134,674
% Differential SK JP to 5 Jurisdiction JP Ave Salary	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	95.0%	95.3%	96.3%	99.1%

\*notes to Table 3 appear in Appendix F

112. It is noted that the Table 2 data outlines only those jurisdictions with an independent commission process currently in place. The Association submits that in order to establish an appropriate salary for Justices of the Peace, this Commission must look at several relationships within the salary comparisons to arrive at an appropriate salary amount. As set out in its submission:

**128** ... The first is the salary of a Saskatchewan PCJ and the relationship of that salary to other Judges' salaries in the comparative regions. The second is the salary Saskatchewan Justices of the Peace require so that their position is in the same equivalent relationship to the JP average as the Saskatchewan PCJs' salaries are to the Judges' salary average. The third is adjusting the resulting year to year salary amount to reflect a year to previous year comparison consistent with the compensation model for Saskatchewan JPs.

**129** The SJPA further submits that this ratio comparison approach results in an appropriate salary determination for Saskatchewan JPs. The SJPA notes that this method was also used in the 2013 Commission process.

113. In analyzing the data available to it, the Association submits that in the five jurisdictions reviewed, and most notably since 2013/14 with the Saskatchewan Justices of the Peace salaries being determined for the first time by an independent commission, the Saskatchewan Justices of the Peace salaries have ranged from 95% to 99.1% (in 2016/17) in comparison to the Justices of the Peace salaries in the other five jurisdictions.



114. The Association submits that if a Saskatchewan Provincial Court Judge's salary is equal to or greater than the average Provincial Court Judge's salary, then a Saskatchewan Justice of the Peace's salary should reflect that same ratio and be equal to or greater than the average Justice of the Peace salaries in the same comparative jurisdictions.
115. The Association then argues that a simple ratio equation can be used to confirm the equivalent salary values for Saskatchewan Provincial Court Judges as compared to the average of the Provincial Court Judges in comparative jurisdictions and the corresponding salary ratio for Saskatchewan Justices of the Peace as compared to the average salary of Justices of the Peace in the same jurisdictions. (paras. 133 and 134, Association Submission)
116. The Association then refers to the Hood Commission Report at paras. 296 and 297 thereof:
- 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.
117. The Association then outlines its calculation of what the 2016 Saskatchewan Justice of the Peace salary would be using a direct ratio comparison. The calculations are set out in paras. 136 and 137 of the Association Submission:
- 136** The following is the 2016 salary calculation using the ratio comparison method:



$$\frac{a}{b} = \frac{c}{d}$$

**Where:**

“a” is the PCJ average annual salary from comparative jurisdictions

“b” is the Saskatchewan PCJ annual salary

“c” is the JP average annual salary from selected jurisdictions

“d” is the annual base salary for a Saskatchewan JP in order to be compensated at an equivalent ratio as the Saskatchewan PCJ is to the PCJ average.

**137** If the average PCJ salary from the same 5 Jurisdictions (Table 4) as the Average JP salary is used, the percentages are as follows:

**a = \$272,626 (2016 Average PCJ Salary 5 Jurisdictions)**

**b = \$282,184 (Saskatchewan PCJ Salary)**

**c = \$134,321 (2016 Average JP Salary 5 Jurisdictions)**

**d = annual base JP salary**

$$\frac{272,626}{282,184} = \frac{134,321}{d}$$

**d = \$139,030**

$$2016 \frac{d}{b} = \frac{139,030}{282,184}$$

**b 282,184**

**= 49.2 % Year to Year Comparison**

**Step 4. Adjusted Ratio: Percentage Ratio Required for a Saskatchewan JP to Achieve the Same Relative Annual Salary Ratio as a Saskatchewan PCJ – Year to Previous Year**

118. The Association then adjusted that ratio to take into account that the Justices of the Peace salary in Saskatchewan is to be determined as a percentage of the “annual salary of a judge of the Provincial Court as of April 1 of the year that preceded the year in which the calculation is made” (s 10.2 of the Act).

119. The Association then submits:

“The Year to Previous Year Percentage would then be calculated as follows:

$$\frac{(2016 \text{ Annual Base JP Salary})}{(2015 \text{ SK PCJ Salary})} = \frac{139,030}{272,295}$$

$$= \frac{139,030}{272,295}$$

**= 51.0 % Year to Previous Year “**

(para. 138, Association Submission)

120. Table 6 is reproduced from the Association Submission. At paras. 145 – 147, inclusive, of the Association Submission, its principal argument for the setting of the percentage of Justices of the Peace salary in Saskatchewan in relation to the Provincial Court Judge’s salaries set by the 2017 Provincial Court Commission is set out:

- 145** The 2013 Hood Commission established a conservative foundation for Justice of the Peace Compensation in Saskatchewan. As can be seen in Table 6, numerically, or in Figure 6, visually, Saskatchewan Justices of the Peace salaries to date have never reached the average salary of other Justices of the Peace across Canada with independent commission processes. The 50% ratio proposed by the SJPA in the 2013 Submission to the Commission would have brought Saskatchewan JP salaries closer to the average. Given the experience in the comparative jurisdictions in the last five years, the trending average salary has increased to be greater than 50% of a Judge’s salary. As a result, the SJPA submits that it would be appropriate at this point for the Commission to recommend adjustment of the salary percentage to, at a minimum, 51% of a PCJ salary.
- 146** The SJPA further submits that 49% is “starting point” in comparing average JP salary percentages but is not adequate when all data is compared and the requirements for Saskatchewan’s compensation model are factored in.
- 147** The SJPA proposes that the appropriate Justice of the Peace annual base rate salary percentage that should be effective April 1 each year is 51% of a Provincial Court Judge’s salary as of April 1 of the preceding year. For greater certainty, the SJPA proposes that as of April 1, 2019, the annual salary for a Justice of the Peace in Saskatchewan should be \$148,326.

<b>2019 Justice of the Peace Annual Base Rate</b>	<b>2018 Annual Salary</b>
	<b>= Provincial Court Judge x 51 %</b>
	<b>= \$290,848 x 51 %</b>
	<b>= \$148,326</b>

**Table 6: Average Comparisons of JP Salary to Previous Year PCJ Salary**

JP Salary as a % Previous Year PCJ Salary - 5 Jurisdictions													
Jurisdiction	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	Column2	Column3	
British Columbia JP Salary - Gov't	78,654	94,730	97,100	99,525	99,525	99,525	99,525	105,967	108,087	110,249			
Previous Year's PCJ Salary	198,000	202,356	220,000	225,500	231,138	231,138	231,138	234,605	244,889	248,562			
	39.7%	46.8%	44.1%	44.1%	43.1%	43.1%	43.1%	45.2%	44.1%	44.4%			
Alberta JP Salary	110,000	117,480	125,000	129,375	134,550	139,932	144,830	148,089	150,310	151,813			
Previous Year's PCJ Salary	220,000	220,000	220,000	250,000	255,000	257,550	263,731	273,000	279,825	286,821			
	50.0%	53.4%	56.8%	51.8%	52.8%	54.3%	54.9%	54.2%	53.7%	52.9%			
Ontario JP Salary	109,000	112,488	115,300	116,123	120,652	123,053	126,744	127,770	128,426	131,123			
Previous Year's PCJ Salary	228,338	234,503	242,007	248,057	252,274	262,113	267,355	275,381	279,791	287,345			
	47.7%	48.0%	47.6%	46.8%	47.8%	46.9%	47.4%	46.4%	45.9%	45.6%			
Québec JP Salary	110,000	110,000	110,000	119,000	119,895	121,091	137,792	138,757	140,838	142,387			
Previous Year's PCJ Salary	217,533	220,731	224,211	221,270	225,737	227,488	230,723	236,722	238,379	241,955			
	50.6%	49.8%	49.1%	53.8%	53.1%	53.2%	59.7%	58.6%	59.1%	58.8%			
Yukon JP Salary*	109,500	112,785	116,169	119,654	123,244	126,941	130,749	133,364	136,031	137,799			
Previous Year's PCJ Salary	199,901	215,742	222,214	228,880	235,746	242,819	250,103	257,606	262,759	268,014			
	0.0%	52.3%	52.3%	52.3%	52.3%	52.3%	52.3%	51.8%	51.8%	51.4%			
Saskatchewan JP Salary	-	-	-	-	-	-	121,525	124,685	127,801	133,425			
SK Previous Year's PCJ Salary	195,000	198,900	204,552	220,916	229,753	238,943	248,090	254,458	260,819	272,295			
	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	49.0%	49.0%	49.0%	49.0%			
Average JP Salary (without Saskatchewan)	103,431	109,497	112,714	116,735	119,573	122,108	127,928	130,789	132,738	134,674			
Average PC Judge Salary (Previous Year)	212,754	218,666	225,686	234,741	239,979	244,222	248,610	255,463	261,129	266,539			
Yearly Average Percentage Differential	48.6%	50.1%	49.9%	49.7%	49.8%	50.0%	51.5%	51.2%	50.8%	50.5%	Sum	Average	
Trending Average 10 yrs	48.6%	50.1%	49.9%	49.7%	49.8%	50.0%	51.5%	51.2%	50.8%	50.5%	502.2%	50.2%	
Trending Average 6 yrs					49.8%	50.0%	51.5%	51.2%	50.8%	50.5%	303.8%	50.6%	
Trending Average 4 yrs							51.5%	51.2%	50.8%	50.5%	204.0%	51.0%	

\* based on 2015 CPI adjustment

**(b) Proposed Compensation Structure**

121. The Association submits that using the salary of the Justice of the Peace as a base rate, the salary for the Supervising Justice of the Peace should be set at 110% of such base rate and the salary of the Assistant Supervising Justice of the Peace should be set at 105% of such base rate.
122. In addition, the Association makes a further submission for an Administrative Justice of the Peace position which would set the additional amount to be paid to that position at 2.5% of the base salary. At para. 150 of its submission, the Association states "... In the event that the Government of Saskatchewan were to enable the formal appointment of Administrative JPs, the SJPA submits that the recommended compensation structure set out in Table 7 would also accommodate a pay category between the existing base rate for JPs and the recommended rates for the Supervising and Assistant Supervising JPs in a manner similar to the compensation structure for Provincial Court Judges with administrative duties".
123. With the revision of the Act which came into force on July 1, 2018, s. 10.2(5.1) of the Act, mandates this Commission to recommend such additional amounts to be paid to the Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace.
124. In its Submission, the Association compares the salary structures for different types of administrative and supervisory models used for judges and justices of the peace and draws upon the structure utilized in British Columbia and Ontario, as the most similar models to that in Saskatchewan.
125. The Association further compared salaries paid to Out of Scope Saskatchewan Government Employees - MCP Classifications (Management Classification and Compensation Plan for Out of Scope Government Employees), Provincial Crown Counsel, RCMP and Regina Police Service for supervisory levels in those organizations.
126. While the Association acknowledges that compensation paid to the Chief Judge and Associate Chief Judge of the Provincial Court of Saskatchewan provides some

assistance for comparison purposes, it submits that recruitment factors also need to be considered. The Association submits that recruitment is an ongoing issue for senior JP positions in general “with relatively few applicants applying for the positions and one competition having to be rerun due to a complete lack of qualified candidates. This issue is also expected to arise for the Supervising Justice of the Peace position”. (para. 160, Association Submission)

127. The Association points out that the Supervising Justice of the Peace position has been designated exclusively for lawyers. In order to attract lawyers from target candidate groups such as Saskatchewan Crown Counsel, the compensation for the position needs to be competitive with the compensation for Crown Counsel and other similar legal positions.
128. The Association submits that its recommendation for additional amounts to be paid to the Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace will assist in recruitment and retention for those positions.

**(c) Pension and Benefits**

129. As mentioned earlier in this Report, in light of the recommendations made by the Government in respect of the enrollment of Justices of the Peace in PEPP, further comment will be made in that regard in that section of this Report in which the Reply Submission of the Association is reviewed.

**(d) Insured Benefits**

130. The Association submits that all full time Justices of the Peace should receive benefits covering group life insurance, disability, dental and extended health benefits (collectively, sometimes referred to herein as the “Insured Benefits”) at the same level and manner in which permanent, non-unionized employees of the Government of Saskatchewan currently receive them. At present, only the Supervising Justice of Peace and Senior Justices of the Peace receive these benefits.
131. The Association further submits that part-time Justices of the Peace should receive a benefits factor in their *per diem* calculation in lieu of Insured Benefits.



132. The Association points out that such a benefits factor is included in the *per diem* calculations for both British Columbia and Alberta Justices of the Peace which are the only comparative jurisdictions that have part-time Justices of the Peace. (para. 173, Association Submission)
133. The Association noted that since most part-time Justices of the Peace would not meet the required threshold limit for extended health benefits which would require a minimum of 16 hours of work per week to qualify, the payment in lieu approach would be appropriate to provide fair and equal compensation for these Justices of the Peace relative to their colleagues in Saskatchewan and comparative jurisdictions. The Association referred to the recommendation in the Hood Commission Report at para. 374 which stated:

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.

**(e) Other Benefits and Allowances**

134. The Association proposes that in the event the Government of Canada creates an additional statutory holiday for “Aboriginal Reconciliation with Indigenous People” prior to 2025, (being the next year in which this Commission would be convened), the Association suggests that this Commission should recommend that the 220 working days denominator in the Justice of the Peace salary calculation formula be reduced by 1 to 219 working days. (para. 178, Association Submission)
135. The Association states that it is not proposing any changes to vacation leave.
136. The Association recommends that the sick day entitlement currently enjoyed by the Supervising Justices of the Peace and Senior Justices of the Peace be implemented for all Saskatchewan Justices of the Peace and that part-time Justices of the Peace be compensated for sick leave in the *per diem* payment formula proposed by the Association so that they receive compensation in a manner equal to their full-time colleagues. (para. 183, Association Submission)

137. In referring to its submission for the establishment of a *per diem* rate for part-time Justices of the Peace in respect of Insured Benefits, the Association referred to the relevant commentary contained in the Hood Commission Report at paras. 344 – 348, inclusive therein.

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 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 JP 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 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).

138. The Association then goes on to review in great detail its proposal for the establishment of *per diem* rates for each of the component benefits included in Insured Benefits as well as sick leave and pension benefits to arrive at a *per diem* rate factor which could be utilized and applied to all part-time Justices of the Peace.



139. In its analysis, the Association arrived at comparable rates utilized in British Columbia and Alberta.
140. Similarly, the Association reviewed the cost of such benefits for Saskatchewan Provincial Court Judges and Crown Counsel as further comparators. Table 15 from the Association's Submission reproduced below demonstrates that while the base salary of a Senior Justice of the Peace is 49% of the base salary of a Saskatchewan Provincial Court Judge, when "total compensation" is used in the comparison, the Senior Justice of the Peace makes 32.955% of a Saskatchewan Provincial Court Judge, while a regular Justice of the Peace makes 27.727% of the "total compensation" of a Saskatchewan Provincial Court Judge. All these comparisons indicate that Saskatchewan Justices of the Peace receive significantly lower compensation than the comparators and substantially lower "total compensation". (para. 203, Association Submission)

**Table 15: Comparison of Saskatchewan Provincial Court Judges and JPs and Crown Counsel Working Full-Time (2017/18 salary)**

Position	Base Salary	Benefits	Total Compensation
<b>Provincial Court Judge</b>	\$290,848	76.72% (\$223,138.58)	\$513,986.58
<b>Senior Crown Counsel (non-supervisory) (&lt; 5 years at maximum salary)</b>	\$154,848	19.98% (\$30,938.63)	\$185,786.63
<b>Senior Crown Counsel (non supervisory) (5-10 years at maximum salary)</b>	\$162,588	19.98% (\$32,485.08)	\$195,073.08
<b>Senior Crown Counsel (non supervisory) (&gt;10 years at maximum salary)</b>	\$170,328	19.98% (\$34,031.53)	\$204,359.53
<b>Senior Justice of the Peace</b>	\$142,515.52	18.8536% (\$26,869.53)	\$169,384.83
<b>Regular Justice of the Peace</b>	\$142,515.52	No Benefits	\$142,515.52

141. The Association provided two options for this Commission's consideration, which each included proposals for *per diem* rates for those part-time Senior Justices of the Peace who meet the threshold for Insured Benefits and sick leave and for those Senior Justices of the Peace who do not meet the necessary threshold of 16 hours of work per work week.
142. In light of the Government's Submission and proposal regarding pension benefits, a discussion of the Association's options will be deferred to that section in this Report which reviews the Association's Reply Submission and which includes revised options for the Commission's consideration, taking into account the Government's proposal.

**(f) Other Benefits**

143. The Association requests that the Commission recommend that all Justices of the Peace receive two mandatory training days per year compensated at their regular salary. At present, only Senior Justices of the Peace receive such benefit. Regular Justices of the Peace are offered optional training once per year, but only travel and meal expenses at paid; however, they receive no compensation for salary. The Association recognizes that this may take the form of an advisory recommendation only.
144. The Association stipulates that the current stand-by (on call) rates and travel rates and expenditures maintained when Justices of the Peace are required to work away from their home communities are acceptable to the Association at this time.
145. Notwithstanding that considerable discussion has taken place between the Government and the Association on access to legal services in relation to discipline hearings for Justices of the Peace, no formal process is in place at this time. The Association acknowledges that these circumstances rarely arise, but submits that coverage for such expenses is an important benefit for Justices of the Peace. The Association proposes that the practice in place in Ontario would be appropriate for Saskatchewan as well, whereby the judicial counsel makes a recommendation to the Attorney General who is bound by the recommendation. Legal fees paid cannot exceed the maximum rate normally paid by the Ontario Government for similar services. In Saskatchewan, the appropriate council would be the Justices of the Peace Review Council established pursuant to s. 12(1) of the Act.

146. The Association further submits that such a benefit would apply to all disciplinary proceedings for Justices of the Peace other than those proceedings in which a Justice of the Peace is charged with the commission of a criminal offence and the discipline proceedings relate to that criminal matter.
147. The Association also submits that counselling services should be made available to Justices of the Peace in a manner similar to those which are made available to Provincial Court Judges. The Association advises that although the Government of Saskatchewan initially agreed to this benefit, a five-year period has since lapsed and no implementation has occurred. The Association acknowledges that the Government has voluntarily accommodated two requests for counselling services for Justices of the Peace, but requests that this Commission recommend that this benefit be formalized by the Government along with a suggested timeframe for implementation. In the submission of the Association, such counselling services should be made available at no cost to the Justices of the Peace requiring this resource.

**(g) Commission Costs**

148. The Association indicates that it anticipates the costs of the Association in participating in the Commission process will be resolved between the Government and the Association directly; however, the Association requests that it be provided with an opportunity to file an additional brief in the event that does not occur.

**D. CANADIAN BAR ASSOCIATION, SASKATCHEWAN BRANCH, SUBMISSION**

149. The Commission also received a Submission from the Canadian Bar Association, Saskatchewan Branch, ("CBA").
150. This is the first formal Submission which has been made by the CBA with respect to Justices of the Peace. In its Submission, it specifically recognizes Justices of the Peace as full members of the judiciary entitled to the same respect and protection as other judges.
151. The CBA states that its primary interest is to ensure that judicial compensation, including benefits, is structured and maintained to fulfill a dual purpose:

- Protecting and promoting the independence of the judiciary through the institution and maintenance of appropriate financial safeguards for its members; and
  - Strengthening and advancing the judiciary through sufficient financial independence of its members and adequate compensation to attract the best and most qualified candidates for appointment.
152. The Submission of the CBA stresses that it is an “independent voice, not representing the interests of either the Government or the Association”.
153. Among the primary objectives of the CBA are the promotion of improvements in the administration of justice and the maintenance of the highest quality justice system in the Province of Saskatchewan. The independence of the judiciary is a fundamental principle for the benefit of our citizens, not a perk for our judges.
154. The Submission of the CBA makes reference to the seminal decisions of the Supreme Court of Canada in the *Provincial Judges Reference* and in *Ell v Alberta*, both of which decisions have been referred to extensively above herein.
155. In addition, the Submission outlines those principles in the *Bodner* decision, reaffirming those same principles embodied in the *Provincial Judges Reference* and, in addition, quoted extensively from the Supreme Court of Canada decision in *Conférence des juges de paix magistrats*. These principles have also been reviewed extensively above in this Report.
156. In its Submission, the CBA refers to the duties outlined in the Association’s Submission at para. 114 and Table 1 (which has been reproduced in this Report at p. 45) and stipulates that a reasonable level of compensation for the performance of these important judicial duties is a necessary and integral part of judicial independence.
157. In considering those duties, the CBA states that ordinary citizens are more likely to encounter Justices of the Peace than other Judges. The public’s perception of the Courts and justice systems is similarly likely to be shaped by these encounters. The public perception is that a judge is a judge and members of the public are not likely to distinguish between Justices of the Peace and other judges. The professionalism and independence of Justices of the Peace is, therefore, vital to public confidence in the administration of justice and respect for the Courts. (para. 22, CBA Submission)

158. In speaking to the Commission process, the CBA reiterates the commentary from the *Bodner* decision which requires that a government give weight to the Commission's recommendations and provide a complete response to those recommendations. (para. 23) A Government may depart from a Commission's recommendations if the Government provides complete and legitimate reasons and deals with a Commission's recommendations in a meaningful way that will meet the standard of rationality. (para. 25, CBA Submission)
159. The CBC further refers to the 2017 Prosser Commission Report which stated that as regards the economic conditions in the Province at that time, "the Province of Saskatchewan is in a strong fiscal position with an economy projected to grow in 2017 and thereafter". The CBA submits that this finding continues to apply in the context of this Commission's work.
160. In referring to the recommendations contained in the Hood Commission Report, the CBA submits that it provides a solid foundation for this Commission and while this Commission may take a more incremental approach with respect to the recommendations which were implemented, it should press for fulfilment of those recommendations which were not implemented. In that regard, the CBA stresses that there are a number of important principles stated in the Hood Commission Report which should be respected and reaffirmed. The CBA Submission emphasizes statements and recommendations from the Hood Commission Report which repeatedly endorsed a compensation model that was "uniform" for all Justices of the Peace, emphasizing the principle yet again that "a JP is a JP and should be seen to be a JP". (para. 255, Hood Commission Report) Accordingly, the CBA emphasizes while there are different categories of Justices of the Peace, this is within the control of the Government, which approves designations, and the Chief Judge who assigns duties. It is suggested that fewer categories are preferable, allowing for greater flexibility in the assignment of duties.
161. In its Submission, the CBA acknowledges that at this time there has been a significant reduction in the number of the Justices of the Peace which appears likely to continue, there having been a reduction from 142 Justices of the Peace down to the current number of 100 Justices of the Peace since the time of the Hood Commission Report.

162. The CBA makes references to comments contained in both the Government's Submission and the Association's Submission in recognizing the continuing trend of the transfer of Justice of the Peace services from communities with small volumes of work as more community Justices of the Peace, retire or resign, in those communities. The result is a more centralized system and a continuing further reduction in the numbers of Justices of the Peace in Saskatchewan.
163. The CBA suggests that these observations and statements from both the Government and the Association support the prediction contained in the Hood Commission Report of a trend towards fewer Justices of the Peace doing more work, which in turn is conducive to greater professionalism.
164. While the CBA states that it takes no position on the appropriate ratio of compensation for Justices of the Peace in relation to salaries for Provincial Court Judges, it does reference Table 6 in the Association's Submission (reproduced on P. 52 of this Report) as appearing to support an upward adjustment above the current 49% rate.
165. The CBA further supports including all Justices of the Peace in PEPP or, at least, pension plan entitlements or compensation to equate to those additional benefits enjoyed currently only by Senior Justices of the Peace.
166. As regards additional benefits, beyond pension benefits, the CBA supports the principle that all Justices of the Peace should enjoy similar benefits to those currently available to Senior Justices of the Peace and other Government employees, or pay in lieu thereof, where such benefit might not be available. The CBA emphasizes that although the Government may not be required to implement all recommendations of this Commission; nevertheless, the Government must not set them aside lightly. Specifically, the CBA refers to the comments made at para. 143 of the Hood Commission Report in which the Commission expressly disagreed with the Government's assertion of "complete discretion" over whether to provide benefits recommended by the Commission and further stated "the Act simply does not grant a greater level of discretion to the Government when considering permitted recommendations as opposed to discretionary recommendations. As this Commission



understands it, the constitutional imperative to ensure a meaningful and effective process continues to apply to these recommendations on benefits”.

167. In referring to the Government’s Submission at para. 185 thereof, as follows:

**185** While the nature of the services they provide differs from that of the Senior Justices of the Peace, the non-senior Justices of the Peace provide a crucial role in the JP programme. Some of them work full-time, and others work substantial hours. In these circumstances, the Government accepts that equitable considerations suggest that the non-senior Justices of the Peace should have the same pension entitlement as the Senior Justices of the Peace.

the CBA stresses that these “equitable considerations” should apply to all benefits, in addition to pension benefits, and should be afforded to all Justices of the Peace, consistent with the total compensation principle and to ensure fair treatment to all.

168. In speaking to the benefits of SDOs for the Supervising Justice of the Peace (on a prospective basis), the CBA expresses concern that the loss of the SDO benefit, even prospectively, may make the position less attractive to future candidates.

169. Finally, on the issue of continuing education and training, the CBA again refers to the Government’s Submission at para. 35 in which it stated that:

**35** One of the goals for this approach [the new Service Delivery Model] is to increase the amount of training that will be available for Justices of the Peace. That in turn has produced greater consistency in decisions by individuals Justices of the Peace.

170. Accordingly, the CBA supports the Association’s recommendation for two mandatory days of training and education annually for Justices of the Peace and that they should receive their normal pay for attending such required training.

## **E. GOVERNMENT REPLY**

171. The Government confirms its general agreement with the Association’s description of the duties of Justices of the Peace in Saskatchewan and the delivery model for the services of Justices of the Peace in Saskatchewan.

172. The Government provided a helpful summary of what it perceives to be its position and the Association’s position, both on required matters and on advisory matters. Those Tables are presented below.



**Table 1: Positions of the Required Matters**

ISSUE	GOVERNMENT POSITION	JP ASSOCIATION POSITION
Salary percentage	No change:49%	Change to: 51%
Salary- calculation of time for specific activities	No change	No change
<i>Pro Rata</i> salaries	<p>No change:</p> <p>1/220 per full day</p> <p>1/440 per half day</p> <p>1/1760 per hour</p> <p>Request re Indigenous Day is hypothetical and should not be implemented at this time</p>	<p>No immediate change:</p> <p>1/220 per full day</p> <p>1/440 per half day</p> <p>1/1760 per hour</p> <p>Subject to a request that if Indigenous Day becomes a federal public holiday, the daily rate be changed to 1/219; the other rates would become 1/438 and 1/1752, respectively</p>
Additional Amounts	<p>7.5% for Supervising JP</p> <p>5.0% for Assistant Supervising JP</p>	<p>10% for Supervising JP</p> <p>5.0% for Assistant Supervising JP</p>
PEPP Contribution Rates	<p>No change to existing rates:</p> <p>7.6% Government</p> <p>5.0% Justices of the Peace</p>	<p>No change to existing rates:</p> <p>7.6% Government</p> <p>5.0% Justices of the Peace</p>
Housekeeping amendments to <i>JP (Commission) Regulations</i>	Amendments to s. 7(2) (update reference to <i>JP Regs</i> ) and s. 8(b) (remove effete provisions)	Not known

**Table 2: Positions on the Advisory Matters**

ISSUE	GOVERNMENT POSITION	JP ASSOCIATION POSITION
Pension for Non-Senior JPs	Enroll all JPs in PEPP, all at the same contribution rates (7.6% for Government, 5.0% for individual JPs)	Pay non-senior JPs an additional 7.6% of their salary in lieu of pension
SDOs for Supervising JP	Remove prospectively; no change for current Supervising JP	Not known
Benefits for non-senior JPs: Sick leave, Group life, Disability, Dental, Extended Dental & Health	No change-Senior JPs only	Provide benefits to all JPs who meet threshold hours
<i>Per diem</i> in lieu of benefits for non-senior JPs	No change-Senior JPs only	Pay a <i>per diem</i> in lieu of benefits for non-senior JPs who do not qualify for benefits based on hours
Legal Services Support	The Government submits this is not a "benefit" within the meaning of s.15(d); however, the Government agrees it should provide an indemnity for work performed by JPs in the course of their duties; prepared to work out a protocol for the indemnity, but not as part of a regulation	The JP Association submits that the JP Review Council should have the power to give binding recommendations for the retainer of private counsel in appropriate cases, to be paid for by the Ministry of Justice
Counselling Services Support	Not a "benefit" within the meaning of s. 15(d); Ministry of Justice can provide these services by administrative protocol	Same counselling programme as the Provincial Court Judges

173. The Government submits that the main disagreements between the parties are:
- The rate to be used to determine salary;
  - The additional amount to be paid for the Supervising Justice of the Peace; and
  - Benefits for Non-senior Justices of the Peace.
174. The Government stresses two key factors, from its perspective, that this Commission must keep in mind. First, this is not an employment arbitration, but rather the process to determine compensation levels which are necessary to satisfy the requirement of judicial independence for Justices of the Peace. As a result, the comparative approach

should not be given as much weight as the Association gives to it. Secondly, consistency with the approach to compensation utilized for Provincial Court Judges is important, particularly for factors such as the *pro rata* formula and additional amounts for administrative duties.

**(1) REQUIRED RECOMMENDATIONS**

**(a) Salary**

**(i) Appropriate Percentage to Apply**

175. The Government disagrees with the emphasizes placed by the Association on a national average salary to be achieved for Justices of the Peace in Saskatchewan. Rather, the objective is to protect the independence of the Justices of the Peace and to meet the goals of recruitment and retention.
176. In this regard, the Government views the circumstances for setting the salaries of Provincial Court Judges to be significantly different than that utilized for determining salaries for Justices of the Peace.
177. In the case of Provincial Court Judges, there is a reference in s. 45(1)(b)(ii) of *The Provincial Court Act*, 1988 (the “PC Act”), to those instances in which a Provincial Court Commission has recommended a salary higher than the national average for Provincial Court Judges. In the event that the Government does not accept the recommendation of the Commission, the Government must move a resolution in the Legislative Assembly which limits the Government’s discretion, and which fixes a salary, “in a manner that meets constitutional tests of judicial independence and in an amount that is not less than the national average” of salaries paid to Provincial and Territorial Court Judges. The Government submits that the Act, while incorporating much of the process used in the PC Act for the process to be followed for this Commission, does not specifically incorporate the above provision.
178. The Government submits that because the concept of a national average salary for Justices of the Peace has not been incorporated specifically into Act, this is a significant difference which means that a comparative approach to salary is not part of the statutory mandate for this Commission.

179. The Government does acknowledge that the Commission is not barred from considering the national average of Justices of the Peace salary; however, it concludes that such national average is not recognized by the Act as a key factor, in the same way as a national average is under the JP Act. (para. 17, Government Reply)
180. The Government submits that another reason for this difference in relation to national average salaries, is found in differences in the responsibilities assigned and the jurisdiction exercised by Justices of the Peace and Provincial Court Judges. The jurisdiction for the latter is, for the most part, assigned by the *Criminal Code* which is the same throughout Canada. However, the mandate and services provided by Justices of the Peace may vary significantly throughout Canada. Accordingly, the Government views the detailed methodology of the Association for determining national average salaries for Justices of the Peace to be of limited assistance to the Commission.
181. Further, the Government submits that by following the comparative approach promoted by the Association, where salaries for Justices of the Peace in other jurisdictions is given considerable weight, the Government submits that this approach runs the risk of turning the Commission process into a type of labor arbitration, based on comparative salaries, and divorced from the realities of local conditions in Saskatchewan.
182. The Government argues that the Commission's focus should be on whether the Justice of the Peace salary as a percentage of the salary of Provincial Court Judges meets the requirements of judicial independence, recruitment and retention. The Government is of the view that the current 49% rate is sufficient to meet that test, in particular when the steady increases in Provincial Court Judges' salaries are taken into account and also, in light of the Government proposal to include all Non-senior Justices of Peace in PEPP. These factors cannot be considered in isolation from each other.
183. The Government points out that, based on its calculations, Saskatchewan Justices of the Peace have received an average salary increase of 3.2% over the past five years and if the 49% rate is retained, they will receive an estimated 2.9% annual increase over the eight years from 2014/15 to 2021/2022. From the Government's perspective, these are significant increases.

184. In addition, with the use of the “CPI – Plus” approach to Provincial Court Judges’ salaries, salary increases for Justices of the Peace have increased at a rate greater than the rate of inflation over the past five years. This is a higher wage increase than wage earners generally in Saskatchewan, including Crown Counsel and Legal Aid Counsel. In this regard, the Government refers to its submissions at paras. 125, 133, 134 and Charts 1 and 2, respectively.
185. Under the Government’s proposal, the total salary increase for Justices of the Peace over the next three years will be \$10,653 for an average yearly increase of 2.3%. Under the Association’s proposal, the salary increase would be \$16,904 over that same period with an average yearly increase of 3.8%.
186. The Government further notes that in Table 5 prepared by the Association, the analysis on comparative salaries ended for the year 2016. The Government notes that at the end of 2016, the Saskatchewan Justice of the Peace salaries would be below the national average by only 0.7%; however, given the steady increases and projected increases, the Government concludes that it is likely that the Saskatchewan Justice of the Peace salary will now be at or above the national average rather than merely at 99.3% of the national average.
187. The Government further points to the different time periods of Provincial Compensation Commissions and court challenges in British Columbia, which lend further uncertainty to the numbers utilized by the Association in its submission.
188. The Government points out that the Association’s own chart (Table 5) indicates that the 49% rate has resulted in the Saskatchewan salary gaining steadily on the national average and there is no reason to believe that trend will stop, given the “CPI Plus” formula consistently used by the Provincial Court Commission.
189. The Government further takes issue with the Association’s listing of duties of Saskatchewan Justices of the Peace in comparison to other jurisdictions (see Table 1 at p. 45, *supra*) compared to functions of Justices of the Peace in other jurisdictions. Such listing, in the Government’s submission is not, in itself, a measure of the work performed by Justices of the Peace in different jurisdictions and does not provide

sufficient guidance to justify concluding the actual work load is heavier in Saskatchewan.

190. In conclusion, on the percentage rate to be utilized, the Government reiterates that an increase of \$10,653 over the next three years, with an average increase of 2.3%, should the Government's submission be accepted, is over the rate of inflation and is sufficient to meet the constitutional requirements of judicial independence and, as well, provide an incentive for recruitment and retention.

**(ii) Ancillary Rules for Calculation of Time**

191. The Government indicates that as regards on-call allowance, attendance at professional development sessions and travel time, there is no need to change the calculation of time for those matters. The Association also has not requested any change to such method of calculation.
192. The Government submits that increasing the training budget for Non-senior Justices of the Peace to two days a year is beyond the mandate of this Commission. It does state, however, that it recognizes the importance of this issue.

**(b) Pro-Rata Amounts**

193. The Government submits that, other than the issue of Indigenous People's Day raised by the Association, both the Government and the Association appear to agree that no changes are required to the method of calculating *pro rata* salaries. If that is the case, and the Commission agrees, then the Commission should make a recommendation that there not be any change and this would mean no amendment would be required to s. 4 of the JP Commission Regulations.
194. The Government then at some length reviews the Association's Submission that this Commission should include a recommendation which would propose a change to the days used in the calculation of *pro rata* salaries, by reducing, in each case, the denominator by one day, which would become effective in the event the Federal Government were to proclaim a national statutory holiday referred to as Indigenous People's Day. Thus, the daily rate would become 1/2119, the half daily rate would become 1/438 and the hourly rate would become 1/1752.



195. The Government stresses that the possibility of a national Indigenous People's Day as a statutory holiday is, at best, hypothetical at this point in time, and may be proposed as a commemorative day rather than a statutory holiday.
196. Any move on the part of the Federal Government to propose a further statutory holiday for this purpose would require amendments to the *Canada Labor Code*. In these circumstances, the Government submits that it would be inappropriate for this Commission to propose recommendations which would be dependent on a hypothetical future event.
197. In addition, in the event such a recommendation were to be made by this Commission, it would result in a further inconsistency with the rates used for the Provincial Court. Accordingly, the Government submits this is not an appropriate change to be made at this time.

**(c) Additional Amounts for Supervising Justice of the Peace and Assistant Supervising Justice of the Peace**

198. The Government and Association have agreed that the additional amount to be paid to the Assistant Supervising Justice of the Peace is 5% of the annual Justice of the Peace salary.
199. The Government and the Association, however, differ on the additional amount to be paid to the Supervising Justice of the Peace. The Government has proposed 7.5% while the Association proposes 10%.
200. The Government has proposed 7.5% so as to remain consistent with the additional amount paid to the Chief Judge of the Provincial Court. The Association has looked at other comparators, both for Supervising Justices of the Peace in other Provinces as well as additional amounts paid to Crown Counsel with administrative duties and police officers with similar responsibilities.
201. The Government does not agree that these comparisons are appropriate and refers to the Reply of the Association to the Hood Commission in which it stated:

The SJPA is of the view that a police comparator for JPs is problematic. There are not comparable factors between the positions in terms of similarities of role, function, and purpose. Furthermore, public misunderstanding about links

between these positions have caused difficulties affecting public perceptions of JP independence.

...

The SJPA submits that the reason for the lack of a police comparator for Provincial Court Judges in Saskatchewan and Justices of the Peace in other jurisdictions is because it is an inappropriate comparator for compensation purposes. For all of these reasons, the SJPA would caution against placing significant weight on a police comparator in this process.

(2013 Reply of the JP Association, pp 9, 10) (Emphasizes added)

202. The Government accepts that view expressed by the Association and suggests that the Hood Commission has appeared to accept that critique in that it did not refer policy salaries as a possible comparator for Justice of the Peace salaries. (para. 288, Hood Commission Report)
203. The Government emphasizes that consistency with the Provincial Court is a general theme of its submissions. Such consistency being an important principle for the purposes of determining the *pro rata* calculations, number of public work days and holidays generally, such principle equally applies to the calculation of amounts to be paid to the Chief Judge and the Supervising Justice of the Peace, for their additional administrative duties. The Government urges that since those duties are similar in nature, the same formula should also be used to determine their additional amounts, as a percentage of their respective salaries. This is a better comparator than ranges or additional amounts paid in other Provinces. The Government refers to the Association's Submission at para. 152 in which it acknowledges that it is difficult to compare the role of the Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace to other jurisdictions "as there are few jurisdictions with Justices of the Peace in a supervisory role".
204. The Government further suggests that the Chief Judge has a greater statutory responsibility for the work of Justices of the Peace than does the Supervising Justice of the Peace. The Act provides that the Chief Judge has "general direction and supervision over the duties and sittings of the Justices of the Peace" (s. 13(1) of the Act), which would include supervision over the Supervising Justice of the Peace. While the Chief Judge can delegate general functions to the Supervising Justice of the Peace, it is ultimately the Chief Judge who determines the functions of the Supervising Justice of

the Peace. The Supervising Justice of the Peace does not have independent statutory powers. (ss. 3 (13)(8) of the Act) (para. 64, Government Reply) The Government rejects the Association's submission that a greater rate for the additional amount to be paid to the Supervising Justice of the Peace is necessary to induce a person to apply for that position. The Government argues that recruitment is not the purpose of the additional amount, but rather to compensate for additional administrative duties. Recruitment concerns are addressed by the base salary, not the additional amounts, in the Government's Submission.

**(d) PEPP Contribution Rates**

205. Each of the Government and the Association appear to agree that no change is required to the PEPP contribution rates for Senior Justices of the Peace. Those contribution rates should remain at 5% of salary for individual Justices of the Peace and 7.6% for the Government contribution.

**(2) ADVISORY MATTERS**

**(a) Pensions for Non-senior Justices of the Peace**

206. The Government reiterates the position it outlined in its main Submission that all Justices of the Peace should be included in PEPP rather than the proposal contained in the Association's main Submission that Non-senior Justices of the Peace should receive an additional amount of 7.5% in lieu of pension.
207. The Government states a number of reasons for this position at para. 75 of its Reply which are outlined below:

**75** The Government submits that including the non-senior JPs in PEPP is also a preferred financial approach to achieve the goal of a retirement pension, superior to a payment in lieu, for the following reasons:

- the 7.6% Government contribution to PEPP will be tax-deferred;
- the 5% contribution of each JP will also be tax-deferred;
- the income earned by the contributions, and then the compounding income, will similarly be tax-deferred;

- PEPP is professionally managed, providing flexibility for each participant to choose their personal degree of risk, balancing growth against security, based on each participant's own personal assessment of investment risk versus reward;
- management fees are low, given the large pool of participants;
- each participant has the option of rolling some or all of their own RRSP accounts into PEPP, taking the benefit of professional management.

208. The Government also provides an explanation for its reasons for not acting earlier on recommending the enrollment of Non-senior Justices of the Peace in PEPP by stating that the Government could neither take this step unilaterally, nor by agreement with the Justice of the Peace Association, without first seeking review from this Commission. (*Conférence des judges de paix magistrats*, para. 90); however, the Government stipulates that it is doing so at this time, consistent with its 2013 Submission and subsequent discussions with the Association. (para. 78, Government Reply)

209. The Government submits that while this Commission does not have the statutory authority to propose regulations to enroll all Justices of the Peace in PEPP, it should give an advisory recommendation that the Government take steps to enroll the Non-senior Justices of the Peace in PEPP. The Government states that it would “then take the necessary steps to do so”. (para. 79, Government Reply)

**(b) Benefits for Non-senior Justices of the Peace**

210. The Government is of the view that by its agreement to enrol a complete and uniform extension of pension benefits to Non-senior Justices of the Peace, this significant change, in tandem with salary increases, serves to offset the need for any further advisory recommendations regarding insured benefits by this Commission.

211. The inclusion of all Justices of the Peace in PEPP, in the Government's submission, provides a remuneration which satisfies the minimum constitutional threshold as referred to in *Conférence des judges de paix magistrats* (para. 88) and the Government further refers to the commentary of the Court in that judgment stating that judicial independence does not require that every Justice of the Peace enjoy the same level of

renumeration (para. 91). [It is important to note here that the comment referred to above at para. 91 of *Conférence des judges de paix magistrats*, in fact, is as follows:

**Judicial independence does not require ... that all judges enjoy the same level of remuneration.**

**The Commission accepts that the Government's reference to "every Justice of the Peace" rather than "judges" was an inadvertent error.]**

212. The Government further refers to the commentary of the Court in that judgment stating that judicial independence does not require that every Justice of the Peace enjoy the same level of remuneration (para. 91 thereof). The Government considers the uniform extension of pension benefits to all Justices of the Peace to be a "broad reform" and submits, in light of the overall remuneration, the minimum threshold is satisfied. (para. 82, Government Reply)
213. The Government submits that the Association's proposal for a *per diem* for benefits can only come within the advisory function of this Commission, and can only be implemented by a Cabinet regulation (ss. 10.3(1)(b), 10.4(4), 15(d) of the Act)

**(c) Legal Services Support**

214. While the Association has requested that Justices of the Peace be provided with legal services support in order to defend their actions in the course of duty, the Government argues that this is not a "benefit" for the purposes of s.15(d) of the Act and therefore does not come within the Association's mandate to give advisory recommendations. Rather, the Government agrees that it has an obligation to provide an indemnity to the Justices of the Peace for good faith conduct in the course of their duties and this is consistent with the approach taken by the Government and the Judges of the Provincial Court.
215. The Government indicates that it proposes to develop a protocol with the Justices of the Peace for an approach to satisfy the indemnity requirement. Such a protocol would allow for greater flexibility to the parties and could be amended as experience is gained with its operation; however, if an indemnity provision were to be set out in regulations based on a Commission recommendation, such flexibility would be lost, at least until a

further review by the future Commission, six years hence. (para. 90, Government Reply)

216. The Government suggests that the Ministry of Justice will consult with Justices of the Peace to devise a protocol covering this issue.

(d) **Counseling Services**

217. Similarly, the Government submits that counseling services are not a benefit for the purposes of s. 15(d) of the Act and that this issue would also be best left to be dealt with by the Government by an administrative mechanism, after discussions with the Association.

218. The Government advises that it has been in discussions with the Association on the issue of costs and both sides are hopeful that the matter has been or will be resolved by agreement and that, for the time being, the Commission need not make any decision but rather reserve jurisdiction to entertain further submissions if necessary.

(3) **SUMMARY OF GOVERNMENT'S SUBMISSION**

219. The Government has summarized its position on both required matters and advisory matters in paras. 100 – 102, inclusive, of its Reply as follows:

**100** The Government therefore respectfully requests that this Commission recommend as follows. First, on the required matters:

- (1) the salary percentage should remain at 49%;
- (2) no change should be made to the *pro rata* formulas;
- (3) the additional amount for the Supervising Justice of the Peace should be 7.5%, and 5.0% for the Assistant Supervising Justices of the Peace;
- (4) no change should be made to the PEPP contribution rates for the Senior Justices of the Peace.

**101** For the advisory matters:

- (1) the JP Commission should recommend that the non-senior Justices of the Peace be enrolled in PEPP, with the same contribution rates as the Senior Justices of the Peace;
- (2) the JP Commission should recommend that the SDOs for the Supervising Justice of the Peace be abolished prospectively, without affecting the benefits of the current Supervising Justice of the Peace;



- (3) no recommendation should be made for the extension of benefits to non-senior Justices of the Peace;
- (4) no recommendation should be made for *per diems* for non-senior Justices of the Peace who do not work sufficient hours to meet the proposed benefits threshold;
- (5) no recommendation should be made for legal services support, as this matter is not a "benefit" under s. 15(d) of the JP Act;
- (6) no recommendation should be made for counselling services support, as this matter is similarly not a "benefit".

**102** The JP Commission should reserve jurisdiction to consider the issue of costs, if raised by the JP Association at a later date.

#### **F. REPLY OF THE ASSOCIATION**

220. In its Reply, by way of introductory comment, the Association reiterated principles applicable to the compensation commission process, all of which have been referred to previously herein in this Report and need not be repeated. The Association refers to the recommendations of the Hood Commission and submits that when the Government implemented certain recommendations of the Hood Commission Report for Senior Justices of the Peace, but not for regular Justices of the Peace, the result was a compensation inequity has been in effect for the past five year period. In the Association's submission, this Commission has an opportunity to reinforce the importance of and build upon the Hood Commission recommendations that were not implemented, with the goal being to establish the compensation equity proposed by the Hood Commission. In the period since the Hood Commission Report, and as a result of further consultations, some of the advisory recommendations of the Hood Commission were implemented, others were not and extensive consultation and correspondence has been engaged in and exchanged between the Association and the Ministry of Justice since the Hood Commission Report was issued. The Association argues that the Government is very much aware of the concerns of the Association regarding the inequity that resulted from the partial implementation of recommendations relating to pensions and benefits as set out in the Hood Commission Report. The written correspondence between the parties recognizing these concerns has been appended to the Association's Reply.

221. In the submission of the Association, despite the extensive consultations which have occurred, a number of the previous Commission's recommendations remain

unimplemented without reasons having been provided to the Association. The Association further notes the Submission of the Canadian Bar Association presented to this Commission which supports this contention and refers, in particular, to para. 47 of the CBA's Submission which reads:

The justification of this omission is not apparent and appears inequitable. Unless it was demonstrably justified to this Commission, it should be corrected in accordance with the principles of uniform compensation.

222. The Association summarizes those areas of significant disagreement between the Government and the Association as follows:

- A) National Comparators
- B) Recommended % for JP annual salary as a % of a PCJ's previous year annual salary
- C) Insured Benefits
- D) Additional salary supplement for the Supervising Justice of the Peace and Assistant Supervising Justice of the Peace
- E) Scheduled Days Off (SDO) for the Supervising Justice of the Peace and
- F) JP Operations

**(1) SALARY**

**(a) National Comparators**

223. In its Reply, the Association reiterates that national comparators of Justices of the Peace's salary in other Canadian jurisdictions with those in Saskatchewan is appropriate, in particular, in those jurisdictions which have an independent compensation commission process in place. The Association reiterates that the Hood Commission did include a consideration of a national average for Justices of the Peace salaries as a significant factor in arriving at its recommendations. In addition, the Hood Commission noted that although Manitoba and Nova Scotia at that time did not have an independent commission process, the salaries in those provinces were not outside the overall range, and were therefore included in its analysis.

224. In expanding upon the data contained in Table 6 of its initial Submission which showed average comparisons of Justices of the Peace salaries to the previous year Provincial Court Judges salaries in five other jurisdictions in Canada (see p. 52 of this Report), the Association expands that analysis to include salaries in Manitoba and Nova Scotia

which are presented in Table 2 below. In the Association's Reply, it acknowledges that the salaries of Justices of the Peace in Manitoba are set by regulation, rather than by independent commission, as a percentage of Provincial Court Judges' salaries in that province. It further advises that Nova Scotia Justices of the Peace's salaries are also set by regulation at 50% of the salary of a Provincial Court Judge.

**Table 2: Justice of the Peace Salaries compared to Provincial Court Judges Salaries of the Previous Year**

JP Salary as a % Previous Year PCJ Salary - 7 Comparable Jurisdictions											
Jurisdiction	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
British Columbia JP Salary - Gov't	78,654	94,730	97,100	99,525	99,525	99,525	99,525	105,967	108,067	110,249	
Previous Year's PCJ Salary	198,000	202,356	220,000	225,500	231,138	231,138	231,138	234,605	244,889	248,562	
	39.7%	46.8%	44.1%	44.1%	43.1%	43.1%	43.1%	45.2%	44.1%	44.4%	
Alberta JP Salary	110,000	117,480	125,000	129,375	134,550	139,932	144,830	148,089	150,310	151,813	
Previous Year's PCJ Salary	220,000	220,000	220,000	250,000	255,000	257,550	263,731	273,000	279,825	286,821	
	50.0%	53.4%	56.8%	51.8%	52.8%	54.3%	54.9%	54.2%	53.7%	52.9%	
Manitoba JP Salary	76,639	82,631	86,763	91,101	93,740	96,364	98,967	102,770	107,189	109,333	
Previous Year's PCJ Salary	173,400	178,230	192,166	201,774	211,862	218,000	224,104	230,155	239,000	249,277	
	44.2%	46.4%	45.2%	45.2%	44.2%	44.2%	44.2%	44.7%	44.8%	43.9%	
Ontario JP Salary	109,000	112,488	115,300	116,123	120,652	123,053	126,744	127,770	128,426	131,123	
Previous Year's PCJ Salary	228,338	234,503	242,007	248,057	252,274	262,113	267,355	275,381	279,791	287,345	
	47.7%	48.0%	47.6%	46.8%	47.8%	46.9%	47.4%	46.4%	45.9%	45.6%	
Québec JP Salary	110,000	110,000	110,000	119,000	119,895	121,091	137,792	138,757	140,838	142,387	
Previous Year's PCJ Salary	176,300	220,731	224,211	221,270	225,737	227,488	230,723	236,722	238,379	241,955	
	62.4%	49.8%	49.1%	53.8%	53.1%	53.2%	59.7%	58.6%	59.1%	58.8%	
Nova Scotia JP Salary*	90,354	98,500	101,455	103,789	107,000	108,091	111,769	127,329	128,986	129,876	
Previous Year's PCJ Salary	176,300	180,708	197,000	202,810	207,577	214,000	216,183	223,537	231,500	234,510	
	51.3%	54.5%	51.5%	51.2%	51.5%	50.5%	51.7%	57.0%	55.7%	55.4%	
Yukon JP Salary	109,500	112,785	116,169	119,654	123,244	126,941	130,749	133,364	136,031	137,799	
Previous Year's PCJ Salary	199,901	215,742	222,214	228,880	235,746	242,819	250,103	257,606	262,759	268,014	
	0.0%	52.3%	52.3%	52.3%	52.3%	52.3%	52.3%	51.8%	51.8%	51.4%	
Saskatchewan JP Salary	-	-	-	-	-	-	121,525	124,685	127,801	133,425	
SK Previous Year's PCJ Salary	195,000	198,900	204,552	220,916	229,753	238,943	248,090	254,458	260,819	272,295	
	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	49.0%	49.0%	49.0%	49.0%	
Average JP Salary (without Saskatchewan)	97,735	104,088	107,398	111,224	114,086	116,428	121,482	126,292	128,552	130,369	
Average PC Judge Salary (Previous Year)	196,034	207,467	216,800	225,484	231,333	236,158	240,477	247,287	253,735	259,498	
Yearly Average Percentage Differential	49.9%	50.2%	49.5%	49.3%	49.3%	49.3%	50.5%	51.1%	50.7%	50.2%	
Trending Average 10 yrs	49.9%	50.2%	49.5%	49.3%	49.3%	49.3%	50.5%	51.1%	50.7%	50.2%	10 yrs = 50.0%
Trending Average 6 yrs					49.3%	49.3%	50.5%	51.1%	50.7%	50.2%	6 yrs = 50.2%
Trending Average 4 yrs							50.5%	51.1%	50.7%	50.2%	4 yrs = 50.6%

225. In the Association's view, whether seven comparator jurisdictions in Canada are used or five, the result is essentially the same, resulting in a ratio of 51% of a Provincial Court Judges' salary for Justices of the Peace compensation. This, in the submission of the Association, results in an objective, fair and reasonable method of determining the appropriate salary ratio as between a Justice of the Peace and a Provincial Court Judge.
226. The Association supports its analysis by setting out its calculations at para. 20 – 22, inclusive, of its Reply Submission as follows:

## 7 Jurisdiction National Averages

- 20 If the average PCJ salary is used from the same 7 Jurisdictions that the Average JP salary is drawn from in the Government's comparison approach the percentages are as follows:

a = \$264,141 (2016/17 Average PCJ salary 7 Jurisdictions)  
b = \$282,184 (2016/17 Saskatchewan PCJ salary)  
c = \$130,369 (2016/17 Average JP salary 7 Jurisdictions)  
d = annual base JP salary

$$\frac{264,141}{282,184} = \frac{130,369}{d}$$

$$d = \$139,274$$

$$2016 \frac{d}{b} = \frac{139,274}{282,184}$$

$$b = 282,184$$

$$= 49.36 \% \text{ Year to Year Comparison}$$

As set out in the SJPA submission, though, this average then requires adjustment to a "Year to Previous Year" percentage to fit the Saskatchewan JP compensation model.

$$\frac{(2016/17 \text{ Annual Base JP salary})}{(2015/16 \text{ SK PCJ salary})} = \frac{139,274}{272,295}$$

$$= 51.15 \% \text{ Year to Previous Year}$$

## 5 Jurisdiction Average

- 21 When the average PCJ salary is used from the same 5 Jurisdictions that the Average JP salary is drawn from for the SJPA's comparison approach, the percentages are as follows:

a = \$272,626 (2016/17 Average PCJ salary 5 Jurisdictions)  
b = \$282,184 (2016/17 Saskatchewan PCJ salary)  
c = \$134,321 (2016/17 Average JP salary 5 Jurisdictions)  
d = annual base JP salary

$$\frac{272,626}{282,184} = \frac{134,321}{d}$$

$$d = \$139,030$$

$$2016 \frac{d}{b} = \frac{139,030}{282,184}$$

$$= 49.26 \% \text{ Year to Year Comparison}$$

This average then requires adjustment to a "Year to Previous Year" percentage to fit the Saskatchewan JP compensation model as follows:

$$\frac{\text{(2016/17 Annual Base JP salary)}}{\text{(2015/16 SK PCJ salary)}} = \frac{139,030}{272,295}$$

= 51.06 % Year to Previous Year

- 22 Regardless of whether a five jurisdiction comparator or a seven jurisdiction comparator is used (see Table 3 for the relevant data), **both methods of calculation result in a ratio of 51% of a PCJ salary for JP compensation.** The SJPA submits that these calculations result in an objective, fair and reasonable method to determine the appropriate salary ratio as between a JP and a PCJ.

227. The Association refers to the Government's Submission (para. 147) in indicating that Saskatchewan Justices of the Peace have the third highest salary among Justices of the Peace in Canada. From the Association's perspective, based on a ratio analysis, it would seem appropriate that Saskatchewan Justices of the Peace should have a similar placement. The Association then notes that its recommended 51% compensation level based on 2016/17 salary levels would, in fact, move Saskatchewan Justices of the Peace into the third place position and would result in those Justices of the Peace being treated in a similar manner for compensation purposes as Saskatchewan Provincial Court Judges relative to Provincial Court Judges across Canada. It further comments that:

- 23 ... The relationship for Saskatchewan PCJs to the national average and Saskatchewan JPs to the national average were factors considered by Commissioner Hood in paragraph 321 of the Report and Recommendations of the 2013 JP Compensation Commission.

228. The Association further disagrees with the Government's Submission that in some other provinces, Justices of the Peace are required to have some legal training; whereas, in Saskatchewan only Senior Justices of the Peace are required to have prior experience as lawyers, but that requirement has only been established as a matter of hiring policy. In the Association's submission, some Justices of the Peace are required to be lawyers to perform specific assignments, such as case management, while others require different skill sets to perform other assignments, such as familiarity with domestic violence issues and assessment for VIVA Justice of the Peace work. The value of the assignments is the same as reflected in equal compensation for the work performed. (para. 26, Association Reply)

229. The Association further emphasizes that for salary purposes, there is no reason to distinguish between different classifications of Justices of the Peace, or work



assignments, or educational backgrounds, or to exclude comparator jurisdictions in which a greater percentage of the Justices of the Peace have a legal background, when the work performed is substantially the same and is of equal value.

**(b) Pension and Benefits**

230. The Association agrees with the Government's Submission to this Commission that the Commission should make an advisory recommendation that Non-senior Justices of the Peace be included in the same pension plan as the Senior Justices of the Peace (PEPP) with the same contribution rates.
231. The Association requests that the Commission make this recommendation along with the suggested timeframe for implementation.
232. As regards additional benefits, the Association emphasizes the continuing inequity that has resulted from the Government not implementing the advisory recommendations of the Hood Commission to provide Insured Benefits and sick leave for all Justices of the Peace, not just for Senior Justices of the Peace. The Association points to specific instances of hardship which has resulted from an inability to access one or more of these Insured Benefits and sick leave benefits.
233. If the pension benefits are provided to all Justices of the Peace as suggested by both the Government and the Association, this would result in a revision to the Association's proposal for a *per diem* benefits calculation as set out in its initial Submission.
234. For all full time Justices of the Peace as well as part time Senior Justices of the Peace who meet the thresholds (minimum 16 hours of work per week of work) for Insured Benefits, they would be enrolled in the appropriate Insured Benefits plans and sick leave would be provided at the rate of 1¼ days per month (15 days per year). Table 6 in the Association's Reply outlines the Association's proposal for Insured Benefits for all Justices of the Peace that meet the 16 hours of work per week threshold:



**Table 6: Insured Benefits for all JPs that Meet Thresholds**

Type of Benefit	Benefit Allowance
Base Salary	\$133,425
Pension	Enroll in the Public Employees Pension Plan (PEPP)
Sick Leave	1 1/4 days/month (15 days / year)
Group Life	Enroll in the Saskatchewan Government Plan
Disability	Enroll in the Saskatchewan Government Plan
Dental	Enroll in the Saskatchewan Government Plan
Extended Dental	Enroll in the Saskatchewan Government Plan
Extended Health	Enroll in the JP Plan

235. For those Senior Justices of the Peace who do not meet the threshold of 16 hours of work per week, the Association has calculated a *per diem* compensation rate at \$612.49 which would provide those Justices of the Peace with compensation which would include the additional benefit of extended health (married) coverage currently available to only full time Senior Justices of the Peace. This *per diem* compensation rate has been calculated by the Association based on information provided to it by the Government in November, 2018. Table 4 of the Association's Reply sets out the calculations of the extended Insured Benefits as a percentage of the 2016/17 Justice of the Peace salary set out below:

**Table 4: Justice of the Peace Benefit Percentage Calculations**

Benefit Plan	Cost of Benefit to Government (2018 rate)*	Percent of 2016/17 JP Salary of \$133,425
Group Life	\$5.50/month	0.0495
Disability	1.96% of Salary	1.9600
Dental	0.85% of Salary	0.8500
Enhanced Dental	0.4 % of Salary	0.4000
Extended Health (single)	\$53.49/month	0.4811 (not used for total)
(Married)*	\$103.92/month	0.9346* (used for total)
(Family)	\$128.20/month	1.1530 (not used for total)
Sick Leave (15 days/year) 15/220	\$606.48 / sick day	6.8182
Total Percent		11.0123

236. Table 5 of the Association's Reply sets out the cost of those proposed benefits to the Government for 2016/17 as follows:

**Table 5: Cost of Proposed Benefits to Government**

Benefit Plan	Percent of Salary (based on 2018 rate)	\$ Cost of Benefits, 2016/17 JP Salary of \$133,425
<b>Group Life</b>	0.0495	\$66.00
<b>Disability</b>	1.9600	\$2,615.00
<b>Dental</b>	0.8500	\$1,134.11
<b>Enhanced Dental</b>	0.4000	\$533.70
<b>Extended Health (Married)*</b>	0.9346* (used for total)	\$1,246.99
<b>Sick Leave (15 days/year) 15/220</b>	6.8182	\$9097.18
<b>Total</b>	<b>11.0123</b>	<b>\$14,692.98 per full-time JP</b>

237. The Association's calculated *per diem* compensation rate of \$612.49 for Senior Justices of the Peace who do not meet the 16 hours of work per week threshold was arrived at in the manner set in para. 40 of the Association's Reply as follows:

**Option 1 Part B:**

- 40 Use a *per diem* rate for Senior Justices of the Peace who do not meet the threshold of 16 hours per week. This would compensate them for Extended Health Benefits at a rate of 0.9346% of salary (2016/17 salary used)

Base salary = \$133,425

*Per diem* =  $\frac{\text{Base Salary} + (\text{Base Salary} \times 0.9346\% \text{ Extended Health Benefits})}{220 \text{ Working Days}}$

*Per diem* =  $\frac{\$133,425 + 0.009346 (\$133,425)}{220}$

*Per diem* =  $\frac{\$133,425 + 1,246.99}{220}$

*Per diem* = \$612.49

\*If 219 is used as the number of working days, then the *per diem* would be \$614.94.

238. For Non-senior Justices of the Peace, the *per diem* would amount to \$673.26 which would provide compensation, in addition to extended health benefits, which would cover benefits for group life insurance, disability, dental and extended dental and sick leave. The Association's calculation in arriving at this *per diem* is set out in para. 41 of its Reply Submission as follows:

**Option 1 Part C:**

- 41 Use a *per diem* rate for all part time "Regular" Justices of the Peace for benefits in addition to pension (2016/17 salary used)

Base salary = \$133,425

$$\text{Per diem} = \frac{\text{Base Salary} + (\text{Base Salary} \times 11.0123\% \text{ Benefits})}{220 \text{ Working Days}}$$

$$\text{Per diem} = \frac{\$133,425 + .110123 (\$133,425)}{220}$$

$$\text{Per diem} = \frac{\$133,425 + \$14,692.76}{220}$$

***Per diem* = \$673.26 in addition to pension**

\*If 219 is used as the number of working days, then the *per diem* would be \$676.33 in addition to pension.

239. The Association calculates that, based on 2017/18 actual annual base salary for Senior Justices of the Peace and regular Justices of the Peace, the total cost to the Government to implement these additional benefits is just in excess of \$173,000 per year, which, from the Association's perspective, is a modest cost when considering the importance of achieving compensation equity and financial security for Justices of the Peace.

**(c) Additional Compensation Percentage for Supervising Justice of the Peace and Assistant Supervising Justice of the Peace**

240. The Association reiterates the comments from its initial Submission that the Supervising Justice of the Peace plays a key role in the selection of all Justices of the Peace, directs and develops policy and procedures for JP operations and serves as a training and legal resource for Justices of the Peace, as well as a backup for Justices of the Peace covering Court proceedings. Such backup may occur at any time of day or night throughout the year.

241. In addition, comparing the Supervising Justice of the Peace position in Saskatchewan to similar positions in other provinces and jurisdictions in Canada is difficult as there are few jurisdictions with Justices of the Peace in supervisory roles. In some other jurisdictions, it is common for a Provincial Court Judge to supervise Justices of the Peace.
242. The Association has identified Senior Crown Counsel as a relevant recruiting pool for the Supervising Justice of the Peace and Assistant Supervising Justice of the Peace positions. Senior Crown Counsel 2016/17 salaries for Senior Crown Counsel with 10 years experience and being paid at the top level of their salary scale earn yearly salaries of just over \$175,000 and Senior Crown Counsel with managerial duties earn an annual salary of approximately \$186,000. In the Association's assessment, this is a serious concern for recruitment from that pool of candidates in that the Supervising Justice of the Peace salary for 2016/17 was approximately \$138,425, including the \$5,000 additional supplement for administrative services. Even with the Association's proposal for an additional 10% payment, this would result in a total annual salary for the Supervising Justice of the Peace (2016/17 figures) of \$152,757.
243. In most other Canadian JP jurisdictions, supervisory functions are left to PCJs. In Ontario, a senior advisory JP is compensated at a level that is 10% higher than other JPs. While the Association acknowledges that the position of an Ontario senior advisory JP may not be an equal comparison to the Saskatchewan Supervising Justice of the Peace position, it submits that the 10% additional amount being recommended for the Supervising Justice of the Peace and 5% recommendation for the Assistant Supervising Justice of the Peace are "at best a conservative starting point that will require further review by future commissions". (para. 55, Association's Reply)
244. The Association therefore submits that its proposal that the Supervising Justice of the Peace be paid a 10% additional amount and the Assistant Supervising Justice of the Peace be paid a 5% additional amount is appropriate.
245. From the Association's perspective, recruitment and retention for these positions remains a serious concern.

**(d) Scheduled Days Off (SDOs)**

246. The Association submits that if the Government's proposal is accepted and SDOs are removed for the Supervising Justice of the Peace position prospectively, this would result in a significant reduction in benefits for this position which would further exacerbate the recruitment concerns for this position.
247. The Association notes that Senior Crown Counsel is a possible candidate group for this position who currently receive the benefit of SDOs, and while the Association acknowledges that Saskatchewan PCJ's do not enjoy the benefit of SDOs, nor are they a likely candidate group for this position.

**(e) Justices of the Peace Operations**

248. The Association notes that while there will be a reduction in Community Justices of the Peace in smaller communities and a corresponding transition of this type of work to the HUB in Regina, the operations change is being managed through attrition and is roughly three-quarters complete with a reduction of 75 Community Justices of the Peace having occurred to date. However, contrary to the Government's assertion in para. 36 of their Submission, most Community Justices of the Peace will not be retiring as of the end of 2018 and this is not part of the transition plan. (para. 59, Association Reply)

**VI. COMMISSION'S ANALYSIS**

**A. GENERAL COMMENTARY**

**(1) STARTING POINT - COMMISSION'S MANDATE AND JURISDICTION**

249. Section I.C. in this Report outlines in detail the mandate of this Commission and in Section II, a summary of the Hood Commission Report and its recommendations is set out, together with a summary of the response of the Government to those recommendations. In effect, the starting point for this Commission commences at that time and forms the foundation for the resulting process that culminated in the formation of this Commission.
250. This Commission has the benefit of the detailed analysis and effort evident from its review of the Hood Commission Report. That Report, as indicated earlier herein, was



the first Commission established pursuant to the significant amendments in 2013 to the Act.

251. As a general principle reflected in the statements of the Supreme Court of Canada in the New Brunswick Reference and endorsed by the 2017 Provincial Court Commission:

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

252. By way of general introductory commentary, this Commission accepts not only the general tenor of the mandatory and advisory recommendations set out in the Hood Commission Report, but, in addition, the factors which the Hood Commission deemed to be most significant and relevant in arriving at those recommendations, as will be reflected in the detailed analysis and comments which follow.

253. This Commission is also cognizant of the commentary at para. 259 of the Hood Commission Report as follows:

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.

254. As outlined in great detail in s. III.B. of this Report, the report and recommendations of this Commission will apply and adhere to those components comprising the principle of judicial independence, as they clearly apply to the determination of compensation for Justices of the Peace in Saskatchewan.

255. Fundamentally, the process to be followed by this Commission is one which is to be flexible, not in the nature of an interest-based arbitration, nor for that matter, judicial decision making. In para. 257 of the Hood Commission Report, these important principles were stated:

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.

256. It is important, in order that judicial independence is maintained, the judiciary must enjoy security of tenure, financial security and administrative independence. These important factors are ultimately and, most importantly, to be achieved for the benefit of the public to ensure and maintain the confidence of the public in safeguarding the administration of justice.
257. Another fundamental consideration for this Commission is an assessment of whether the constitutional minimum acceptable level of compensation for Justices of the Peace in Saskatchewan has been met.
258. With the fundamental amendments to the Act in 2013 and the resulting report and recommendations of the Hood Commission, this Commission is satisfied that such minimum acceptable level of compensation has been met with the establishment of the base salary for Justices of the Peace in Saskatchewan in relation to the salary for Provincial Court Judges. Such salary for Justices of the Peace is to be based upon the salary for Provincial Court Judges for the immediately preceding fiscal year.
259. Both the Association and the Government accept that it is not necessary for this Commission to undertake a full review of the economic conditions of the Province of Saskatchewan. That analysis was undertaken and reflected in the 2017 Prosser Commission Report which, due to the manner in which salaries for Justices of the Peace is to be determined, will automatically be reflected in the recommendations contained herein.

## **(2) NATURE OF WORK OF JUSTICES OF THE PEACE IN SASKATCHEWAN**

260. At para. 32 of this Commission's Report, a lengthy description of the types of services provided by all Justices of the Peace in Saskatchewan has been reproduced from the Association's Submission. (paras. 48 – 61, inclusive)

261. This Report at para. 37, reproduces a summary of the history and services provided by Justices of the Peace through the Hub and reproduces paras. 64 – 71, inclusive of the Association’s Submission detailing the evolution of the Hub and the scope of services provided through the Hub.
262. The Government, in its Reply Submission at para. 2, indicates that it is in general agreement with the Association’s description of the duties of Justices of the Peace in Saskatchewan, and the service delivery model, as summarized in paras. 24 - 71 of the Association’s Submission. Accordingly, there is no substantive difference of opinion between the parties in this regard.
263. The Commission also notes the comment in para. 36 of the Government’s Reply Submission that the listing of Justices of the Peace functions by the Association in its Submission and which have been reproduced earlier in this Report (Table 1, Comparison of Justice of the Peace Duties in Selected Jurisdictions – p. 45) does not represent a true measure of the work performed by the Justices of the Peace in different jurisdictions, including Saskatchewan. The Government suggests that there is no basis to conclude from this information that the actual workload of Justices of the Peace is heavier in Saskatchewan. Nevertheless, this Commission accepts, from the information provided by the Association, that the jurisdiction and breadth of services provided by Justices of the Peace in Saskatchewan certainly would appear, by all objective standards, to be as extensive as those in the other jurisdictions named in Table 1. The Government has not, either in its Submission or Reply Submission, suggested anything to the contrary.
264. In addition, the services provided Justices of the Peace in Saskatchewan, as comprehensively outlined by the Association, attests to the significant role played by Justices of the Peace in contributing to the administration of justice in all parts of the Province, whether in cities or in the most remote areas of Saskatchewan (See Figure 1 at p. 24 of this Report) and centrally through the Hub.

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**(3) WORKING CONDITIONS: RECRUITMENT AND RETENTION**

265. In its Submission, the Association referred extensively to the difficult working conditions in which many Justices of the Peace operate, particularly those who provide

services outside of the Hub and official Court locations. These conditions have been summarized in paras. 92 - 95, inclusive, of the Association's Submission and reproduced at p. 42.

266. Further, the Association argues that recruitment of candidates to fill the position of Senior Justice of the Peace, and by extension, the position of Supervising Justice of the Peace, remains a serious obstacle.
267. The Justices of the Peace are truly the "front line" when it comes to the administration of justice in this Province. Often, the facilities and services at their disposal are minimal and, in fact, expose some Justices of the Peace to significant risk of physical harm.
268. All of these factors are important and must be kept in mind when assessing what constitutes fair and appropriate remuneration and benefits for the Justices of the Peace.

## **B. REQUIRED RECOMMENDATIONS**

### **(1) SALARY**

269. The Government's submits that the annual salary of a Justice of the Peace in Saskatchewan should remain at 49% of the previous year's Provincial Court Judges salary. The Association submits that the percentage should be increased to 51%.

### **(a) Comparators**

270. Both the Government and the Association, in their respective Submissions and Replies, provided detailed arguments and statistical information in respect of the use of comparators. From this Commission's perspective, the most significant comparator is that of the compensation received by Justices of the Peace in other Canadian jurisdictions. The respective positions put forward by each of the parties has been outlined in this Report.
271. The Government submits that while the national average of compensation for Justices of the Peace is a factor which may be considered by this Commission, it submits that it is of decidedly less importance than the emphasis which has been placed upon it by the Association.

272. The Government refers to the fact that the Act does not specifically incorporate by reference section 45(1)(b)(ii) of the PJ Act. (para 176 and 177 herein)
273. It is important to note, however, that this section of the PJ Act would only apply in the event the Government did not accept the recommendations of the PJ Commission (s. 43 and 47, PJ Act). The Government does acknowledge that the national average salary is a factor which may be considered by this Commission.
274. This Commission acknowledges that while the use of national averages is not a completely direct “same year” comparison given that the applicable timeframe for recommendations made by individual commissions differs and, in some cases, salary recommendations are set by Provincial Regulation rather than through an independent commission process; nevertheless, this Commission is of the view that it remains one of the most significant indicators by which it should be guided.
275. The extensive analysis provided by the Association and the statistical information outlined in its Submission as summarized in Table 6 of this Report (p. 52) is particularly helpful. The five jurisdictions selected are those which are subject to an independent commission review and recommendation.
276. Table 6 contains a ten-year comparison and notes the trending averages over that period of time. The Association refers to the average trending percentage for the past four years (essentially since the time of the Hood Commission Report) of an approximately 51% ratio of Justices of the Peace salary to Provincial Court salary as an average of the selected jurisdictions.
277. The Government suggests that the salary figures for the other jurisdictions noted therein are not consistently current, unlike the Saskatchewan salary amount, and points to the Alberta JP Commission being about to start its hearings soon for the period April 1, 2017 to March 31, 2021. The British Columbia Provincial Court salary is under challenge in the Court, which leads to further uncertainty; however, these different timeframes within which commissions exercise their mandates and the existence of Court challenges to commissions’ findings, while relevant, do not preclude this Commission from analyzing and taking into account the statistical information available to it at the time it is required to deliver its report and make its recommendations. The

Government further takes issue with the inclusion of the Yukon Justice of the Peace salary in Table 5 of the Association's Submission (and correspondingly in Table 6 set out in this Report as referred to earlier). It submits that the higher salary "may reflect the greater isolation of Yukon as a northern territory" and further states "while on paper there is a position of Justice of the Peace in Yukon, it is the Government's understanding that there is no intention to fill that vacancy. Given that situation, including the Yukon figure is not particularly reliable".

278. As the Hood Commission stated, it considered its report to be a starting point since its mandate constituted a fundamental change from the manner in which Justices of the Peace salaries in Saskatchewan had previously been determined. This Commission now has the benefit of the intervening several years of national salary figures to include in its analysis.
279. This Commission does not accept the Government's Submission that the Yukon salary should be excluded, for comparison purposes. Each Province and Territory may have circumstances and factors which are somewhat unique in looking at the salaries presented in the Tables presented to it; however, this Commission sees no reason to exclude any of them since none appear to be extreme, or outside a reasonable range, as to amounts.
280. Having considered all of the factors and data provided by each of the parties, this Commission concludes that 51% is, at this time, the appropriate percentage of a Justice of the Peace salary in relation to the previous year's salary of a Provincial Court Judge in Saskatchewan.
281. In coming to this conclusion, this Commission has, in particular, been persuaded by the analysis of the Association as reproduced earlier in this Report at para. 226 in demonstrating that whether five or seven jurisdictions are used for comparative purposes, the resulting ratio of the average Justice of the Peace salaries (without Saskatchewan) in relation to the average PCJ's salary for the previous year is, for all practical purposes, very close to 51%. As the Association submits, and as this Commission accepts, "these calculations result in an objective, fair and reasonable

method” to determine the appropriate salary ratio as between a Justice of the Peace and a PCJ.

282. This Commission is also cognizant of the fact that its recommendations, if accepted, will not be subject to further review for a period of six years. This is significant for both the Government and the JP’s. This Commission is of the view that its proposed ratio is fair, reasonable and appropriate bearing in mind this extensive timeframe.

**(b) *Pro-Rata Rate for Part Time Salaries***

283. Subject to the Association’s commentary and submissions with respect to the matter of a possible Indigenous Peoples’ Day being implemented by the Federal Government in the future, each of the Government and Association agree that the daily rate should remain at 1/220, the half daily rate at 1/440 and the hourly rate at 1/1760, the numerator being the annual salary of a full-time Justice of the Peace.
284. This Commission accepts the Government’s submission that it is not appropriate and very likely beyond the mandate of this Commission to recommend a future revision to these ratios based on the more possibility that a federal statutory holiday designated as the Indigenous Peoples’ Day, or some similar designation, may be proclaimed in the future.

**(c) *Additional Amounts for Supervising Justice of the Peace and Assistant Supervising Justice of the Peace***

285. With the amendment to the Act which came into force on July 1, 2018 with the addition of s. 10.2(5.1), this Commission is required to make recommendations for an additional amount to be paid annually to the Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace.
286. The Government and the Association have agreed in their Submissions that the additional amount to be paid to the Assistant Supervising Justice of the Peace should be set at 5% of the salary paid to a Justice of the Peace.
287. However, the Government and the Association disagree on the additional amount to be paid to the Supervising Justice of the Peace.



288. The Government submits that the additional amount should be set at 7.5% of a Justice of the Peace salary and argues that it is important that there be consistency between the additional amounts set for the Chief Judge of the Provincial Court and the additional amount to be paid to the Supervising Justice of the Peace, in particular, because in the Government's view, the duties of each are substantially similar. In addition, due to the fact that the Chief Judge of the Provincial Court has statutory authority over Justices of the Peace and may, in his or her discretion, delegate general supervisory functions to the Supervising Justice of the Peace, it is ultimately the Chief Judge who must determine the functions to be performed by the Supervising Justice of the Peace. Further, the Chief Judge plays a significant role in the investigation and determination of disciplinary allegations against Justices of the Peace.
289. The Association, on the other hand, in its Submission, has referred to similar positions in other Provinces and the amounts paid to those individuals.
290. In the Associations' view, an additional amount of 10% is necessary, not only to be consistent with other jurisdictions, but also to attempt to address its recruitment and retention issues.
291. Respectfully, this Commission is not convinced that the comparators set forth by the Association has provided this Commission with any significant guidance as each jurisdiction appears to be quite different in the manner in which it deals with additional compensation for its equivalent position to that of the Supervising Justice of the Peace. Some Provinces do not have such a position.
292. While this Commission acknowledges and accepts the Association's concern regarding recruitment and retention, this appears to be an issue that originates with the recruitment and retention of Senior Justices of the Peace and not directly with the appointment of the Supervising Justice of the Peace. By establishing the base salary of a Justice of the Peace at an appropriate level, hopefully this will, in turn, address, at least to some extent, the recruitment and retention issues identified by the Association.
293. Similarly, the continuing evolution of the method of delivery of Justices of the Peace services, will hopefully continue to result in improved working conditions for Justices of the Peace which in turn should ease recruitment and retention issues.

294. This Commission recognizes and accepts the Government's submission that it is important to maintain consistency as between the Provincial Court and Justices of the Peace in respect of the manner in which this additional amount is to be paid.

295. Accordingly, it is this Commission's recommendation that the additional amount to be paid to the Supervising Justice of the Peace should be set at 7.5% of the salary of a Justice of the Peace.

**(d) Scheduled Days Off (SDOs)**

296. The SDOs are currently a benefit made available made only to the Supervising Justice of the Peace and the Government has submitted that this Commission should make a recommendation prospectively that the SDOs be removed as a benefit of that position immediately upon the retirement of the current Supervising Justice of the Peace.

297. With respect, the Commission disagrees with the Government's submission and declines to make any recommendation for the prospective removal of SDOs for the position of the Supervising Justice of the Peace.

298. This Commission accepts the submission of the Association that the retention of the SDOs for the Supervising Justice of the Peace may be of assistance in recruitment efforts to this position; however, that is not the principal reason why this Commission declines to make any recommendation for change.

299. While the Government may be correct in its Submission that the granting of SDOs to the Supervising Justice of the Peace may be a historical anomaly, this Commission considers it well beyond its purview and mandate to review the historical rationale for the granting of this benefit and then make a recommendation which would remove, even prospectively, this benefit from the position of the Supervising Justice of the Peace.

**(e) Pension Contributions Rates**

300. The Government and the Association have agreed that there should be no change to the PEPP contribution rates for Senior Justices of the Peace; i.e. 5% of salary for individual Justices of the Peace and 7.6% annual contribution to be paid by the Government.

## **(2) ADVISORY MATTERS**

### **(a) Pension for Regular (Non-Senior) Justices of the Peace**

301. The Government and Association are in agreement that this Commission should make an advisory recommendation that the Non-senior Justices of the Peace be included in the same pension plan as the Senior Justices of the Peace, PEPP, with the same contribution rates. Therefore, this Commission does make that advisory recommendation.

### **(b) Insured Benefits**

302. Insured Benefits, for the purposes herein, has been defined as including group life insurance, disability, dental and extended health benefits. Currently, only the Senior Justices of the Peace who meet the 16 hours of work per week threshold and the Supervising Justice of the Peace receive these benefits.
303. The Government submits that given its willingness to include Non-senior Justices of the Peace in the PEPP, this additional benefit, together with the increase in salaries which will result for Justices of the Peace, even if the Government's submission of the 49% were to be accepted, serves to offset the need for any further recommendations regarding Insured Benefits by this Commission.
304. By taking this approach, the Government is, in effect, saying that by extending pension benefits to Non-senior Justices of the Peace, it need not do anything further and that this partial move towards equality for all Justices of the Peace is good enough.
305. With respect, this Commission disagrees and accepts the submissions of Association and the CBA, together with the recommendations of the Hood Commission, that all Justices of the Peace should be treated in the same manner and receive the same benefits. This includes Insured Benefits.
306. The Association has calculated *per diem* rates of compensation, for those Senior Justices of the Peace who do not meet the threshold of 16 hours of work per week, to compensate those Justices of the Peace for extended health benefits. The resulting *per diem* rate is \$612.49 as calculated by the Association and reproduced at para. 237 of this Report.

307. For Non-senior Justices of the Peace, the *per diem* rate would amount to \$673.26 to provide those Justices of the Peace with compensation, in addition to extended health benefits to cover Group Life Insurance, disability, dental and extended dental and sick leave. This calculation is reproduced at para. 238 of this Report.
308. These *per diem* rates have been calculated using a 220 working day year.
309. The *per diem* rates of compensation calculated by the Association and referenced in paras. 303 and 304 above, are referred to for illustrative purposes in support of the manner in which part-time Senior Justices of the Peace and all Non-senior Justices of the Peace can be compensated on a *per diem* or *pro-rata* basis in respect of Insured Benefits (as applicable, in each instance) and sick leave to provide them with equivalent benefits to those currently being received by the Supervising Justice of the Peace and those Senior Justices of the Peace who meet the 16 hours of work per week threshold.
310. This Commission understands that while it may only make an advisory recommendation in respect of these *per diem* or *pro rata* rates, it does make that recommendation.
311. This Commission recommends that the Government implement an appropriate *per diem* or *pro rata* rate for part-time Senior Justices of the Peace and Non-senior Justices of the Peace which will result in equal benefits for all Justices of the Peace.
312. The Government's submission that the enrollment of Non-senior Justices of the Peace in PEPP, together with salary increases, should somehow be viewed as sufficient is not tenable from this Commission's perspective.

**(c) Professional Training and Development**

313. At present, only Senior Justices of the Peace receive two mandatory training days per year which are compensated at their regular salary. Non-senior Justices of the Peace are offered one optional training day per year for which they are entitled to be reimbursed for travel and meal expenses; however, they receive no compensation for salary.
314. The Association submits that all JP's should receive the same benefits as Senior JP's i.e. two mandatory training days compensated at their regular salary or *per diem* rates. The

Government submits that this issue is beyond the Commission's mandate but recognizes the importance of the issue. The CBA supports the Association's request.

315. The Commission concurs with the Submissions of the Association and the CBA and further agrees with the Government that this is an important issue. This Commission will include this in its advisory recommendations.

**(d) Stand-by Pay (On Call); Alternate Location Work Assignments; Expenses Away from Assigned Community**

316. The Association makes no submission for change to the current stand-by pay (on call), compensation for travel time to and from assignments away from home communities or reimbursement of expenses away from home communities while on duty.

**(e) Legal Services Support**

317. While the Association submits that payment of legal expenses and discipline proceedings (other than those in which a Justice of the Peace is charged with the commission of a criminal offence or discipline proceedings related to such criminal offence) should be paid or reimbursed based on a binding recommendation which would be made by the Justice of the Peace Review Council, the Government's alternative proposal is to enter into a suitable indemnity agreement based on a protocol which it would establish with the Justice of the Peace Association. The Government is of the view that this is outside of the mandate of this Commission to make an advisory recommendation in that the reimbursement of legal expenses is not a "benefit". The Government further advises that there is currently no similar provision for indemnity or payment of legal expenses for Provincial Court Judges but rather is a matter under active discussion between the Ministry of Justice, the Chief Judge and the Judges of the Provincial Court.

318. It appears that this matter of reimbursement or the availability of legal resources to Justices of the Peace for job related disciplinary proceedings, has been an ongoing topic of discussion which was also reviewed by the Hood Commission. It further appears that, at that time, the Government acknowledged an appropriate application and authorization process would be implemented; however, no such process is yet in place.

319. In correspondence dated September 29, 2017 addressed to the Justice of the Peace Association from the Ministry of Justice, under the heading “Legal Services for Justices of the Peace (JP)”, the correspondence states “the Provincial Court Judges’ protocol is still under review by the Provincial Court Judges’ Association and the Ministry. Once the protocol is finalized, it will be shared with the SJPA as a model for similar protocol. We are hopeful this will occur in the next few months”.
320. The Commission respectfully disagrees that the availability of legal resources, or reimbursement for such services, is not a “benefit” and accordingly recommends, on an advisory basis, that an appropriate protocol be completed and implemented within a reasonable period of time.

**(f) Counseling Services**

321. It is apparent that the issue of counseling services has also been the topic of discussion between the Government and the Association for an extended period of time and is also referred to in the correspondence noted above. In that correspondence, the Government concluded it could proceed, without a Government regulation “if the budget was in place. The Ministry will consider the implications of this benefit in future budgets”.
322. Again, the Government suggests that this is not a “benefit” for the purposes of section 15(d) of the Act and therefore is best left to be resolved between the parties “after discussions with the Justices of the Peace Association”. (para. 92, Government Reply)
323. This Commission concurs with the position of the Hood Commission that such services should be made available to all Justices of the Peace, in particular, given the stressful and often potentially dangerous environments in which they are required to perform their services. This Commission therefore recommends, on an advisory basis, that all Justices of the Peace have access to counseling programs similar to those made available to PCJ’s.

**(3) COSTS**

324. As to the matter of costs, the parties have maintained the same position on the issue of costs that they took in their submissions to the Hood Commission.



325. The Association has requested that this Commission reserve jurisdiction over the issue of costs incurred by the Association for participating in the Commission process.
326. Notwithstanding that the Government submits that this Commission does not have jurisdiction to award costs, it does accept that there is no need for the Commission to make any ruling on costs at this time. Rather the parties have acknowledged that they have been in discussion on the issue of costs and are hopeful that it will be resolved by consensus.
327. The Government, nevertheless, requests, as does the Association, that the Commission reserve jurisdiction to entertain further submissions on the matter of costs if the necessity arises.
328. This Commission is prepared to accept the request of the parties and agrees to reserve jurisdiction to consider further submissions should they be forthcoming.

**(4) SUMMARY OF RECOMMENDATIONS**

329. The following is a summary of the required recommendations made by this Commission:
- (a) The annual salary for Justices of the Peace commencing on April 1, 2019 should be set at 51% of the previous year's Provincial Court Judges' salary.
  - (b) *Pro rata* portions of this annual salary should be calculated using devisers equal to 220 working days, 440 half days and 1760 hours;
  - (c) The additional amounts to be paid to the Supervising Justice of the Peace and the Assistant Supervising Justice of the Peace shall be 7.5% and 5%, respectively, of the annual salary of a Justice of the Peace effective April 1, 2019; and
  - (d) There be no change to the PEPP contribution rates for the Senior Justices of the Peace, with individual Senior Justices of the Peace continuing to contribute 5% of their annual salary and the Government continuing to contribute 7.6% of Justices of the Peace salary on an annual basis.
330. This Commission further recommends that the Lieutenant Governor in Council amend *The Justice of the Peace Regulations, 1989, supra*, to provide the following benefits:

- (a) Non-senior Justices of the Peace be enrolled in PEPP, with the same contribution rates as the Senior Justices of the Peace;
- (b) Non-senior Justices of the Peace who are classified as full-time and who earn an annual salary set by the Regulations should receive:
  - (i) 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);
  - (ii) Leave of absence with pay for 10 public holidays and 2 Saskatchewan public service employee holidays;
  - (iii) 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 full time Senior Justices of the Peace and the Supervising Justice of the Peace;

- (iv) Enrolment in the following insured benefits programs, in the same manner as the Senior Justices of the Peace and the Supervising Justice of the Peace:
  - Government of Saskatchewan Group Life Insurance Plan;
  - Public Employees Dental Plan;
  - Government of Saskatchewan Disability Income Plan; and
  - Extended Health Care Plan.
- (c) Senior Justices of the Peace who do not meet the threshold of 16 hours of work per week should receive an additional amount of compensation based on a calculated *per diem* or *pro rata* rate in lieu of the extended health (married) coverage currently available to only full-time Senior Justices of the Peace.
- (d) Non-senior Justices of the Peace who receive remuneration according to the *pro rata* calculation should receive an additional amount of compensation based on a calculated *per diem* or *pro rata* rate in lieu of Insured Benefits and sick leave.

- (e) Non-senior Justices of the Peace who receive remuneration according to the *pro rata* calculation should receive an additional amount of compensation, expressed as a percentage of the annual salary;
  - (i) In lieu of sick leave; and
  - (ii) In lieu of Insured Benefits programs.
- (f) Senior and Non-senior Justices of the Peace whether full-time or part-time should all receive the following benefits:
  - (i) Compensation at regular salary rates and reimbursement for travel and meal expenses while attending two mandatory professional training days per year;
  - (ii) Legal resources for disciplinary hearings, subject to the approval of the Chair of the Justices of the Peace Council, or through a mutually agreeable protocol developed between the Government and the Association; and
  - (iii) Counseling services through the Justice of the Peace or similar program.

## **VII. CLOSING REMARKS**

331. The Commission wishes to express its sincere appreciation and thank you to all parties who have made submissions to this Commission.

**DATED** at Saskatoon, Saskatchewan effective this 31<sup>st</sup> day of December, 2018.



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**Leslie W. Prosser, Q.C.**  
**Chairman**