SUBMISSION OF

THE ALBERTA PROVINCIAL JUDGES’ ASSOCIATION

to the

2017 JUDICIAL COMPENSATION COMMISSION

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INTRODUCTION

1. The mandate of this 2017 Judicial Compensation Commission (“JCC”) is to make recommendations to the Minister concerning what is appropriate remuneration for judges of the Provincial Court of Alberta (also referred to as the “Provincial Court” or the “Court”) for the four year period from April 1, 2017 to March 31, 2021. To assist the Commission with this task, the Alberta Provincial Judges’ Association (hereinafter referred to as “the Association”) provides the following submissions.

2. Part I contains an overview of the legal and legislative framework and the role of judicial compensation commissions generally with a focus on recent developments in the law. This section also explains the importance of the Commission being clear in its recommendations and detailed in its reasoning. Part II gives an overview of the Provincial Court of Alberta in terms of its jurisdiction and role within Alberta’s court system, as well as the nature of the work performed by Provincial Court judges.

3. Part III of the Submission addresses each of the criteria which the Association submits should be considered by this Commission in light of the decisions of past commissions in Alberta, the decisions of judicial compensation commissions in other jurisdictions and the governing regulation.

4. Part IV details the Association’s proposals for modest increases in judicial salaries, a reduction in the age of eligibility for part-time service, and greater transparency regarding the terms and conditions of the Judicial Indemnity that was implemented by Government following the recommendations of the 2013 JCC.

5. Part V addresses the legal and other costs of preparing for and appearing before this Commission.
PART I: THE EVOLVING JCC PROCESS - ITS PURPOSE AND IMPORTANCE

6. Every federal, provincial and territorial jurisdiction across Canada has some form of constitutionally established administrative tribunal responsible for making recommendations to government about what is appropriate compensation for judges for the period of that commission’s mandate. In Alberta, that administrative body has historically been called a “Judicial Compensation Commission” (“JCC”), as it has been named in many other jurisdictions. Certain jurisdictions use other terms such as ‘Judicial Remuneration Commission’ or ‘Salary and Benefits Tribunal’.

7. While some jurisdictions had some form of a commission process in place prior to 1997, the processes as they now exist largely came into being as a direct result of the 1997 Supreme Court of Canada decision generally known as the PEI Reference case. Each jurisdiction has designed its commission process slightly differently with respect to such things as the timing of the commissions, the length of their respective mandates, the persons eligible for appointment to the commission and to what degree the commission’s recommendations are binding on government.

8. In PEI Reference, the Supreme Court considered cases which originated from Alberta, Manitoba and PEI, all of which concerned the independence of the judiciary. In his reasons for decision, Chief Justice Lamer, as he then was, commented on the “national scope” of the issues before the Court, which demonstrated that the “proper constitutional relationship between the executive and the provincial court judges … ha[d] come under serious strain” (para 7).

Reference re Remuneration of Judges of The Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of the Provincial Court of Prince Edward Island; R. v. Campbell; R. v. Ekmecic; R. v. Wickman; Manitoba Provincial Judges’ Association v. Manitoba (Minister of Justice), [1997] 3 S.C.R. 3, (hereinafter referred to as “PEI Reference”), Joint Book of Authorities, Tab 1

- 2 -
9. The Provincial Judges’ Association of Manitoba challenged the constitutionality of the reduction in salary for provincial judges in Manitoba that resulted from the enactment of Bill 22, *The Public Sector Reduced Work Week and Compensation Management Act*. The judges alleged that the Bill infringed judicial independence, as protected by section 11(d) of the *Charter*, and argued that the salary reduction was unconstitutional because it effectively suspended the operation of the Judicial Compensation Committee, a body created under the then *Provincial Court Act*. The judges also alleged that the actions of the Manitoba Government in ordering the withdrawal of court staff and personnel on unpaid days of leave (“Filmon Fridays”) interfered with judicial independence. Further, the Association alleged that the Government had interfered with the independence of the judiciary by exerting improper pressure in the course of salary discussions in an effort to convince the judges not to launch the constitutional challenge.

*PEI Reference, supra, Joint Book of Authorities, Tab 1, paras 21-22*

10. In Alberta, the situation was slightly different in that the cases eventually determined by the Supreme Court of Canada originated with three accused who challenged the constitutionality of their trials, alleging in essence that because of what was effectively a 5% salary reduction imposed by the Government on Provincial Court of Alberta judges’ salaries by *Alberta Regulation* 116/94, the Provincial Court was no longer an independent tribunal as required by section 11(d) of the *Charter*. Further, the accused challenged the constitutionality of changes to the judges’ pension plan that reduced the base salary for calculating pension benefits and limited cost of living adjustments to 60% of the annual percentage change in the Consumer Price Index. The accused also challenged the constitutionality of the Attorney General’s power to designate court sitting days and judges’ place of residence.

*PEI Reference, supra, Joint Book of Authorities, Tab 1, paras 16-18*

11. In the background of the Alberta case, and referred to by Lamer CJC in his Reasons, were the remarks of then Premier Ralph Klein who, in reference to a judge of
the Provincial Court who had declared that he would not sit in protest over his salary reduction, indicated that the judge should be “very, very quickly fired”.

*PEI Reference, supra, Joint Book of Authorities, Tab 1, para 19*

12. In Prince Edward Island, the case arose as a reference by the Lieutenant Governor, who referred two constitutional questions to court after numerous accused challenged the constitutionality of the Provincial Court of Prince Edward Island following the passage of provincial legislation which reduced the pay of judges.

*PEI Reference, supra, Joint Book of Authorities, Tab 1, paras 11-13*

13. The decision in *PEI Reference* was a major turning point in the history of the courts in Canada, as it underscored the importance of judicial independence and, in particular, the financial security aspect thereof. Lamer CJC, as he then was, outlined the three aspects of judicial independence which include financial security, administrative independence and security of tenure. According to Lamer CJC, a JCC process is necessary to ensure financial security for judges.

14. As the Supreme Court of Canada reiterated in its 2005 decision, in a case we will refer to as *Bodner*:

“… financial security embodies three requirements. First, judicial salaries can be maintained or changed only by recourse to an independent commission. Second, no negotiations are permitted between the judiciary and the government. Third, salaries may not fall below a minimum level.”

*Provincial Court Judges’ Assn. of New Brunswick v. New Brunswick (Minister of Justice); Ontario Judges’ Assn. v. Ontario (Management Board); Bodner v. Alberta; Conférence des juges du Québec v. Quebec (Attorney General); Minc v. Quebec (Attorney General), 2005 SCC 44, (hereinafter “Bodner”), Joint Book of Authorities, Tab 2, para 8*

15. In *PEI Reference*, as well as in *Bodner*, the Supreme Court of Canada outlined the flexible requirements for JCC processes, which must be independent, objective and
effective. With respect to the requirement of independence, Lamer CJC explained in *PEI Reference*:

“The rationale for independence flows from the constitutional function performed by these commissions - they serve as an institutional sieve, to prevent the setting or freezing of judicial remuneration from being used as a means to exert political pressure through the economic manipulation of the judiciary. It would undermine that goal if the independent commissions were under the control of the executive or the legislature.”

*PEI Reference, supra*, Joint Book of Authorities, Tab 1, para 170

16. The requirement of objectivity is described as follows:

“They must make recommendations on judges’ remuneration by reference to objective criteria, not political expediencies. The goal is to present “an objective and fair set of recommendations dictated by the public interest” … I recommend (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 judges’ salaries remain adequate, as well as the need to attract excellent candidates to the judiciary.”

*PEI Reference, supra*, Joint Book of Authorities, Tab 1, para 173

17. Lamer CJC went on to discuss the requirement of effectiveness which he suggested must be guaranteed in a number of ways:

“First there is a constitutional obligation for governments not to change (either by reducing or increasing) or freeze remuneration until they have received the report of the salary commission. Changes or freezes of this nature secured without going through the commission process are unconstitutional. The commission must convene to consider and report on the proposed change or freeze. Second, in order to guard against the possibility that government inaction might lead to a reduction in judges’ real salaries because of inflation, and that inaction could therefore be used as a means of economic manipulation, the commission must convene if a fixed period of time has elapsed since its last report, in order to consider the
adequacy of judges’ salaries in light of the cost of living and other relevant factors, and issue a recommendation in its report. Although the exact length of the period is for provincial governments to determine, I would suggest a period of three to five years. Third, the reports of the commission must have a meaningful effect on the determination of judicial salaries.”

PEI Reference, supra, Joint Book of Authorities, Tab 1, paras 174-175

18. And at paragraph 287 (2), Lamer CJC wrote:

“Provinces are under a constitutional obligation to establish bodies which are independent, effective, and objective, according to the criteria that I have laid down in these reasons. Any changes to or freezes in judicial remuneration require prior recourse to the independent body, which will review the proposed reduction or increase to, or freeze in, judicial remuneration. Any changes to or freezes in judicial remuneration made without prior recourse to the independent body are unconstitutional.” [emphasis and underlining added]

PEI Reference, supra, Joint Book of Authorities, Tab 1

19. Lamer CJC explained that while the effectiveness requirement could mean that the Commission’s report is binding on government, a variety of models would be consistent with judicial independence. Where the JCC recommendations were not binding, the government could refuse to implement the recommendations if it gave legitimate reasons and could justify its decision, if necessary, in a court of law.

PEI Reference, supra, Joint Book of Authorities, Tab 1, paras 180-183

20. The effectiveness of JCC processes across Canada became an issue almost from the very moment the PEI Reference decision was released. In many jurisdictions, governments decided for various reasons not to follow the recommendations of their JCCs. The relevant judges’ associations (or association of justices of the peace) challenged those government decisions based on the principles outlined in PEI Reference. Indeed, litigation arose in almost every jurisdiction across Canada.
21. In 2005, the Supreme Court of Canada issued its decision in *Bodner*, which involved cases from four jurisdictions, Alberta, Ontario, Quebec and New Brunswick. In all of the cases, issues had arisen from the failure of a government to implement a JCC report. The common issue in all of the cases was essentially “what is the appropriate test to be applied by a reviewing court to a government’s response to the recommendations of a JCC?”.  

*Bodner, supra, Joint Book of Authorities, Tab 2*

22. In *Bodner*, the Supreme Court of Canada reiterated that the JCC process is necessary in order to ensure the financial security of the judiciary. The Court described the focus of a JCC as being “on identifying the appropriate level of remuneration for the judicial office in question”. The Court clearly enunciated that the task of a JCC is unique. As the Court emphasized, “the process is neither adjudicative interest arbitration nor judicial decision making”. Rather, a JCC must focus on what is appropriate remuneration for judges in light of all the relevant factors including, in Alberta’s case, those set out in s. 13 of the *Commission Regulation*. We discuss those factors in much detail below.

*Bodner, supra, Joint Book of Authorities, Tab 2, para 14

*Commission Regulation*, Joint Book of Authorities, Tab 11

23. The Supreme Court of Canada also clarified the test to be applied by a reviewing court when a government fails to implement the recommendations of a JCC Report. According to the Court in *Bodner*, a reviewing court must consider the following questions.

1. Has the government articulated a legitimate reason for departing from the commission’s recommendations?

2. Do the government’s reasons rely upon a reasonable factual foundation?

3. Viewed globally, has the commission process been respected and have the purposes of the commission – preserving judicial independence and depoliticizing the setting of judicial remuneration – been achieved?
24. The judicial review that followed the Government of Manitoba’s response to the 2008 Manitoba JCC’s Report underscored the point that a JCC must be given the opportunity to fulfill its purposes. In that case, the Government of Manitoba rejected or simply ignored many of that JCC’s recommendations and the Provincial Judges Association of Manitoba (“PJAM”) sought judicial review of the Government’s reasons for rejecting the recommendations. Mr. Justice Oliphant issued his decision in March 2012 (Joint Book of Authorities, Tab 5), applying the test set out in Bodner. The Government appealed and, in August 2013, the Court of Appeal issued a unanimous decision (Joint Book of Authorities, Tab 6), which upheld the decision of Oliphant J.

25. One of the significant issues before the Manitoba courts involved the Government’s reasons for rejecting the JCC’s salary recommendations and whether, in responding to the JCC’s recommendations, the Government could properly rely on its bargaining position with the public sector. Mr. Justice Oliphant emphasized that, to the extent the Government intends to rely on a particular consideration in responding to the recommendations of the JCC, it is obliged to put that consideration before the JCC. Because the Government of Manitoba had been content to “leave it to the JCC” to determine an appropriate salary for judges, had urged the JCC to focus on the factors set out in the Act, and had failed to put before the JCC any information about public sector salaries, it could not later reject the recommendations based on concerns about the impact of the recommendations on its bargaining position with the public sector.


26. The analysis of Oliphant J. clearly recognized that in order for a JCC to be effective, it must be given the opportunity to provide its independent and objective recommendations based on all relevant considerations. As Steel J.A. wrote: “… if
information is available and the Government chooses not to present it to the JCC, then it cannot do so at a later time”.


27. Not only must the Government put its full position and considerations before the JCC, but it must also take into account the “special circumstances” that exist in dealing with salaries and benefits for judges (Decision of Oliphant J., Joint Book of Authorities, Tab 5, para 105). As the Manitoba Court of Appeal stated, the most obvious difference is that “judges cannot negotiate and must rely upon the good faith of the legislative branch” (in Alberta, the executive branch). The special circumstances also include that what is appropriate judicial compensation must be assessed in light of the unique set of factors identified by the Government itself (in Alberta, the factors in s. 13 of the Commission Regulation). For example, while it may or may not be relevant to consider extra-provincial comparators in the context of collective bargaining for certain provincial employees, it is a mandated consideration for judges.

Commission Regulation, Joint Book of Authorities, Tab 11, s. 13


28. As noted above, the JCC process is “neither interest arbitration nor adjudicative decision making”. The parties must put their full positions before the JCC, which must make its recommendations about what is appropriate compensation in light of the factors set out in the Act.

_Bodner, supra, Joint Book of Authorities, Tab 2, para 14_

29. As the Association has argued before past JCCs, it is crucial that the Report clearly and fully considers the arguments advanced by the parties and that the JCC supports its recommendations with detailed reasons. In responding to the recommendations, the
Government is required to engage with the reasoning of the JCC in a meaningful way. The stronger the reasoning that is set out in the report, the greater chance the recommendations will be implemented.

30. In terms of the recommendations themselves, it is important that the JCC specify:

   (a) the effective date of the recommendation (e.g. April 1, 2017);

   (b) to whom it applies: i.e. all Provincial Court judges as at April 1, 2017 (regardless of later death or retirement and all Provincial Court judges since appointed); and

   (c) the details of each aspect of the recommendation.

31. Many issues have arisen over the years in a number of different provinces because of a lack of clarity in JCC reports when JCCs have, for instance, failed to mention specific effective dates for some of the recommendations. This has led to confusion and periods of uncertainty for both affected judges and the civil servants who are charged with implementing the report. While acknowledging that it is not always an easy task, we request that this Commission express its recommendations with precision to the greatest degree possible. The Association has attempted to set out those types of details in our submissions below and urge the Government and/or the JCC to seek clarification should the Association’s proposed recommendations be unclear.

**History of Judicial Compensation in Alberta**

32. The first Judicial Compensation Commission in Alberta was held in 1998 following the decision of the Supreme Court of Canada in *PEI Reference*. Before then, there were, broadly speaking, three periods in the history of judicial compensation in Alberta. The first period began when the Provincial Court was established as a court of record in 1973, and lasted until 1975. During this period, salaries of Provincial Court judges were determined on an “ad hoc basis through negotiations between representatives of the judges and representatives of the government”.

1998 JCC Report, Joint Book of Authorities, **Tab 16**, page 4
In 1973, the Government established a Board of Review chaired by Mr. Justice W.J.C. Kirby of the Supreme Court of Alberta (Trial Division). Following issuance of the Kirby Report in 1975, the Government determined that Provincial Court of Alberta judges would be paid salaries equal to 90% of the salaries paid to the District Court of Alberta judges, who in turn were paid salaries equal to 90% of the salaries paid to Supreme Court of Alberta judges. In 1980, when the District Court and Supreme Court (Trial Division) were amalgamated into the Court of Queen’s Bench of Alberta, the Government determined (some allege by way of contractual agreement with members of the Provincial Court) that Provincial Court judges would be paid a salary of 80% of the salary paid to Court of Queen’s Bench judges.

The so-called “80% rule” era continued, more or less, until 1988, when the Government unilaterally determined that it would no longer link salaries to those of Queen’s Bench judges on a percentage basis. Thus began the third period, during which salaries were frozen until 1991. The Government then implemented a 9% increase in salaries, only to freeze salaries again in the years that followed before imposing a rollback of salaries in 1994. The rollback prompted three accused persons to challenge the independence of the judiciary based on a lack of financial security, which litigation was, as has been noted, ultimately heard by the Supreme Court of Canada as part of the PEI Reference case. The salary reduction imposed in 1994 was ultimately determined to have been unconstitutional.

1998 Judicial Compensation Commission

Following the PEI Reference case in 1997, the Government and the Association entered into a Framework Agreement dated March 3, 1998, which established the first Alberta Judicial Compensation Commission (the “1998 JCC”). The members of the commission were Roderick A. McLennan, Q.C., Louis D. Hyndman, Q.C., and E. Susan Evans, Q.C. who served as chair. The 1998 JCC prepared a Report delivered June 19, 1998, recommending significant improvements to the compensation for Alberta’s
Provincial Court judges (also referred to as ‘Alberta judges’) for the period April 1, 1998 to March 31, 2000.

1998 JCC Report, Joint Book of Authorities, Tab 16

36. The recommendations included a salary of $142,000 and $152,000 effective April 1 of each of 1998 and 1999, up from the salary of $113,964 which had been in place since 1992. Substantial changes to the pension arrangements were also recommended, since the 1998 JCC found that Alberta’s judges had the least advantageous plan across the country, with the exception of only Manitoba and Newfoundland & Labrador. Among other changes, the 1998 JCC recommended that the pension accrual rate be 2.67% per annum (an increase from 2% per annum) for all judicial service after April 1, 1998.

1998 JCC Report, Joint Book of Authorities, Tab 16, pages 38-41

37. The salary recommendations of the 1998 JCC were not fully accepted by the Government, and the Association sought judicial review of the Order in Council whereby the Government rejected these recommendations. The Alberta Court of Appeal ultimately found that the reasons offered by Government did not meet the standard of rationality established in PEI Reference. As a result, the recommendations were required to be implemented in full.

Alberta Provincial Judges Association v. Alberta, 1999 CarswellAlta 72 (QB); 70 Alta. L.R. (3d) 177, aff’d 1999 CarswellAlta 687 (CA), leave ref’d 2000 CarswellAlta 482 (SCC)

2000 Judicial Compensation Commission

38. The second Judicial Compensation Commission (the “2000 JCC”) was constituted with a single commissioner, J. Bruce Dunlop, who issued his Report to the Minister of Justice and the Attorney General on July 31, 2000 for the period April 1, 2000 to March 31, 2003. The Association and the Government had presented a joint submission to the
2000 JCC requesting certain recommendations which were ultimately made by the 2000 JCC, accepted by Government and then implemented.

39. The recommendations included an increase in salary to $170,000 for the period April 1, 2000 to March 31, 2003, and some changes to the pension arrangements, including an increase in the pension accrual rate to 3% for judicial service after April 1, 2000. A professional allowance of $2,500 was also recommended (and also accepted by Government and implemented) notwithstanding that the joint submission had not raised the issue of professional allowance.

2000 JCC Report, Joint Book of Authorities, Tab 17, pages 16 and 17

2003 Judicial Compensation Commission

40. A third Alberta Judicial Compensation Commission (the “2003 JCC”) was appointed in the year 2003. Its members included S. H. Wood, Q.C., D. J. Corry, Q.C. and it was chaired by Daniel McKinley. The 2003 JCC issued a Report on February 5, 2004 which made recommendations in respect of the period April 1, 2003 to March 31, 2006. The 2003 JCC made a number of recommendations relating to changes in salary, LTD benefits, and the professional allowance.

2003 JCC Report, Joint Book of Authorities, Tab 18

41. The recommendations included salaries of $200,000, $210,000 and $220,000 effective April 1, 2003, 2004 and 2005 respectively, up from the salary of $170,000 which had been in place since 2000. The salary recommendations of the 2003 JCC were not fully accepted by the Government, and the Association sought judicial review of the Order in Council whereby the Government rejected those recommendations.

Alberta Provincial Judges’ Assn v. Alberta, 2004 ABQB 611

42. The Association and the Government advanced quite different positions in respect of the justification standard that was to be applied. The Association relied on the decision
of the Alberta Court of Appeal in *Bodner v. Alberta*, while the Government urged a lower standard derived from the *PEI Reference* case. Ultimately, Mr. Justice MacCallum of the Court of Queen’s Bench held that he was bound by the Court of Appeal’s decision in *Bodner*, and that standard was applied. The Government was ordered to justify its departure from the recommendations within 90 days, failing which the recommendations would become binding.

*Alberta Provincial Judges’ Assn v. Alberta, 2004 ABQB 611*

43. The Government did not respond with further reasons within the 90 days and thus was obliged to implement the salary recommendations of the 2003 JCC. The Government did however appeal the finding that the Court of Appeal’s *Bodner* standard applied.

44. The Government made an application for a stay of the decision of the Court of Queen’s Bench review pending the determination of the appeal filed with the Supreme Court of Canada by the Government in *Bodner*. The stay application was rejected. The appeal was held in abeyance.


**2006 Judicial Compensation Commission**

45. The next Judicial Compensation Commission (the “2006 JCC”), chaired by its sole commissioner John Moreau, Q.C., was appointed to make recommendations for the period April 1, 2006 through March 31, 2009. The Government and the Association each made a separate but effectively a joint submission on the issues of salary and pension. Other submissions were received on behalf of Judge Hugh Landerkin, the Alberta Branch of the Canadian Bar Association, the Canadian Taxpayers’ Federation and two individual Albertans.
46. Submissions were filed in May 2006, and the 2006 JCC Report was issued on August 14, 2006. Both the Association and the Government wanted to put an end to the ongoing litigation discussed above, and to achieve certainty regarding judicial compensation. The situation was further complicated by the fact that no information was yet available about compensation that would be paid in the relevant years to two groups of judges who had long been considered to be the best comparators for Alberta’s Provincial Court judges: federally appointed judges in Alberta, and provincial judges in Ontario.

2006 JCC Report, Joint Book of Authorities, Tab 19

47. In its written Submission to the 2006 JCC, the Association referred to the written Submissions it had filed with the 2003 Commission and in particular to the portion of that Submission which referred to compensation of other judges in Canada. The Association pointed out that the factor was “two pronged” involving both a comparison of the compensation package of Alberta Provincial Court judges with provincial and territorial court judges in other jurisdictions and a comparison of Alberta’s compensation package for Provincial Court judges with the compensation of federally appointed judges working in Alberta.

Association’s Submission to the 2006 JCC, Association’s Documents, Tab 1, para 10

48. The Association referenced its argument to the 2003 JCC that the federal jurisdiction was “most comparable” given that the two courts compete for the same applicants in Alberta. The Association also pointed to the widening of the gap between federally and provincially appointed judges and argued that the gap should “now be narrowed and steps should be taken to guard against a future widening of the gap”.

Association’s Submission to the 2006 JCC, Association’s Documents, Tab 1, para 11
The Association noted that the compensation for federally appointed judges had yet to be determined for the period April 2004 to March 31, 2008, which period included the very years for which the 2006 JCC was to make recommendations. While the 2003 Quadrennial Judicial Compensation and Benefits Commission (the ‘McLennan Report’) had been issued, the recommendations contained therein had yet to be addressed by the Government of Canada.

Association’s Submission to the 2006 JCC, Association’s Documents, Tab 1, paras 12-13

Arguing that it was in the “broad public interest” that certainty be obtained in judicial salaries, the Association maintained that a recommendation that the then current salary of $220,000 per annum continue to be paid throughout the period April 1, 2006 to March 31, 2009, would eliminate a number of “current uncertainties” including:

(a) the outcome and costs of the current litigation between the government and the judges [i.e. the government’s appeal of Mr. Justice MacCallum’s decision];

(b) the potential for repayment of a portion of the salary already paid to judges over the last three years [if the Government’s appeal was successful]; and

(c) the possibility that recommendations by this Commission, after a contested hearing, might not be accepted by the government, creating the potential for further litigation with associated costs and distraction, between the government and the judges.

Association’s Submission to the 2006 JCC, Association’s Documents, Tab 1, paras 15-16

The Report of the 2006 JCC was presented to the Minister of Justice and Attorney General on August 14, 2006. Significantly, on the salary issue, the 2006 Commission stated as follows:
“The 2006 Commission accepts the submission of both the Minister and the Association that the current agreed salary of $220,000 for the next three years is a compromise which reflects the current uncertainty surrounding the salary to be paid to federally-appointed judges and the public interest in determining with certainty the salary to be paid to Judges in Alberta for the period April 1, 2006 to March 31, 2009.”

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52. Consistent with the submissions of the Association and the Government, the 2006 JCC recommended that the salary for puisne judges and masters should be set at $220,000 for April 1, 2006 through March 31, 2009. It also endorsed and recommended the agreed per diem salary rate for supernumerary judges and the adoption of a universal “best three consecutive years” rule when calculating pension benefits. It also approved the compensation paid to part-time judges. In response to the independent submission of Judge Landerkin, the Commission recommended a change to the LTD program. All recommendations of the 2006 JCC were accepted by the Government and implemented.

53. Concurrent with the submissions made to the 2006 JCC, the appeal relating to the 2003 JCC was abandoned and the Government accepted and implemented its recommendations in full.

**2009 Judicial Compensation Commission**

54. The 2009 Judicial Compensation Commission (“2009 JCC”) was appointed in 2011 to make recommendations in respect of the four year period from April 1, 2009 to March 31, 2013. Its members included Andrew C. L. Sims, Q.C., Craig W. Neuman, Q.C. and its chair, J. Patrick Peacock, Q.C. The 2009 JCC Report was issued on October 6, 2011.
55. Its recommendations included a salary of $250,000 effective April 1, 2009, with an increase to $255,000 effective April 1, 2010. On April 1st in each of 2011 and 2012, the Commission recommended that the annual salaries of judges be increased by the percentage amount in the year over year increase, if any, in the “Alberta all items consumer price index” for the preceding calendar year, as published by Statistics Canada. The 2009 JCC also recommended a per diem rate for supernumerary judges of 1/207.5 of the salary of a full-time puisne judge.

56. The 2009 JCC further recommended that, effective April 1, 2009, there should be 100% indexing of the judicial pension based on the annual percentage change in the CPI for Alberta. Other issues were also addressed, which had been the subject of joint submissions by the parties, including an increase in the amount of the professional allowance and an expansion of its purposes, as well as the percentage differential to be paid to the administrative judges (the Chief Judge, the Deputy Chief Judge and the Assistant Chief Judges).

57. The Government accepted all of the recommendations of the 2009 JCC, save and except for a pension-related recommendation that had emanated from the submission of an individual judge. The Government’s Response to the 2009 JCC Report is provided at Tab 21 in the Joint Book of Authorities.

2013 Judicial Compensation Commission

58. The 2013 Judicial Compensation Commission ("2013 JCC") was appointed in Spring 2014 with a mandate to make recommendations in respect of the four year period from April 1, 2013 to March 31, 2017. Its members included Andrew C. L. Sims, Q.C., Damon S. Bailey, and its chair, John M. Moreau, Q.C.

59. Due to the late appointment of the Commission members, the 2013 JCC conducted its hearing in early October 2014. Its Report was finalized on March 30, 2015, nearly two years into the Commission’s four-year mandate.

2013 JCC Report, Joint Book of Authorities, Tab 22
60. As the 2013 JCC noted in its Report, the “world price of oil dropped in half” between the time of the October 2014 hearing and the March 2015 Report, with the result that economic conditions in Alberta were “certainly less favourable” by the time of the Report. In the context of the dramatic deterioration of the economy that occurred in the second year of its mandate, the 2013 JCC recommended a salary of $273,000 effective April 1, 2013. This salary maintained approximate parity with the salaries paid to Ontario judges and was roughly 93% of the salary paid to federally appointed judges.

61. For the three years that followed, the Commission rejected the Government’s proposal of increases based on the percentage changes in Alberta’s CPI. Instead, it recommended fixed increases of 2.5% per annum, taking into account all of the relevant factors identified in the Commission Regulation. This resulted in salaries of $279,825, $286,821 and $293,991 effective on each of April 1, 2014, 2015 and 2016 respectively,

62. The 2013 JCC confirmed that the per diem rate should be maintained at 1/207.5 of the full-time salary. Further, the Commission adopted the joint submission of the parties in recommending that:

(a) part-time judges should have access to the full amount of the professional allowance;

(b) certain cost-neutral changes should be made to the pension plan, including a reduction in the vesting period from five to two years and that the pension partner of a judge who dies in office should be able to select from among alternate forms of pension; and

(c) a Judicial Indemnity should be adopted to protect judges from the costs associated with legal proceedings in certain defined circumstances.

63. On July 8, 2015, by Order in Council 172/2015, the Government accepted all of the recommendations set out in the 2013 JCC Report. It gave no reasons for its decision.
64. The salary recommendations were reflected in Alberta Regulation 178/15, which was passed on November 26, 2015. Some time thereafter, judges received the adjustments, retroactive to April 1, 2013.

65. There was significant additional delay in implementing the changes to the judicial pension, as the judicial pension regulation was not amended until November 2017. This was more than two years after the Government accepted the recommendations, and eight months after the expiry of the four year mandate of the 2013 JCC.

66. Also in November 2017, a regulation was finally passed authorizing the Minister to indemnify judges consistent with a binding recommendation of a JCC (e.g. the recommendation of the 2013 JCC which was accepted by Government in November 2015, and which was therefore binding pursuant to section 9 of the 2013 Commission Regulation, A.R. 33/2013). A Ministerial Order was subsequently passed ordering the Crown to indemnify judges and masters in accordance with the Judicial Indemnity recommended by the 2013 JCC. However, as discussed further below, the terms and conditions of the Indemnity itself are not set out in any regulation.

The Role and Jurisdiction of this 2017 Judicial Compensation Commission

67. This 2017 Judicial Compensation Commission (“2017 JCC”) has been mandated to make recommendations in respect of the four year period from April 1, 2017 to March 31, 2021. It is tasked with making fair and appropriate recommendations for compensation dictated by the public interest, after considering the various factors set out in the Commission Regulation, including other factors it considers relevant.
68. Like its two most recent predecessors, this 2017 Commission was not appointed until well into the period of its four-year mandate. As such, its recommendations are unlikely to be implemented until at least two years into the four year period.

69. In Bodner, the Supreme Court of Canada explained the role of the Commission:

14 The Reference laid the groundwork to ensure that provincial court judges are independent from governments by precluding salary negotiations between them and avoiding any arbitrary interference with judges’ remuneration. The commission process is an “institutional sieve” (Reference, at paras. 170, 185 and 189) — a structural separation between the government and the judiciary. The process is neither adjudicative interest arbitration nor judicial decision making. Its focus is on identifying the appropriate level of remuneration for the judicial office in question. All relevant issues may be addressed. The process is flexible and its purpose is not simply to “update” the previous commission’s report. However, in the absence of reasons to the contrary, the starting point should be the date of the previous commission’s report.

15 Each commission must make its assessment in its own context. However, this rule does not mean that each new compensation commission operates in a void, disregarding the work and recommendations of its predecessors. The reports of previous commissions and their outcomes form part of the background and context that a new compensation committee should consider. A new commission may very well decide that, in the circumstances, its predecessors conducted a thorough review of judicial compensation and that, in the absence of demonstrated change, only minor adjustments are necessary. If on the other hand, it considers the previous reports failed to set compensation and benefits at the appropriate level due to particular circumstances, the new commission may legitimately go beyond the findings of the previous commission, and after careful review, make its own recommendations on that basis.

Bodner, supra, Joint Book of Authorities, Tab 2, para 14-15

70. The Association refers below to the reasoning employed by the prior Commissions, and by the Government itself, as part of its analysis of the relevant factors supporting its proposed recommendations.
PART II: PROVINCIAL COURT OF ALBERTA - A BRIEF OVERVIEW

Origins and Growth of the Provincial Court

71. The current iteration of the Provincial Court of Alberta, with its total complement of 136 fully funded judicial positions including 119 full-time judges, came into being on July 1, 1973 when The Provincial Court Act, S.A. 1971, c. 86, came into force.¹ For the first time, the Provincial Court was a court of record. Provincial Courts in Western Canada, including the Provincial Court of Alberta, can trace their roots back to the courts established pursuant to statute² by the Hudson’s Bay Company in the 19th century. As far back as 1839, the Company appointed Adam Thom to be the first Recorder to sit in a judicial function in one such court. At 179 years and counting, the lineage of the Provincial Court of Alberta is the longest of any Court in the Province. As such, it has the deepest roots in Alberta’s judicial system.

72. The Provincial Court of Alberta is a front-line court designed to provide timely judicial resolutions to the legal issues brought to it by members of the public and law enforcement agencies. Virtually all societies require some mechanism by which to resolve disputes which are bound to arise as a result of the conduct of its members. Those mechanisms may have few or several layers, but all of them have a layer which has, as at least one of its functions, the provision of a forum for the initial contact between the individual and the legal system. The Provincial Court of Alberta has always provided that forum. For that reason, the Provincial Court is often said to be the “face of justice” for most Albertans.

73. Though the Provincial Court began as a somewhat “rough and ready” front-line court which summarily disposed of minor matters, and for more serious matters acted as a gateway to the courts of superior jurisdiction, the Provincial Court of the 21st century is

¹ Act for regulating the Fur Trade and establishing a Criminal and Civil Jurisdiction within certain Parts of North America, 1821 (U.K.), 1 & 2 George IV, c. 66.
a very different institution. Indeed, the evolution of the Provincial Court into its present form is a success story not often acknowledged.

74. It is in the last 40 years that the Provincial Court of Alberta has evolved significantly. Indeed, if they do not practice criminal or family law, many senior members of the Bar are unaware of what the Court has become. Their views of the Court are based upon experiences garnered when they were articling students sent to “Magistrate’s Court” to deal with a client’s speeding ticket, or to elect a trial before a court of superior criminal jurisdiction. Their experiences, in what was then still very much a “police court”, may well have been in stark contrast to their concurrent experiences in the more refined atmosphere of the Supreme Court of Alberta (Trial Division), or its successor (the Court of Queen’s Bench of Alberta).

75. Over the last four decades, the Provincial Court of Alberta has quietly grown into a full-fledged trial court equal to any other trial court in Canada. The Court is now made up of men and women each of whom have approximately 25 years at the Bar before being considered for appointment, and whose average age on appointment was age 52.3.3

76. The Provincial Court now has an articling student program equivalent to those operated by the Court of Queen’s Bench and the Court of Appeal. Judges of the Provincial Court now admit students-at-law to the Law Society just as do their judicial colleagues in the Court of Queen’s Bench and the Court of Appeal.

77. While the Provincial Court of Alberta is still the first point of contact between the justice system and the individual, it no longer merely acts as a portal to other courts. Now, the Court acts as the adjudicating tribunal for the vast majority of the legal disputes in the Province. To put it succinctly, the Provincial Court has come of age and is now an equal partner in the administration of justice in Alberta.

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3 This is not to imply that the men and women who sat on the Court without formal legal training were any less dedicated or hardworking than the current complement of judges. However, the fact that lay persons could sit on the bench, did not assist in raising the stature of the Court when lawyers were considering a judicial career.
78. There are three interrelated reasons for this growth. First, given the volume of work undertaken by the Court, the judges of the Court have developed specialized knowledge in adult and youth criminal law, family law, and many areas of civil litigation. That specialized knowledge is attractive to lawyers when they seek a forum for the resolution of a litigious matter and, when the law gives them a choice, they frequently choose the Provincial Court as a legal forum which will provide not only an expeditious legal process (and therefore a more economical legal process), but also legally sound decisions. Most telling is that while all criminal prosecutions start in the Provincial Court, more than 97% of them are concluded in the Provincial Court. The specialized knowledge of its Bench attracts more cases to the Court, which in turn provides more opportunities for the judges of the Court to develop that specialized knowledge. That fact was of significance to the 2013 JCC Commission.

2013 JCC Report, Joint Book of Authorities, Tab 22, page 43

79. Second, there was a time when an appointment to the Provincial Court was considered to be significantly less desirable than an appointment to one of the federally appointed Courts. Then, the work of the Provincial Court tended to be of a very summary, minor nature, with matters of substance going to the federally appointed trial court. On top of that, the judges of the Provincial Court were very poorly compensated compared with private practitioners and judges of other Courts. That combination of factors made it more difficult for the Court to attract the best candidates to its Bench.

80. However, two things have now made the Provincial Court a more attractive alternative for those seeking a judicial career: (1) the increase in amount and quality of the work brought to the Court which has provided its judges with endless opportunities for intellectual stimulation and professional growth; and (2) there is now in place an independent, objective process for the determination of judicial compensation. As discussed below, the fact that potential candidates see that a process is in place to ensure fair and appropriate compensation, increases the ability of the Court to attract highly qualified applicants.
81. The third reason that the Provincial Court has now grown into a full-fledged and equal trial court in the Province, is that both the provincial and the federal governments have significantly increased the jurisdiction of the Court. We provide an overview of the current jurisdiction in the next section.

**Jurisdiction of the Provincial Court**

82. The mission of the Provincial Court is to provide to Albertans, a judicial forum which is both accessible and economical for litigants, and which competently adjudicates legal disputes in a timely fashion. To assist in accomplishing that mission, the Court sits in 72 locations in the Province (by way of comparison, the Court of Queen’s Bench sits in 13 locations). The Provincial Court exercises jurisdiction in five areas of law: adult criminal, provincial offences and inquiries, civil, family and youth. Adult and youth criminal law is by far the most significant aspect of the Court’s overall work as measured by volume.

Maps showing the sitting locations of the two Courts, Association’s Documents, Tab 2

83. While judges sitting in Calgary and Edmonton specialize in the areas of criminal, civil or family law, judges sitting in the regions outside of these main city centres are required to, and in fact do, specialize in all three areas. To compound the challenge of the broad nature of their jurisdiction, the regional judges often serve in areas where there are few, if any, other judges with whom to consult when particularly difficult issues arise. In addition, they are often required to travel to circuit points, the distance to which is frequently measured in hours, one-way.

**Adult Criminal**

84. The federal government enacts criminal law and also creates regulatory offences in relation to areas within its legislative jurisdiction. For ease of reference, in this overview of the Court’s criminal jurisdiction, “criminal” refers not only to offences set out in the *Criminal Code*, but also criminal offences created by federal legislation such as the
Controlled Drugs and Substances Act and the Income Tax Act. It also refers to regulatory offences set out in legislation such as the Fisheries Act or the Aeronautics Act.

85. All charges laid under any federal legislation begin in the Provincial Court. It is in the Provincial Court that the charge is formally put to the accused.

86. Offences fall into one of two categories: (1) offences which are prosecuted by way of summary conviction proceedings; and (2) offences which are prosecuted by way of indictment. The legislation which creates the offence will set out the mode of prosecution and the trend in recent years has been to significantly increase the number of offences which allow for the Crown to elect proceeding by way of summary conviction procedure.

87. The Provincial Court has absolute jurisdiction to try all summary conviction offences, and has concurrent jurisdiction with the Court of Queen’s Bench to try all indictable offences with the exception of treason, alarming Her Majesty, intimidating Parliament or a legislature, mutiny, sedition, piracy, murder, and some recently enacted offences under the Crimes Against Humanity and War Crimes Act. In short, the Provincial Court has jurisdiction to try nearly all offences created by and charged under federal legislation. As previously noted, more than 97% of prosecutions are concluded in the Provincial Court. Much more often than not, if an accused has a choice between being tried in Provincial Court and the Court of Queen’s Bench, the accused will choose to be tried in the Provincial Court. In the remaining 2-3% of prosecutions, a preliminary inquiry is customarily heard by a judge of the Provincial Court.

88. While it might be argued that this was the case at the time of the 2013 JCC, there have been significant changes since affecting the workload, and the complexity of that workload. They are important.

89. The number of criminal charges commenced and concluded in the Provincial Court have each increased since the 2013/14 fiscal year. While the numbers fluctuate, the five year average for the number of criminal charges commenced, is 12% higher than the number of charges commenced in 2013/14. The five year average is now 761,740 per year, 81,027 more than the number of charges commenced in 2013/14. The five year
average of the number of charges concluded in the Provincial Court each year (796,597) is 6.3% higher (i.e. 47,565 more per year) than the number of charges concluded in 2013/14.

Table of Court Statistics, Association’s Documents, Tab 3

90. The Court is under tremendous pressure to reduce backlog and to meet the strict timeline requirements as set out by the Supreme Court of Canada in R. v. Jordan, 2016 SCC 27. In Jordan, the Supreme Court emphasized the need to avoid unreasonable delay between the time of the initial charge and the anticipated or actual end of trial. As a result, the Court must actively work to ensure that its cases are resolved without unreasonable delay or face the possibility of having to dismiss the charges as a result. As importantly, while the number of charges has increased as noted, the comparative percentage increase in the judicial complement has been considerably less notwithstanding requests by the judiciary to have the judicial complement keep pace with the number of charges.

91. Almost all show cause (judicial interim release/bail) hearings are held in the Provincial Court. In recent years, judicial interim release has become a focus of appellate consideration. The Supreme Court’s decision in R v. St-Cloud, 2015 SCC 27 had significant implications for the application of tertiary grounds in bail hearings (i.e. whether or not the release of the accused will compromise confidence in the administration of justice), with the Court holding that the scope of the tertiary ground ought to be considered as an independent consideration, thereby broadening the test for ongoing detention of an accused. Moreover, in R. v. Antic, 2017 SCC 27, the Supreme Court reiterated that if judicial interim release is granted, it ought to be on the least restrictive conditions possible unless additional conditions are justified. This has forced all players, including judges, to reformulate their existing approaches to judicial interim release.

92. These developments and others, such as the increasing prevalence of Gladue Reports being introduced for indigenous offenders during applications for judicial interim release, have resulted in ever-increasing levels of complexity and time spent on applications for judicial interim release.
93. In addition to sentencing and judicial interim release decisions, and as part of its criminal jurisdiction, the Court also regularly hears applications for search warrants, general warrants, DNA warrants, one party consent wiretap orders, production orders, assistance orders, and prisoner transfer orders. Further, if a private citizen wishes to lay a criminal charge, that application and the resultant process hearing is held in the Provincial Court. The Provincial Court also exercises jurisdiction in relation to controlling possession of firearms, including issues related to firearms licences.

94. Legislative changes under Bill C-13, passed in March 2015, amended the provisions under the Criminal Code for obtaining production orders, search warrants, and other applications of this kind, and gave judges new powers to issue certain kinds of warrants, such as tracking warrants. As a result of these amendments, more information is required to obtain certain types of orders than in the past, meaning that applications for these sorts of orders and warrants have become more complex and require more time for consideration by judges than in the past.

95. Other developments on the near horizon could have a drastic impact on the Provincial Court. For example, at present, a defendant has a right to a preliminary inquiry for virtually all indictable offences. The purpose of a preliminary inquiry is to determine whether there is sufficient evidence for the Crown to proceed to trial. Often, the inquiry results in the Crown staying the proceedings or the defendant opting to plead guilty, thereby reducing time spent in Court. However, in March 2018, the federal government introduced Bill C-75, which proposes to eliminate the availability of the preliminary inquiry for all offences except those where there is a risk of life imprisonment (the list of offences that carry this punishment in Canada is quite short and includes murder, committing an indictable offence for a criminal organization, and arson). The proposed Bill would take away a defendant’s right to a preliminary inquiry for virtually all offences where they currently otherwise possess this right. When passed, Bill C-75 will undoubtedly result in more trials in Provincial Court given its reputation for excellence, and its ability to deal with trials more expeditiously (and therefore more economically) than the Court of Queen’s Bench. The Bill is currently before the House of Commons.
96. Bill C-75 also proposes a further change that will result in many more cases remaining in the Provincial Court. Many heretofore indictable offences are now summary offences, carrying a maximum penalty of two years less a day. The result will be that the Crown will elect to proceed summarily with the result that there will be significantly more trials heard in the Provincial Court and fewer heard in the Court of Queen’s Bench.

97. On its own initiative, the Court has implemented a number of procedures to assist in the orderly resolution of matters which come before it and/or which will afford more “just” results. Examples of the multitude of initiatives, which continue to be driven by members of the Provincial Court of Alberta, include the following.

1. **Court Case Management Program**  
   This a judicially led and designed program which has created a new and innovative method of case management in the Alberta Provincial Criminal Court. Through the Program, first appearances and remands can now be dealt with through the Case Management Office, reducing the time spent in docket court speaking to matters that usually require no judicial input. The Program significantly reduces wait times in Court and further reduces the need to transport prisoners to court for personal appearances. The Case Management Office also provides resources to assist the accused and counsel in understanding the status of matters and necessary next steps.

2. **Remote Courtroom Scheduling (RCS)**  
   RCS gives defence counsel electronic access to court information they could previously only obtain through written request or by telephone. In addition, RCS can be accessed by counsel 24/7, allowing them to serve their clients better. It is no longer necessary to attend the courthouse to book every matter.

3. **Pre-Trial Conferences**  
   Pre-Trial Conferences are held for each matter which is scheduled to last more than a day. Their purpose is to ensure the matters are ready to proceed on the scheduled day.

4. **Domestic Violence Courts**  
   Allegations of criminal conduct which have a domestic component (i.e. alleged violence involving “family members” - broadly defined) are heard in a courtroom dedicated to such matters.
5. **Drug Treatment Courts**
Offenders may apply to be accepted into the Drug Treatment Program if drug addiction is at the root of their offending behaviour. The Court’s purpose is to assist the offender in addressing the addiction issue. Rehabilitation, and not punitive measures, are the focus of the Court.

6. **Mental Health Court**
The Provincial Court launched a Mental Health Court in Edmonton in the Spring of 2018 which deals with accused who are in trouble with the law at least in part because of mental health issues.

7. **Indigenous Courts**
The Provincial Court expanded its Indigenous Court in Calgary in the Spring of 2018. The Provincial Court also holds special hearings in various indigenous communities where community involvement in the court process is promoted. Using a restorative justice model, a local justice committee provides recommendations for sentencing options and further assists the Court in identifying appropriate community-based alternatives.

### Provincial Offences and Inquiries

98. The Province of Alberta has created a number of offences (traffic offences, employment safety offences, environmental offences, consumer protection offences), and municipalities (acting on power delegated to them by the Province) have enacted thousands of by-laws, all of which, while not classified in law as “criminal”, often carry significant penalties (e.g., imprisonment, large fines, forfeiture of property, stop work orders, loss of driving privileges). All of those offences are exclusively dealt with in the Provincial Court.

Table of Court Statistics, Association’s Documents, **Tab 3**

99. Under Alberta’s *Fatality Inquiry Act*, judges of the Provincial Court are appointed to conduct inquiries into certain deaths which occur in the Province. These inquiries are held in public and involve the hearing of *viva voce* evidence. Where appropriate, the presiding judge makes recommendations on how to avoid deaths in similar circumstances. A high-profile example of such an inquiry is that which was held into the
deaths of two young teens who snuck into Calgary’s Canada Olympic Park and accessed the bobsled track.

Civil Jurisdiction

100. Since its inception in 1973, the Provincial Court has exercised similar jurisdiction with the Court of Queen’s Bench in respect of claims in debt and damages arising in contract or tort. Initially, the Provincial Court was limited to adjudicating civil claims to a maximum of much less than $1,000 but this has evolved up to the current maximum of $50,000. The $50,000 limit is the highest of any common law jurisdiction in Canada and became effective August 1, 2014. The increased limit provided a new forum for people with claims which previously could only be brought in the Court of Queen’s Bench, though economically it was impractical to do so. It also provided a more attractive forum for many claims where the plaintiffs are represented by counsel, for reasons of cost and timeliness compared with the Court of Queen’s Bench. In 2017, a total of 16,505 cases were filed in Provincial Court; of which, 2,235 matters involved claims of between $25,000-$50,000.

101. That increase in jurisdiction is in recognition of the Government of Alberta’s confidence in the competence and importance of the Provincial Court of Alberta. The 2013 JCC wrote: “In our view, the suggested increases reflect the considerable workload and responsibilities of the judges sitting in the Provincial Court of Alberta.”

102. This jurisdictional limit is per cause of action per claimant. It is common for there to be both a claim and a counterclaim each of a value close to that jurisdictional limit, so that the case’s real value is close to $100,000.

103. It is of course the case that the complexity of any claim, whether it be for $500 or $50,000 is neither necessarily nor practically a function of the quantum of the claim, but rather is determined by the nature of the issues arising in the claim.
104. The Provincial Court of Alberta’s current remedial jurisdiction exceeds the traditional jurisdiction to provide only a monetary remedy in damages or debt. The Court’s jurisdiction includes the authority to hear and adjudicate on a range of equitable and other remedies including replevin, unjust enrichment, specific performance and rescission.

105. The Provincial Court also has concurrent jurisdiction with the Court of Queen’s Bench over residential tenancies matters and can conduct payment hearings with respect to money owing under any judgment or order of the Court. It also has the power to find individuals in contempt of court for failing to comply with orders given by the Court. This includes the power to impose fines or imprisonment for any contempt so found.

106. The Provincial Court has focussed on streamlining court procedures, particularly in the area of dispute resolution before trial. These efforts include imposing requirements for mediation, pre-trial conferences and judicial dispute resolution hearings which have proven to be successful in resolving the dispute in approximately 70% of cases. This has led not only to more expeditious and economical resolutions to the benefit of litigants, but has also promoted the most expeditious use of judicial/courtroom resources.

107. Adding to the challenges faced by the Civil Division is the fact that most parties appear as self represented litigants, many of whom are unfamiliar with the legal process and basic evidentiary rules. This has a significant impact on the length of time each matter might take, and the involvement of the judge in the pre-trial and trial processes. Alberta caselaw states that a judge “has a special duty to provide limited assistance to unrepresented parties”. In the Statement of Principles on Self Represented Litigants 2006, the Canadian Judicial Council said that “Judges have a responsibility to enquire whether self represented persons are aware of their procedural options and to direct them to available information if they are not. Depending on the nature of the case, judges may explain the relevant law in the case and its implications, before the self represented person makes critical choices.

108. The Provincial Court of Alberta civil process was designed to be simple, inexpensive, expeditious and user friendly for members of the public who, but for the jurisdiction offered by the Provincial Court, would effectively have no access to civil
justice. It continues to meet those objectives, and provides Albertans a practical, timely and cost-effective means to civil justice. This was recognized by the Government in its adoption, effective January 1, 2019, of more efficient procedures suggested to it by the Court, including new resolution tracks such as simplified trials and binding dispute resolution, which will increase access to justice for the litigants, but will increase the preparation workloads of the judges.

**Family and Youth Jurisdiction**

109. The judicial work of the Provincial Court of Alberta with respect to Family and Youth matters is best considered in three parts, reflecting different judicial approaches:

1. young offender matters;
2. child protection proceedings; and
3. private family disputes.

110. Youth Court is a criminal court and is the Court which deals with all provincial regulatory offences involving individuals under the age of 18. The adversarial model is followed. Child protection proceedings, on the other hand, are a hybrid of both the adversarial and inquisitorial models.

**Youth Jurisdiction**

111. Before April 1, 2003, youth justice was governed by the *Juvenile Delinquents Act* and then, in 1984, by the *Young Offenders Act*. The *Young Offenders Act* moved away from a child welfare philosophy and focussed instead on personal responsibility for criminal acts. Under the *Young Offenders Act*, the Provincial Court was designated as a Youth Court for the Province of Alberta.

112. On April 1, 2003, the *Youth Criminal Justice Act*, S.C. 2002 c.1 came into force replacing the *Young Offenders Act*. The Provincial Court of Alberta was designated as a Youth Justice Court of Alberta for purposes of dealing with nearly all youth matters. Section 14 of the *Act* gives the Youth Justice Court exclusive jurisdiction with respect to
any offence alleged to have been committed by a young person, that is a person who is between the ages of 12 and 17 inclusive. Pursuant to that designation, a Provincial Court judge will deal with all youth matters in the Youth Justice Court except the rare instances of cases referred to in paragraph 86 above and the equally rare instances where youth may elect to be tried by a judge of the Court of Queen’s Bench and a jury.

113. Sentencing pursuant to the Youth Criminal Justice Act is complex and specific. The Act provides a multitude of sentencing options which provide considerable discretion to the Court in fashioning a sentence on fair and proportional accountability. The Act makes it clear that any sentence must be the least restrictive sentence that is capable of achieving the objectives of accountability and rehabilitation. Rehabilitation is viewed as a means of achieving the long term protection of the public.

114. In the Report of the 2003 Alberta Judicial Compensation Commission, which is the last Commission to discuss the Court’s jurisdiction, the Commission acknowledged with respect to the Youth Criminal Justice Act:

“This Act also has the potential to add to the workload, stress and complexity in dealing with youth offenders.”

2003 JCC Report, Joint Book of Authorities, Tab 18, page 49

115. The average number of youth charges commenced has increased to an average that is 8% higher than the 2013/14 figure (based on the five year average of 813,377 criminal charges commenced, which is 61,765 more than the 2013/14 figure).

Table of Court Statistics, Association’s Documents, Tab 3

Child Protection

116. A Provincial Court judge in child protection proceedings is called upon to make decisions that arguably have greater consequence than in the case of parents fighting over custody of or contact with a child. The judge must assess whether the quality of
parenting has fallen below the community standards set out in the *Child Youth and Family Enhancement Act*, R.S.A. 2000 c.C-12 ("CYFEA") and whether it is appropriate and in the interests of the child to remove the child from the family and place the child in the care of the state.

117. Provincial child protection laws are found mainly in the CYFEA, which authorizes intervention by the state into the privacy of families in circumstances where the caretakers are alleged to be unable or unwilling to provide a minimum standard of care for their children. The Provincial Court of Alberta has exclusive jurisdiction over all child protection proceedings.

118. If the Provincial Court judge is satisfied that the child is in need of protection, within the meaning of the legislation, then the judge may make a variety of different orders ranging from a Supervision Order to an Order for Permanent Guardianship.

119. Child protection proceedings are usually charged with emotion and high intensity. The judge must balance the interests of the child and the child’s constitutional rights, with the interest of the community in maintaining the family unit, and the constitutional rights of the parents to parent their child.

120. A Provincial Court judge is also charged with determining whether a child, whose guardian refuses to consent to essential medical, surgical, dental or other medical treatment, should be so treated (forcibly if necessary). In these circumstances, the judge must balance the need for treatment with the religious or other convictions of the child, and the child’s family, which form the basis of the opposition to the treatment.

121. A judge’s decision in child protection proceedings will impact upon the liberty and autonomy of the child, the autonomy of the family, and the rights of parents to parent and be secure in the family. These decisions have a profound impact on the future of the child, the child’s family and upon society as a whole. It is a very serious responsibility for the Court.
122. The Provincial Court of Alberta also exercises exclusive jurisdiction in consider applications for orders to apprehend a child in situations of sexual exploitation or in situations where a child is at risk as a result of drug abuse.

123. Judges of the Provincial Court of Alberta also deal with situations involving family violence and exercise concurrent jurisdiction with the Court of Queen’s Bench of Alberta to issue Emergency Protection Orders if the judge determines that family violence has occurred, that there is reason to believe that the perpetrator will continue or resume carrying out family violence, and that given the seriousness or urgency, an order should be granted to provide immediate protection of the claimant and other family members who reside with the claimant.

Family Matters

124. The Provincial Court of Alberta has concurrent jurisdiction with the Court of Queen’s Bench with respect to all aspects of family law under the Family Law Act, S.A. 2003, c. F-4.5, except those areas involving matrimonial property, exclusive possession thereof, or trusts. While, the Provincial Court is without jurisdiction to make a general declaration of parentage, it may make a finding of parentage for purposes of making a Child Support Order. The applicant may choose the Court in which he or she wishes to initiate proceedings and, in the event that the parties commence separate proceedings in different courts, the first in time has priority.

125. The Provincial Court of Alberta provides judicial service in family matters to individuals who may be economically unable to access the Court of Queen’s Bench. Many are not only unable to afford counsel, but even the fee to commence proceedings in the Court of Queen’s Bench. As in the civil context discussed above, the Provincial Court has worked hard in developing case management and judicial dispute resolution procedures designed to effect either resolution of matters before trial or, if that is not possible, preparation for trial in order to promote efficiencies in the ultimate Court hearing.

126. Proceedings involving the determination of guardianship, parenting, custody, spousal support, and child support are more often than not also charged with emotion.
and high intensity. Usually the parties are without counsel. Accordingly, the judge must attempt to educate and assist the parties while at the same time maintaining actual and apparent objectivity and impartiality.

**Conclusion - Jurisdiction**

127. In considering the jurisdiction of the Provincial Court of Alberta, the Report of the 1998 Alberta Judicial Compensation Commission concluded with these comments:

“Much has been written on the increasing jurisdiction of Provincial Courts and consequential impact, both in terms of complexity and volume of work, on the judges. To quote Mr. Justice Lamer in the Provincial Court Judges Case, ‘it is worth noting that the increased role of Provincial Court judges in enforcing the provisions and protecting the values of the Constitution is in part a function of a legislative policy of granting greater jurisdiction to these courts.’ Clearly, the responsibility of the judiciary at all levels has been increased as a result of the *Canadian Charter of Rights and Freedoms*. The laws governing admissibility of evidence in criminal trials is undoubtedly increasingly complex. In the civil actions, the monetary jurisdiction in Alberta has recently been raised to $7,500 and it appears likely that that trend will continue. In family and youth matters, the jurisdiction of the Provincial Court has been expanded in a number of areas including domestic strife, custody and enforcement matters. Moreover, the Provincial Court must contend with many cases in which one or both parties are not represented by counsel, necessitating a challenging balancing act in attending to the interests of the unrepresented parties and remaining fair and objective to the other party.”


128. The aforementioned description by the 1998 Commission of the ever-increasing responsibilities of the Provincial Court is even more apt today. The jurisdiction of the Provincial Court in criminal matters continues to expand and the Court continues to conclude over 97% of all criminal cases in Alberta. The 2009 JCC wrote: “What our review of the Court’s jurisdiction reveals is a refocusing of the trial jurisdiction in criminal cases into the Provincial Court”. For its part, the 2013 JCC recognized: “The jurisdiction of the Provincial Court of Alberta has continued to expand.”
129. As was recognized by past JCCs, the Provincial Court’s jurisdiction continues to expand at the instance of both the federal and provincial governments. Because of this, and the choices exercised by counsel and unrepresented litigants, it is ever increasingly the Court which has the greatest day to day contact with Albertans from all walks of life.
PART III: FACTORS FOR CONSIDERATION

130. No Commission could be expected to make recommendations about appropriate compensation in a vacuum. Indeed, the whole concept of compensation being appropriate means it must be related to objective criteria or compared with compensation received by other comparable groups. Accordingly, this section explores both the principles which should drive the recommendations and the comparisons which are submitted to be appropriate.

131. The Commission Regulation sets out at section 13 that in making recommendations in its report, the Commission “must consider” the following criteria:

(a) the constitutional law of Canada;

(b) the need to maintain the independence of the judges and the Provincial Court;

(c) the unique nature of the role of judges;

(d) the need to maintain a strong Provincial Court by attracting highly qualified applicants;

(e) the remuneration and benefits other judges in Canada receive;

(f) increases and decreases, as applicable, in the Alberta real primary household income per capita;

(g) the need to provide fair and reasonable compensation in light of prevailing economic conditions in Alberta and the overall state of the economy, including the financial position of the Government;

(h) the Alberta cost of living index and the position of the judges relative to its increases or decreases, or both;

(i) the nature of the jurisdiction of judges;
(j) the level of increases or decreases, or both, provided to other programs and persons funded by the Government;

(k) any other factors considered by the Commission to be relevant to the matters in issue.

*Commission Regulation, Joint Book of Authorities, Tab 11*

132. Each criterion is addressed in turn.

1. **The Constitutional Law of Canada**

133. Judicial independence is a concept central to our form of democracy and as such is a fundamental tenet of our constitutional law. It flows “as a consequence of the separation of powers” of the three branches of government, which include the executive, the legislature and the judiciary; it operates to insulate the courts from interference by parties to litigation and the public generally. In his reasons in *PEI Reference*, Lamer CJC went on to quote from Professor Shetreet, who stated,

“Independence of the judiciary implies not only that a judge should be free from executive or legislative encroachment and from political pressures and entanglements but also that he should be removed from financial or business entanglement likely to affect or rather to seem to affect him in the exercise of his judicial functions.”

*PEI Reference, supra*, Joint Book of Authorities, Tab 1, para 130

134. The *PEI Reference* case clearly articulates that the purpose of the constitutional guarantee of financial security as an aspect of judicial independence is not to benefit the judges who come within its scope. Rather, the benefit that judges derive is purely secondary. Judicial independence is important because it serves important societal goals. It is a means to secure these goals which include the maintenance of public confidence in the impartiality of the judiciary, including the perception that justice will be done in individual cases.
135. Lamer CJC described the financial security aspect of judicial independence as having three components which can be summarized as follows:

- The salaries of Provincial Court judges can be reduced, increased, or frozen, only after prior recourse to an independent, effective and objective JCC process;

- 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; and

- 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.

*PEI Reference, supra*, Joint Book of Authorities, **Tab 1**, paras 131 and following (per Lamer CJC)

136. The challenge identified in *PEI Reference* is to ensure that judicial compensation is set in a manner that fulfills the so-called “structural requirement of the Canadian Constitution”, which is that the relationship between the judiciary and the other branches of government must be depoliticized. As Lamer CJC pointed out, the difficulty is that the setting of remuneration from the public purse is “inherently political” and, at the end of the day, the judicial compensation must be fixed by one of the political organs of the Constitution.

*PEI Reference, supra*, Joint Book of Authorities, **Tab 1**, para 146 per Lamer CJC

137. The solution identified by Lamer, and confirmed by the Court in *Bodner*, was to require recourse to an independent, objective and effective commission, which would identify and consider objective criteria upon which to base recommendations about appropriate judicial compensation. As the Supreme Court of Canada stated in *Bodner*: “The commission process is an ‘institutional sieve’ (*PEI Reference*, at paras 170, 185 and 189) – a structural separation between the government and the judiciary”.

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138. The 2013 JCC accepted these principles, stating:

“It is important for our Commission to state at the outset that we agree with the view expressed by the Association that the protection of judicial independence is the very ‘raison d’être’ of the Commission process. The Commission process is meant to reinforce the historic separation of powers between the judiciary and the legislative/executive branches of Government. A judicial compensation commission, as recommended in Bodner, safeguards that arms-length separation and ensures a result uninfluenced by any political considerations.”

139. This underscores the need for recommendations which should be understood to be independent and objective or, in other words, based on objective criteria rather than political considerations.

140. One aspect of this factor is that it invites particular comparison with other judges within Alberta who are appointed by the federal government. In Bodner, the Supreme Court determined that a JCC would be misdirecting itself if it focused on a comparison with federally appointed, or “s.96 judges”, to the exclusion or virtual exclusion of other relevant factors. To be clear, while the Association’s proposal for each of the years is articulated as a percentage of the federal salaries, the Association’s salary proposals are based on all of the relevant factors and the manner in which those have been considered by past JCCs in Alberta and by the Government itself.

141. Further, consistent with the reasoning of past JCCs, consideration must be given to the fact that the judicial function is similar among the various levels of courts. While one level is purely appellate in nature, and another deals with jury trials as opposed to sitting and deciding as a judge alone, the same qualities of judicial temperament, legal knowledge, and an abiding sense of fairness are required of all judges. It is necessary
that judges at all levels of court have the ability to make decisions that will greatly affect
people’s lives, including the potential loss of freedom, without bending to improper
influence, the pressure of public demands and expectations, or a consideration of
inadmissible material. The key factor is that judicial decision-making is common to all
judges.

142. While the Association has consistently maintained that the federally-appointed
judges in Alberta are the most relevant comparators for judges on the Provincial Court,
the Government has also supported a comparison with federally appointed judges. The
Government’s counsel stated during the 2006 JCC hearing:

“The Association has always been of the view that federally appointed
judges are the most conquerable [sic] group and that the salary of Alberta
judges should be broadly equivalent to that of federally appointed Judges.
And even the Minister submits, and has submitted in the past, that the gap
between the courts should not be too wide. The fear of course being that
top candidates will be attracted away from the Provincial Court and into the
Court of Queen’s Bench.”

Transcript of the 2006 Hearing, Association’s Documents, Tab 4, page 19

143. The Association discusses this comparison further in the context of its salary
position and relies on the reasoning of past JCCs in that regard. The 2009 JCC concluded
in relation to this criterion:

“Regard must be had to what has been said by previous commissions, the
appropriateness of comparisons with other provincial courts and judges,
and federal courts and Section 96 judges. The commission and its process
constitute a structural separation between the government and the judiciary.
The Commission process fully meets the description of … “an institutional
sieve” as envisaged by the Supreme Court of Canada.”

2009 JCC Report, Joint Book of Authorities, Tab 20, page 14

144. The 2013 JCC concluded in respect to this criterion:
“A further criterion which merits close attention is the remuneration paid to other judges in Canada. Although the salaries paid to provincial court judges in other jurisdictions is an important comparator, commissions in the past have also viewed the salaries paid to federal court judges as an important benchmark.”

2013 JCC Report, Joint Book of Authorities, Tab 22, page 43-44

145. The important benchmark of the remuneration paid to federally appointed judges is discussed in detail in the salary section below.

2. The Need to Maintain Independence of the Judges and the Provincial Court

146. Subsection 13(b) invites consideration of constitutional law principles surrounding the concept of judicial independence which have been discussed above in the context of the constitutional law criterion. Lamer CJC in *PEI Reference* and the Court in *Bodner* wrote that one consideration of financial security is that judges’ salaries must not be allowed to fall below a minimum level. To be clear, the Association does not suggest that Alberta judges’ salaries have reached or are approaching this bare minimum level. Moreover, the JCC’s task is not to determine what amounts to the bare minimum level, but rather to assess what is fair and appropriate compensation in light of all of the relevant objective factors.

*PEI Reference, supra*, Joint Book of Authorities, Tab 1, para 147

*Bodner, supra*, Joint Book of Authorities, Tab 2, para 67

147. The 2013 JCC stated:

“Our Commission recognizes the importance of its role in recommending compensation to the provincial court judges and masters for the period of April 1, 2013 through to March 31, 2017. It is our obligation to assure a strong and independent judiciary by setting a fair and reasonable level of compensation. That goal remains at the forefront of our deliberations and the recommendations set out in this report.”
148. In considering this same criterion, the 2003 JCC stated:

“We accept the submissions of the parties, and the proposition accepted by the courts and prior compensation commissions that judicial independence is the overriding and paramount principle to be considered in determining compensation of Provincial Court Judges.” [emphasis added]

2003 JCC Report, Joint Book of Authorities, Tab 18, page 30

149. The 2003 JCC went on to note that this factor meant that the salary levels of Government employees ought to be given little weight. It stated:

“The Association in its submission emphasized that the need to maintain an independent judiciary should cause [the 2003] Commission to place, little if any, weight on salary levels of government employees, be they administrative employees or elected officials. We have accepted this submission and have not placed any weight on the salary levels of government employees.” [emphasis added]

2003 JCC Report, Joint Book of Authorities, Tab 18, page 32

150. The Association again takes the position that the actual salary levels of Government employees should be accorded little, if any, weight in assessing appropriate compensation for the judiciary. While it rejects consideration of such salaries, the Association discusses below the level of increases received by others funded by Government, referenced in ss. 13(j) of the Commission Regulation. The levels of increases granted to others may reveal the Government’s own assessment of its ability to pay, taking into account political considerations.

3. The Unique Nature of the Role of Judges

151. According to subsection 13(c) of the Commission Regulation, the JCC is obliged to consider “the unique nature of the judges’ role”. The 2003 JCC considered this
criterion, noting that “a judge is the arbitrator of important constitutional rights of citizens and is the protector of those rights against the power and expanse of government”.

2003 JCC Report, Joint Book of Authorities, **Tab 18**, page 32

152. The 2003 JCC heard evidence from three judges and, in discussing this criterion, considered the personal impact on an individual who accepts an appointment to the office of a judge. The 1998 Commission similarly considered the personal impact of a judicial appointment, noting that while accepting an appointment means the newly appointed judge is entitled to “very substantial independence, power over the lives and property of his or her fellow citizens, prestige of office and security of position”, these benefits are subject to “counter-balances”, including “significant obligations and restraints”.

1998 JCC Report, Joint Book of Authorities, **Tab 16**, page 27

153. The 2013 JCC Commission also wrote about the personal challenges that are unique to the role of judges:

“Judges accept that their personal behaviour, both inside and outside the courtroom, must be beyond reproach. They must at all times behave with dignity and be circumspect in their daily lives. A judge cannot let his or her guard down or speak out spontaneously on matters that affect the many and varied subjects that are presented for resolution in court. A judge must at all times be aware that their reputation, and that of the court, is rooted in the public’s perception of a stable and reliable judicial bench. That reputation is a heavy burden which a judge must bear on a daily basis and which cannot be compromised.”

2013 JCC Report, Joint Book of Authorities, **Tab 22**, page 23

154. The type of work performed by Provincial Court judges is unique within the Alberta economy generally and as such, it is most comparable to that of other judges. The majority of the cases presided over by Alberta’s Provincial Court judges involve criminal matters where the stakes are high for both accused persons and complainants. Many other cases involve family law issues such as child protection matters. As a result, judges
are often exposed to very tense and emotional circumstances. The subject matter of some cases can be quite disturbing and traumatic to the parties but also to the judge.

155. Judges of the Provincial Court are also subject to considerable scrutiny from the public and the media because of the types of criminal cases they adjudicate. The outcomes of judicial interim release applications and sentencing of crimes are often reported on by the media, and not all of this coverage is favourable to the judge, or even neutral. This is not to suggest that the courts, and by extension the judges of the Provincial Court, should not be subject to both public scrutiny and criticism. Rather, it is to note that this scrutiny can have a significant impact on judges, both professionally and personally. Moreover, judges are not generally in a position to respond publicly to the media scrutiny.

156. Another unique aspect of judges, both individually and collectively, is that they are precluded from negotiating their own compensation. Lamer CJC stated plainly in *PEI Reference*:

   “For the judiciary to engage in salary negotiations would undermine public confidence in the impartiality and independence of the judiciary, and thereby frustrate a major purpose of s. 11(d).”

   *PEI Reference, supra, Joint Book of Authorities, Tab 1*, para 186

157. In summary, members of the judiciary are unique both in their constitutional status and job function. It is a “job” not easily compared with others in the Alberta economy, and certainly not with jobs within the public service. The uniqueness of the role of judges in our society underscores the importance and ultimately the fairness of comparisons with the compensation paid to judges in other jurisdictions including federally-appointed judges working in Alberta. We discuss the importance of various comparators below and emphasize that the relevance of the various comparators must be assessed keeping in mind the uniqueness and importance of the role of judges in our society.
4. **Need to Maintain Strong Provincial Court by Attracting Highly Qualified Applicants**

158. In considering the criterion identified in s. 13(d) of the Commission Regulation, it is submitted that the Commission should weigh the following five points: the relevance of the Commission process itself; the significance, if any, to be drawn from the number of applicants; the need to attract highly qualified candidates; the competition for applicants from s. 96 courts; and the need to promote legal diversity on the Bench. We discuss these in turn.

(a) **The Relevance of the Commission Process Itself**

159. First, the very existence of a Commission process contemplated by the Supreme Court of Canada as being both (a) meaningful and effective and (b) grounded on good faith on the part of government, in and of itself attracts more applicants to the Bench. In particular, ensuring that such a process exists attracts highly qualified applicants, and especially those who might not otherwise be attracted for financial reasons.

160. An able, qualified or competent lawyer, who is contemplating allowing himself or herself to be considered for appointment, does not simply look at the level of remuneration currently being paid to judges. Qualified applicants also consider what is in place which will, from time to time, review and adjust the level of judicial remuneration, and whether that process has been meaningful and effective in practice. It is not merely the level of compensation which attaches to the office of a judge at the time of appointment which will attract the qualified candidate, but also the legitimate expectation that it will be regularly, meaningfully, and effectively reviewed, and adjusted by government acting in good faith.

161. Without the assurance that this expectation will be realized on an ongoing basis, qualified applicants will not be attracted or, at best, a significantly reduced number of them will be attracted. Indeed, without that assurance, there is a risk that only those lawyers whose current level of compensation is less than that of a judge will be attracted.
162. Second, that expectation explains why judges, particularly judges who an informed public would want to remain as judges of the Provincial Court of Alberta, may be more inclined to remain on the Bench and in that Court.

163. Past Commissions have recognized the importance of retaining qualified judges as well as attracting qualified applicants. The 1998 JCC made that point at pages 33-34 of its Report:

“We wish to emphasize that the importance of attracting highly qualified candidates to the bench ought not overshadow the significance of two other fundamental principles in human resource management, motivating and retaining those individuals once appointed. If history and current practice are any guide, appointment to the bench is a long-term commitment, not a staging post. ... If the level of compensation is inadequate to attract qualified applicants to the bench, one can hardly assume that it will be sufficient to motivate and retain judges who have been on the bench for 20 or so years.” [emphasis in original]

1998 JCC Report, Joint Book of Authorities, Tab 16, page 34

164. Motivation, as well as attraction, was also referenced by the 2000 JCC at page 11 of its Report.

2000 JCC Report, Joint Book of Authorities, Tab 17, page 11

165. Third, and most importantly, that expectation assumes that this 2017 Commission and its successors will have a meaningful effect on the determination of judicial compensation.

(b) The Number of Applicants

166. There will always be applicants for judicial positions. There are lawyers for whom an appointment is attractive because it would result in a significant increase in their remuneration. Indeed, it may be the only prospect they realistically have of such an
increase. Those lawyers will always be in the pool of applicants for appointment. That does not mean that they are qualified.

167. There are lawyers for whom the opportunity to exercise power and control makes the prospect of becoming a judge attractive. There are lawyers for whom the prestige of the office makes the prospect of becoming a judge attractive. There will always be those lawyers in the pool of applicants for appointment. That does not mean that they are qualified.

168. Governments routinely assert at commission hearings that there are available applicants who would accept an appointment, and attach a number to those assertions. There will always be applicants for the reasons noted, but that does not mean that all of them, a majority of them, many of them, or even any of them are qualified. Because the identity of those applicants is and must remain confidential, one never will know. The number is just a number.

169. Governments respond that those applicants have been screened, by a Judicial Council, a Nominating Committee or both, and that each screening body has determined that those applicants are qualified. But the screening does not make them qualified, it simply establishes a screening. Without knowing who has been screened and the base line for approval or recommendation, one will never know the measure of the term 'qualified'.

170. Nor does one know what proportion of that number would only accept an appointment to Edmonton or Calgary. While the remuneration may be enough to attract a candidate to a judgeship in Calgary or Edmonton, it may not be enough to attract that candidate to accept an appointment in Grande Prairie, Fort McMurray, Peace River or some other non-metropolitan area.

171. For those reasons, the mere counting of the number of applicants is not meaningful.
172. As it did for the 2009 and 2013 JCCs, the Association requested that the Government provide certain statistics from past years in an effort to review how the number of applicants has changed over time. The Government advised during the 2009 JCC process that it was unable to provide statistics related to the number of applicants for years before 2008. That said, we do know from the Government’s rejection of the recommendations of the 2003 Commission, that “as of November 15, 2003, there were 136 approved candidates”.

Judicial Applicant Statistics, Joint Book of Agreed Facts and Exhibits, Tab 2

Order in Council 161/2004, Association’s Documents, Tab 5, page 12

173. The number of approved candidates is now substantially lower than the 136 approved candidates in 2003. In fact, the number has fallen over the period of the last few JCCs to as low as 54 effective April 10, 2018, about 40% of the 2003 number. As discussed below, the bulk of the drop off in applicants appears to have been from among lawyers within the private bar.

174. It is important that the recommendations of this Commission put the remuneration of judges at a level that it is confident is sufficient in order to encourage qualified applicants to put their name forward for possible appointment, particularly when those appointments could be for areas outside the main metropolitan areas.

(c) This Criterion is More Rigorous than Attracting Qualified Applicants

175. It is not enough that the recommended level of remuneration attract qualified applicants, it must be at a level which attracts highly qualified applicants. What has been said about the assertions about the number of qualified applicants applies equally to the assertions about the number of highly qualified applicants.
(d) The Competition for Applicants

176. In endeavouring to attract highly qualified applicants, the Provincial Court of Alberta must compete with the Court of Queen’s Bench of Alberta, the Alberta Court of Appeal, the Federal Court of Canada, and the Tax Court of Canada. All of these Courts seek applications from the same pool of applicants, namely lawyers in Alberta with at least 10 years at the Bar.

177. It is the applicant and only the applicant who decides to which Court he or she will seek an appointment. Self-exclusion from potential for appointment to the Provincial Court is a real risk if there is a significant gap in remuneration between provincial and federal appointees. In recognition of this point, the 2003 JCC stated in its Report:

“The Minister’s submission also stated that the “gap” cannot be too wide. We agree that there should be no significant financial disincentive for the best candidates to select the Provincial Court, where they can sit in a division which is eminently suited to their interests, versus the Court of Queen’s Bench, where only some of the cases will be handled within their area of interest or expertise.”

2003 JCC Report, Joint Book of Authorities, Tab 18, page 37

178. The gap is most apparent in the levels of salary and annuity/pension, and would therefore be reasonably apparent to potential highly qualified applicants for appointment.

179. The gap in the respective base salaries of provincially and federally appointed judges in Alberta is reflected in the Table which forms Tab 6 in the Association’s Documents. The gap has narrowed and widened from time to time. Most significant to any analysis is that at the time of the last five Alberta Commissions, (2000, 2003, 2006, 2009 and 2013) the salary recommended by those Alberta Commissions reduced the gap to 94.9%, 92.3%, 98.1%, 93.6% and 93% respectively. Only because of federal compensation commission recommendations made and later accepted by the
Government of Canada, were the ultimate gaps larger in 2000\(^1\) and 2006\(^2\). Nevertheless, in those years, and in 2003 when there was no prospect of a later differing recommendation for that year, all three Commissions recommended that the salary gap be reduced.

Salary Comparison Alberta Provincial Court Judge to Alberta Queen’s Bench Justice - Point in Time Analysis, Association’s Documents, Tab 6

180. The salary recommendations of the 2000 and 2006 Commissions followed joint recommendations of the Alberta Provincial Judges’ Association and the Government of Alberta. It was in 2006 when the gap was at its narrowest: 98.1%.

Salary Comparison Alberta Provincial Court Judge to Alberta Queen’s Bench Justice - Point in Time Analysis, Association’s Documents, Tab 6

181. As detailed in the salary section below, the Association’s proposed salary of $296,382 effective April 1, 2017, amounts to 94% of the salary paid to federally appointed judges in the same year. The Association proposes a continuation of the same percentage relationship for the 2018 fiscal year, and a gradual increase, by half a percent per annum to 94.5% of the federal judges’ salary in the 2019 fiscal year and 95% in 2020. This proposal, which takes into account all of the factors identified in section 13 of the Commission Regulation, is in the range of what past Commissions have considered to be appropriate to mitigate the financial disincentive that exists for potential applicants to the Provincial Court.

Salary Comparison Alberta Provincial Court Judge to Alberta Queen’s Bench Justice - Point in Time Analysis, Association’s Documents, Tab 6

182. The tempered nature of the Association’s proposal is underscored by the significant gap in the value of the federal judicial annuity and the Alberta judicial pension.

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\(^1\) 1999 (First) Quadrennial Judicial Compensation & Benefits Commission (the Drouin Report)

\(^2\) 2003 (Second) Quadrennial Judicial Compensation & Benefits Commission (the McLennan Report), Association’s Documents, Tab 7 [excerpt only]
Set out below are several more generous features to the judicial annuity available to federally appointed judges are readily apparent to potential candidates for the different Courts.

(a) A federally appointed judge accumulates a full judicial annuity (pension) over only 15 years of service with an accrual rate of 4.4% per annum, while the current judicial pension in Alberta requires 23.3 years of service with an annual accrual rate of 3%. A federally appointed judge’s annuity is calculated on the basis of what has already been noted to be a higher salary than the salary paid to a provincially appointed judge.

(b) A federally appointed judge's annuity is calculated based on the salary actually being paid at the moment of retirement. By contrast, the pensionable salary used to calculate the Alberta judicial pension is the average of the three highest consecutive years of salary. The disparity between pensionable salary and the salary actually being paid at the moment of retirement is avoided only if the salary has been constant for the three years before retirement. Where there are significant differences in the provincial salary from year to year, the impact of averaging can be significant.

(c) A federally appointed judge has the ability to elect supernumerary status after 15 years (or even earlier in certain circumstances). A supernumerary judge will generally sit 2/3 of the time and, upon full retirement, receives their judicial annuity based on the salary as at the moment of full retirement.

183. A detailed comparison of the relative values of the annuity paid to federally appointed judges and the pension payable to Alberta’s Provincial Court judges is provided in the Report prepared by actuary André Sauvé, dated September 24, 2018. As discussed in detail beginning at paragraph 291 below, even with the Association’s proposed salary increase for 2017, there would continue to be a 17.2% difference in the overall value of the salary and pension arrangements for judges in Alberta paid by the province versus the federal government.
184. Successive JCCs have acknowledged that the greater the gap in remuneration between provincially and federally appointed judges, the greater the likelihood highly qualified applicants will refrain from applying for a provincial appointment. The reality is that, in the eyes of members of the legal profession, higher compensation is often equated with greater prestige which, in turn, affects the relative attractiveness of the two Courts. For many potential applicants, it would be more attractive to hold out for a federal appointment with a significantly higher level of remuneration in both salary and the value of the judicial annuity.

185. Between 1997, when the commission process became constitutionally mandated, and the 2006 JCC, there were no direct federal judicial appointments from the Provincial Court of Alberta.\(^3\) Between 2006 and the time that the 2009 JCC sat in 2011, a number of Alberta Provincial Court judges not only applied for a federal appointment, but accepted such an appointment including one to the Alberta Court of Appeal,\(^4\) five to the Court of Queen’s Bench,\(^5\) and one to the Federal Court of Canada.\(^6\) Over that same period of 2006-2011, before the 2009 JCC recommendations were implemented, the salary gap between provincially and federally appointed judges had grown significantly.

186. In the period since the submissions were made to the 2009 JCC in 2011, three Provincial Court judges were appointed to the Court of Queen’s Bench.\(^7\) Finally, since the 2013 JCC issued its Report, two more Provincial Court Judges have been appointed to the Court of Queen’s Bench.\(^8\)

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\(^3\) Judge D. Hanson who was technically appointed while nominally a member of the Provincial Court of Alberta had been seconded to the National Judicial Institute in 1992 where she remained until she was appointed to the Federal Court of Canada in 1999

\(^4\) Judge B.K. O’Ferrall (March 11, 2011)

\(^5\) Judge J.D.B. McDonald (September 18, 2006 and since appointed to the Alberta Court of Appeal May 20, 2009), Judge M.R. Bast (August 13, 2009), Judge S.L. Hunt McDonald (September 9, 2009), Judge J.T. McCarthy (December 11, 2009), Judge J.H. Goss (February 10, 2010)

\(^6\) Judge L.S. Mandamin (April 27, 2007)

\(^7\) Judge B.L. Veldhuis (June 24, 2011 and since appointed to the Court of Appeal February 8, 2013), Judge B.A. Millar (October 21, 2011), Judge E.J. Simpson (June 7, 2013).

\(^8\) Judge J. Henderson (July 5, 2016) and Judge M. Slawinsky (appointed to the Provincial Court in September 2015 and to the Court of Queen’s Bench less than two years later, on March 24, 2017)
187. The number of other Alberta Provincial Court judges who may have similarly applied for federal appointments is not publicly available. 9

(e) Legal Diversity

188. In our pluralistic society, it is well recognized that a Bench consisting of members of diverse backgrounds - racial, ethnic, cultural, linguistic, and gender - is not merely desirable, it is essential to the community's confidence in the courts. There is risk that a court, whose composition lacks diversity, will lose credibility with the general public or a significant portion of that general public. Diversity in the characteristics of judges on a court will only be maintained or achieved if there is diversity in the applicants for appointment.

189. There is another, often overlooked, element of diversity, which is the legal background of the Court's member judges. The statistics regarding applicants to the Court over the period of 2008-2014 and 2014-2018 show that the proportion of the total number of approved candidates originating from the private bar has decreased since 2008, from a high of 73% in that year, to a low of 33% in 2018.10 The following graph shows the trend and compares that information with the percentage of the legal profession as a whole who practice in private law firms.


Judicial Applicant Statistics, 2008 - 2014, Association’s Documents, Tab 8

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9 The Office of the Commissioner of Federal Judicial Affairs does not publish that information.

10 It should be noted that the data provided for the years 2015 and following addresses only candidates who are “approved” in the fiscal year in question, as distinct from the entire pool of approved candidates as at that date (as was the case with the pre-2014 data). The Association requested comparable data but was advised that it is not currently available.
190. The percentage of approved and highly recommended candidates from the private bar is low compared with the proportion of practicing Alberta-based lawyers who work in a law firm (i.e. 68%).

191. As the number of applicants from private firms has apparently declined, the proportion of judges who are appointed from positions within Government appears to be steadily increasing. The 2013 JCC was provided with statistics which showed that between January 2011 and September 2014, 12 of the total of 32 appointees, or 37.5%, came from Government practice. This was higher than the 31% who were appointed from Government during the entire period of December 2004 to the September 2014.

192. This proportion has increased significantly again. Over the course of the 2013 JCC’s mandate up to today (i.e. from April 1, 2013 to September 2018): of the 40 judges appointed, 20 judges (50%) came from Government (including the Crown’s office and Legal Aid). This is remarkable considering that lawyers employed by Government and Legal Aid (including pro bono lawyers) make up only 12% of the Bar as a whole. Three
other recent appointees served as Justices of the Peace prior to their appointment, and another came from an in-house corporate position. Only 40% were appointed from private practice. This percentage is low, considering that 68% of lawyers in the Alberta Bar work in private firms.

Judicial Appointments April 1, 2013 to September 2018 - Practice Backgrounds, Association’s Book of Documents, Tab 9

Law Society of Alberta Statistics, Joint Book of Agreed Facts and Exhibits, Tab 3

193. There will only be legal diversity on the Bench if those from the private bar apply to be appointed. There will only be highly qualified applicants from the private bar if the level of remuneration is comparatively adequate to what one might reasonably expect to earn in practice.

194. If the pool of applicants fails to include highly qualified applicants from the private bar, there is substantial risk that the Provincial Court of Alberta will revert in appearance to a ‘police court’, as it was once widely known (although in the modern era, it might be referred to as a ‘Crown court’). The Government will only have the ability to ensure legal diversity on the Court if it has a full range of qualified applicants to choose from. The Commission can assist with this by ensuring that the level of remuneration is attractive to qualified applicants from the private bar.


“There are two parts to the quest of securing a judiciary of high quality and this Commission can influence only one part. We expect that our recommendations, if implemented, will result in a salary level that will attract the best and the brightest to make themselves available for judicial appointment, or at least not discourage them from doing so. The goal will be attained when the second part of the quest is properly fulfilled, which is the selection, from the pool of candidates available, of the most qualified of those prepared to accept judicial office. That will continue to be the challenge of the government.”
196. The importance of judicial remuneration to the recruitment of highly qualified applicants in private practice was commented on in Ontario’s Fourth (1999) Triennial Report of the Provincial Judges Remuneration Commission (the “Beck Report”) on May 20, 1999 at page 46:

“Another factor that we think is important is the attraction of the Provincial bench to a cross section of the best of the men and women practising at the criminal bar, or with some experience at the criminal bar. For many, appointment to the Provincial Division would see little, if any, increase in salary. For others, such an appointment would constitute a fall, in some cases a very sharp fall, in remuneration. What is absolutely essential is that the level of remuneration (including pension, which will be dealt with below), be set at such a level that it will be attractive, or at least not a disincentive, to the ablest men and women at the bar.”


197. The importance of giving consideration to the remuneration received by those in private practice in order to attract highly qualified applicants was recognized in the McLennan Report at page 31 where the Commission said:

“... [I]t is necessary, to the extent possible, in order to address the requirement of attracting outstanding candidates to the bench, to have regard to the income of private practitioners, since that remains the pool from which most of the appointees, and presumably most of the recommended applicants, come.”

McLennan Report, Association’s Documents, Tab 7

198. The McLennan Report continued at page 32 to observe with respect to earlier federal compensation commissions:
“The triennial commissions dealt with the relationship between the incomes of lawyers in private practice and the salaries of judges. The Scott Commission, in particular, was of the view that the commission process in the Judges Act was “a statutory mechanism for ensuring that there will be, to the extent possible, a constant relationship, in terms of degree, between judges’ salaries and the incomes of those members of the Bar most suited in experience and ability for appointment to the Bench.”

The rationale, of course, is that it is in the public interest that senior members of the Bar should be attracted to the bench, and senior members of the Bar are, as a general rule, among the highest earners in private practice. While not all the “outstanding” candidates contemplated by s. 26(1.1)(c) of the Judges Act will be senior lawyers in the higher earning brackets, many will, and they should not be discouraged from applying to the bench because of inadequate compensation.”

McLennan Report, Association’s Documents, Tab 7

199. The comparative importance of this aspect was stressed in the McLennan Report at page 41 where, after noting the extensive data which had been provided on the income of self-employed lawyers, and the inadequacies of that data, the Commission stated:

“While we deplore the deficiencies in the material put before us with respect to the 2000 and 2001 income data of self-employed lawyers, we remain of the view that the income of self-employed lawyers in Canada is an important, and perhaps the most important, comparator for our work, and that we must do the best we can with the data available.”

McLennan Report, Association’s Documents, Tab 7

200. The unfortunate practical reality is that accurate data regarding the incomes of lawyers in private practice is not available. For that reason, none is provided. Nonetheless, given the fact that the federal and provincial courts compete for the same candidates, the income of self-employed lawyers is subsumed to some extent in the remuneration of federally appointed judges and how it is more attractive than that of provincially appointed judges.
5. Remuneration and Benefits Other Judges in Canada Receive

201. Section 13(e) of the Commission Regulation requires consideration of “the remuneration and other benefits other judges in Canada receive”. It is the position of the Association that other judges are the best comparators to consider in assessing appropriate compensation. This is because of the uniqueness of the judicial role, which is discussed above.

202. Past JCCs have considered the remuneration paid to judges both in and out of Alberta to be of particular importance, with the primary focus on federally appointed judges in Alberta and Provincial Court judges in Ontario. The reasoning of the past JCCs in respect of these two most significant comparators is outlined in detail in the salary section below.

Comparison of Overall Remuneration

203. When it accepted the recommendations of the 2009 JCC, the Government itself offered as a reason that Alberta would rank second amongst Provincial Court Judges in overall compensation. The Association agrees that consideration of overall compensation is important and that the relative value of the pension available to judges in other jurisdictions should also be taken into account in comparing judicial salaries.

204. As noted, the Association retained an actuary, Mr. André Sauvé, to prepare an analysis comparing the overall compensation paid to judges. The analysis compares the relative value of the two most significant aspects of overall compensation, salary and pension, which are referred to below as “total compensation”. An exhaustive analysis of

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11 The Association raises this only to illustrate the reasoning offered by the Government in support of its decision to accept the recommendations. The Association does not accept that the expert report appended to the Government’s Response compares overall compensation. Rather, it compared the cost to the relevant government of the judicial salary plus the cost to government of the pension, based on certain inappropriate assumptions (such as that judges retired at the first unreduced retirement age).
every piece of compensation provided to judges in each jurisdiction is not only impractical but would also be prohibitively expensive, at least for the Association. 12

205. Mr. Sauvé’s Report, entitled, “Comparative Analysis of Judicial Pension Plans”, dated September 24, 2018, is at Tab 11 in the Association’s Documents. Mr. Sauvé’s Curriculum Vitae is at Tab 12. As discussed in the salary section below, Alberta’s overall compensation is currently significantly lower than that paid to judges in the federal jurisdiction, Ontario and Saskatchewan and a disparity would remain even with the Association’s proposed salary increases. While this relative positioning of the compensation paid to Alberta’s judges is not appropriate given the relative fiscal capacity of Alberta as compared with that of these other jurisdictions, the Association’s proposals for the period to be considered by this 2017 JCC are intentionally modest, reflecting the Government’s approach to dealing with its recent fiscal challenges.

6. Increases and Decreases, as Applicable, in the Alberta Real Primary Household Income Per Capita

206. Subsection 13(f) of the Commission Regulation calls for consideration of the increases or decreases in the Alberta real primary household income per capita. This is the first time that this statistic has been a specified consideration in the Regulation governing an Alberta JCC, although this indicator was considered by the 2013 JCC.

207. For prior JCCs, subsection 13(f) of the Commission Regulation called for consideration of the growth or decline in real per capita income in Alberta. The 2013 JCC explained:

“Both the Minister and the Association noted that the statistical measure of ‘real income per capita’ is no longer tracked by Statistics Canada. In 2012, it switched to using a new economic measure of income called Primary

12 As the JCC will expect, judges in each jurisdiction are entitled to a variety of other benefits such as health and dental benefits, sick leave and long-term disability insurance, not to mention reimbursement for a variety of professional and/or educational expenses. As these benefits are roughly comparable across the jurisdictions, the analysis focuses on the two most significant aspects of compensation – salary and pension. However, as is noted below, the 8 weeks of vacation accorded to federally-appointed judges as compared with the 6 weeks available to Alberta’s Provincial Court Judges further exacerbates the disparity in total compensation.
"Household Income which more accurately captured the income of households in Canada and is more in line with international standards."

2013 JCC Report, Joint Book of Authorities, Tab 22, pages 29-30

208. As discussed in detail in the next section, the Association retained Dr. Melville L. McMillan, a Professor in the Department of Economics at the University of Alberta, to prepare a report on the economic and fiscal circumstances of Alberta (the “2018 McMillan Report”). Attached as Tab 13 in the Association’s Documents is the Curriculum Vitae of Dr. McMillan.

209. The 2018 McMillan Report explains that primary household incomes per person in Alberta “have exceeded those in every other province since 2000”. As shown in Figure 14 of the McMillan Report, the premium over other provinces continues to be significant despite being reduced by the recent recession. The 2018 McMillan Report concludes:

   Thus, the recession in Alberta has resulted in the premium of Alberta’s primary household incomes per person relative to those in other provinces being reduced but that premium is still considerable (perhaps substantial). In addition, if incomes recover as well as the Alberta government expects, the premium relative to Ontario will be about 25 per cent and relative to British Columbia about 15 per cent.

   2018 McMillan Report, Association’s Documents, Tab 14, page 19-20

210. Figure 14 in the 2018 McMillan Report does not reflect the changes in the cost of living as revealed through changes in the Consumer Price Index ("CPI"). The following graph presents the same data, adjusted to 2002 dollars, to reflect the changes in the cost of living.
211. The Government’s Economic Outlook Fiscal Plan 2018-21, which formed part of its 2018 Budget, contains the following forecasts with respect to primary household incomes per capita for the years within this 2017 JCC’s mandate. As the criterion in the Commission Regulation calls for consideration of “real” data, the forecasted CPI adjustments are also shown, with the real figure being the difference between the two.

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<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
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<tbody>
<tr>
<td>Primary Household Income (% change)</td>
<td>4.4%</td>
<td>4.5%</td>
<td>4.7%</td>
<td>4.8%</td>
</tr>
<tr>
<td>Consumer Price Index (% change)</td>
<td>1.6%</td>
<td>2.1%</td>
<td>1.9%</td>
<td>2.0%</td>
</tr>
<tr>
<td>Real Primary Household Income Change</td>
<td>2.8%</td>
<td>2.4%</td>
<td>2.8%</td>
<td>2.8%</td>
</tr>
</tbody>
</table>

212. As discussed below, the Association’s proposed salary adjustments are lower than the anticipated increases in real primary household incomes in each of the four years at issue. This underscores the moderate nature of the Association’s proposals, which take into account the economic and fiscal circumstances.
7. The Need to Provide Fair and Reasonable Compensation in Light of Prevailing Economic Conditions in Alberta and the Overall State of the Economy, Including the Financial Position of the Government

213. The focus of this criterion is the need to provide fair and reasonable compensation for judges in light of the prevailing economic and fiscal conditions in Alberta. Given the role of the JCC as an institutional sieve, it is essential that the economic and fiscal conditions be considered objectively and not through the lens of the Government’s political decisions.

214. As discussed below, Alberta continues to enjoy tremendous economic strength and an enviable fiscal capacity despite the significant volatility of government revenues that has historically resulted from the significant reliance on natural resource revenues. In this environment, it is particularly important for the JCC to take a broader perspective that is not driven by the immediate circumstances but by general trends.

215. In providing its Report in March 2015, when the world price of oil was in dramatic decline, the 2013 JCC determined that the such fluctuations should not be the “deciding factor” in setting judicial compensation:

Given the “waxing and waning” effect of world oil prices on the Alberta economy, it would not be appropriate to focus on the recent drop in the price of oil as the deciding factor which outweighs all others in our recommendations. That would be a disservice to this process. It would also amount to an abdication of our mandate set out in the PEI Reference to be “independent, objective and effective”.

2013 JCC Report, Joint Book of Authorities, Tab 22, page 42

216. After two very challenging years of recession in 2015 and 2016, Alberta’s economy has “regained its footing and is moving ahead”. The 2018 McMillan Report describes the state of the Alberta economy and the finances of the Government with a focus on the years at issue for this 2017 JCC. It compares Alberta’s fortunes with those of Ontario, which has been considered by past Alberta JCCs to be Alberta’s best extra-provincial
comparator. It also compares Alberta’s situation with that of British Columbia and Saskatchewan, its closest neighbours. A national perspective is also provided by reference to the Canadian average for many of the statistics.

2018 McMillan Report, Association’s Documents, Tab 14

217. The analysis below highlights the most significant parts of Dr. McMillan’s analysis and goes on to suggest how the information should assist this 2017 JCC in making its recommendations regarding appropriate compensation for Alberta judges.

218. With respect to the current situation, the 2018 McMillan Report observes:

▪ the extended post 2000 economic boom in Alberta came to an abrupt halt with the recession in 2015 and 2016, but the economic turnaround in 2017 was substantial and has put Alberta back on a path of continuing moderate growth (page 1);

▪ despite the setbacks, the Alberta economy has emerged still leading the other provinces in per capita GDP by considerable margins and GDP per capita is expected to continue to be 40 to 60 per cent greater than that of most other provinces (pages 1, 8);

▪ while employment dropped substantially during the recession in 2016, as of April 2018 it has exceeded mid-2015 peak levels (page 13);

▪ average weekly earnings in Alberta remain the highest in Canada and 13.5% greater than those in Ontario (page 20);

▪ despite the economic setback, population growth between 2015 through 2017 ranked second among Western Canada and Ontario (page 25).

2018 McMillan Report, Association’s Documents, Tab 14

219. This 2017 JCC is mandated to make recommendations for the period April 1, 2017 to March 31, 2021. Accordingly, to the extent that predictions are available and reliable, it is important to consider not only what has already occurred, but also predictions for the subsequent years. Detailed information on the current forecasts is set out in the McMillan Report. Dr. McMillan concludes:
▪ the 2017 turnaround of the Alberta economy is expected to herald continued growth (page 7);

▪ real GDP is expected to continue its long-term growth. By the end of the decade, per capita GDP is expected to be 15 per cent greater than in 2000 (page 6);

▪ the Conference Board of Canada expects nominal GDP in 2022 to be 26.4 per cent greater than in 2017 and real GDP to be 10.3 per cent greater (page 7);

▪ based on the Alberta Government’s own predictions, primary household incomes per person will be greater than in every other province, and about 25 per cent greater than in Ontario and 15 per cent greater than in BC (page 20);

▪ average weekly earnings, average income per employee and primary household income in Alberta are the highest in Canada and the traditional premiums or differentials as compared with other provinces, albeit somewhat reduced, are expected to persist (page 54);

▪ Alberta’s population is expected to grow by 7.9 per cent by 2022, leading the country (page 25); and

▪ unemployment is expected to be between 5.8 and 6.0 per cent through 2021, about equal with Ontario over that period (page 15).

2018 McMillan Report, Association’s Documents, Tab 14

220. In summary, Dr. McMillan explains that:

“… the Alberta economy has turned the corner, advanced substantially in 2017 and seems to be on the path to a reasonable but gradual recovery. Although growth is expected to be moderate, it is projected to be comparable to that in Ontario and the other comparator provinces. As such, the traditional premiums or differentials, though somewhat reduced, are expected to persist although the advantages across industrial sectors will have changed to some degree.”

2018 McMillan Report, Association’s Documents, Tab 14, page 28
221. The 2018 Budget Address confirms that the Government shares the positive outlook of other forecasters cited in the 2018 McMillan Report. While acknowledging that Alberta is coming out of a recession, Minister Ceci emphasized the following.

▪ “Alberta’s economy is growing-faster than any province in Canada.”

▪ “In short, following a very difficult recession in Alberta, today job’s are up, the deficit is coming down, and our economy continues to grow.”

▪ “[In 2017] Alberta also outperformed the rest of the country on a number of key economic metrics - the highest per capita GDP, the highest average weekly earnings and the highest employment rate in the country.”

▪ “Alberta’s best days are ahead of us, not behind us.”

2018 Budget Address, Joint Book of Agreed Facts and Exhibits, Tab 10, pages 1-2,14

Financial Position of Alberta

222. The 2018 McMillan Report considers the Alberta Government’s finances and fiscal situation from two perspectives: within Alberta and in comparison with the situation in other provinces.

223. Dr. McMillan considers the province’s expenditures and revenues in some detail and the fiscal developments are summarized beginning at page 29. Dr. McMillan explains that, despite considerable reductions in revenues, the provincial government still leads all provinces in its fiscal capacity.

2018 McMillan Report, Association’s Documents, Tab 14, page 48

224. Alberta’s fiscal advantage is summarized beginning at page 42 and following in McMillan’s Report. Dr. McMillan sets out the following key points.

▪ Despite the loss in resource revenues and the recession’s broader negative impacts on the provincial government’s revenues, Alberta’s relative fiscal
capacity remains 41 per cent greater than the provincial average and greater than that of any other province (pages 48-49).

- Alberta is far from realizing the net debt levels of most provinces (page 45).

- Alberta’s net debt is small as a percentage of GDP, and modest as a percentage of government revenues as compared with other provinces (pages 45 and 53).

- Alberta maintains a more or less average level of per capita program expenditures, which is noteworthy, perhaps remarkable, given the relatively high cost of production inputs (page 43).

- Alberta’s high fiscal capacity has been relied on by Government to create a large tax advantage for Albertans (page 53).

2018 McMillan Report, Association’s Documents, Tab 14

225. The unique strength of Alberta’s fiscal situation is revealed when it is compared with the circumstances in other provinces as follows.

- Despite the downturn of the Alberta economy and the considerable negative impact on the provincial government’s finances, Alberta’s relative fiscal capacity has only slipped from being 55 per cent greater than the provincial average to 41 per cent greater than the average, and still about 20 percentage points greater than the next highest province (pages 48-49).

- Tax capacities from personal income, consumption and property taxes are themselves sufficient to provide Alberta with a well above average fiscal capacity (page 56).

- With respect to net debt relative to GDP, the percentage in Alberta was 2.8 per cent of GDP in 2016-17, or 21 per cent of provincial government revenue, each of which is substantially less than the figures for other provinces (page 45).

- Although debt has increased sharply in Alberta, the projected peak is well below that in eight other provinces and is “quite manageable” (page 55).

- Provincial expenditures per capita are mid-range and close to the average of those in other provinces, despite Alberta operating in a high cost economy. In relative terms, Alberta’s spending is quite moderate (page 55).
226. In comparison with other provinces, Dr. McMillan notes that “one suspects taxpayers and governments in most if not all provinces would gladly accept Alberta’s fiscal issues and willingly trade positions.”

227. The 2018 McMillan Report highlights Alberta’s very significant tax advantage or, in other words, the additional taxes that Alberta individuals and businesses would pay if Alberta had the same tax system as in each of the other provinces. Under any other province’s tax system, Albertans would pay at least $11.2 billion dollars more in taxes.

228. The sheer scale of Alberta’s tax advantage is revealed by the fact that if Alberta adopted a tax system equivalent to that of another province with the least tax advantage, it could balance its budget and still maintain a tax advantage over all other provinces (page 50). As a result, Dr. McMillan concludes:

“Alberta does not have a difficult fiscal problem. The provincial government is in a position to address its fiscal challenges and still maintain a fiscal advantage over all other provinces. Rather, Alberta has a political problem. Alberta’s world has changed from what it was ten, even five, years ago and that has drastically undermined resource revenues as a source of provincial funds. The political problem is the need to convey the unpleasant implications to Albertans. Thus, put simply, Alberta’s problem is not a fiscal problem but a political problem.”

229. Overall, the 2018 McMillan Report concludes:

- after two years of deterioration, the economy has regained its footing and is moving head (page 54);
- employment exceeds previous levels, and unemployment is trending downward towards regional levels (page 54);

- earnings and incomes are increasing, and the activity index is flirting with 2014 peaks (page 54);

- the recession reduced but did not eliminate the economic advantages that have characterized Alberta for some time (page 54);

- GDP per capita is still the highest among the provinces and 40 to 60 per cent greater than in the other four western provinces (page 54);

- average weekly earnings and average income per employee as well as primary household income in Alberta are the highest in the country (page 54);

- provincial expenditures per capita are mid-range and close to the national average, and low compared to household incomes. Alberta’s spending is quite moderate (page 55);

- Alberta’s fiscal capacity remains high. In 2018-19, its capacity is 40 per cent greater than the average province. Alberta still has the greatest fiscal capacity of any province and 20 percentage points greater than the 2nd ranked province (page 56); and

- Alberta’s fiscal capacity has meant a large tax advantage for Albertans (page 56).

2018 McMillan Report, Association’s Documents, Tab 14

230. The criterion identified in section 13(g) of the Commission Regulation, is focused on the need to provide fair and reasonable compensation for judges. As Dr. McMillan explains that, when viewed within its Canadian context, the apparently “dramatic transformation of the provincial government’s fiscal condition” is properly viewed as “fairly benign”. Despite its current challenges, Alberta remains the envy of its neighbour jurisdictions across the country.

2018 McMillan Report, Association’s Documents, Tab 14, page 56
231. The financial position of the Government is clearly such that it enjoys much latitude in making its policy choices about how to improve the current fiscal position. While the Government has chosen, in the 2018 Budget, to make “targeted investments” and to constrain expenditures, it is clear from the 2018 McMillan Report that other choices are available. It is not the role of a JCC to assess or critique the Government’s choices as they relate to the economy generally, nor is the JCC bound by those choices. Rather, the 2017 JCC must consider what is fair and reasonable compensation for judges in light of the prevailing conditions and all of the other objective criteria identified in the Commission Regulation.

232. Most important for this 2017 JCC is that economic circumstances are clearly improving and the Government continues to have substantial fiscal capacity, and therefore flexibility, particularly as compared with other jurisdictions. While the Government has chosen the particular path in dealing with the current situation that is set out in its 2018 Budget, a government’s political choices cannot dictate the recommendations of this JCC. When it comes to the setting of judicial compensation, Government must make its decision in light of the recommendations of the independent and objective JCC.

233. In the salary section below, the Association sets out how its salary proposals take into account the prevailing economic and fiscal conditions, as well as the other factors identified in the Commission Regulation.

8. **The Alberta Cost of Living Index and the Position of the Judges Relative to its Increases or Decreases, or Both**

234. Subsection 13(h) of the *Commission Regulation* directs that this 2017 JCC must consider as one criterion the cost of living index and the position of the judges relative to its increases. The impact of inflation is an important consideration which was specifically identified by Lamer CJC in *PEI Reference*. Lamer determined that one key to the effectiveness of the commission process is that the process should be held regularly,
such as every three to five years, in order to guard against the erosion of judicial salaries because of inflation.

*Commission Regulation*, Joint Book of Authorities, Tab 11, ss.13(h)

*PEI Reference, supra*, Joint Book of Authorities, Tab 1, para 174

235. Changes in the cost of living are most often discussed in reference to the Consumer Price Index (‘CPI’) statistics published by Statistics Canada. The CPI tracks changes in the cost of a fixed basket of consumer goods on a monthly basis.

236. Predictions for the change in the CPI for Alberta for the years 2017 through 2020 are available from Alberta Treasury Board and Finance’s Economic Outlook. The most current information suggests:

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<th>2019</th>
<th>2020</th>
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<tbody>
<tr>
<td>Alberta</td>
<td>1.6%</td>
<td>2.1%</td>
<td>1.9%</td>
<td>2.0%</td>
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237. As detailed below, the Association’s proposals are for salary increases in the fiscal years 2017 and 2018 that are less than the increase that would be required to prevent erosion due to increases in the cost of living. The increases proposed for 2019 and 2020, which are based on a consideration of all the relevant factors, are only half a percent higher than the forecasted increases in the cost of living.

9. **The Nature of the Jurisdiction of Judges**

238. We earlier described the nature of the Court’s jurisdiction in Part II above. The transformation of the Court over the last 40 years has been remarkable. Moreover, it is apparent that the jurisdiction of the Court has continued to expand as a result of the ever-increasing reputation of the Court among counsel and litigants alike, and legislative
initiatives which have increased the number of matters which can be dealt with in the Provincial Court.

239. The crucial work performed by Alberta judges supports the Association’s request for compensation that ensures the ability of the Court to attract the best possible qualified candidates. As discussed above, the need to attract highly qualified applicants supports the Association’s position that federally-appointed judges are one of the two most appropriate comparators, because judges for both Courts are selected from the same pool of potential applicants.

10. **The Level of Increases or Decreases, or Both, Provided to Other Programs and Persons Funded by the Government**

240. Subsection 13(j) of the *Commission Regulation* obliges this 2017 JCC to consider “the level of increases provided to other programs and persons funded by the government”. It is important to appreciate that this criterion refers to the level of increases provided to other programs and persons funded by the Government and imports consideration of changes in overall remuneration of persons or funding of programs.

241. It is well understood that judges are not civil servants. Accordingly, and given the uniqueness of the judicial role, comparisons with the actual salaries received by civil servants are of no, or little, value.

*Commission Regulation*, Joint Book of Authorities, **Tab 11**, ss 13(j)

2003 JCC Report, Joint Book of Authorities, **Tab 18**, page 32

242. The levels of the increases provided to other programs or persons funded by the Government show what increases the Government has been prepared to agree to for public sector groups which engage in collective bargaining, based on political considerations. These levels also show what the Government has, itself, decided it will pay to employees who do not bargain collectively.
243. The levels of increases must be viewed as evidence of the willingness of the Government to pay and accordingly, its own political assessment of its financial position. An objective analysis of that financial position, and the enviable fiscal capacity that continues to benefit Alberta, is discussed in detail in the 2018 McMillan Report.

244. As the Association has argued in the past, a province such as Alberta cannot reasonably argue that it does not have the ability to pay the current complement of judges and masters. The budget for their payroll represents only a minute proportion of the overall budget for the Department of Justice, never mind the budget of the Government as a whole. Accordingly, when considered as an indicator of the willingness of the Government to pay, the levels of the increases provided to other groups are a useful consideration against which the Government's position about appropriate salaries for judges can be tested. In referencing the levels of increases, however, one must of course recognize that pay for these other groups is not set in reference to the particular factors set out in the Commission Regulation that governs this process. Further, the levels of increases for these other groups may well be affected, to greater or lesser degrees, by the strength of the bargaining power enjoyed by the group in question.

245. As Lamer CJC clearly articulated in PEI Reference, decisions about the use of public funds are inherently political and the purpose of the JCC is to act as an institutional sieve to depoliticize, to the greatest extent possible, the setting of judicial compensation.

*PEI Reference, supra, Joint Book of Authorities, Tab 1, para 146*

246. Attached as Tab 8 in the Joint Book of Agreed Facts and Exhibits are a series of tables which set out the general wage increases received by different groups in the public service over the years 2002 and following. The charts do not reflect the many other aspects to the collective agreements recently negotiated by the Government with various public sector employee groups. In the salary section below, we explain how this information supports the Association’s salary proposal.
11. **Other Relevant Factors**

247. Subsection 13(k) of the *Commission Regulation* also directs this 2017 JCC to consider “any other factors considered by the Commission to be relevant to the matters in issue”. It is apparent that it is within this Commission's discretion to consider factors or matters in addition to the criteria identified in ss. 13(a) though (j). For instance, while the criteria in subsections (f), (g) and (h) reference Alberta specifically, meaning and objectivity are brought to the Alberta data when they are considered in the context of the same statistics for comparator jurisdictions, including particularly Ontario and Canada as a whole.

*Commission Regulation, Joint Book of Authorities, Tab 11*
PART IV: RECOMMENDATIONS

1. Salary

Recommendations Sought:

- That, effective April 1, 2017, the annual salary for *puisne* judges\(^\text{13}\) shall be increased to $296,382;

- That, effective April 1, 2018, the annual salary for *puisne* judges shall be increased to $302,304;

- That, effective April 1, 2019, the annual salary for *puisne* judges shall be increased to 94.5% of the salary of a federally appointed judge; and

- That, effective April 1, 2020, the annual salary for *puisne* judges shall be increased to 95% of the salary of a federally appointed judge.

- That these recommendations shall apply to all who were Provincial Court Judges as at April 1, 2017 (regardless of later death or retirement) and to all Provincial Court Judges since appointed.

248. The proposed salaries for the fiscal years 2017 and 2018 amount to 94% of the “important benchmark” of the salaries paid to federally appointed judges, and maintain the approximate parity with Ontario judges’ salaries that has been considered appropriate by past JCCs and the Government itself. This approximate parity is continued in the 2019 and 2020 fiscal years, when the proposed salaries rise slightly to 94.5% and 95%, respectively, of the federal salaries.

249. As detailed below, the Association’s proposals take into account all of the criteria that must be considered by this 2017 JCC pursuant to section 13 of the *Commission Regulation* and are consistent with the reasoning of past JCCs in Alberta. The

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\(^{13}\) The Association understands the GOA to agree that, in addition to the *puisne* judge salary, the administrative judges will continue to receive the administrative stipends recommended by the 2009 JCC and implemented by the GOA thereafter. These are 10%, 7.5% and 5% of a *puisne* judge’s salary, for the Chief Judge, Deputy Chief Judge and Assistant Chief Judges respectively.
The Association’s proposals reflect the need to maintain a strong Provincial Court by providing compensation that is fair and reasonable in light of the prevailing economic conditions in Alberta and the overall state of the economy, including the financial position of the Government.

250. The tempered nature of the proposals is underscored by the significant gaps that would remain, even in light of the Association’s proposals, between the total compensation paid to judges in Alberta and that paid to judges in each of Ontario and the federal jurisdiction, respectively. As discussed in detail below, the disparity in compensation is largely due to the significantly more advantageous pension provisions that exist for judges in both Ontario and Canada. While that analysis may well support that improvements should be made to the pension provisions available to Alberta judges, none are proposed to this JCC in view of the Government’s fiscal circumstances.

251. Further, the Association’s proposed salary increases are less than the forecasted changes in the Alberta Consumer Price Index for both 2017 and 2018 and only slightly exceed the forecasted changes in CPI for 2019 and 2020. They take into account the Government’s efforts to restore fiscal balance, the strategy for which includes negotiating so-called “practical agreements” with its public sector employees.

252. The discussion below examines in detail how each of the criteria identified in the Commission Regulation supports the Association’s position. In that context, we address the reasoning of past JCCs and the Government in accepting the recommendations of past JCCs, and the past submissions of the parties related to salary issues.

**Judicial Independence and the Uniqueness of the Judicial Role**

253. The salaries proposed by the Association are consistent with the constitutional law of Canada in that they are based on objective criteria, not political expediencies, and would maintain the independence of the Court and its judges. This Submission discusses the unique nature of the judges’ role beginning at page 45. As noted, the unique role of Provincial Court judges supports the Association’s position that other judges are the best comparators to consider in assessing appropriate judicial compensation.
Federally Appointed Judges are an Important Benchmark

254. Section 13(d) of the Commission Regulation requires consideration of “the need to maintain a strong court by attracting highly qualified applicants”. As noted above, this factor points to the importance of a comparison with federally appointed judges in Alberta, since the Provincial Court and the Court of Queen’s Bench compete for applicants from the same population of lawyers in Alberta. The Association submits that this 2017 JCC should follow the reasoning of past JCCs in Alberta in respect of the comparison with federally appointed judges.

255. The 2013 JCC observed that past Commissions had considered the salary paid to federally appointed judges to be an “important benchmark” and noted that while there was some recognition of the different role of judges at the provincial and superior court levels, the “gap is closing with a significant overlap in the daily work of both courts”.

2013 JCC Report, Joint Book of Authorities, Tab 22, pages 43-44

256. In the particular circumstances considered by the 2013 JCC, including the “precipitous drop in the world price of oil beginning in late 2014”, the 2013 JCC endorsed a 93% relationship with federal salaries, very close to the proportion that had been found to be appropriate in the context of the difficult economic circumstances before the 2009 JCC (which sat in 2011). The 2013 JCC wrote:

“If the 2009 JCC tempered its recommendations because of the economic and fiscal situation that started with the 2008 recession, as counsel for the Association submits, we find ourselves in a similar position when considering the sudden transition in the economy at this time in early 2015."

2013 JCC Report, Joint Book of Authorities, Tab 22, page 44

257. The 2009 JCC recommended a salary of $250,000 effective April 1, 2009, which amounted to 93.6% of the salary paid to federally appointed judges in the same year,
$267,200. For 2010, the 2009 JCC recommended a salary of $255,000, which was 94% of the federally salary of $271,400.

Salary Comparison, Alberta Provincial Court Judges to Alberta Queen’s Bench Justice - Point in Time Analysis, Association’s Documents, Tab 6

258. The 2009 JCC made its recommendations in 2011, as Alberta was emerging from the 2008/09 recession. The 2009 JCC accepted the “consistent view expressed by past commissions” that there remains justification to distinguish pay levels for federally and provincially appointed judges. However, while it noted that neither party advanced an argument for actual parity, it went on to explain that:

“Our salary recommendation is intended to preserve what we consider to be a suitable difference between salaries for judges of these courts.”

2009 JCC Report, Joint Book of Authorities, Tab 20, page 33

259. The 2006 JCC commented that by recommending the salary proposed by both the Government and the Association, the gap between the salaries of these two courts had been “significantly narrowed” such that “there is little financial incentive for prospective candidates not to select the court for which they are best suited” (page 12). It went on to find that the “relatively narrow difference” in salary between provincially and federally-appointed judges in Alberta “supports the joint submission of the Minister and the Association on the salary issue” (page 14).

2006 JCC Report, Joint Book of Authorities, Tab 19, pages 12 and 14

260. At the time the 2006 JCC made these comments, the difference in salary for judges on the two courts was only $4,200, with Alberta’s judges earning $220,000, or 98% of the salaries of federally appointed judges which were then $224,200. The 2006 JCC did expect that the salary for s.96 judges would increase once the Report of the Second (2003) Quadrennial Federal Judicial Compensation and Benefits Commission (‘the McLennan Report’) was dealt with by Parliament. At the time the 2006 JCC considered
the matter, while it was thought that the increase for federally appointed judges would be more than statutory indexing, because there was a minority Parliament there still remained uncertainty.

2006 JCC Report, Joint Book of Authorities, Tab 19, page 13
Salary Comparison Alberta Provincial Court Judge to Alberta Queen’s Bench Justice Point in Time Analysis, Association’s Documents, Tab 6

261. The importance of federally appointed judges as a comparator was also accepted by the 2003 JCC. The 2003 JCC described federally appointed judges as one of the “major comparatives” (along with Ontario’s provincially appointed judges ['Ontario judges']), commenting that it was “pleased to note the excellent quality of candidates appointed in the past two years”, and indicating “we want to ensure that it continues”.

2003 JCC Report, Joint Book of Authorities, Tab 18, page 52

262. The 2003 Commission went on to accept the Association’s submission that “to attract the best candidates one cannot offer compensation which is significantly below that paid to judges on the Court of Queen’s Bench”. The 2003 JCC also accepted the Government’s submission that “the ‘gap’ cannot be too wide” in order to avoid creating a financial disincentive for applicants to choose the Bench which would be otherwise most suited to their interests. The 2003 JCC recommended a salary of $200,000 effective April 1, 2003, which was 92% of the then salary for federally-appointed judges, which was $216,600 in the same year.

2003 JCC Report, Joint Book of Authorities, Tab 18, page 38
Salary Comparison Alberta Provincial Court Judge to Alberta Queen’s Bench Justice Point in Time Analysis, Association’s Documents, Tab 6

263. Similarly, when the parties made a joint submission on salary to the 2000 JCC, the salary proposed by both the Association and the Minister was $170,000, which was 95% of the salary which existed at that time for federally appointed judges ($179,200).
264. The Association’s proposed 0.8% salary increase, to $296,382 effective April 1, 2017, and a further 2% increase to $302,304 effective April 1, 2018, would put Alberta judges’ salaries at 94% of the salaries paid to federally appointed judges in each of those years.

265. For the 2019 and 2020 fiscal years, the Association proposes that Alberta judges be paid salaries equal to 94.5% and 95% of the salary that will be paid to federally appointed salaries in those years, respectively. Pursuant to section 25 of the Judges’ Act, the salaries paid to federally appointed judges are increased annually by the percentage change in the Industrial Aggregate Index for Canada calculated over the preceding calendar year.

266. The Judicial Compensation and Benefits Commission (the “Federal JCC”) will sit again in 2020. As part of its mandate to make recommendations on appropriate compensation for federally appointed judges, it may make recommendations for increases beyond the IAI-based adjustments that are required by statute. Neither the 2011 Federal JCC nor the 2015 Federal JCC recommended increases beyond the IAI-based adjustments required by statute. The additional increases that were recommended by the 2007 Federal JCC were rejected by the Government of Canada and only the IAI-based increases required by statute were applied.

The website for the Federal JCC, which includes links to past reports and the government’s response thereto, is: www.quadcom.gc.ca/pg_JcJc_QC_01-eng.php

267. Assuming the IAI for Canada rises by 2% per annum in 2018 and 2019, federally appointed judges’ salaries would increase to $328,032 effective April 1, 2018 and $334,593 effective April 1, 2019. Under the Association’s proposal, this would mean salaries for Alberta judges of $309,990 effective April 1, 2018 and $317,863 effective April 1, 2019.
268. The following chart compares the Association’s proposal for Alberta judges with the salaries that have been paid or are likely to be paid to federally appointed judges during the relevant years:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Federal Salary (actual or predicted)</th>
<th>Association’s proposal</th>
<th>% relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$315,300</td>
<td>$296,382</td>
<td>94%</td>
</tr>
<tr>
<td>2018</td>
<td>$321,600</td>
<td>$302,304</td>
<td>94%</td>
</tr>
<tr>
<td>2019</td>
<td>$328,032 (assumes 2% increase in IAI for Canada)</td>
<td>$309,990</td>
<td>94.5%</td>
</tr>
<tr>
<td>2020</td>
<td>$334,593 (assumes 2% increase in IAI for Canada)</td>
<td>$317,863</td>
<td>95%</td>
</tr>
</tbody>
</table>

Other Provincial and Territorial Court Judges

269. The chart at Tab 5 of the Joint Book of Agreed Facts and Exhibits compares the salaries of judges in the provincial and territorial jurisdictions across Canada, as well as the salaries of federally-appointed judges.

270. The Association’s proposed salaries would situate Alberta’s Provincial Court judges appropriately at the top of the salary scale of provincial and territorial court judges in Canada. This is consistent with the reasoning of past JCCs in Alberta and with the reasoning of the Government itself in accepting the recommendations of the 2009 JCC.
Approximate Parity with Ontario Continues to be Appropriate

271. Ontario has long been considered the most comparable jurisdiction to Alberta and, as such, has been a focus of each successive JCC dating back to the year 2000. The 2018 McMillan Report supports that Ontario continues to be the best comparator for Alberta.

272. Almost twenty years ago, the 2000 JCC agreed with the Association’s submission that “the circumstances in Ontario are most comparable to those prevailing in Alberta”. The joint proposal, which involved, in part, the settlement of the Association’s previous lawsuits and issues of costs related thereto, was for a salary of $170,000 per annum for the three years commencing April 1, 2000. The 2000 JCC noted that this put the judicial salaries in Alberta “at the same level as Ontario” for 2000, although it did note that Ontario judges’ salaries could be expected to rise over the subsequent years.

273. The 2003 JCC concluded that Alberta’s economy was strong and the “strongest in Canada”. At the time, both household incomes and average weekly earnings in Alberta and Ontario were still similar in that Alberta’s departure from Ontario in terms of the various economic indicators had only just begun. The 2003 JCC recommended a salary of $200,000 effective April 1, 2003 for Alberta judges, at a time when judges in Ontario were paid $206,348 (including their cost of living allowance). The recommendation was effectively that Alberta judges should receive 96.3% of the salary paid to Ontario judges. The 2003 JCC stated that: “Overall, we recommend that an Alberta Provincial Court judge continue to be paid near the top of the salary scale of Provincial Court judges in Canada”.

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274. Although it was unknown at the time the recommendations were made, the recommendations of the 2003 JCC, which included increases to $210,000 and $220,000 in each of 2004 and 2005, achieved that JCC’s objective of keeping Alberta’s judges near the top of the salary scale. Ontario judges earned $213,054 in 2004, and $219,979 in 2005.

2003 JCC Report, Joint Book of Authorities, Tab 18, page 53

Puisne Judge Salaries Across Canada 2005-2022, Joint Book of Agreed Facts and Exhibits, Tab 5

Salary Comparison of Alberta Provincial Court Judge to Ontario Provincial Court Judge/Justice Point in Time Analysis, Association’s Documents, Tab 15

275. The 2006 JCC did not hear extensive evidence about the economic state of Alberta compared with Ontario, likely because the parties were advancing a joint submission on salary. However, that JCC did comment on the “enviable economic position” of Alberta, and determined that the salary for Alberta judges should be at the top of the scale relative to other provincial and territorial jurisdictions. In that regard, the 2006 JCC noted that the current salary of $220,000 “puts Alberta Judges at the top of the salary list of all the provinces and territories …” and that this fact “supports the joint submission of the Minister and the Association on the salary issue”. As set out in the Salary Comparison document, the known salary in Ontario at the time of this recommendation was $213,630 (later raised to $221,748 with the cost of living adjustment that was unknown at the time of the 2006 JCC but later established).

2006 JCC Report, Joint Book of Authorities, Tab 19, page 14

Salary Comparison of Alberta Provincial Court Judge to Ontario Provincial Court Judge/Justice Point in Time Analysis, Association’s Documents, Tab 15

276. As was noted by both the Association and the Government in their respective Submissions to the 2006 JCC, and by the 2006 JCC itself, there was no information
available to that JCC about what judicial salaries would be in Ontario for the fiscal years 2006, 2007 and 2008.

2006 JCC Report, Joint Book of Authorities, Tab 19, pages 13-14

277. The 2009 JCC accepted the Government’s argument that the recommendations needed to be tempered as a result of the fiscal impact in Alberta of the global recession. The following comments of the 2009 JCC were quoted by the Government in accepting the recommendations:

“It is our view, the state of the economy and the fiscal position of the Government requires us to examine what is fair and reasonable compensation for the mandate of this Commission, with caution. Increases in judicial compensation must be tempered by the reality of the economic conditions in the province gauged by the economic conditions in the rest of Canada, including, and particularly, in Ontario.”

2009 JCC Report, Joint Book of Authorities, Tab 20, page 25
Government Response to 2009 Report, Joint Book of Authorities, Tab 21, page 5

278. The 2009 JCC accepted that approximate parity with Ontario salaries was appropriate even though the global recession had a “profound effect on the economic conditions in Alberta … and the financial position of the Government”. The 2009 JCC concluded:

“Maintaining approximate parity between Alberta and Ontario provincial judges over the term of our mandate reflects the pattern of recommendations from judicial compensation commissions in Alberta over the last decade. There have been individual years when one of these provincial comparators has diverged from the other; primarily, it seems, because of the vagaries of the timing of compensation review processes in the two jurisdictions. However, overall, we detect a strong linkage between pay levels in these courts which we think reasonable to maintain.”

2009 JCC Report, Joint Book of Authorities, Tab 20, page 34
279. In light of the relative economic standing of the two jurisdictions, the 2009 JCC specifically rejected the Government’s argument that Alberta judges should be paid 95% of Ontario salaries. The 2009 JCC acknowledged the evolution of the relative economic positions of the two provinces over the decade which preceded the JCC’s analysis, concluding:

“Nor is discounting pay for judges in Alberta compared with Ontario in keeping with what we perceive to be the relative economic standing of these two jurisdictions as it has evolved over the last decade or more. Alberta, despite difficult economic times that impacted the province and the country (indeed, the global economy) in 2009, is still, by many measures, in an enviable fiscal position compared to Ontario and other jurisdictions. Quite simply, Alberta can well afford to match Ontario compensation levels.”

2009 JCC Report, Joint Book of Authorities, Tab 20, page 35

280. The Government itself acknowledged in its argument to the 2009 JCC that Alberta’s long term prospects were strong, and that it did not take issue with the Association’s argument that Ontario has fallen behind in terms of the overall economy. At that time, however, the Government focussed on “short-term fiscal problems” facing the province, and argued - successfully - that the 2009 JCC ought to take those into account.

Transcript of 2009 JCC (excerpt only), Association’s Documents, Tab 16, page 226, lines 21-23

281. The 2013 JCC issued its Report in March 2015 at a time of dramatically declining oil prices and the resulting “sudden transition” of the economy. Nonetheless, it also concluded that approximate parity with Ontario should be maintained. In making its salary recommendations, the 2013 JCC cited the specific salary figures that had been set for Ontario judges for 2013 and 2014, noting that its recommendation for each of the years was very slightly lower than the Ontario salary in 2013 but slightly higher in 2014.

2013 JCC Report, Joint Book of Authorities, Tab 22, pages 45-46
282. Although the recent recession has reduced the extent to which Alberta outpaces Ontario in the various indicators, it remains the case that Alberta’s economic and fiscal prospects exceed those of Ontario by a sizeable margin. The 2018 McMillan Report makes the following points about Alberta’s position vis-à-vis Ontario:

- primary household income per person is 22 per cent higher than in Ontario and is expected to remain so over the next few years (page 19). If incomes recover at the rate expected by the Alberta government, the premium relative to Ontario will widen to about 25 per cent (pages 19-20);

- even in the depths of the recession in 2016, Alberta’s per capita GDP remained 49 per cent greater than Ontario (page 7);

- even with a sharp reduction after 2014, the per capita level of non-residential capital expenditures was 2.8 times that in Ontario, and 4.8 times the net non-residential capital stock in Ontario (pages 10-11);

- these differences are not expected to disappear. The Conference Board’s predictions for 2027 are that GDP per person in Alberta will be 1.4 times that of Ontario’s (page 7);

- average weekly earnings in Alberta are approximately 13.5 per cent larger than in Ontario as of March 2018 (page 20); and

- employee earnings in Alberta are 23 per cent greater than in Ontario, and this gap is expected to remain constant through 2023 (page 21).

2018 McMillan Report, Association’s Documents, Tab 14

283. The same is true of Alberta’s fiscal position, not to mention its fiscal capacity, which is “remarkably greater” than that of Ontario. McMillan explains:

- Alberta is a “have province” with respect to fiscal capacities while Ontario is a “have not” province (page 48);

- net debt to government revenues in Alberta is 21%. In Ontario, it is over 200% (page 45); and

- Alberta’s tax advantage over Ontario is $14.1 billion, and ranges from $1296 to $7158 annually for families across income groups (pages 52-53).
284. Ontario’s salaries for the years 2014-2022 were only recently determined, as conduct of the commission reporting for the 2014-2018 period was delayed by agreement in an effort to resolve outstanding litigation. In the end, the 9th and 10th Provincial Judges Remuneration Commissions were conducted jointly and one Report deals with the years April 1, 2014 to March 31, 2022. All except the pension-related recommendations are binding by legislation.

285. The chart below compares Ontario judges’ salaries with the Association’s proposed salaries for Alberta judges for the years within this JCC’s mandate. Because the Ontario salaries are linked with those of federally-appointed judges going forward, we have assumed a 2% adjustment to federal salaries in each of 2019 and 2020 (based on an estimated 2% increase in the IAI for Canada). The estimated figures are shown in *italics*.

<table>
<thead>
<tr>
<th>Year</th>
<th>Ontario Judges Salaries</th>
<th>APJA Proposed Alberta Salary</th>
<th>Federally appointed judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$292,829 (92.87% of feds)</td>
<td>$296,382 (94% of feds)</td>
<td>$315,300</td>
</tr>
<tr>
<td>2018</td>
<td>$300,600 (93.47% of feds)</td>
<td>$302,304 (94% of feds)</td>
<td>$321,600</td>
</tr>
<tr>
<td>2019</td>
<td>94.07% of feds $308,579</td>
<td>94.5% of feds $309,990</td>
<td>IAI for Canada $328,032 (assuming 2%)</td>
</tr>
<tr>
<td>2020</td>
<td>94.67% of feds $316,759</td>
<td>95% of feds $317,863</td>
<td>IAI for Canada $334,593 (assuming 2%)</td>
</tr>
</tbody>
</table>

286. While the dollar difference between Ontario’s judicial salary and that proposed for Alberta would be $3,553 in 2017, the proposed salaries are within roughly $1,000 of the
Ontario salaries in each of the later years. This continues the approximate parity that has been found to be appropriate by past JCCs.

287. Given the economic evidence about the continued strength of Alberta’s economy vis-à-vis that of Ontario, the Association’s proposal - for all four years - is consistent with the reasoning of the past JCCs. It also reflects the Government’s acknowledgement in argument before the 2009 JCC that Ontario’s economy had “fallen behind” that of Alberta’s, as well as with the reasons offered by the Government for accepting the salary recommendations of the 2009 JCC.

2009 JCC Report, Joint Book of Authorities, Tab 20, pages 32-36

Transcript of 2009 JCC, Association’s Documents, Tab 16, page 226, lines 21-25

Government Response to 2009 Report, Joint Book of Authorities, Tab 21, pages 3-4

Other Provinces and Territories

288. As noted, a chart setting out judicial salaries across the country since the fiscal year 2005/06 is Tab 5 of the Joint Book of Agreed Facts and Exhibits.

289. In reviewing the chart of judicial salaries in other jurisdictions, it is useful to note the following:

- Saskatchewan’s salaries have been established for the years at issue for this 2017 JCC;

- the BC salaries shown in the chart are the lower salaries substituted by the Government, which rejected the 2016 JCC’s recommendations. The Provincial Court Judges’ Association of British Columbia applied for judicial review. The case was heard in August 2018 and the decision is under reserve;

- the 2017 Manitoba JCC issued a Report dated May 23, 2018, which was finally tabled in the Legislature on October 11, 2018. The salary recommended for April 1, 2017 is binding according to s. 11.1(23) of The Provincial Court Act. The balance of the recommendations must be referred
to a Standing Committee of the Legislature which will adopt a Motion accepting, rejecting or varying the recommendations. This Motion must then be voted on in the Legislature. It may well be Spring 2019 before the Government’s response is known;

- the Nova Scotia salaries are those imposed by the Government, which rejected the salary recommendations of the 2017 JCC. The Nova Scotia judges’ association has challenged the constitutionality of amendments to the governing legislation, which removed the binding nature of the JCC process in that province, and has also filed a separate application for judicial review of the Government’s decision. The litigation is on-going;

- in Newfoundland & Labrador, the Government rejected the Tribunal’s salary recommendations for 2013-2017 and imposed a four year freeze. On judicial review, Mr. Justice Alphonsus Faour, of the Supreme Court of Newfoundland & Labrador, ordered the Government to implement the Tribunal’s salary increases which are reflected in the chart.

Puisne Judge Salaries Across Canada 2005-2022, Joint Book of Agreed Facts and Exhibits, Tab 5

A Total Compensation Analysis Confirms the Modesty of Association’s Proposals

290. The Sauvé Report, at Tab 11 in the Association’s Documents, compares the total value of the salaries and pension arrangements provided in each of Alberta, Ontario, the federal jurisdiction and Saskatchewan. Mr. Sauvé calculated the compensation value of retirement pension benefits as a level percentage of salary each year over the working lifetime of typical judges in Alberta. As the compensation value of the judicial pension arrangements varies by age at appointment and retirement, Mr. Sauvé used the demographic data of the current Bench including the retirement experience of Alberta judges, to calculate a weighted average compensation value that applies for the Bench as a whole. Mr. Sauvé then calculated the relative value of the pension plans available to judges in the other jurisdictions, for the group of Alberta judges.

291. According to the Sauvé Report, depending on the age of an individual judge at appointment, the value of Alberta’s judicial pension arrangement varies from a low of 37.9% of salary to a high of 40.5% of salary. The weighted average value, which takes
into account demographics of the entire complement of Alberta judges, is 39.3%. The value of Alberta’s judicial pension arrangements is significantly lower than the value, to the Alberta complement, of the pension currently available to judges in each of Ontario, the federal jurisdiction, and Saskatchewan:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Weighted Average Compensation Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta</td>
<td>39.3%</td>
</tr>
<tr>
<td>Ontario</td>
<td>57.1%</td>
</tr>
<tr>
<td>Federal</td>
<td>58.1%</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>47.4%</td>
</tr>
</tbody>
</table>

Sauvé Report, Association’s Documents, Tab 11, page 5

292. As the Sauvé Report confirms, the Association’s proposed increase of 0.81% in 2017, is much less than the salary increase that would be required to bring the total value of the Alberta salary and pension into line with the value of the salaries and pensions provided in the other jurisdictions. For the Alberta compensation to be equal to that provided in the other jurisdictions, the following salary increases would be required:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>% salary increase required for Alberta judges to receive equal total compensation</th>
<th>$ amount of salary increase required for equal total compensation</th>
<th>Association’s proposed increase for 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ontario</td>
<td>12.3%</td>
<td>$36,160</td>
<td>0.81% or $2,391</td>
</tr>
<tr>
<td>Federal</td>
<td>21.6%</td>
<td>$63,502</td>
<td>0.81% or $2,391</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>4.7%</td>
<td>$13,818</td>
<td>0.81% or $2,391</td>
</tr>
</tbody>
</table>

293. The foregoing ignores a further disparity that arises from the fact that judges in both Ontario and the federal jurisdiction are entitled to 8 weeks of vacation as compared with the 6 weeks available to Alberta judges. The additional 2 weeks of vacation is the equivalent of an additional 4% in salary. While the Association contends that the vacation entitlement for Alberta judges should be increased in the future, no such change is proposed to this 2017 JCC.
294. Leaving aside vacation, under the Association’s proposal, the total compensation of judges in Alberta would still be 17.2% less than the total compensation of federally appointed judges in both 2017 and 2018, and 10.3% and 10.8% less than the total compensation of Ontario judges in those years respectively.

Sauvé Report, Association’s Documents, Tab 11, page 6

295. The total compensation comparison supports an argument for increases to salary and/or to the value of the pension benefit provided in Alberta beyond what is currently proposed. The Association is not proposing to address the current disparities at this time because of Alberta’s economic and fiscal circumstances and the Government’s stated desire to constrain spending. The comparisons set out in the Sauvé Report clearly demonstrate that the Association’s proposals are fair and reasonable in the context of the fiscal difficulties that currently exist in Alberta.

The Real Increases in Primary Household Income Exceed Proposed Salary Increases

296. The following data from the chart on page 64 compares the forecasted increases in the real primary household income with the percentage salary increases proposed by the Association:

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Real Primary Household Income Change</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.8%</td>
<td>2.4%</td>
<td>2.8%</td>
<td>2.8%</td>
</tr>
<tr>
<td><strong>APJA Salary proposal</strong></td>
<td>0.8%</td>
<td>2.0%</td>
<td>2.5%</td>
<td>2.5%</td>
</tr>
</tbody>
</table>

297. The increases in Real Primary Household Income for the average Albertan exceed those proposed for judges. This criterion supports that the Association’s proposed adjustments are fair and reasonable in light of the economic and fiscal conditions for Albertans generally.
298. Alberta’s Primary Household Income Per Capita continues to compare favourably with that of other jurisdictions, including Ontario in particular. The 2018 McMillan Report concludes:

Thus, the recession in Alberta has resulted in the premium of Alberta’s primary household incomes per person relative to those in other provinces being reduced but that premium is still considerable (perhaps substantial). In addition, if incomes recover as well as the Alberta government expects, the premium relative to Ontario will be about 25 per cent and relative to British Columbia about 15 percent.

2018 McMillan Report, Association’s Documents, Tab 14, pages 19-20

299. This indicator supports the Association’s position that Alberta judges should continue to be paid at the top of provincial/territorial judicial salaries across the country.

Economic and Fiscal Circumstances of the Province

300. As detailed above commencing at page 58, Alberta’s economy leads that of all other jurisdictions by a very significant margin.

Changes in the Cost of Living

301. In its submissions to the 2013 JCC, the Government proposed that in each of 2014, 2015 and 2016, judicial salaries should be increased based on the percentage change in the Alberta Consumer Price Index, in order to “ensure that judicial salaries are not eroded by the effects of inflation”. This proposal was rejected by the 2013 JCC, which instead recommended fixed adjustments of 2.5% in each of those years. In so doing, the 2013 JCC explained, “We have done so deliberately considering all of the above factors set out in the Regulation, and more particularly the certainty it provides to both the Government and the judges of the Provincial Court of Alberta through to 2017.”

2013 JCC Report, Joint Book of Authorities, Tab 22, pages 35 and 47
302. That was distinct from the approach of the 2009 JCC, which recommended specific salaries for each of 2009 and 2010, and then CPI-based adjustments in each of 2011 and 2012. While this approach ensures that there is no erosion against cost of living in the period after an appropriate salary is determined for certain years based on all of the factors, it is clearly preferable that all of the relevant factors are taken into account in determining the appropriate salary for each of the years. Further, a CPI-based approach for the later years of a Tribunal’s mandate usually results in the need for a greater increase in the first year of a JCC’s mandate to once again reflect all of the relevant factors.

303. The Association’s proposal takes into account the estimated and forecasted changes in the Alberta CPI in each of the four years but also considers the other factors identified in the Commission Regulation. The actual and predicted changes in the CPI for fiscal year 2016/17 and following are set out in the Economic Outlook portion of the Fiscal Plan 2018-21, which was part of the Government’s 2018 Budget documents.

   Economic Outlook, Joint Book of Agreed Facts and Exhibits, Tab 13, page 2

304. The following chart shows what the judicial salaries would be if adjusted only by the percentage change in Alberta’s cost of living, and compares those figures with the Association’s proposal.

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta CPI (fiscal year)</td>
<td>1.1%</td>
<td>1.6%</td>
<td>2.1%</td>
<td>1.9%</td>
<td>2.0%</td>
</tr>
<tr>
<td>Salaries if adjusted only for CPI</td>
<td>$293,991</td>
<td>$297,225</td>
<td>$303,467</td>
<td>$309,232</td>
<td>$315,107</td>
</tr>
<tr>
<td>APJA proposal</td>
<td>n/a</td>
<td>$296,382</td>
<td>$302,304</td>
<td>309,990 (assuming IAI for Canada is 2%)</td>
<td>$317,863 (assuming IAI for Canada is 2%)</td>
</tr>
</tbody>
</table>
305. The chart above demonstrates that the Association’s proposal is fair and reasonable in light of the economic and fiscal difficulties discussed above. Indeed, the Association’s proposal would amount to less than a CPI-based adjustment in each of the first two years and only marginally more than CPI in the last two years.

306. The Association’s moderate approach respects the realities of the recent recession and the Government’s preferred approach thereto, but is consistent with the reasoning of past JCCs vis-à-vis the most important comparators for Alberta judges.

Expanding Jurisdiction

307. Having regard to s.13(i) of the Commission Regulation, the ever-expanding jurisdiction of the Provincial Court also supports its request for increased salaries effective April 1, 2017. The jurisdiction of the Court is described in some detail in Part I of this Submission.

Levels of Increases or Decreases, or Both, Provided to Other Programs and Persons Funded by the Government

308. This factor calls for consideration of the increases or decreases, or both, provided to other programs and persons funded by Government. While the Government has clearly opted to constrain spending, it is apparent from the discussion below that there continue to be increases, from an overall perspective, for both the programs and persons funded by Government.

309. In terms of program funding, the Fiscal Plan calls for operating expenses to rise 3.1% per year, on average, from 2018-19 to 2023-24. This will be achieved through containing costs in its two largest areas of spending – public sector compensation and health – while finding efficiencies across all areas of government.

Alberta Fiscal Plan, Budget 2018, Joint Book of Agreed Facts and Exhibits, Tab 12, page 82
310. In its Fiscal Plan set out in Budget 2018, the Government identifies seven ways in which it intends to “focus the investment of tax dollars where they are needed most, eliminate waste, control spending and find efficiencies to balance the budget by 2023-24”. One of the seven is:

- Managing public sector compensation which is over half of government’s annual operating expense by:
  
  o reaching practical agreements with labour unions;
  
  o continuing with a salary freeze on non-union employees in the public sector;
  
  o cutting the salaries and eliminating perks and bonuses for some of the highest paid executives of Alberta’s agencies, board and commissions, and
  
  o keeping the size of the Alberta public service flat.

Alberta Fiscal Plan, Budget 2018, Joint Book of Agreed Facts and Exhibits, Tab 12, page 10

311. So-called “practical agreements” have been reached with the Alberta Medical Association, the United Nurses of Alberta, Alberta Teachers’ Association, the Health Sciences Association of Alberta and the Alberta Union of Public Employees. It is apparent that each of the bargaining units achieved a variety of unique and valuable provisions in exchange for agreeing to no general wage increase for up to two years.

312. In February 2018, the United Nurses of Alberta ratified a three-year collective agreement with Alberta Health Services, the term of which is April 2017 to March 2020. The agreement included no general wage increases in either of 2017 or 2018, but a wage reopener clause in 2019. According to the wage reopener provision, if the pay increase cannot be agreed upon, the parties will proceed to interest arbitration. The agreement also includes a host of other benefits: job security assurances for registered practical nurses and registered nurses, guarantees of no reductions in hours; limits on the length of shift cycles; improved language relating to leaves for maternity and adoption, critical
illness of family members, disappearance of a child, domestic violence, union duties and citizenship ceremonies; payment in lieu of named holidays; and new language relating to on-call work for casual employees.


313. Accordingly, while there were no general wage increases in the first two years, there are clearly many other aspects to the agreement, many of which are of significant benefit to the union members. Moreover, presumably once the next election has passed, the union will have access to interest arbitration (in the absence of a negotiated agreement) to determine an appropriate wage increase for the third year of the agreement.


314. In May 2018, members of the Alberta Medical Association approved a two-year agreement which will be in place until March 31, 2020. The agreement involves no fee increases for doctors, although it does contemplate an increase of 3.5% to accommodate higher patient volumes. A series of other investments are reportedly part of the arrangement, including a Rural Remote Northern program, which pays doctors up to $60,000 to serve small communities, and the Business Costs initiative that assists community physicians with their overhead costs. Given the comparatively unique manner in which doctors are compensated, it is difficult, if not impossible, to understand the impact of the collective agreement as a whole on the compensation of individual doctors. Clearly though, there is much more to the agreement than the lack of fee increases which was the focus of media coverage.

Edmonton Journal, “Alberta doctors agree to fee freezes in two-year deal with province”, May 30, 2018, Association’s Documents, Tab 17
The Alberta Teachers’ Association recently negotiated a province-wide contract that provided no general wage increase for teachers and provided instead for a $75 million investment in improving “classroom conditions”. The agreement also contains “me too” provisions that will provide teachers with salary increases if other public sector unions secure pay increases in their negotiations. Once the provincial issues were resolved, local groups of teachers also negotiated other benefits specific to their local. In some cases, those negotiations are ongoing.


Edmonton public school teachers negotiated a one-year agreement that runs from September 1, 2017 to August 31, 2018 involving a $750,000 payment into a staff development fund, and an increase in the proportion of the $1.1 million in professional development funds available for post-secondary tuition. Teachers in other districts across Alberta have reached agreements with their school boards on local issues such as increases in professional development funding and entitlement, accumulation of leave of absence, the introduction of family needs leave, and substitute teachers’ rights, including notice of cancellation or pay in lieu of notice, and paid time if the individual is injured on the job. As of September 10, 2018, it was reported that 46 out of 61 locals have reached collective agreements with their respective school boards.

Edmonton Journal, “Edmonton teachers get more for professional upgrades”, November 7, 2017, Association’s Documents, Tab 20

ATA News, “Teachers make gains at local tables, Volume 52 Number 14, March 27, 2018, Association’s Documents, Tab 21

Calgary Herald, “Unresolved local issues could lead to Alberta teacher job action, teachers’ association says”, September 10, 2018, Association’s Documents, Tab 22

In February 2018, the Health Sciences Association of Alberta reached a three-year collective agreement with Alberta Health Services. The agreement commences in April 2017 and expires in March 2020. The agreement includes a two year salary freeze and a
requirement to negotiate wages in the third year. It also includes improvements to employee benefits and improved scheduling flexibility. The agreement was ratified in March 2018.

Alberta Health Services Press Release, “Alberta Health Services reaches agreement with Health Sciences Association of Alberta”, March 26, 2018, Association’s Documents, Tab 23

318. In August 2018, the Alberta Union of Public Employees reached a tentative settlement with the Government for members in direct Government Services which is currently subject to a ratification vote by the membership. Like other recently negotiated agreements, the agreement runs from April 2017 to March 2020 and includes no general wage increases in either 2017 or 2018 but contains a wage reopener in the third year (the parties will resort to binding arbitration if they are unable to reach a negotiated wage increase). The agreement also contains other monetary increases and benefits, including increases to the employees' health spending accounts, payments of overtime for travelling to and attending training, increases in the period whereby standby pay is incurred, and an increase in the reimbursements for medical certificates. The agreement also sees an increase in allowance amounts for correctional officers and an increase in the camp allowance for certain positions.

AUPE, “Tentative Agreement Between AUPE And the Government of Alberta”, Association’s Documents, Tab 24

319. There are a host of job security and workload assurances and improvements in the agreement as well, including the suspension of the layoff and recall and position abolishment clauses for the duration of the agreement, meaning that there will be no involuntary losses of employment during the life of the agreement. The summary document provided by the Alberta Union of Public Employees to its members regarding the agreement states that “in many ways the language improvements are historical and go far beyond what we have been able to achieve in past negotiations.” According to the Alberta Union of Public Employees website, the ratification vote process will be complete on October 23, 2018.
320. In September 2018, the Alberta Union of Public Employees also reached a
tentative settlement with Alberta Health Services for a three year collective agreement
running from April 2017 to March 2020. The agreement provides for no general wage
increases in either 2017 or 2018 but contains a wage reopener in the third year. The
agreement also reportedly provides for improvements in overtime and health benefits,
enhanced dental coverage, an increase in paramedical and other health coverage, and
an increase to the health spending account. The agreement also provides new
employment security provisions, protections against contracting out, and job guarantees
for members until the expiration of the agreement. It also provides for new domestic
violence and other forms of leave. According to the Alberta Union of Public Employees
website, the ratification vote process will be complete on November 14, 2018.

321. From the information available, it is clear that the parties to these various
negotiations chose to focus on items other than general wage increases, at least for the
first two years of the collective agreement. As each agreement contemplates a variety of
investments into a number of different aspects of compensation or working conditions, it
is difficult to assess what “level of increase” was really agreed upon. Further, while a no
layoff clause or a guarantee of hours has tremendous value to union members, that value
is difficult to quantify. It is clear, however, that this was far from concession bargaining
and that these public sector unions have achieved modest gains in a variety of their terms
and conditions of employment. Moreover, the general wage increase for 2019 is yet to
be determined.

322. JCCs in other jurisdictions have exercised significant caution in considering
information put forth by governments focusing on the general wage increases paid to
public sector employees. In rejecting the Manitoba Government’s proposal to apply the
same general wage increases to judges that it had paid to employees in the public sector, the 2011 Manitoba JCC wrote:

“The Province argued that 0%, 0% and 2.9% increases were the norm for the public sector in Manitoba. While the Committee received some information on these settlements, we did not see all the financial terms of the comprehensive agreements.

Also, we have to be mindful that in some, if not all, of these agreements, employees are entitled to step increases in their compensation based on years of service in a classification. Judges, of course, are not entitled to receive such increases based on years of service. Furthermore, certain unions bargained for and received guarantees of no layoffs. This has no relevance for judges, but it is a benefit that is difficult to put a dollar value on.”

2011 Manitoba JCC Report, Association’s Documents, Tab 26, page 73

323. As the 2011 Manitoba JCC pointed out, it is crucial to understand that a freeze of the salary grid does not mean individual employees will see a freeze in their compensation. To the extent that they have not reached the top of the steps within their classification, and assuming they do not seek promotion to a higher classification, unionized employees are still eligible to move up the salary grid based on years of service. By contrast, because judges all receive the same rate regardless of years of service, a judicial salary freeze is in fact a freeze.

Canadian Taxpayers Federation, “A couple quick notes about Government employee “pay freezes” in Alberta…”, taxpayer.com, posted August 16, 2018, Association’s Documents, Tab 27

324. In summary, the following points can be distilled from the foregoing discussion:

▪ there have been increases provided to programs and persons funded by Government, but those increases have been comparatively limited as part of an effort to constrain spending;

▪ there is no consistent overall measure that has been applied across the public sector; in each case, the parties have negotiated collective
agreements that include gains which reflect the unique priorities of bargaining unit members; and

- many of the gains achieved by public sector employees (e.g. no layoff clause, guaranteed hours, Business Costs initiative) are very significant, but difficult to quantify, and have no application in the context of a judicial office.

325. The Association has respected the Government’s focus on constrained spending in crafting tempered proposals to this 2017 JCC. By so doing, the Association’s proposals balance this factor with the other relevant criteria identified in the Commission Regulation, in a manner that is consistent with the reasoning of past JCCs in this and other jurisdictions.

2. **Reduction in the Age of Eligibility for Part-Time Service to Age 55 from Age 60**

**Recommendation Sought:**

- That the age of eligibility for part-time service be reduced to age 55 from age 60.

326. As it will create an overall cost-saving, the Association joins the Government in what the Association understands will be the Government’s proposal to reduce the age at which a judge is eligible for part-time service, to age 55 from age 60.

327. Section 9.24(1) of the *Provincial Court Act* provides for judges to be appointed to work “part-time” in certain circumstances, both before and after age 70, when all judges are required to retire. Subsection 9.24(2) of the Act provides that a judge may be appointed to part-time service if he or she has attained at least age 60 and meets certain other conditions. The subsection reads:

9.24(2) Where a judge

(a) has attained the age of 60 years,

(b) has completed 10 years of service as a judge, and
states in writing to the Chief Judge that the judge is prepared to retire as a full-time judge in order to continue in office as a part-time judge, the Chief Judge may approve that person to continue in office as a part-time judge on that person’s retirement as a full-time judge if the Chief Judge determines that approving that person to continue in office will enhance the efficient and effective administration of the Court.

Provincial Court Act, Joint Book of Authorities, Tab 9

328. As set out above, a judge who seeks the approval of the Chief Judge to move to part-time service must retire as a full-time judge, which means that the judge ceases contributing to and accruing further benefits in the judicial pension plans. The Government therefore no longer incurs the cost of making pension contributions in respect of the judge.

329. The Government and the Association jointly retained an actuary, Mr. John Slipp, an actuary with Aon, which also acts as the plan actuary for the Provincial Judges and Masters in Chambers Registered and Unregistered Pension Plans. Mr. Slipp’s Report, dated September 21, 2018, is provided as Tab 7 in the Joint Book of Agreed Facts & Exhibits.

330. The Association accepts Mr. Slipp’s conclusion, which is set out on page 4:

Providing an enhancement to reduce the age at which a member is eligible to retire and be reappointed to a part-time position will result in some minor increases to liabilities, but as members would be expected to be in a part-time position for a longer period, this should result in less full-time members earning future benefits, which will result in some saving in future current service costs. The current service cost savings will likely be larger than the net cost noted above.

331. Mr. Slipp notes in his Report that comparatively few judges will be eligible to access this benefit. This is because the average age of appointment of judges in full-time service as of April 1, 2017 was age 52.3. In order to meet the requirement for 10 years of service and at least age 55, a judge would have had to be appointed at age 45 or earlier. Given
the realities of the average appointment age, this benefit will necessarily be unavailable to many of the current complement because of the separate requirement for ten years of service. Even among those who were appointed at a sufficiently young age in order to meet the service requirement, the move to part-time service is unlikely to appeal to very many.

332. As pension benefits are accrued at 3% per annum, a judge with only ten years of service will have accrued a pension of only 30% of the best three years of salary. The financial impact of retiring from full-time service with so little pension accrued can reasonably be expected to act as a significant disincentive. Put bluntly, the move to part-time service before age 60 is likely to be attractive only to those who consider themselves effectively unable, for whatever reason, to continue serving as a judge in a full-time capacity. To those few who would otherwise consider leaving the Bench entirely, the opportunity to continue as a part-time judge would provide another option. The Bench as a whole would benefit significantly in that a talented, experienced judge who may well otherwise retire completely, would have the opportunity to continue to serve in a part-time capacity. For this reason, the proposal is also in the public interest.

333. Particularly as the proposal is likely to generate cost savings, but also because it will provide a very significant benefit to the few who can be reasonably expected to take up the opportunity, the Association respectfully submits that the proposed reduction in the age of eligibility for part-time service is both fair and reasonable.

3. **Judicial Indemnity**

**Recommendation Sought:**

- That the Government should pass a Regulation containing the provisions of the Judicial Indemnity such that its terms and conditions are clear and transparent, like all other aspects of judicial compensation.

334. The 2013 JCC recommended the adoption of a Judicial Indemnity, the terms of which were agreed upon between the parties after more than two years of discussion.
The terms and conditions of the Judicial Indemnity form Appendix A to the 2013 JCC Report.

2013 JCC Report, Joint Book of Authorities, Tab 22, page 51 and Appendix A

335. As noted, the Government accepted all the 2013 JCC’s recommendations on July 8, 2015. Despite that, and despite many inquiries by and on behalf of the Association, the Government took no immediate steps to ensure that the Judicial Indemnity was reflected in Regulation. Only on November 21, 2017, more than two years later, did the Lieutenant Governor in Council pass Order in Council 395/2017, AR 220/2017, which provided the necessary authorization for the Minister to provide the Indemnity.

AR 220/2017, Association’s Documents, Tab 28

336. Alberta Regulation 220/2017 had the effect of amending the Indemnity Authorization Regulation (AR 22/97) by, inter alia, adding the following after section 11:

12(1) In this section, “Minister” means the member of the Executive Council responsible for the Provincial Court Act and the Court of Queen’s Bench Act.

(2) The Minister is authorized on behalf of the Crown, on the terms and conditions recommended by a Judicial Compensation Commission that are binding on the Crown, to indemnify a judge of the Provincial Court of Alberta or a master in chambers against all costs, charges and expenses, including amounts paid to settle actions or satisfy judgments, incurred by the judge or master in chambers in respect of civil, criminal or administrative actions or proceedings, including any complaints, charges or inquiries, whether a party or not, arising out of his or her conduct as a judge or master in chambers.

AR 220/2017, Association’s Documents, Tab 28

337. AR 220/2017 authorizes the Minister to provide the Indemnity, but does not set the terms of that Indemnity. On December 14, 2017, the Deputy Minister signed a “Ministerial Order (M.O. 80/2017) ordering that the Crown shall indemnify judges and masters in
accordance with the recommendations of the 2013 JCC. A copy of MO 80/2017 is at Tab 29 in the Association’s Documents.

338. Accordingly, it is currently the case that in order to determine what Indemnity is available, a judge or a member of the public would need to:

(a) locate the relevant sections in the *Indemnity Authorization Regulation*;

(b) locate the relevant Ministerial Order and any subsequent orders that revoke or amend it;

(c) locate and review subsequent JCC Reports to determine what, if any, recommendations have been made for a Judicial Indemnity (including whether, and to what extent, those provisions had been amended by subsequent JCC recommendations); and

(d) review the Orders in Council which contain the Government’s response to these JCC recommendations (and to the extent any recommendations were rejected, the status of any related litigation).

339. No other aspect of judicial compensation is similarly shielded from public view. Save and except for the Judicial Indemnity, every other aspect of judicial compensation for Alberta judges is clearly set out in either the:

(a) Provincial Judges and Masters in Chambers Compensation Regulation; or

(b) Provincial Judges and Masters in Chambers Registered and Unregistered Pension Plan Regulation.

340. When a recommended change in compensation is accepted by Government, the Government makes the adjustment only after the compensation is clearly set out in either of these regulations. The reasons why the Judicial Indemnity has been dealt with so differently are unknown to the Association.
341. The Association considers that the terms and conditions of the Judicial Indemnity should be transparent and readily accessible to any judge – or member of the public – who wishes to find out what is provided. This is particularly important in an era when the public demands a high level of transparency and accountability from all branches of government, including the judiciary. For these reasons, it is the position of the Association that the terms of this significant protection for judges should be clearly set out - or at least directly referenced - in the Provincial Judges and Masters in Chambers Compensation Regulation.
PART V: COSTS

342. The Association continues to be of the view that its reasonable costs, including legal fees and disbursements, should be fully paid by the Government.

343. Section 17 of the *Commission Regulation* states:

17(1) The Crown shall pay the reasonable costs incurred by the Association in making its submissions to the Commission in an amount not exceeding the amount set by order of the Minister, which order must be made within a reasonable period of time before the date set by the Commission for the commencement of its inquiry hearings.

17(2) If the Minister does not agree with the costs incurred by the Association for the purposes of section (1), including lawyers’ charges and other costs of the proceedings before the Commission, then, on the Minister’s application, the reasonableness of those costs may be reviewed by a review officer, in which case Rule 10.46 (including the right to appeal under Rule 10.46(4) of the Alberta Rules of Court (AR 124/2010) applies.

*Commission Regulation*, Joint Book of Authorities, Tab 11

344. By order of the Minister of Justice and the Attorney General of Alberta, the maximum amount of representational costs to be paid to the Association by the Government is $150,000. This is the same amount which the Minister authorized as the maximum amount in connection with the 2013 JCC process, conducted four years ago.

*Ministerial Order MO 56/2018*, Joint Book of Authorities, Tab 15

345. The Association maintains the position it advanced before the 2009 and 2013 JCCs, that section 17 of the *Commission Regulation* does not foreclose this JCC from recommending costs in excess of those set unilaterally by the Minister. Subsection 4(1) of the *Commission Regulation* expressly confirms this 2017 JCC’s jurisdiction to conduct an inquiry respecting “any other issues relevant to the financial security of the judges that the Commission agrees to resolve”. As argued in the 2009 and 2013 JCC processes, it is routine for JCCs across Canada to make recommendations regarding payment by the
Government of costs incurred by Provincial Court judges in preparing for and appearing at the JCC.

346. Costs for the 2009 JCC were also governed by Regulation, albeit with different language than that contained in either the 2013 or the current Commission Regulation. Section 19 of the 2009 Alberta Provincial Judges Compensation Commission Regulation required the Government to pay two-thirds of the reasonable costs that were incurred by the Association in making its submission to the 2009 JCC up to a maximum of $200,000 (2009 JCC Report, Joint Book of Authorities, Tab 20, page 57).

347. The Association sought a recommendation that the Government pay 100% of the Association’s reasonable legal fees and disbursements (including expert evidence). In arguing that the 2009 JCC had jurisdiction to so recommend, the Association cited s. 6(d) of the Regulation that permitted the Commission to conduct an inquiry respecting “any other issues relevant to the financial security of the judges that the Commission agrees to resolve”.

348. The 2009 JCC concluded that:

“The Association makes the legitimate point that it is essential to an effective commission process that the Association be adequately represented and able to provide comprehensive submissions to the commission.”

2009 JCC Report, Joint Book of Authorities, Tab 20, page 58

349. It also concluded that:

“There is force to the argument that, in placing its own position before the Commission, the Government is basically unrestrained in its use of resources. It faces no percentage limit or cap. To some extent, the scope of the Association’s submission is determined by what the Government decides to submit, to concede, or to dispute.”

2009 JCC Report, Joint Book of Authorities, Tab 20, page 58
350. It further concluded:

“There is also force to the view that, if the Commission process is to be, and to be perceived to be, something other than ordinary labour relations collective bargaining, then it should be recognized, by the allocation of resources, that the Association is playing an important public role instead of simply a “judicial bargaining” role. Simply put, the more the members of the Association, who must fund the Association’s costs to the extent they are not covered by Government, have to pay for “their submissions”, the more they will perceive it to be bargaining with Government. This is the very appearance and attitude the unique judicial Compensation Commission was designed to avoid.”

2009 JCC Report, Joint Book of Authorities, **Tab 20**, page 59

351. Despite that the Commission accepted these various arguments advanced by the Association, it nonetheless found that it was bound by the language of s.19(1) unless the costs set by Regulation were “so parsimonious as to amount to a significant barrier to the process”. In the absence of that circumstance, the JCC considered that it was bound by the language in section 19(1) which established the formula for costs and removed the JCC’s authority to alter the result established by the Regulation.

2009 JCC Report, Joint Book of Authorities, **Tab 20**, page 59

352. As noted above, the formula set out in both the 2013 and 2017 Commission Regulations provides simply that “the Crown shall pay the reasonable costs incurred by the Association in making its submissions …”. The cap on fees was set by Ministerial Order. The Association submits that, given this difference, it is open to the 2017 JCC to recommend that additional costs should be paid.

*Commission Regulation*, Joint Book of Authorities, **Tab 11**

353. Over the course of the last four years, the Association has incurred significant cost in the course of engaging with Government to ensure implementation of the pension-related recommendations of the 2013 JCC, urging Government to appoint this 2017 JCC
on a timely basis, and discussing its intended proposals to this 2017 JCC with Government in an effort to explore the possibility of advancing common positions on all or certain issues, thereby increasing the efficiency of the process. Through its participation in these various efforts, the Association has reasonably incurred very significant legal fees and disbursements, including the cost of experts. For that reason, it reserves the right, up to the conclusion of the hearing, to seek a recommendation for costs beyond the limit set out in the Ministerial Order.

All of which is respectfully submitted this 17th day of October, 2018.

SUSAN DAWES