2017 ALBERTA JUDICIAL COMPENSATION COMMISSION

The Minister of Justice and Solicitor General
in and for the Province of Alberta

- and -

The Alberta Provincial Judges’ Association

SUBMISSION OF THE MINISTER OF JUSTICE AND SOLICITOR GENERAL
IN AND FOR THE PROVINCE OF ALBERTA

ALBERTA JUSTICE
Bill Olthuis
Kate Bridgett
Josh de Groot

Counsel for The Minister of Justice and Solicitor General in and for the Province of Alberta

MYERS WEINBERG LLP
Susan Dawes

Counsel for The Alberta Provincial Judges’ Association
TABLE OF CONTENTS

INTRODUCTION ................................................................................................................................. 1

SUMMARY OF MINISTER’S COMPENSATION SUBMISSIONS .......................................................... 1

JUDICIAL COMPENSATION IN ALBERTA ......................................................................................... 2

JURISDICTION OF THE PRESENT COMMISSION .......................................................................... 2

PARTICIPANTS IN THE COMMISSION PROCESS ............................................................................ 2

LEGAL PRINCIPLES RELEVANT TO JUDICIAL COMPENSATION .................................................. 3
  Judicial Independence and Compensation Commissions .............................................................. 3
  Government’s authority to set judicial compensation ................................................................. 6

CRITERIA ............................................................................................................................................... 6

BACKGROUND AND CONTEXT OF THE 2017 COMMISSION ..................................................... 7

1998 COMMISSION .......................................................................................................................... 8

2000 COMMISSION .......................................................................................................................... 9

2003 COMMISSION ........................................................................................................................ 11

2006 COMMISSION ........................................................................................................................ 13

2009 COMMISSION ........................................................................................................................ 16

2013 COMMISSION ........................................................................................................................ 17

REVIEW AND CONSIDERATION OF CRITERIA (A) TO (D) .......................................................... 19

CRITERIA A AND B – THE CONSTITUTIONAL LAW OF CANADA AND THE NEED TO MAINTAIN INDEPENDENCE OF JUDGES AND THE PROVINCIAL COURT ................................................................................................................................. 19
  Guarantee of Judicial Independence ............................................................................................... 20
  Commission Process ....................................................................................................................... 21

CRITERION C – THE UNIQUE NATURE OF THE ROLE OF JUDGES ............................................... 22

CRITERION D – THE NEED TO MAINTAIN A STRONG PROVINCIAL COURT BY ATTRACTING HIGHLY QUALIFIED APPLICANTS ................................................................................................................................. 22
  The Current Composition of the Court including Recent Appointees .......................................... 23
  The Judicial Appointment Process ............................................................................................... 29

REVIEW AND CONSIDERATION OF CRITERION (E) ........................................................................ 30

SPECIFIC CONSIDERATION OF CRITERION E - THE REMUNERATION AND BENEFITS OTHER JUDGES IN CANADA RECEIVE ............................................................. 30
  Historical Compensation Comparison – Alberta Provincial Court Judges and Other Canadian Provincial Court Judges ........................................................................................................................................ 30
  Specific Historical Compensation Linkage – Alberta and Ontario Provincial Judges ................ 33
  Specific Historical Compensation Linkage – Alberta Provincial Judges and Federally Appointed Judges ................................................................. 37
The Recent Commission Practice of Recommending Alberta Judicial Salaries be at “Approximate Parity” with Ontario Judicial Salaries Should Be Abandoned
This Commission Should Give Considerable Weight to the Relatively Severe Short and Medium Term Negative Effects of the Recent Alberta Recession on the Overall Alberta Economy and the Financial Position of the Government of Alberta in Comparison to the Much More Stable and Positive Performance of the Ontario Economy in the Same Time Period. ................................................................. 85

This Commission Should Maintain the Historically Recognized Salary “Gap” with Federally Appointed Judges and Should be Wary of Statutorily Prescribed Annual Salary Increases for Federally Appointed Judges .............. 88

CONCLUSIONS BASED ON CONSIDERATION OF CRITERIA (F) AND (H) ................................................................. 90

2013 Commission Recommendations for Alberta Judicial Salary Percentage Increases Based on Overly Optimistic Economic Predictions ................................................................. 90

Review of the 2013 Justices of the Peace Compensation Commission - the Post 2014 Sudden and Sharp Decline in Alberta Economic Conditions Expressly Noted and Salary Recommendations Tempered Accordingly ........... 92

CONCLUSIONS BASED ON CONSIDERATION OF CRITERION (G) ........................................................................ 94

This Commission Can and Should Make Salary Recommendations Based in Part on Evaluation of the Stated Rationale for the Salary Increase Recommendations of the 2013 Commission ........................................ 94

This Commission Should Make Salary Recommendations Bearing in Mind Previous Over Compensation Resulting from the Reliance of the 2013 Commission on Overly Optimistic Economic Indicators .......... 101

This Commission Should Make Salary Recommendations Bearing in Mind the Past, Present, and Anticipated Future Negative Effects of the Recent Alberta Recession and the Inherently Volatile and Uncertain Nature of Alberta’s Economy Looking Ahead ................................................................. 102

CONCLUSIONS BASED ON CONSIDERATION OF CRITERION (I) ......................................................................... 105

Alberta is balancing its obligations to meet all of its financial obligations with respect for the JCC process and the administration of justice ............................................................................ 105

RESPONSE TO APJA’S ACTUARIAL EVIDENCE .................................................................................................. 106

NOTABLE CONCLUSIONS FROM THE MOORE REBUTTAL REPORT ........................................................................ 106

“ALBERTA’S TAX ADVANTAGE” — GENERAL AFTER TAX COMPARISON OF JUDICIAL SALARIES IN SELECT PROVINCES .......... 109

THE MINISTER’S COMPENSATION PROPOSAL .................................................................................................. 113

GENERAL COMMENTS ........................................................................................................................................ 113

THE MINISTER’S PROPOSED JOINT SUBMISSION .......................................................................................... 113

DETAILS OF THE MINISTER’S COMPENSATION PROPOSAL ........................................................................ 115

Salary ................................................................................................................................................................. 115

Professional Allowance .................................................................................................................................. 116

Reduction in the Age of Eligibility for Part-time Service ................................................................................. 116

Judicial Indemnity ............................................................................................................................................ 116

THE ASSOCIATION’S SALARY INCREASE PROPOSAL SHOULD BE REJECTED .................................................. 117

COSTING OF THE PARTIES’ COMPENSATION PROPOSALS ........................................................................ 121
# INDEX OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 1</td>
<td>Provincial Court Appointments, July 2014 – July 2018</td>
<td>24</td>
</tr>
<tr>
<td>Table 2</td>
<td>Total Percentage Increases in Judicial Salary, 2013/14 to 2016/17</td>
<td>51</td>
</tr>
<tr>
<td>Table 3</td>
<td>Comparative Judicial Salary Percentage Ratios</td>
<td>51</td>
</tr>
<tr>
<td>Table 4</td>
<td>Judicial Salary Comparison Chart: The Association’s Judicial Salary Increase Proposal and the Recommendation of the 2018 Ontario Commission</td>
<td>119</td>
</tr>
<tr>
<td>Table 5</td>
<td>Projected Salary and Benefit Costs for the Minister’s Compensation Proposal</td>
<td>123</td>
</tr>
<tr>
<td>Table 6</td>
<td>Projected Salary and Benefit Costs for the Association’s Compensation Proposal</td>
<td>124</td>
</tr>
<tr>
<td>Table 7</td>
<td>Comparison between Minister’s Compensation Proposal and Association’s Compensation Proposal</td>
<td>125</td>
</tr>
</tbody>
</table>
INTRODUCTION

REFERENCES

[AFE #] refers to Tab numbers in the Joint Book of Agreed Facts and Exhibits

[JBA #] refers to Tab numbers in the Joint Book of Authorities

[TAB #] refers to Tab numbers attached to these Submissions

Summary of Minister’s Compensation Submissions

1. The Minister of Justice and Solicitor General in and for the Province of Alberta (“Minister”) submits that the 2017 Judicial Compensation Commission (“Commission”) should recommend the following as reasonable compensation and benefits for Provincial Court Judges and Masters in Chambers (referred to collectively hereinafter as “The Minister’s Compensation Proposal”).

Salaries: For reasons set out below, the Minister's position is that there should be no salary increases for the term of the Commission's mandate.

Professional Allowance: The Minister is agreeable to an increase to the judges' annual professional allowance from $3,750 to $4,500, effective April 1, 2017.

Reduction in the Age of Eligibility for Part-time Service: Based on the conclusions in the final report of the Actuary for the Provincial Judges and Masters in Chambers Registered and Unregistered Pension Plans (John Slipp of Aon) dated September 21, 2018, the Minister is agreeable to an amendment to the eligibility for part-time service from 60 to 55 years of age.

Judicial Indemnity Issue: For reasons set out below, the Minister is of the view that there is no need to include reference to the indemnity in another regulation as proposed by the Alberta Provincial Judges’ Association (“AP JA”).
2. The Commission is the seventh in Alberta. It has jurisdiction to conduct an inquiry and make recommendations regarding the appropriate compensation for Judges and Masters in Alberta from April 1, 2017 through March 31, 2021.1

Participants in the Commission Process

3. The following parties are involved in the inquiry:

**The Minister**, who is responsible for superintending all matters relating to the administration of justice in Alberta that are within the powers or jurisdiction of the Legislature or the Government;2

**The Alberta Provincial Judges Association** (the Association or APJA), which is incorporated under the *Societies Act* and enjoys the membership of most, but not all, provincial court judges; and

**The Association of Masters in Chambers of the Court of Queen’s Bench of Alberta**, which is incorporated under the *Societies Act* and enjoys the membership of all of the masters.

4. As at August 10, 2018, there were 119 full-time judges and 25 part-time judges sitting in Alberta, along with a number of available supernumerary judges and four judges receiving Long Term Disability Insurance benefits.3

---

2 Pursuant to Schedule 9 of the *Government Organization Act* [RSA 2000 c.G-10 as amended] and s 16 of the *Designation and Transfer of Responsibility Regulation* [AR 38/2008 as amended]
3 Judicial Complement as at August 10, 2018 [AFE #1]
5. As at August 10, 2018 there were six full-time and two half-time masters sitting in Alberta, along with one part-time and one ad hoc master.⁴

**Legal Principles Relevant to Judicial Compensation**

**Judicial Independence and Compensation Commissions**

6. Section 11(d) of the Charter guarantees judicial independence for provincial court judges and Masters in Chambers (references to judges in this brief can be read as references to the Provincial Court Judges and the Masters in Chambers). Judicial independence has three components: security of tenure, administrative independence, and financial security.⁵ Ensuring financial security requires that a provincial judge’s right to compensation be established by law, and that the executive branch of government not be able to arbitrarily interfere with that right.

7. To protect the judicial branch’s constitutional role in Canada and to support public confidence in the independence of the judiciary, compensation commissions must advise government about the appropriate level of judicial compensation.⁶ The governing principles are as follows [all paragraph references to PEI Reference]:⁷

- The relationship between the judiciary and other branches of government must not be political. Courts must be free and appear to be free from political interference through economic manipulation by the other branches of government [131];

- Provincial judges’ salaries can be reduced, increased or frozen as part of an overall economic measure affecting salaries of same or all persons remunerated from public funds, or as part of specific measures directed at provincial court judges. However, any changes or freezes require prior recourse to an independent,
effective, and objective process or body – a commission – to avoid the possibility or appearance of political interference through economic manipulation [133];

- Governments are constitutionally required to go through a commission process [133];

- The executive and the legislature are not bound by a commission’s recommendations but should not set them aside lightly. If the executive or the legislature chooses to depart from them, it must justify the decision, if need be, in court [133];

- Although chief judges and organizations representing judges may express concern or make submissions to government regarding the adequacy of judicial compensation, neither the collective judiciary nor individual judges can negotiate compensation with the executive or legislature [134];

- Judicial remuneration cannot be reduced or eroded by inflation below a basic minimum level which is required for the office of a judge. Public confidence in the independence of the judiciary would be undermined if judges were paid so little that they could be perceived as susceptible to political pressure through economic manipulation [135].

8. Commissions must be independent, objective, and effective, consistent with the following principles [all paragraph references to PEI Reference]:

- Commissions serve as an institutional sieve, to prevent the use of judicial remuneration as a tool to exert political pressure on the judiciary. It would undermine that goal if the independent commissions were under the control of the executive or the legislature [170];

- Commission members must have security of tenure, meaning they should serve for a fixed term which may vary in length [171];
• A commission should have members appointed by the judiciary and the legislature and the executive so that it isn’t entirely controlled by any single branch of government [172];

• A commission’s goal is “an objective and fair set of recommendations dictated by the public interest”. It must make recommendations based on objective criteria included in the enabling legislation or regulation, not political expediencies. Commissions should be fully informed before making their recommendations, so should receive and consider submissions from the judiciary, the executive, and the legislature [173];

• These requirements guarantee a commission’s effectiveness [174 – 183]:
  o Governments are constitutionally obligated not to change or freeze judicial remuneration until they have received the commission’s report;
  o To guard against inflation-based reduction in salaries based on government inaction, commissions must convene if a fixed period of time has passed since their last report;
  o Although not binding, commission reports must have a meaningful effect on judicial compensation. Judicial independence requires that the executive or legislature must formally respond to the commission’s recommendations within a specified time. If the executive or legislature chooses to reject a recommendation, it has to give reasons for doing so, and justify its decision, if necessary, in a court of law, on a standard of simple rationality.
9. If a government chooses to reject a commission’s recommendations it must provide rational reasons for doing so.⁸

**Government’s authority to set judicial compensation**

10. Decisions about allocating public resources belong to the legislature and executive; the Charter does not require that commission recommendations be binding.⁹ Governments can change or freeze judges’ salaries either as part of a global measure aimed at some or all persons paid from public funds, or as a measure affecting judges only, as long as that the government goes through the commission process first. In other words, governments have the power to determine judicial compensation but that power is not absolute.¹⁰

11. There is nothing inherently irrational about including judges in across-the-board measures affecting substantially every person paid from the public purse; such measures are typically connected with the government’s overall fiscal priorities and aimed at furthering the larger public interest.¹¹ As Chief Justice Lamer wrote,

   Nothing would be more damaging to the reputation of the judiciary and the administration of justice than a perception that judges were not shouldering their share of the burden in difficult economic times.¹²

**Criteria**

12. The Commission Regulation sets out the objective criteria the Commission must consider in conducting its Inquiry and in framing its recommendations (the Criteria).¹³ The Criteria, which are nearly identical to those considered in the previous Alberta Commissions, are:

   a) the constitutional law of Canada (Criterion A);

---

⁸ *Provincial Court Judges’ Assn (New Brunswick) v New Brunswick (Minister of Justice) (“Bodner”) 2005 CarswellNB 405, 2005 SCC 44 [JBA #2]*  
⁹ *PEI Reference* at paras 131, 133, 176 [JBA #1]; *Bodner* at para 20 [JBA #2]  
¹⁰ *Bodner* at para 22 [JBA #2]  
¹¹ *PEI Reference* at para 184 [JBA #1]  
¹² *PEI Reference* at para 196 [JBA #1]  
¹³ *Commission Regulation* ss 13(a) – (k) [JBA #11]
b) the need to maintain the independence of the judges and the Provincial Court (Criterion B);

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

d) in the case of Provincial Court judges, the need to maintain a strong Provincial Court by attracting highly qualified applicants (Criterion D);

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

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

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 (Criterion G);

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

i) the nature of the jurisdiction of judges (Criterion I);

j) the level of increases or decreases, or both, provided to other programs and persons funded by the Government (Criterion J);

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

**BACKGROUND AND CONTEXT OF THE 2017 COMMISSION**

13. Before *PEI Reference*, Alberta judicial compensation was determined in a variety of ways, including direct negotiations between government and judicial representatives.
14. Since *PEI Reference* and consistent with the legal principles set out above, six previous Commissions have recommended judicial compensation for Judges and Masters.\(^{14}\)

15. This is the 7th Alberta Commission. Each previous Commission conducted a careful and thorough review of judicial compensation in Alberta and made recommendations based on extensive evidence and submissions by the parties.

**1998 Commission**


17. The 1998 Commission recommended significant improvements to the compensation of Alberta Provincial Court Judges:

   **Salary:** Increases from $113,964 to $142,000 and $152,000 effective April 1, 1998 and April 1, 1999 respectively;

   **Administrative Stipend:** An increase in the extra salary paid to the Chief Judge and Assistant Chief Judges from $14,256 to $15,000, and from $7,288 to $7,500, respectively;

   **Pension:** Several changes, including:

   - A supplemental or unregistered plan to deal with the maximum salary cap determining pensionable salaries in the federal *Income Tax Act* (“ITA”);

\(^{14}\) **1998 Commission:** April 1, 1998 – March 31, 2000; **2000 Commission:** April 1, 2000 – March 31, 2003; **2003 Commission:** April 1, 2003 – March 31, 2006; **2006 Commission:** April 1, 2006 – March 31, 2009; and **2009 Commission:** April 1, 2009 – March 31, 2013 [reports at JBA #16, #17, #18, #19 and #20]
• On a go-forward basis, an increase in the pension accrual rate from 2% to 2.67% per year, and a change in the benefit formula to the best three consecutive years in place of the best 5 consecutive years rule;

• For post-1998 judicial service, an early retirement penalty of 3% per year for every year below age 65 or for every year by which the total of age plus years of service was less than 80; and

• A requirement that judges contribute 9% of their annual salaries for a maximum of 25 years, and that maximum benefits be accrued after 25 years;

Other Benefits: An extension of Long Term Disability Insurance (“LTDI”) from age 65 to age 70, and removal of the $78,000 coverage ceiling.

18. These recommendations were eventually implemented over the Government’s objections: Provincial Judges’ Assn. (Alberta) v. Alberta\textsuperscript{15}.

2000 Commission

19. The 2000 Commission was a significant departure from the 1998 Commission as the Association and the Minister presented a joint submission to a sole Commissioner, Bruce Dunlop, FCA: Report and Recommendations of the 2000 Judicial Compensation Commission (\textquotedblleft2000 Report\textquotedblright) [JBA \#17]. Also, the 2000 Commission was the first Alberta Commission to be established by Regulation\textsuperscript{16}, a practice which continues to the present.

20. The joint submission was a product of the settlement agreed to by the parties following the government’s legal challenge of the 1998 Commission’s recommendations. Its purpose was “to assist in the orderly and efficient discharge of the 2000 Commission’s constitutionally mandated obligations” [JBA \#17 at p. 4]. Also as part of the settlement agreement the

\textsuperscript{15} 1999 CarswellAlta 72 (QB), affirmed 1999 CarswellAlta 687 (CA), leave to appeal refused 2000 CarswellAlta 482 (SCC) [not attached]

\textsuperscript{16} AR 100/2000 [not attached]
Government agreed to pay the Association’s costs incurred in respect of the 1998 Commission, an issue on which the 1998 Commission had been silent.

21. With one exception, the recommendations of the 2000 Commission reflected the joint submission. The recommendations were:

**Salary:** Increase from $152,000 to $170,000 for the period April 1, 2000 to March 31, 2003;

**Administrative Stipend:** Maintenance at $15,000 and $7,500 for the Chief Judge and Assistant Chief Judges respectively;

**Pensions:** several changes, including:

- Reduction of the contribution rate from 9% to 7% effective April 1, 2000;

- Increase in the accumulation rate from 2.67% to 3% per year for each year of judicial service after April 1, 2000;

- Increase of the maximum ceiling from 66 2/3% to 70% effective April 1, 1998;

- For judges who retire after April 1, 2000, the penalty for early retirement on pension benefits earned after April 1, 1998 should be the greater of:
  - 3% of those benefits for every year of retirement before age 60, or
  - 3% of those benefits for every year less than the total of the judge’s age in years plus the judge’s years of judicial service deducted from 80;

- For the period January 1, 1992 to March 31, 1998, removal of:
  - the ITA maximum cap on pensionable salary,
  - reduction of survivors’ benefits below 75%, and
  - penalties for early retirement after age 55;
• Continuation of survivor benefits at 75% from April 1, 1998 onwards;

**Other Benefits:** A non-taxable annual professional allowance of $2,500 commencing April 1, 2000;\(^{17}\)

**Costs:** Payment of the Association’s costs before the 2000 Commission, calculated in the same manner as government compensates external counsel.

22. The government accepted and implemented the recommendations of the 2000 Commission.

**2003 Commission**


24. The recommendations of the 2003 Commission were as follows:

**Salary:** Increase to $200,000 from April 1, 2003 to March 21, 2004; to $210,000 from April 1, 2004 to March 31, 2005; and to $220,000 from April 1, 2005 through March 31, 2006;

**Administrative Stipends:** Maintain at $15,000 and $7,500 for the Chief Judge and Assistant Chief Judges respectively;

**Per Diem for Supernumerary Judges:** Increase from $760 per day to $1,000, $1,030, and $1,060 effective April 1, 2003, 2004 and 2005 respectively;

**Pension:** No changes;

---

\(^{17}\) This was not part of the joint submission. It was based on a submission made by an individual judge.
Other Benefits:

- Introduction of indexing LTDI benefits at a rate of 60% of the increase in the Statistics Canada Consumer Price Index for Alberta;
- Increase the Professional Allowance from $2,500 to $3,000; and
- Remove the $300 annual cap on extra vehicle insurance required for business use.

25. Though it accepted the recommendations regarding pension and other benefits, the Government did not accept the salary and per diem recommendations. The LGC gave its reasons for doing so and set the compensation for judges and masters for the period April 1, 2003 through March 31, 2006 in Judicial Compensation Order OC 161/2004.

26. The Association applied for judicial review of OC 161/2004. The Honourable Mr. Justice MacCallum found that the LGC’s reasons for not accepting the Commission’s recommendations were rational, but held that the Court of Appeal’s decision in Bodner v Alberta\(^\text{18}\) required the reasons to pass a justification standard which required demonstration of extraordinary circumstances, which they did not: Alberta Provincial Judges’ Assn. v. Alberta\(^\text{19}\). Accordingly, he ordered that the Government reconsider its position with respect to the 2003 Commission’s salary and per diem recommendations within 90 days and provide reasons justifying any rejection of the recommendations on the ground of exceptional circumstances, failing which the recommendations would become binding on the Crown.

27. The Government did not provide further reasons within the 90-day period. Rather, the Government continued to pay Judges and Masters in accordance with the recommendations of the 2003 Commission, even though the Compensation Regulation had never been amended to provide for the payment of salaries in such amounts. The Association appealed and the Government cross-appealed Justice MacCallum’s decision, but neither appeal was ever argued.

\(^{18}\) 2002 CarswellAlta 1451, 2002 ABCA 274 [not attached]  
\(^{19}\) 2004 ABQB 611 [not attached]
After the appeals were filed, the Supreme Court of Canada reversed the Alberta Court of Appeal in *Bodner* and affirmed that the test for judicial review of the reasons of the LGC for rejecting JCC recommendations is simple rationality, and that no exceptional circumstances need be shown.\(^{20}\)

**2006 Commission**

28. Both parties supported a joint submission to the 2006 Commission, which consisted of sole Commissioner John Moreau, Q.C. With one exception, the recommendations by the 2006 Commission reflected the joint submission: Report and Recommendations of the 2006 Judicial Compensation Commission ("2006 Report") [JBA #19].

29. This joint submission occurred in the aftermath of the aforenoted ongoing legal dispute which followed the 2003 Commission. The Government viewed the said decision of the SCC in *Bodner* as very strongly favouring its position in regard to its pending appeal of Justice MacCallum’s decision. The Government knew that if it was successful in that appeal the practical result would be that the de facto salaries paid to the Alberta Provincial Court Judges and Alberta Masters since the 2003 Commission would have represented overpayment.

30. This was stated, as follows, in the Minister’s Written Submissions to the 2006 Commission:

\[\text{30. Thus, while compensation for judges and masters is usually governed by the Compensation Regulation, the Compensation Regulation has not been amended to provide for salaries or per diems for the period after March 31, 2003. The salaries and per diems paid effective April 1, 2003 have in fact been those recommended by the 2003 Commission, as shown in Table 1 below:}\]

\(^{20}\) Although *Bodner* arose out of the 2000 Alberta *Justices of the Peace* Compensation Committee, at para. 121 the SCC rejected any notion that the principles were different from those applicable to provincial judges [JBA #2]
Table 1: Alberta Judicial Salaries & per diem, 2003 - 2006 per 2003 Commission

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Judge / Chief Judge / Assistant Chief Judge Salary</th>
<th>Supernumerary Per Diem</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003-2004</td>
<td>$200,000 / $215,000 / $207,500</td>
<td>$1000</td>
</tr>
<tr>
<td>2004-2005</td>
<td>$210,000 / $225,000 / $217,500</td>
<td>$1030</td>
</tr>
<tr>
<td>2005-2006</td>
<td>$220,000 / $235,000 / $227,500</td>
<td>$1060</td>
</tr>
</tbody>
</table>

31. Should the Association’s position in the Court of Appeal prevail, no adjustments will be necessary, whereas Government success on the Appeals would mean that the Compensation Regulation would be amended in accordance with OC 161/2004, Schedule 2, to provide that the amounts shown in Table 2 below would be the lawful salaries of judges and masters over the last 3 fiscal years, such that judges and masters had been overpaid:

Table 2: Alberta Judicial Salaries & per diem, 2003 - 2006 per OC 161/2004

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Judge / Chief Judge / Assistant</th>
<th>Supernumerary</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003-2004</td>
<td>$186,000 / $201,000 / $193,500</td>
<td>$831</td>
</tr>
<tr>
<td>2004-2005</td>
<td>$193,000 / $208,000 / $200,500</td>
<td>$862</td>
</tr>
<tr>
<td>2005-2006</td>
<td>$200,000 / $215,000 / $207,500</td>
<td>$893</td>
</tr>
</tbody>
</table>

31. Ultimately, in regard to the 2006 Commission, the Government, despite its aforesaid view that its chance of success in the pending appeal was very good, decided to participate in a joint submission on compensation. This was done in recognition of the SCC’s remark in *Bodner* that one of the major purposes of the Commission process is to diminish, rather than exacerbate, friction between the executive and the judiciary [JBA #2 at para. 12].

32. Specifically, the parties discussed the possibility that there might be common ground with respect to the compensation issues for the purposes of the 2006 Commission. This was based on four components: 1) that the salaries and per diem rates paid in accordance with the decision of the 2003 Commission would be treated as permanent compensation for 2003 – 2006; 2) that the appeal and cross-appeal of Justice MacCallum’s decision be abandoned; 3) that judicial salaries would remain at $220,000 for 2006 – 2009; and 4) that certain minor changes be made to the judicial pension plan.

33. Each party prepared separate written arguments supporting the joint submission for different stated reasons:
• The Government compared provincial judges salaries in Alberta from 1998 – 2006 to all other provincial and territorial jurisdictions and federally appointed judges in the same time period, and illustrated that the 2003 Commission’s recommendations increased Alberta’s salaries significantly in relation to every other Canadian jurisdiction. The Government also illustrated that if the joint proposal were accepted, Alberta’s salary would be second only to the salary of federally appointed judges;

• The Association argued that the salaries recommended by the 2003 Commission were adequate, suitable and appropriate, that Alberta judges’ salaries should reflect the “narrowing of any meaningful functional difference” between the Provincial Court and the Court of Queen’s Bench, and that uncertainty over the salary of federally appointed judges from 2004 – 2008 made it difficult to make any submission on the extent to which salaries for Alberta provincial judges should be adjusted for 2006 – 2009 beyond $220,000 per annum. The Association noted that it was in the public interest to determine the issue of judicial compensation for the next three years with certainty, and described its submission to maintain salaries for the next three years as “moderate and restrained”.

34. After considering written and oral submissions by the parties, and after considering the criteria set out in the governing Regulation\textsuperscript{21}, the Commission made the following recommendations:

**Salary:** $220,000 for the period April 1, 2006 – March 31, 2009;

**Administrative Stipends:** For the Chief Judge and Assistant Chief Judges remain at $15,000 and $7,500 respectively;

\textsuperscript{21} Alberta Provincial Judges Compensation Commission Regulation AR 111/2006 [not attached]
**Per Diem for Supernumerary judges:** $1,060 per scheduled sitting day and, where a sitting is cancelled with less than 24 hours’ notice, the supernumerary judge who would have held the sitting is entitled to be paid for that sitting, as well as for the allowances provided for all judges in sections 4 and 5 of the *Compensation Regulation*;

**Part-time judges:** The part-time judges program should continue operating as it has been since October 1, 2005. For the period April 1, 2006 through March 31, 2009, part time judges be paid a salary of 50% of the amount payable to a full time judge, but if the aggregate of the part-time judge’s annual salary and pension benefits payable during a 12 month term of appointment exceeds the annual salary of a full time judge for that 12 month term of appointment, the annual salary payable to the part-time judge shall be reduced by the amount exceeded;

**Pension:** For Judges and Masters retiring on or after April 1, 2006, the pension plan be enhanced by the adoption of a universal “best three consecutive years” rule when calculating pension benefits;

**Other benefits:** For the period April 1, 2006 – March 31, 2009 the other benefits for Judges and Masters be as provided in the Compensation Regulation;

**LTDI:** Effective April 1, 2006, LTDI benefits be payable at 70% of the current salary being paid to judges performing regular duties.22

**2009 Commission**

35. The Association and the Minister made separate submissions to the 2009 Commission, which recommended:23

**Salary:** Increase to $250,000 from April 1, 2009 to March 31, 2010, to $255,000 from April 1, 2010 to March 31, 2011, and for the next two fiscal years, by the percentage

---

22 This was not part of the joint submission. It was based on a submission made by an individual judge.
amount of the year-over-year increase, if any, in the Alberta All Items Consumer Price Index for the preceding year;

**Administrative Stipends:** For April 1, 2009 to March 31, 2010 increase to $20,000, $15,000 and $10,000 for the Chief Judge, Deputy Chief Judge and Assistant Chief Judges respectively, then starting April 1, 2010, set stipend in these respective categories at an additional 10%, 7.5% and 5% of a full time puisne judge’s salary;

**Per Diem for Supernumerary Judges:** Maintain at the current ratio of 1/207.5 of the salary of a full time puisne judge;

**Pensions:** Effective April 1, 2009 and for all judges retiring on or after that date, index pension benefits at 100% of the annual Alberta CPI percentage change;

**Professional Allowance:** Increase to $3,750 per year for full time judges and set at $1,875 per year for part time judges. Implement specific rules about carrying forward unreimbursed amounts and allowable expenses, and make available an additional $750 per judge for fiscal years 2009 and 2010.

36. The government accepted and fully implemented all of the recommendations except the recommendation to provide a full pension to any judge who has served for 25 years.

**2013 Commission**


38. The recommendations of the 2013 Commission were as follows:

**Salary:** Increases to $273,000 from April 1, 2013 to March 21, 2014; to $279,825 from April 1, 2014 to March 31, 2015; to $286,821 from April 1, 2015 through March 31, 2016; and to $293,991 from April 1, 2015 to March 31, 2017;
Per Diem for Supernumerary Judges and part-time/ad hoc Masters: Maintain at the current ratio of 1/207.5 of the salary of a full time puisne judge;

Professional Allowance: Professional development allowance of $3,750 per year be provided to all judges and Masters, including part-time judges and half-time Masters. This recommendation maintained the full time judges’ professional allowance amount, but increased the amount for part-time judges and half-time Masters from $1,875 per year to $3,750 per year;

Pension: The 2013 Report made detailed pension recommendations at pages 48-51 of the Report, which can generally be summarized as follows:

i) Allowing a surviving pension partner of a judge that dies prior to termination from the pension plans the ability to make the choices under s. 29(1) of the Provincial Judges and Masters in Chambers (Registered) Pension Plans Regulation that would have been available to the judge if the judge had terminated from the pension plans prior to death;

ii) The vesting period for the judicial pensions be reduced from five years to two years.

Judicial Indemnity: The Minister develop and implement a Judicial Indemnity Agreement that full indemnifies the Provincial Court of Alberta judges and masters for legal fees and other costs incurred which may affect their judicial function or capacity as a judge or master.

REVIEW AND CONSIDERATION OF CRITERIA (A) TO (D)

Criteria A and B – the constitutional law of Canada and the need to maintain independence of judges and the Provincial Court

40. Because of the overlap between these two criteria, we address them together in this section.

41. The Commission process and Minister’s Compensation Proposal meet the constitutional requirements to maintain the independence of the Court, Judges and Masters.

42. Judicial independence is the constitutional principle which guides the existence and work of this Commission. This principle serves the important societal goal of maintaining public confidence in the impartiality of the judiciary and the rule of law.\(^{24}\)

43. To meet the guarantee of judicial independence, compensation must not fall below a minimum standard, changes to compensation must be developed through recourse to an independent commission, and governments and judges must not negotiate compensation. In Alberta, all three aspects of these tests are met.

44. The Supreme Court of Canada has said that “the guarantee of a minimum acceptable level of judicial remuneration is not a device to shield the courts from the effects of deficit reduction”.\(^{25}\) The British Columbia Court of Appeal agrees that the guarantee “does not shield judges from sharing the burden of difficult economic times”.\(^{26}\)

45. Though the Supreme Court of Canada has not prescribed what an acceptable minimum level of judicial remuneration might be, there can be no serious argument that the Minister’s Compensation Proposal is so inadequate that the public could perceive judges as being susceptible to political pressure through economic manipulation.

\(^{24}\) PEI Reference at paras. 9 and 10 [JBA #1]  
\(^{25}\) PEI Reference at para. 196 [JBA #1]  
\(^{26}\) Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General), 2015 BCCA 136 at para 40 [TAB #1], leave dismissed Attorney General of British Columbia v. Provincial Court Judges’ Association of British Columbia, 2015 CanLII 69435 (SCC) [not attached]
46. The Commission itself constitutes a structural separation between the government and the judiciary, and meets the constitutional standard:

- It is independent – appointments to the Commission are not controlled by any one branch of government and are for fixed terms;\(^{27}\)

- It is objective – the Commission Regulation contains objective criteria to guide its deliberations, and it receives and considers submissions from the Association, the Minister and members of the public to ensure it is fully informed;\(^{28}\)

- It is effective – the Commission was convened within the timeframe prescribed in the *Judicature Act*, the government will not alter judicial compensation before receiving this Commission’s report, and its recommendations bind government unless the government takes specific steps to reject them. This procedure requires that government formally respond to the Commission’s report within a set time frame and, if it chooses not to accept some or any recommendations, justify this decision on a simple rationality standard.\(^{29}\)

**Guarantee of Judicial Independence**

47. The key principle guiding the existence and work of this Commission is judicial independence, which emerges from Canadian constitutional law. Judicial independence serves important societal goals, namely maintaining both public confidence in the impartiality of the judiciary, and the rule of law.\(^{30}\)

48. *Valente* says that the *Charter* guarantees judicial independence, and that financial security is one of its three components. Both *PEI Reference* and *Bodner* reflect the principle that the design and level of judicial compensation arrangements are one of the key elements in securing and maintaining an independent and impartial court as required by the constitution.

\(^{27}\) *PEI Reference* at paras. 171 and 172 [JBA #1]

\(^{28}\) *PEI Reference* at para. 173 [JBA #1]

\(^{29}\) *PEI Reference* at paras. 174 and 175 [JBA #1]

\(^{30}\) *PEI Reference* at paras. 9 and 10 [JBA #1]
Therefore, to meet the guarantee, 1) changes to compensation must be developed through recourse to an independent commission, 2) governments and judges must not negotiate compensation, and 3) compensation must not fall below a minimum standard.

**Commission Process**

49. The Commission itself meets the constitutional standard:

   It is independent – appointments to the Commission are not controlled by any one branch of government and are for fixed terms;\(^{31}\)

   It is objective – the *Commission Regulation* contains objective criteria to guide its deliberations, and it receives and considers submissions from the Association and the Minister to ensure it is fully informed;\(^{32}\)

   It is effective – the Commission was convened within the timeframe prescribed in the *Judicature Act*, the government will not alter judicial compensation before receiving this Commission’s report, and its recommendations bind government unless the government takes specific steps to reject them. This procedure requires that government formally respond to the Commission’s report within a set time frame and, if it chooses not to accept some or any recommendations, justify this decision on a simple rationality standard.\(^{33}\)

50. Overall, as 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 envisioned by the Supreme Court of Canada.

---

\(^{31}\) *PEI Reference* at paras. 171 and 172 [JBA #1]

\(^{32}\) *PEI Reference* at para. 173 [JBA #1]

\(^{33}\) *PEI Reference* at paras. 174 and 175 [JBA #1]
Criterion C – the unique nature of the role of judges

51. This criterion reflects the critical role judges play in enforcing the law and protecting the values of our society. No other member of our society has the same responsibility and authority. The Minister’s Compensation Proposal recognizes the singular nature of this role in balance with the other criteria.

52. Judges are uniquely subject to public scrutiny, and despite their understanding of the facts and law in issue, cannot respond to criticism no matter how ill-informed or unfair. Provincial court judges spend much of their time adjudicating between the Crown and its citizens and as such, a judge is the arbiter of important constitutional rights of citizens and is the protector of those rights against the power and expanse of government. Judges’ personal behaviour inside and outside the courtroom must be beyond reproach; they cannot show favour or be swayed by personal biases.

53. Because the role of a judge does not equate to that of a politician, bureaucrat, executive leader or advocate, the level of judicial compensation ought not to be determined by any direct relationship to salary levels of government employees. Similarly, the salaries of private sector decision-makers are not suitable comparators.

Criterion D – the need to maintain a strong Provincial Court by attracting highly qualified applicants

54. The Minister submits that the Minister’s Compensation Proposal will fully meet this need.

34 1998 Report at p 27 [JBA #16]
35 2009 Report at p 16 [JBA #20]
36 2003 Report at p 32 [JBA #18]
37 2013 Report at p 23 [JBA #22]
The Current Composition of the Court including Recent Appointees

55. As the current list of full time and part time Judges and Masters illustrates, the existing court represents an overall high standard of excellence.  

56. Information regarding judicial appointees since the last Commission hearing demonstrates the Court’s present ability to attract highly experienced, qualified and competent applicants. As shown in Table 1, the 28 judges appointed to the Provincial Court since July 2014 represent a balanced cross-section of lawyers working in the private and public sectors. All were relatively senior with a wide variety of legal experience and community, professional and charitable service. The average years at the bar pre-appointment was just over 26 and ranged from 17 to 37 years. Of the 17 women and 11 men shown in Table 1:

- 15 spent most of their careers in the private sector, including six criminal defence and two family law specialists, three civil lawyers from large firms, three general practitioners, and one who specialized in First Nations governance and treaty issues;
- Eight spent most of their careers with the Alberta Crown Prosecution Service or the Federal government, with three others spending part of their careers as prosecutors; and
- Five had mixed practices including time spent in both the public and private sectors.

---

39 Judicial Complement as of August 10, 2018 [AFE #1]
40 The source of the information in Table 1 is a series of Government of Alberta News Releases since July 2014 [TAB #2]
**Table 1**  
Provincial Court Appointments July 2014 – July 2018

<table>
<thead>
<tr>
<th></th>
<th>Appt Date</th>
<th>Judge</th>
<th>Sitting Location</th>
<th>Years at Bar</th>
<th>Other Particulars</th>
<th>Public/Private Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2014 Sep 18</td>
<td>Joyce LESTER</td>
<td>Edmonton</td>
<td>29</td>
<td>Various community initiatives, including the Foster Care Advisory Council, the Youth Emergency Shelter Society, and volunteer board member with the Edmonton Minor Hockey Association</td>
<td>Public and private: Crown prosecutor, criminal defence, part-time and full-time Justice of the Peace</td>
</tr>
<tr>
<td>2</td>
<td>2014 Sep 18</td>
<td>Laura STEVENS, Q.C.</td>
<td>Edmonton</td>
<td>31</td>
<td>Executive with the Criminal Trial Lawyers Association, Legal Aid Society committee member, sessional lecturer at University of Alberta Faculty of Law</td>
<td>Private: senior partner in criminal defence firm</td>
</tr>
<tr>
<td>3</td>
<td>2014 Dec 04</td>
<td>Greg LEPP, Q.C.</td>
<td>Edmonton</td>
<td>32</td>
<td>Also member of SK bar, has represented AB on many national and international prosecution committees, lectured across Canada and the USA, member of the judge-led Court Case Management Program, which aims to improve access to justice and the efficiency of Alberta’s criminal justice system</td>
<td>Public: Alberta Crown Prosecution Service Assistant Deputy Minister, Director of Special Prosecutions, economic crime prosecutor</td>
</tr>
<tr>
<td>4</td>
<td>2015 Jan 30</td>
<td>Daniel ZALMANOWITZ, Q.C.</td>
<td>Edmonton Family &amp; Youth</td>
<td>36</td>
<td>Donates his time to charitable work and mentoring with the Law Society of Alberta</td>
<td>Private: partner at large firm; commercial law, with emphasis on franchise law</td>
</tr>
<tr>
<td>Appt Date</td>
<td>Judge</td>
<td>Sitting Location</td>
<td>Years at Bar</td>
<td>Other Particulars</td>
<td>Public/Private Sector</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-------</td>
<td>------------------</td>
<td>--------------</td>
<td>------------------</td>
<td>----------------------</td>
<td></td>
</tr>
<tr>
<td>2015 Sep 18</td>
<td>Diana MAH</td>
<td>Calgary Family &amp; Youth</td>
<td>24</td>
<td>While with the Youth Criminal Defence Office (YCDO) helped implement Calgary Provincial Court’s Functional Family Therapy program, which addresses domestic violence issues; executive of the Criminal Defence Lawyers Association, volunteer facilitator and evaluator with the Canadian Centre for Professional Legal Education, mentors articling students at University of Calgary Faculty of Law Student Legal Assistance, V-P of her community association</td>
<td>Private: general practice and staff counsel with Legal Aid’s Youth Criminal Defence Office</td>
<td></td>
</tr>
<tr>
<td>2015 Sep 04</td>
<td>Lloyd ROBERTSON, Q.C.</td>
<td>Calgary Criminal</td>
<td>23</td>
<td>Co-lead of Alberta Crown Prosecution Service initiatives including Court Case Management Program. Board member of HomeFront Calgary, an organization dedicated to addressing domestic violence, and the Sheldon Kennedy Child Advocacy Centre which supports children and families inside and outside of the court system who have been affected by child abuse</td>
<td>Public: Crown Prosecutor / Chief Crown Prosecutor</td>
<td></td>
</tr>
<tr>
<td>2015 Sep 04</td>
<td>Marilyn SLAWINSKY</td>
<td>Calgary Criminal</td>
<td>28</td>
<td>Board member of Red Deer County Subdivision and Development Board, Central Alberta Regional Assessment Review Board, Red Deer Community Information and Referral Society; volunteer with Law Society of Alberta, Alberta Legal Education Society, Golden Circle Senior Centre (Red Deer), mediator with GoA’s Family Mediation Program</td>
<td>Public and private: Family Law and ADR, Manager of Family Justice Services, Family Law Information Centre, Provincial Court Civil Claims Mediation program, AB Director of Dispute Resolution Services, Public Complaint Director and Counsel for Calgary Police Commission, Policing Manager for City of Red Deer</td>
<td></td>
</tr>
<tr>
<td>Appt Date</td>
<td>Judge</td>
<td>Sitting Location</td>
<td>Years at Bar</td>
<td>Other Particulars</td>
<td>Public/Private Sector</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-------</td>
<td>------------------</td>
<td>--------------</td>
<td>------------------</td>
<td>-----------------------</td>
<td></td>
</tr>
<tr>
<td>2015 Oct 23</td>
<td>Renée COCHARD, Q.C.</td>
<td>Edmonton Criminal</td>
<td>36</td>
<td>Legal advisor for Student Legal Services of Alberta’s Family Law Project, providing legal assistance to low income and unrepresented families. Holds Master of Laws degree, PhD candidate at time of appointment; steering committee member of Edmonton YWCA Battered Women’s Support program, board member of Canadian Mental Health Association, Planned Parenthood Edmonton and the Breakfast Committee; Honorary Consul of Belgium for the AB Region</td>
<td>Private: Family Law</td>
<td></td>
</tr>
<tr>
<td>2016 Jul 29</td>
<td>Carrie Jean SHARPE</td>
<td>Edmonton Criminal</td>
<td>20</td>
<td>Volunteer with United Way, Habitat for Humanity, Prostitution Offender Program, Edmonton Young Offender Centre</td>
<td>Public: Alberta Crown Prosecutor (incl. appellate counsel) and Public Prosecution Service of Canada</td>
<td></td>
</tr>
<tr>
<td>2016 Sep 28</td>
<td>Ivan Modeste Laurie LADOUCEUR</td>
<td>Edmonton Region - St. Paul</td>
<td>24</td>
<td>Member of Metis Nation of Alberta, fluent in Cree, member of the Eagle Sundance Society helping First Nations organize and conduct the Eagle Sundance ceremony</td>
<td>Private: criminal, family and child welfare based in High Prairie and serving northern communities incl. Fort McMurray, Fort Chipewyan, Valleyview, and others</td>
<td></td>
</tr>
<tr>
<td>2016 Oct 26</td>
<td>Jasmine SIHRA</td>
<td>Northern Region – Grande Prairie</td>
<td>22</td>
<td>Has taught law and business classes at Grande Prairie Regional College</td>
<td>Public and private: general practice, Crown Prosecutor in Grande Prairie</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Appt Date</td>
<td>Judge</td>
<td>Sitting Location</td>
<td>Years at Bar</td>
<td>Other Particulars</td>
<td>Public/Private Sector</td>
</tr>
<tr>
<td>-----</td>
<td>---------------</td>
<td>------------------------</td>
<td>------------------</td>
<td>--------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>13</td>
<td>2016 Oct 26</td>
<td>D'Arcy DePOE</td>
<td>Edmonton</td>
<td>35</td>
<td>Member and past president of the Criminal Trial Lawyers Association, instructor at Bar Admission Course, Legal Education Society of Alberta seminars, guest lecturer at University of Alberta Law School</td>
<td>Private: criminal defence</td>
</tr>
<tr>
<td>14</td>
<td>2016 Nov 01</td>
<td>Thomas ACHTYMICHUK, Q.C.</td>
<td>Edmonton</td>
<td>26</td>
<td>President of CBA Alberta Branch, Director of LESA and Canadian Bar Insurance Association, chair of national CBA Legislation and Law Reform Committee, speaker at CLE conferences and articling student admission program</td>
<td>Private: large firm civil litigation and business law</td>
</tr>
<tr>
<td>15</td>
<td>2016 Dec 13</td>
<td>Michèle COLLINSON</td>
<td>Edmonton</td>
<td>26</td>
<td>Volunteers with animal rescues and collecting food for the Edmonton Food Bank</td>
<td>Public: Crown Prosecutor and Assistant Chief Crown Prosecutor, including roles as Special Prosecutions Coordinator of the High Risk Offenders Unit and Counsel in the ACPS Policy Branch</td>
</tr>
<tr>
<td>16</td>
<td>2016 Dec 13</td>
<td>Julie LLOYD, Q.C.</td>
<td>Edmonton</td>
<td>24</td>
<td>Bencher of the Law Society of Alberta, sessional instructor and guest speaker at University of Alberta’s Faculty of Law, member of the Canadian Human Rights Tribunal</td>
<td>Private: family and human rights, counsel at Legal Aid Alberta’s Legal Services Centre</td>
</tr>
<tr>
<td>17</td>
<td>2017 May 09</td>
<td>Fatima AIRTH</td>
<td>Calgary</td>
<td>17</td>
<td>Helped set up first court within the Provincial Court specifically designed to hear domestic violence cases</td>
<td>Public: practiced immigration and refugee law, positions with Citizenship and Immigration Canada, Canadian Border Services Agency; full-time Justice of the Peace</td>
</tr>
<tr>
<td>18</td>
<td>2017 May 09</td>
<td>Joshua HAWKES, Q.C.</td>
<td>Calgary</td>
<td>26</td>
<td>Bencher of the Law Society of Alberta, local and national Canadian Bar Association sections, President of the Uniform Law Conference of Canada</td>
<td>Public: Crown Prosecutor &amp; Appellate Counsel including management positions</td>
</tr>
<tr>
<td>Appt Date</td>
<td>Judge</td>
<td>Sitting Location</td>
<td>Years at Bar</td>
<td>Other Particulars</td>
<td>Public/Private Sector</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>--------------------------------</td>
<td>------------------</td>
<td>--------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>2017 May 09 Margaret KEELAGHAN, Q.C.</td>
<td>Calgary Criminal and Region</td>
<td>26</td>
<td>Senior managing counsel at Calgary Legal Guidance, John Howard Society and Elizabeth Fry Society board member, Law Society of Alberta Access to Justice Committee member</td>
<td>Private: criminal defence focusing on Indigenous and human rights</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>2017 Dec 05 David HANCOCK, Q.C.</td>
<td>Edmonton Family &amp; Youth</td>
<td>37</td>
<td>Board member of the Edmonton Community Foundation, Citadel Theatre, and Alberta Arbitration and Mediation Society; Chancellor of St. Stephen's College at the University of Alberta</td>
<td>Public and private: criminal, civil, family and corporate law, 18 years as an MLA, Cabinet Minister (Justice, Health, Human Services, Education, Deputy Premier), Premier and Government House Leader</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>2017 Dec 05 Marian De SOUZA, Q.C.</td>
<td>Calgary Region</td>
<td>21</td>
<td>Numerous roles with the Law Society of Alberta and the Canadian Bar Association, including president and executive officer of the Alberta branch; active volunteer in Calgary, has provided pro-bono legal advice and services through a number of local community organizations</td>
<td>Private: legal-aid clients in civil, criminal, family and child protection cases; ten years as corporate in-house counsel and Director of a Fortune 500 company</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>2017 Dec 05 Robert SHAIGEC</td>
<td>Edmonton Region</td>
<td>20</td>
<td>Committee member for Legal Aid Alberta, held numerous positions with the Criminal Trial Lawyers Association and is a long-time community volunteer</td>
<td>Private: criminal defence</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>2017 Dec 13 Karen A. CROWSHOE</td>
<td>Calgary Criminal</td>
<td>23</td>
<td>Member of the Piikani Nation, member of the Iron Shirt Culture and Heritage Society, United Way of Calgary youth mentor, Piikani Youth &amp; Education Foundation board member, taught native studies courses at University of Lethbridge and Red Crow Community College</td>
<td>Private: focus on First Nations governance, treaty rights, on-reserve business and economic development, development of on-reserve child welfare services</td>
<td></td>
</tr>
<tr>
<td>Appt Date</td>
<td>Judge</td>
<td>Sitting Location</td>
<td>Years at Bar</td>
<td>Other Particulars</td>
<td>Public/Private Sector</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>-------</td>
<td>-----------------</td>
<td>--------------</td>
<td>-------------------</td>
<td>----------------------</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>2018 July 31</td>
<td>Randal BRANDT</td>
<td>Edmonton</td>
<td>Criminal</td>
<td>25</td>
<td>Member of MB bar, board member and chair of the St. Paul United Church Board of Directors</td>
</tr>
<tr>
<td>25</td>
<td>2018 July 31</td>
<td>Andrea CHRENEK</td>
<td>Northern Region - Grande Prairie</td>
<td>24</td>
<td>Past member of the Provincial Court Nominating Committee, facilitator for the Parenting After Separation Seminar; member of the Swan City Rotary Club, director of the Grande Prairie Youth Emergency Shelter Society, board member of the Grande Prairie Women’s Residence Association</td>
<td>Private: commercial litigation, employment and family law</td>
</tr>
<tr>
<td>26</td>
<td>2018 July 31</td>
<td>Sandra CORBETT, Q.C.</td>
<td>Civil Division - Edmonton</td>
<td>28</td>
<td>Recognized for her leadership and efforts to advance women in the legal profession, frequent speaker at legal conferences, sessional instructor teaching insurance law at University of Alberta Faculty of Law</td>
<td>Private: large firm, focus on resolving complex tort and liability matters in civil and commercial litigation</td>
</tr>
<tr>
<td>27</td>
<td>2018 July 31</td>
<td>Karen HEWITT, Q.C.</td>
<td>Central Region - Wetaskiwin</td>
<td>28</td>
<td>Holds master of laws degree, Law Society of Alberta Bencher, member of various academic, non-profit and CBA committees</td>
<td>Public: Crown prosecutor, including Specialized Prosecutions and regional circuit</td>
</tr>
<tr>
<td>28</td>
<td>2018 July 31</td>
<td>Robert MARCEAU</td>
<td>Northern Region - Peace River</td>
<td>19</td>
<td>Member of Criminal Trial Lawyers Association, long-term community volunteer, member of the Legal Aid Appeal Committee</td>
<td>Private: criminal defence, partner in Peace River firm</td>
</tr>
</tbody>
</table>

**The Judicial Appointment Process**

57. Detailed information about the judicial appointment process is available on the Alberta Courts website. Excerpts are included at **AFE #4**. Briefly, the Judicial Council first reviews all applications, then makes recommendations to the Minister of Justice about who is suitable to proceed further. The Provincial Court Nominating Committee (PCNC) then interviews applicants who have been approved by the Judicial Council. The PCNC considers applicants based on set
criteria, and after interviewing each applicant, classifies the applicant as highly recommended, recommended, not recommended, or not recommended at this time. The Minister fills judicial vacancies by selecting from the list of applicants who are recommended or highly recommended, and submits a recommendation to Cabinet. If Cabinet agrees with the Minister, the new judge is appointed by Order in Council.

58. Judicial Applicant Statistics 2014 – 2018 at AFE #2 sets out information about the pool of judicial applicants at several points in time. For example, it shows that as at April 10, 2018, there were 30 lawyers on the PCNC’s list of “highly recommended” candidates, including 13 in private practice and 17 in government, corporate, or other practices. The number of highly recommended candidates on the list has remained consistent over the last four years. There is no reason to believe this situation will change.

REVIEW AND CONSIDERATION OF CRITERION (E)

Specific Consideration of Criterion E - the Remuneration and Benefits Other Judges in Canada Receive

59. Criterion E is “the Remuneration and Benefits Other Judges in Canada Receive”.

Historical Compensation Comparison – Alberta Provincial Court Judges and Other Canadian Provincial Court Judges

60. It has been generally accepted by previous Commissions that, as judges play a unique role in society, a primary consideration in the determination, at any particular time, of an appropriate level of compensation for judges is a review of comparable compensation paid to other judges.

61. The 1998 Commission specifically looked at where Alberta Provincial Court Judges “ranked” as against other Judges in Canada (including Federally Appointed Judges). In its Report, the Commission included a comparative judicial salary table: 1998 Report p.10. [JBA #16].
62. In its Report, the 1998 Commission included the following comment: 1998 Report, p. 31 [JBA #16]:

From our perspective, at the risk of generalizing, a comparative analysis of other jurisdictions is clearly instructive but not determinative of the appropriate compensation for our Provincial Court judges, for a number of reasons.


64. In its Report, the 2003 Commission noted that it had, “. . . carefully considered the compensation of other judges in Canada”: 2003 Report p. 37 [JBA #18]. Further on, the 2003 Commission stated that, “. . . 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”: 2003 Report p. 53 [JBA #18].


66. In its Report, the 2009 Commission also specifically noted the relative importance of this criterion. For instance, it stated the following: 2009 Report p. 53 [JBA #20].

What judges and masters performing similar functions in other jurisdictions are being paid can provide guidance with respect to the adequacy of their remuneration in this province, and offer a measure of assurance that the key constitutional requirements associated with the compensation of judges, as previously articulated, are being met.

Past commissions have all identified this criterion as one of the more important ones regarding developing recommendations. At the same time, past commissions have also expressed the caution, which we adopt, to not let this one criterion completely overshadow other factors that need properly to be taken into account to arrive at our conclusions.

67. The 2009 Commission also took the time to review and analyze in some detail the differing submissions of the Association and the Minister in respect to this criterion and its specific
significance in application to the circumstances with which the 2009 Commission was dealing
with: 2009 Report pgs. 19 - 21 [JBA #20].

68. In this regard, the 2009 Commission specifically noted that while both “… parties agreed,
generally, that Alberta appointees, when compared to other provincial judges … should receive
compensation "near the top" in Canada (that) this general consensus did not translate into
agreement, as has happened in the past … to jointly support specific salary recommendations.”
The 2009 Commission further stated that “… while expressing a similar sentiment, it was
apparent from the written briefs and the oral submissions we received that there was significant
divergence about how this common general observation should translate into concrete salary
positions”: 2009 Report p. 19 [JBA #20].

69. In regard to what it referred to as “… undertaking comparisons of judicial compensation
between jurisdictions”, the 2009 Commission referred to one of “the challenges” in doing so as
resulting from the fact that “… parallel compensation review processes take place federally and
in other provinces at different times (with the result that the) … periods for which compensation
arrangements are in place in one jurisdiction will not necessarily align with periods for which
judges' pay has been fixed in another jurisdiction”: 2009 Report p. 20 [JBA #20].

70. The 2009 Commission noted that the parties had made “competing submissions” in this
regard and then expressed its preferred way to make such comparisons of judicial compensation
between jurisdictions as follows: 2009 Report p. 20 [JBA #20]:

One way for us to address the vagaries of timing of different compensation-setting processes in
different jurisdictions is to consider trends that the comparators exhibit, rather than isolating data
on specific dates. This will tend to even out year-to-year variations.

71. Applying that methodology to the data presented to it, the 2009 Commission then went
on to make the following specific observations in regard to what it referred to as “inter-
jurisdictional comparisons” of judicial salaries previous to that time: 2009 Report p. 20 [JBA #20]:
Broadly speaking, key trends that we derive from an examination of the data ... include the following:

- Salaries of federally-appointed superior court judges have typically exceeded salaries of Alberta Provincial Court judges; in the period that independent compensation commissions have been operating, since 1998, up to April, 2009, the gap has ranged between 7% and 19%, averaging 13% over this time frame;

- Pay of Ontario and Alberta Provincial Court judges has historically been aligned more closely; since 1998 differences have varied between 0% and 14%, averaging 5% (with Ontario salaries exceeding Alberta salaries) over this full period;

- In 2000, 2003 and 2006, when the past three Alberta Judicial Compensation Commissions issued their respective reports, they recommended salaries for Alberta judges and masters equating to 99%, 97% and 100% of Ontario salaries in place at those respective times; the trend has been to more closely match pay between these jurisdictions over the last decade.

Specific Historical Compensation Linkage – Alberta and Ontario Provincial Judges

72. Included in its explanation with respect to its specific judicial salary recommendations, the 2009 Commission also recognized the validity of maintaining what it agreed was a traditional linkage between the respective salaries for Alberta and Ontario provincial judges, which it referred to as “approximate parity”. More specifically it stated the following: 2009 Report p. 34 [JBA #20]:

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.

73. It is, however, critical to also note that the 2009 Commission expressly remarked that Alberta should not simply base its judicial compensation on that in Ontario. It noted that a consideration of the judicial compensation in other jurisdictions was only one of the “criterion” upon which Alberta judicial compensation was to be based. And it further emphasized that the basis for the setting of Alberta judicial compensation should be one “made in Alberta”. Specifically in that regard it stated the following: 2009 Report p. 35 [JBA #20]:
We do not suggest that the only criterion for setting pay for judges in this province should be an exercise in following Ontario’s lead. We can, and should, have “made in Alberta” salaries for provincial court judges and masters. Our salary recommendations, overall, are intended to achieve this result. [Emphasis Added]

74. In fact, and very notably, a review of the specific judicial salary recommendations which the 2009 Commission made to apply over the entire four year period it was mandated to deal with is clearly illustrative of its allegiance to both of the above noted objectives. Specifically, those recommendations sought to maintain overall an “approximate parity” of salary between the Alberta and Ontario judges over the said term but such objective was subject to certain “made in Alberta” considerations which inevitably led to variances in such parity over the said term.

75. In that regard, the following comments of the 2009 Commission are notable: the 2009 Report p. 34 [JBA #20]:

The increases we recommend for 2009-2010 and 2010-2011 will put judges more or less on a par again with their Ontario counterparts, when viewed over the time frame for which we have comparative data available. As of April 1, 2009 the salary of $250,000 we recommend for Alberta Judges compares to a $248,057 salary in Ontario. As of April 1, 2010 the Alberta salary would increase to $255,000, while the Ontario salary was fixed as of that date (subject to recommendations of a judicial compensation commission in that province that we understand have yet to be released) at $252,274.

We have very recently been informed by the parties that judges’ salaries in Ontario increased again effective April 1, 2011 to $262,113. Our recommendations do not contemplate Alberta salaries increasing to match this Ontario pay level in 2011; instead they would only increase to $257,550. This is because of our recommendation to utilize changes in the Alberta Consumer Price Index to trigger salary adjustments in 2011 and 2012, as opposed to adopting the mechanism of tracking increases in the Industrial Aggregate Income Index for Canada, which is used in Ontario.

76. Those specific comments of the 2009 Commission are very significant. Despite the acknowledgement of the 2009 Commission that it was a reasonable objective to attempt to maintain “approximate parity” in compensation between Alberta and Ontario provincial judges, the 2009 Commission specifically emphasized that it was not prepared to, in striving for such objective, follow the Ontario practice of “... adopting the mechanism (for annual judicial salary adjustments) of tracking increases in the Industrial Aggregate Income Index for Canada” (“the Ontario Mechanism For Annual Judicial Salary Adjustments”). Instead, as also noted above, the 2009 Commission made the contrary recommendation “... to utilize changes in the Alberta
Consumer Price Index to trigger (annual judicial) salary adjustments.” It is evident that this determination was, for the 2009 Commission, a key part of reaching a distinctive “made in Alberta” decision in regard to determining the most appropriate mechanism for annual judicial salary adjustments.

77. In this regard, keeping in mind the specifics of the components of the Ontario Mechanism For Annual Judicial Salary Adjustments is important. It is firstly important to note that the Ontario Mechanism For Annual Judicial Salary Adjustments is specifically set out in a 1995 Framework Agreement (“the Ontario Framework Agreement”) which had evolved out of the recommendations of the 1994 Ontario Provincial Judges Remuneration Commission. The Ontario Framework Agreement was specifically incorporated, as an Appendix, into the Ontario Courts of Justice Act and so is of statutory effect.

78. The specifics of the Ontario Mechanism For Annual Judicial Salary Adjustments are set out in section 45 of the Ontario Framework Agreement. In simple terms, the Ontario Mechanism For Annual Judicial Salary Adjustments consists of the implementation of annual mandatory statutorily prescribed salary adjustments for Ontario provincial judges in lock step with changes over a specific year of the average weekly wages and salaries as reported in the Industrial Aggregate Index for Canada (IAI Canada) published by Statistics Canada: The Ontario Framework Agreement, section 45 [JBA #24].


80. The First Kaplan Commission Report contained binding recommendations for the compensation of Ontario judges for the period of April 1, 2010 to March 31, 2014. In addressing the specific issue of judicial salaries, the First Kaplan Commission Report referred to certain
specific salaries for each of the four years in the above noted period and then stated the following: The First Kaplan Commission Report, para. 1 [JBA #25].

These are the salaries as increased automatically by the IAI Canada as provided by the Courts of Justice Act. We understand that these salaries have already been implemented. (Emphasis Added).

81. In regard to the issue of judicial salaries, the 2013 Commission agreed with what it referred to as “the perspective adopted by previous Alberta judicial compensation commissions that approximate parity between Alberta and Ontario should be maintained”: 2013 Report, p. 45 [JBA #22].

82. However, in addition to stating the aforesaid, the 2013 Commission also expressly noted the following: 2013 Report, p. 45 [JBA #22]:

We agree that there should not be a hard and fast rule to keep salaries at say, 95% of those of Ontario Provincial Courts judges. Ontario is a large manufacturing based economy while Alberta’s economy depends to a large extent on its fluctuating natural resource revenues.

83. It is also notable that the 2013 Commission expressly rejected the submission of the Association that it “should consider implementing the IAI for Alberta, as a built in method to ensure proper adjustments to salaries”. In specific response to that submission, the 2013 Commission stated: 2013 Report, p. 46 [JBA #22]:

We disagree. In that regard, we adopt the view expressed by the 2009 Commission that the IAI index does not measure changes in the cost of living (i.e. changes in the cost of purchasing goods and services) but rather reflects changes in total earnings received by workers. Those earnings, as the Minister points out, are heavily affected by the number of hours worked and overtime pay, which in turn varies with each industry.

84. It is thus the case that both the 2009 Commission and the 2013 Commission clearly rejected the Association’s position that judicial salary increases should be based on some sort of automatic reference to the economic indicators of either IAI or Average Weekly Earnings (AWE),
which, as was noted in the 2013 Commission Report at footnote 9 on page 31, are terms often used “interchangeably”.

85. In other words, both the 2009 Commission and the 2013 Commission firmly rejected the notion that Alberta judicial salary increases should be, at least in part, based on the application of some sort of formula similar to the approach taken within the Ontario Mechanism for Annual Judicial Salary Adjustments.

86. To the contrary, it seems clear that both the 2009 Commission and the 2013 Commission accepted the Minister’s arguments that it is key for a Judicial Compensation Commission to consider unique “made in Alberta” current factors in making recommendations about judicial salaries. Specifically, in that regard, the 2013 Commission noted the following: 2013 Report, p. 28 [JBA #22]:

The Minister did not dispute the Association’s submission that both parties referred to Ontario in the 2009 JCC as the key jurisdiction (in addition to the federal jurisdiction) when considering this part of the Regulation. The Minister noted, however, that the 2009 JCC expressly indicated that Alberta should not base its judicial compensation solely on the compensation paid to Ontario provincial court judges. The Minister further noted that the consideration of judicial compensation from other jurisdictions was only one criterion under the Regulation. In the end, the 2009 JCC, the Minister noted, sought to maintain “approximate parity” of salary between the Alberta and Ontario judges over the term of the commission, subject to certain “made in Alberta” considerations, such as the economic formula used to trigger annual judicial salary adjustments.

Specific Historical Compensation Linkage – Alberta Provincial Judges and Federally Appointed Judges

87. Because all judicial appointments in Alberta come from the same pool of lawyers, previous Commissions have acknowledged that the salary gap between federally and provincially appointed judges should be narrow enough so as to not economically dissuade prospective judicial candidates from selecting the court to which they are best suited.

41 Also, see footnote 13 on page 46 of the 2013 Commission Report for a reference to a “helpful explanation of AWE”.
42 2003 Report at pp 36 to 37 [JBA #18] and 2006 Report p 12 [JBA #19]
88. The Minister supports this view, but consistent with her position before other Commissions, points out that regardless of the level of compensation, there will always be lawyers who prefer an appointment to another court.\textsuperscript{43}

89. The 2009 Commission stated that distinguishing pay levels for federally and provincially appointed judges is justifiable. It noted that their respective roles and jurisdictions are different, and there is a recognized hierarchy within the judiciary. Accordingly, the 2009 Commission recognized the validity of the traditional “gap” between the respective salaries of federal and provincial judges. Specifically it stated the following: 2009 Report p. 33 \textbf{[JBA \#20]}:

\begin{quote}
... we accept the consistent view expressed by past Commissions that there remains justification to distinguish pay levels for federally and provincially appointed judges. There is a recognized hierarchy within the judiciary, and there remain differences in the roles of judges of the superior and provincial courts. Our salary recommendation is intended to preserve what we consider to be a suitable difference between salaries for judges of these courts. While opposing arguments were advanced before us about whether or not retaining this compensation gap between superior and provincial court judges was still justified, in reality no one advanced the position that the gap be eliminated. [Emphasis Added]
\end{quote}

90. In respect to the specifics of that traditional “gap”, the 2013 Commission specifically noted that 2009 Commission had “determined that something closer to a 93% difference preserved the “suitable difference” between the salaries of the two courts”: 2013 Report, p. 44 \textbf{[JBA \#22]}.

91. The 2013 Commission also noted the stated positions of the parties in regard to the historical “gap” between salaries of Alberta provincial court judges and federally appointed judges and the 2013 Commission in its conclusions recognized the validity of retaining that “gap”.

92. In that regard, the 2013 Commission expressly noted the following submissions made by the Minister: 2013 Report, p. 29 \textbf{[JBA \#22]}:

\textsuperscript{43} 2003 Report at p 37 \textbf{[JBA \#18]}
The Minister also indicated that in previous commissions, the Association has argued that the compensation of Alberta provincial court judges should be “broadly equivalent” to that of federally appointed judges. The Minister points out that this particular point was thoroughly canvassed and rejected by the 2003 JCC. The 2003 JCC further noted that the court system in Canada is hierarchical in structure, and endorsed the conclusion of the 1998 Commission that this historical hierarchy should continue to be observed. The Minister further indicated that although previous commissions, in both Alberta and in other jurisdictions, have recognized that the courts are “hierarchical” in nature, they have also accepted the Association’s submission that the gap between the salaries of the superior court and provincial court judges should not be too wide.

Finally, the Minister notes that, unlike Alberta, federally appointed judges, similar to the Ontario provincial court judges, are entitled to statutorily prescribed annual salary increases. In the case of the federally appointed judges, those prescribed increases are computed in accordance with the Industrial Aggregate Index (“IAI”) for Canada to a maximum of 7%.

93. In the end, the 2013 Commission stated the following conclusion in respect to the issue of what would constitute a reasonable “gap” between the salaries of superior court and provincial court judges: 2013 Report, p. 44 [JBA #22]:

In reviewing the salaries paid to Alberta Queen’s Bench Justices, indexed to 2013 levels and 2014 levels, the above recommended increases are similarly close to the 93% amount paid to federal court judges. In endorsing the 93% figure, we do not blindly adhere to a number set by the 2009 JCC. We take the view that the 93% margin is a fair and appropriate difference, particularly given the most recent downward trend in the Alberta economy.

12 $273,000/$295,500 = .9238% for 2013/14;  
$279,825/$300,000 = .93026% for 2014/2015

94. That conclusion of the 2013 Commission was in keeping with those from previous Alberta Commissions. For instance, the 2003 Commission, in rejecting the Association’s argument that the compensation of Alberta Provincial Court Judges should be “broadly equivalent” to that of federally appointed judges, agreed with the Minister’s submission that recommending a salary already set by a federal Commission “would be tantamount to surrendering jurisdiction to a body responsible to Parliament and abdicating responsibility to make a decision faithful to local conditions”. The 2003 Commission also agreed with the Minister’s submission that the court system in Canada is hierarchical in structure, and endorsed the conclusion of the 1998 Commission that the historical hierarchy should continue to be observed: 2003 Report ps. 41 and 42 [JBA #18].
95. The 2009 Commission had specifically recognized the validity of maintaining the traditional “gap” between the respective salaries of federal and provincial judges. And the 2009 Commission had specifically commented that “… since 1998, up to April, 2009, the gap has ranged between 7% and 19%, averaging 13%...”: 2009 Report ps. 82 and 83 [JBA #20].

96. Other provincial compensation commissions have also rejected the parity argument. For example, in its report the 2005 Saskatchewan Provincial Court Commission stated as follows at p. 13:

This Commission does not find the argument to compare with the Court of Queen’s Bench to be compelling. The two courts are separately recognized in Canada’s Constitution and the jurisdiction of each is vastly different. While the parity argument, or movement towards parity argument, has been a hallmark of the submissions on behalf of the Provincial Judges before every commission, our salary recommendation...proposes a principled and rational basis to determine the appropriate salary for Provincial Court Judges. The salary of Judges of the Court of Queen’s Bench adds very little to our principled approach. [Emphasis Added]

Saskatchewan Provincial Court Commission Report December 31, 2005 [Extract at TAB #3].

97. The majority of the Ontario 2001 Commission stated the following in response to the parity argument: Fifth Triennial Report of the Provincial Judges Remuneration Commission (Ontario), pg. 27 [Extract at TAB #5]:

We do not recommend parity and neither do we recommend any formulaic linkage to the salaries of the federally appointed judiciary. We agree that each level of judicial remuneration should be determined on its own merits, having regard to the criteria pursuant to which an independent Commission makes its recommendations. One can’t ignore that the two groups of judges are paid by different levels of government, whose fiscal abilities and priorities are different, and who are accountable in different manners to the taxpayers from whom the necessary revenues are received... [Emphasis Added]

98. The argument that provincial court judges should be paid at par with federally appointed judges was judicially considered by the New Brunswick Court of Appeal: Provincial Court Judges’ Assn. (New Brunswick) v. New Brunswick (Minister of Justice)44 [JBA #4].

44 2003 CarswellNB 374, 2003 NBCA 54. Note that this case was appealed to the SCC where it was dismissed. See Bodner at paras. 56-69 and 65-85 [JBA #2]
99. The decision followed the report of the 2001 New Brunswick Judicial Remuneration Commission, which rejected the provincial judges’ argument for full salary parity with federally appointed puisne judges but recommended a salary increase which would have paid them approximately 85% of the salary of federally appointed puisne judges. The New Brunswick government rejected the Commission’s recommendations for a number of reasons, following which the judges sought judicial review. The Court of Queen's Bench dismissed the application on the grounds that the government’s reasons for refusing to implement the recommendations met the review standard of simple rationality. The Court of Appeal dismissed the judges’ subsequent appeal, stating the following, respectively at paragraphs 9 and 163:

...the Government’s contention that the salary of federally appointed puisne judges is based on considerations that are irrelevant in the provincial context is sound, both in fact and logic. In short, the Association’s parity argument is fundamentally flawed and, therefore, it is simply unnecessary for this Court to be drawn into the equality debate as framed by the parties. I hasten to add that nothing turns on the distinction between a salary recommendations that embraces partial as opposed to full parity. The fact remains that the Commission effectively limited the number of comparator groups to one: judges of the Court of Queen’s Bench...

...In these circumstances, the Government of New Brunswick is justified in its contention that the Association’s claim to salary parity with federally appointed puisne judges is misguided. The federal salary is fixed by reference to factors that have no application in the provincial context. Specifically, the fact that the federal salary is uniform so as not to reflect regional differences, and that it is set at a level that is capable of attracting qualified candidates in major metropolitan areas throughout Canada, where salary levels are much higher than in the small urban centres, are factors that need not concern provincial remuneration commissions. [Emphasis Added]

100. There are a number of more recent Commission rejections of the parity argument. The general consensus is that the gap should be maintained for the traditionally accepted reasons but it should not be allowed to become too wide.

101. For instance, the 2013 British Columbia Commission noted the following: British Columbia Provincial Court Commission Report; September 25, 2013, at page 38 [TAB #8].

The disparity in compensation between justices of the BC Supreme Court and judges of the BC Provincial Court is an important factor in determining reasonable compensation for Provincial Court judges, but it is not an overriding one. For reasons discussed further below, the gulf should not become so wide that it makes the compensation of the Provincial Court judges unreasonable in the eyes of those who might seek to undertake the office. Yet, the compensation for Provincial Court judges should not be rigidly held at a specific target in relation to federally appointed judges, as these positions are different.
Both the Provincial and Supreme Courts require excellent candidates and they compete for the same senior members of the criminal defence bar, the best from the Crown counsel ranks, and for many of the best civil litigators in family law, personal injury, and insurance defence. However, while there is significant overlap in the needs of two courts, the needs are not identical. The Supreme Court has broader jurisdiction in civil matters, and a greater need of candidates with experience in complex corporate commercial matters. Also, federal court judges are compensated by a different government, which faces varied financial and other considerations. [Emphasis Added]

102. The 2016 British Columbia Commission also addressed the issue of parity and agreed with the long-standing convention of a flexible pay gap. It noted the following: 2016 British Columbia Provincial Court Commission Report; at page 48 [TAB #9].

The Commission finds that the disparity in compensation between judges of the Supreme Court and Provincial Court is an important factor in determining reasonable compensation for Provincial Court judges. This disparity should not become so great that it makes the compensation unreasonable in the eyes of those who might seek to undertake the office. But, as with past commissions, the Commission finds that the compensation for Provincial Court judges should not be held at a specific target percentage in relation to federally-appointed judges, as these positions are different. There is significant overlap in the needs of the two courts and while both the courts require excellent candidates and compete for the same senior members of the private bar and the best from the Crown counsel rank, the needs of each court are not identical. The Supreme Court has broader jurisdiction in civil matters, and a greater need of candidates with experience in complex corporate commercial matters. Also, federal court judges are compensated by a different government, with different financial and other considerations. [Emphasis Added]

103. The 2017 Saskatchewan Commission noted that the compensation of federally appointed judges was an important factor to be considered but rejected the argument for parity and also noted that there is no principle requiring the compensation “gap” to close over time. It noted the following in regard to arguments raised respecting parity: Report and Recommendations of the 2017 Provincial Court Commission of Saskatchewan, paras. 215-217 [TAB #4].

This Commission also takes the position that the salaries of Queen's Bench Judges are an important factor to consider, not only in the context of the disparity between the salary levels of the two Courts, but also on the basis of the relative workload and responsibilities of the two Courts. This Commission accepts the proposition that the role of the Provincial Court of Saskatchewan in dispensing justice to the citizens of the Province is equally important to that of the Court of Queen's Bench and the Saskatchewan Court of Appeal.

In considering this factor, this Commission must also be aware of the fact that the Court of Queen’s Bench and the Saskatchewan Provincial Court attract candidates for appointment from the same talent pool of lawyers.

The Commission does not accept the proposition that it has a responsibility to close the gap between salaries of Provincial Court Judges and those of the Court of Queen’s Bench and the
Saskatchewan Court of Appeal within a finite period of time. Having stated this, however, we recognize that this is not a matter within this Commission’s direct control, in any event. [Emphasis Added]

104. The Minister does not suggest in any way that there is a difference in the importance or value of the work done by the two levels of Court. The point to be made is that as one of the criteria to be considered by this Commission, “the unique nature of the judge’s role” is not meant to invite such comparisons. Rather, it is meant to ensure that through recommendation of an appropriate compensation package which ensures judicial independence, proper recognition is given to the singular nature of the responsibility and authority of the judicial position.

Review and Analysis of the 2018 Report of the Ninth and Tenth Ontario Provincial Judges Remuneration Commissions


106. The Second Kaplan Commission Report noted that “representatives of the government and the judges” had agreed on “certain recommendations” relating to judicial salaries, and that the Commissions “fully and unequivocally” endorsed those joint recommendations relating to judicial salaries in both the respective periods of 2014 to 2018 and 2018 to 2022.

107. In that context, it is very notable that the Joint Submission of the Government of Ontario and the Ontario Judges (“the Joint Submission to the 2018 Ontario Commissions”) does not set out any details of the rationale of either of the parties, including in respect of their joint recommendations on the judicial salary issues in the period of 2018 to 2022. The only reference to such issue is in paragraph 9 thereof, which reads as follows: Joint Submission to the 2018 Ontario Commissions, para. 9 [TAB #6]:

43
The parties agree that providing Provincial Judges with the above noted salaries ending with an amount that is 95.27% of the Federally Appointed Judge’s current year’s salary rate as of April 1, 2021 reflects an appropriate level of remuneration for the term of the ninth and tenth Commissions in light of the criteria the Commission is mandated to consider.

108. In regard to the four year period of April 1, 2014 to March 31, 2018, the Second Kaplan Commission Report recommended that judicial salaries be “increased annually in an amount equivalent to the IAI (Canada) indexing”. Such salary increases were, as noted above, already statutorily prescribed as part of the Ontario Mechanism for Annual Judicial Salary Adjustments.

109. Specific details of such statutorily imposed salary increases, included in chart form, are set out in the Second Kaplan Commission Report. As noted therein, in certain of the charts, the specific annual percentage increases therefore provided in respect to Ontario judicial salaries, on the basis only of matching IAI (Canada) increases, in each of those first four years were as follows:

Second Kaplan Commission Report at pages 4-6 [JBA #26]:

As at April 1, 2014 – 1.9%
As at April 1, 2015 – 2.7%
As at April 1, 2016 – 1.2%
As at April 1, 2017 – 0.7%

110. It should be noted in this regard that, for that four year period from 2014 to 2018, the Second Kaplan Commission Report did not recommend salary increases over and above the aforesaid statutorily imposed judicial statutory increases.

111. In regard to the four year period from April 1, 2018 to March 31, 2022, the Second Kaplan Commission Report endorsed (verbatim) the following joint recommendations of the parties respecting increases to judicial salaries: Second Kaplan Commission Report, paragraphs 4 and 7 on page 6 [JBA #26]:

44
4. Commencing on April 1, 2018, the salaries of Provincial Judges will be increased over the four year term of the 10th Provincial Judges Remuneration Commission to align with a percentage of the salary rate of a puisne judges of the federal Superior Court of Justice ("Federally Appointed Judge") on a phased-in approach to 95.27% of a Federally Appointed Judge’s salary by April 1, 2021, as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Provincial Judge Salary Rate Percentage Link to Federally Appointed Judge’s Salary Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 1, 2018</td>
<td>Provincial Judge April 1, 2017 salary rate + Industrial Aggregate Index (IAI) (Canada) + the difference required to bring Provincial Judges salaries to 93.47% of the Federally Appointed Judge’s current year’s salary rate</td>
</tr>
<tr>
<td>April 1, 2019</td>
<td>Provincial Judge April 1, 2018 salary rate + Industrial Aggregate Index (IAI) (Canada) + the difference required to bring Provincial Judges salaries to 94.07% of the Federally Appointed Judge’s current year’s salary rate</td>
</tr>
<tr>
<td>April 1, 2020</td>
<td>Provincial Judge April 1, 2019 salary rate + Industrial Aggregate Index (IAI) (Canada) + the difference required to bring Provincial Judges salaries to 94.67% of the Federally Appointed Judge’s current year’s salary rate</td>
</tr>
<tr>
<td>April 1, 2021</td>
<td>Provincial Judge April 1, 2020 salary rate + Industrial Aggregate Index (IAI) (Canada) + the difference required to bring Provincial Judges salaries to 95.27% of the Federally Appointed Judge’s current year’s salary rate</td>
</tr>
</tbody>
</table>

7. The parties agree that providing Provincial Judges with the above noted salaries ending with an amount that is 95.27% of the Federally Appointed Judge’s current year’s salary rate as of April 1, 2021 reflects an appropriate level of remuneration for the term of the ninth and tenth Commissions in light of the criteria the Commission is mandated to consider.

112. As noted above, the salary recommendations set out in the Second Kaplan Commission Report reflected the Commissions’ acceptance of the joint recommendations of the Government of Ontario and the judges. In terms of a rationale for the Commissions’ salary recommendations for the four year period from April 1, 2018 to March 31, 2022, all that is included in the Second Kaplan Commission Report is the above quoted paragraph 7, which is a simply a verbatim restatement of the above quoted paragraph 9 of the Joint Submission to the 2018 Ontario Commissions. Critically there is absolutely nothing in that paragraph 9 which explains why the parties concluded that the said joint position on the recommended judicial salary increases “reflects an appropriate level of remuneration”. Furthermore, there is no analysis set out in the Second Kaplan Commission Report respecting the “judicial salary issues” and thus there is no explanation set out there respecting the rationale of the Commissions in recommending the
aforesaid binding salary recommendations, including for the four year period from April 1, 2018 to March 31, 2022.

**Maintain Historical “Percentage Gap” with Federally Appointed Judges**

113. As indicated above, previous Alberta Commissions have rejected arguments that the salaries of Alberta Provincial Court Judges should be “broadly equivalent” to that of Federally Appointed Judges. However, previous Alberta Commissions have referred to the salaries of Federally Appointed Judges for “comparative purposes”. Although the previous Commissions have recognized that the courts are “hierarchical” they have also accepted the premise that the gap between the salaries of Superior Court and Provincial Court Judges should not be too wide.

114. For instance, the 2000 Commission anticipated that a specifically proposed salary would bring the Alberta Provincial Court Judges to a salary level equivalent to 86% of that of Federally Appointed Judges. The 2000 Commission accepted that percentage as representing a reasonable “salary gap”: 2000 Report p. 14 [JBA #17].

115. The 2003 Commission basically agreed with the submissions of both the Association and the Minister that the comparative “salary gap” between Alberta Provincial Court Judges and Federally Appointed Judges should not be “too wide”: 2003 Report pp. 37, 43 and 52 [JBA #18].

116. The 2006 Commission noted that the “... salary gap between federally-appointed judges and provincial court judges in Alberta has now been significantly narrowed”: 2006 Report p. 12 [JBA #19].

117. As noted above, the 2009 Commission noted that from 1998 to 2009 the salaries of federally-appointed judges typically exceeded salaries of Alberta Provincial Court judges with the gap averaging 13%. Or stated conversely, from 1998 until 2009, the salaries for Alberta Provincial Court Judges averaged approximately 87% of the salaries of federally-appointed Judges.
118. In contrast to that percentage gap, from 2009-10 to 2016-17 the salaries for Alberta Provincial Court Judges have averaged approximately 93% of the salaries of federally-appointed Judges.45

119. It should also be noted in making any comparison to any specific time frame between the salaries of federally-appointed judges and the salaries of Alberta Provincial Court judges that the same complicating factor exists in doing so as exists in comparing the salaries of Ontario Provincial Court judges and the salaries of Alberta Provincial Court judges. Federally-appointed judges, like the Ontario Provincial Court judges, are entitled to statutorily prescribed annual salary increases. In the case of the federally-appointed judges, those prescribed increases are computed in accordance with the Industrial Aggregate Index for Canada (IAI Canada) to a maximum of 7%.

Specific Judicial Salary Comparisons

120. Attached hereto is a copy of a series of charts or tables containing information relating to Judicial Compensation in Canada (“The Judicial Compensation Charts”): The Judicial Compensation Charts [TAB #12].

121. Included in The Judicial Compensation Charts is a table entitled “Judicial Compensation in Canada – Puisine Judge Salaries Across Canada” (“The Judges Comparative Salaries Table”).46 This Table contains comparative judicial salary data, insofar as it is presently available, for Canadian judges in the period from 2005/06 to 2021/22. The Judges Comparative Salaries Table, on its reverse or second page, also contains some specific notable explanatory notes in respect of unique developments in certain of the noted jurisdictions: The Judges Comparative Salaries Table in The Judicial Compensation Charts [TAB #12].


45 For details of this, see paragraph 128 below.
46 A copy of the The Judges Comparative Salaries Table (but NOT of the rest of the contents of The Judicial Compensation Charts) is also included at AFE #5.
122. Included in The Judicial Compensation Charts is a table entitled “Judicial Compensation in Canada – Provincial Rankings by Year” (“The Provincial Judicial Salary Rankings Table”). This colour-coded table compares the salaries for judges in each Canadian jurisdiction for each specific year from 2006/07 to 2017/18 and also “ranks” each of the provinces in comparison to all of the others and in comparison to the federally appointed judges in each of those years: The Provincial Judicial Salary Rankings Table in The Judicial Compensation Charts [TAB #12].

123. Included in The Judicial Compensation Charts is a colour-coded line-graph entitled “Judicial Salaries in Canada” (“The Judicial Salaries Comparative Graph”). This graph clearly illustrates the respective increases in judicial compensation in each Canadian jurisdiction, relative to each other, in the period from 2007/08 to 2018/19: The Judicial Salaries Comparative Graph in The Judicial Compensation Charts [TAB #12].

124. Included in The Judicial Compensation Charts is a table entitled “Judicial Compensation in Canada – Growth by Province or Territory” (“The Judicial Salaries Annual Percentage Increase Table”). This table discloses the annual percentage increases for judicial salaries in each Canadian jurisdiction for each year in the period of 2006/07 to 2021/22: The Judicial Salaries Annual Percentage Increase Table in The Judicial Compensation Charts [TAB #12].

125. Included in The Judicial Compensation Charts is a table entitled “Judicial Compensation in Canada – Comparison to Alberta” (“The Comparison to Alberta Judicial Salaries Chart”). This chart indicates the percentage of judicial salaries in each other Canadian jurisdiction in comparison to Alberta judicial salaries for each year from 2005/06 to 2016/17: The Comparison to Alberta Judicial Salaries Chart in The Judicial Compensation Charts [TAB #12].

126. Included in The Judicial Compensation Charts is a table entitled “Judicial Compensation in Canada – Comparison to Federal” (“The Comparison to Federal Judicial Salaries Chart”). This chart indicates the percentage of judicial salaries in each other Canadian jurisdiction in
comparison to Federal judicial salaries for each year from 2005/06 to 2018/19: The Comparison to Federal Judicial Salaries Chart in The Judicial Compensation Charts [TAB #12].

127. The information disclosed in the various tables, charts and graphs included in The Judicial Compensation Charts is of course, to a large degree, self-explanatory. But some especially notable observations can be made in regard to certain of the information included in The Judicial Compensation Charts.

128. For instance, a review of The Provincial Judicial Salaries Rankings Table demonstrates that the salary level for Alberta Provincial Court Judges has, in the period from 2009/10 to 2016/17, been either first or second in the overall Provincial Judicial Salary Rankings (i.e. this does not include salaries of the Federally appointed judges): The Provincial Judicial Salaries Rankings Table in The Judicial Compensation Charts [TAB #12]. And a review of The Comparison to Federal Judicial Salaries Chart demonstrates that in the period from 2009-10 to 2016-17 the salaries for Alberta Provincial Court Judges have varied between 92% to 94% (thus averaging approximately 93%) of the salaries of federally-appointed Judges: The Comparison to Federal Judicial Salaries Chart in The Judicial Compensation Charts [TAB #12].

129. Included in the information contained in The Judicial Salaries Annual Percentage Increase Table is the following:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Salary on March 31, 2013</th>
<th>Salary on March 31, 2017</th>
<th>Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saskatchewan</td>
<td>248,010</td>
<td>282,184</td>
<td>13.8%</td>
</tr>
<tr>
<td>Manitoba</td>
<td>224,104</td>
<td>254,263</td>
<td>13.5%</td>
</tr>
<tr>
<td>Alberta</td>
<td>263,731</td>
<td>293,991</td>
<td>11.5%</td>
</tr>
<tr>
<td>British Columbia</td>
<td>231,138</td>
<td>252,290</td>
<td>9.2%</td>
</tr>
</tbody>
</table>
### Percentage Increases in Judicial Salaries in the Four-Year Period of 2013/14 to 2016/17

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Salary on March 31, 2013</th>
<th>Salary on March 31, 2017</th>
<th>Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>288,100</td>
<td>314,100</td>
<td>9.0%</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>249,582</td>
<td>272,000</td>
<td>9.0%</td>
</tr>
<tr>
<td>Ontario</td>
<td>267,355</td>
<td>290,793</td>
<td>8.8%</td>
</tr>
<tr>
<td>Quebec</td>
<td>230,723</td>
<td>250,000</td>
<td>8.4%</td>
</tr>
<tr>
<td>Yukon</td>
<td>250,103 (March 31, 2016)</td>
<td>268,014 (March 31, 2016)</td>
<td>7.2% (3-year increase)</td>
</tr>
</tbody>
</table>

The Judicial Salaries Annual Percentage Increase Table in The Judicial Compensation Charts [TAB #12].

130. Included in the information contained in The Comparison to Alberta Judicial Salaries Chart is a percentage comparison between the Alberta Judicial Salary, in effect at specific times, and that of specific comparative jurisdictions. For instance, the following percentage comparative information is therein set out for the time frame of 2016/17:

### Table 3

<table>
<thead>
<tr>
<th>Comparative Judicial Salary Percentage Ratios 2016/17 (Alberta = 100%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>B.C. / Alberta</td>
</tr>
<tr>
<td>Saskatchewan / Alberta</td>
</tr>
<tr>
<td>Manitoba / Alberta</td>
</tr>
<tr>
<td>Ontario / Alberta</td>
</tr>
<tr>
<td>Quebec / Alberta</td>
</tr>
<tr>
<td>New Brunswick / Alberta</td>
</tr>
<tr>
<td>Nova Scotia / Alberta</td>
</tr>
<tr>
<td>Prince Edward Island / Alberta</td>
</tr>
<tr>
<td>Newfoundland / Alberta</td>
</tr>
</tbody>
</table>
Northwest Territories / Alberta  |  93%
---|---
Yukon (2015/16) / Alberta  |  93%
Federal Judges / Alberta  |  107%

The Comparison To Alberta Judicial Salaries Chart In The Judicial Compensation Charts [TAB #12].

REVIEW AND CONSIDERATION OF CRITERIA (F) TO (H)

131. Criteria F, G, and H are hereinafter collectively referred to as the Economic and Fiscal Criteria.

132. In regard to consideration of the Economic and Fiscal Criteria, the Minister obtained three expert reports, as follows:

- A report entitled "Report on the Alberta Economy and the Government of Alberta's Finances and Fiscal Situation" dated August 31, 2018, authored by Dr. Bev Dahlby ("Dr. Dahlby’s Report"). A copy of Dr. Dahlby’s Report is included at TAB #13. Copies of Dr. Dahlby's Curriculum Vitae and formal biography are included at TAB #15. Copies of these documents have been provided to APJA counsel.

- Two reports authored by Catherine Rothrock (Chief Economist, Alberta Finance). One of these reports is entitled "Key Economic and Fiscal Developments in Alberta since 2013" ("The Finance Review of Post 2013 Economic Developments Report"). A copy of The Finance Review of Post 2013 Economic Developments Report is included at TAB #16. The other report is entitled “The Alberta Economy” ("The Finance Economic Outlook Report"). A copy of The Finance Economic Outlook Report is included at TAB #17. A copy of Catherine Rothrock's Professional Resume is included at TAB #19. Copies of these documents have been provided to APJA counsel.
133. Counsel for the APJA provided counsel for the Minister with a copy of an August 2018 report authored by Dr. McMillan and indicated that the APJA intended to rely upon such report (“Dr. McMillan’s Report“). In response to same, counsel for the Minister provided counsel for the APJA with the following two rebuttal reports. One is a report authored by Dr. Bev Dahlby entitled "Responses to McMillan Report August 2018" (“Dr. Dahlby’s Rebuttal Report”). The other is a report authored by Catherine Rothrock entitled "Response to August 2018 McMillan Report" (“The Finance Rebuttal Report”). A copy of Dr. Dahlby’s Rebuttal Report is included at TAB #14. A copy of The Finance Rebuttal Report is included at TAB #18.

134. The Finance Economic Outlook Report includes a Table entitled “Key Alberta Economic Indicators” (“The Finance Economic Indicators Table”), which, as the name suggests, sets out data respecting a variety of certain specific Economic Indicators for Alberta. The data included is for the years from 2010 to 2016 (actual) and 2017 to 2021 (estimated or forecast): The Finance Economic Indicators Table, at p. 5 of The Finance Economic Outlook Report [TAB #17].

Specific Consideration of Criterion F – Increases and Decreases, As Applicable, in the Alberta Real Primary Household Income Per Capita

135. Criterion F is “increases and decreases, as applicable, in the Alberta real primary household income per capita”.

The Reported Relevant Data

136. The Finance Economic Outlook Report contains references to the actual or, as the case may be, to the anticipated changes in the Alberta Real Primary Household Income Per Capita at various points in time in Alberta. Specifically, included in the listing of the Key Alberta Economic Indicators set out in The Finance Economic Indicators Table is reference to specific data

\[ \text{\textsuperscript{47}} \text{A copy of Dr. McMillan’s Report is included as an attachment to the APJA Written Submission.} \]
measuring changes in the Alberta Real Primary Household Income Per Capita\textsuperscript{48}: The Finance Economic Indicators Table, at p. 5 of The Finance Economic Outlook Report [TAB #17].

137. The specific wording of Criterion F is significant in that it refers to changes in the Real Primary Household Income Per Capita \textit{in Alberta}. As is evident from a review of the Finance Economic Indicators Table, there is a key distinction between the data measuring changes in the Per Capita Primary Household Income and the data measuring changes in the Real Per Capita Primary Household Income. That distinction is that the latter data includes adjustments for the effects of measured inflation. Furthermore, it is important to note that Criterion F does not refer to any comparison of the Alberta Real Primary Household Income Per Capita with the data relating to Real Primary Household Income Per Capita in any other jurisdiction.

138. In this regard the following notable forecast is included in the Finance Economic Outlook Report: The current forecast for growth in real primary household income per capita (i.e. adjusted for inflation) is an average of about 1.2% between 2018 and 2022. Alberta Treasury Board and Finance is not currently forecasting a return to Alberta's boom years in the mid-2000s over the medium term: The Finance Economic Outlook Report at page 5 [TAB #17].

139. The Finance Economic Indicators Table includes the following specific data for the years from 2010 to 2022 in regard to the percentage growth (or decrease) in, respectively, the Alberta Primary Household Income Per Capita (APHIPC) and the Alberta Real Primary Household Income Per Capita (ARPHIPC): The Finance Economic Indicators Table at p. 5 of The Finance Economic Outlook Report [TAB #17]:

- the reported growth in APHIPC (not adjusted for inflation) for 2011 was 6.9%, for 2012 was 6.2%, for 2013 was 3.6%, for 2014 was 3.6%, and for 2015 was 1.4%;

\textsuperscript{48} The Finance Economic Indicators Table also contains reference to data measuring changes in the Alberta Primary Household Income Per Capita, i.e., the same data except it is not CPI adjusted for inflation. See the discussion of this distinction hereinafter.
the reported growth in ARPHIPC (which adjusts for inflation) for 2011 was 4.3%, for 2012 was 5%, for 2013 was 2.2%, for 2014 was 1%, and for 2015 was 0.3%;

very notably, there were reported severe decreases in 2016 for both APHIPC (-8.7%) and ARPHIPC (-9.7%);

the estimated or forecast growth in APHIPC for 2017 is 3.2%, for 2018 is 3.1%, for 2019 is 3.2%, for 2020 is 3.3%, for 2021 is 3.2% and for 2022 is 3.5%.

the estimated or projected growth in ARPHIPC for 2017 is 1.6%, for 2018 is 0.8%, for 2019 is 1.3%, for 2020 is 1.2%, for 2021 is 1.2% and for 2022 is 1.5%.

140. In specific regard to actual reported data and to predictive data relating to, respectively, past changes and anticipated future changes in the Alberta Real Primary Household Income Per Capita (ARPHIPC), Dr. Dahlby noted as follows: Dr. Dahlby’s Report, pages 4 and 15 [TAB #13]:

Real (inflation adjusted) per capita primary household incomes in Alberta peaked in 2015 and then declined by 9.7 percent in 2016. From 2017 to 2021, real per capita primary household income is forecast to increase by 6.7 percent, but in 2021 it will still be lower than in 2013.

141. It should be noted that the reported specific data included in The Finance Economic Indicators Table for the anticipated growth in APHIPC and ARPHIPC represents specifically expected growth in per capita primary household income: The Finance Economic Indicators Table at p. 5 of The Finance Economic Outlook Report [TAB #17].

142. There is somewhat similar data reported in the 2018 GOA Budget but there are some distinctions between the two sets of data as is explained below.

143. That “somewhat similar data” is as follows. The 2018 GOA Budget included a Fiscal Plan for 2018 to 2021 (“2018 Fiscal Plan”) [AFE #12]. The 2018 Fiscal Plan set out the following data:
2016 (Actual) is -7.4%, for 2017 (Estimates) is 4.4%, for 2018 (Projected) is 4.5%, for 2019 (Projected) is $4.7%, for 2020 (Projected) is 4.8%, for 2021 (Projected) is 4.9%: 2018 Fiscal Plan, p. 92, at [AFE #12];

- In the Primary Household Income Benchmark Table, the same reported or projected growth is recorded, but on an annual yearly basis, as follows – for 2016 (Actual) is -7.4%, for 2017 (Estimates) is 4.4%, for 2018 (Projected) is 4.5%, for 2019 (Projected) is $4.7%, for 2020 (Projected) is 4.8%, for 2021 (Projected) is 4.9%: 2018 Fiscal Plan, p. 118, at [AFE #12].

144. Catherine Rothrock advised as follows respecting comparison of the above noted specific data relating to the anticipated growth in Primary Household Income Per Capita as reported in The Finance Economic Indicators Table (of The Finance Economic Outlook Report) with the above noted specific data relating to the anticipated growth in Primary Household Income, as reported in the 2018 GOA Budget:

(1) Primary house income growth reported in Budget 2018 represents the growth in total primary household income earned by all Albertans. This includes the effects of growth in hourly wages, non-labour income and employment and population.

(2) The number reported in the Finance Economic Indicators table represents growth in per capita primary household income. This is lower than the growth in total primary household income because it accounts for the impact of population growth. Alberta’s population has continued to grow and is projected to continue to grow in the future.

(3) We also reported the growth in real (CPI inflation-adjusted) per capita income in the Finance Economic Indicators table. This growth is lower than (2) because it removes the effects of inflation, as consumer prices have continued to rise and are forecasted to continue to increase.

145. As noted above, the specific wording of Criterion F refers to changes in the Real Primary Household Income Per Capita in Alberta. Criterion F does not refer to comparing levels of Real Primary Household Income Per Capita in Alberta with those in other provinces. Counsel for APJA provided counsel for the Minister with a copy of an August 2018 report authored by Dr. McMillan
and indicated that the APJA intended to rely upon such report (Dr. McMillan’s Report). There is reference in Dr. McMillan’s Report to “primary household incomes per person” in Alberta but the reference is only in comparison to such income in other provinces. There is no specific reference in Dr. McMillan’s Report to the data relating to what Criterion F specifically refers to, i.e., changes in the Real Primary Household Income Per Capita within Alberta. [Dr. McMillan’s Report, pgs. 19-20]

146. In any event, it is submitted that the specific applicable measure to consider with respect to Criterion F is that of actual or forecast increases or decreases in Real (i.e., inflation adjusted) Primary Household Income Per Capita in Alberta. The specific data for that measure is, as noted above, as reported in The Finance Economic Indicators Table (of The Finance Economic Outlook Report) as ARPHIPC.

Specific Consideration Of Criterion G – The Need to Provide Fair and Reasonable Compensation in light of the Prevailing Economic Conditions in Alberta and the Overall State of the Economy, Including the Financial Position of the Government

147. Criterion G is “the need to provide fair and reasonable compensation in light of the prevailing economic conditions in Alberta and the overall state of the economy, including the financial position of the government.”

148. At the outset of this discussion, it is important to note in general that none of the specific Criteria directly refer to a comparison of Alberta with other provinces. That is especially important to note in respect to Criterion G.

149. Criterion G expressly calls for an analysis of the “prevailing economic conditions in Alberta and the overall state of the economy, including the financial position of the government” but it

49 A copy of Dr. McMillan’s Report is included as an attachment to the APJA Written Submission.
does not directly refer to or otherwise contemplate any comparison of the results of such an analysis with an analysis of such factors in respect to any other province.

150. It is submitted that essentially the only relevance of any such comparison of the prevailing economic conditions and the overall state of the economy in Alberta with that of any other province would be in respect to Criterion E. For that purpose alone, there is included in the discussion in this section a comparison between the Alberta economy and those of certain so-called comparator provinces. Furthermore, some conclusions in regard to Criterion E are set out below in respect to such comparisons.

The Prevailing Economic Conditions in Alberta and the Overall State of the Economy

151. Between submissions to the 2013 JCC and its Report and Recommendations, world oil prices dropped precipitously, leaving the 2013 JCC to consider what impact this abrupt change in the Alberta economy would have on their recommendations, without a clear idea of the long term effects of that change. Ultimately, the 2013 JCC determined that “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”: 2013 Report, p. 42 [JBA #22].

152. The 2017 Commission now has the opportunity to assess how the drop in oil prices and other factors have impacted the “prevailing economic conditions in Alberta and the overall state of the economy” since the release of the 2013 Commission Report.

153. Dr. Dahlby’s Report discusses a number of economic factors that are witness to a significant negative change to the “prevailing economic conditions in Alberta and the overall state of the economy” in the last few years, especially in comparison to that of the noted comparator provinces. For instance, there are the following points made therein:

- Between 2014 and 2016 (the most recent year that annual statistics are available), Alberta’s real GDP declined by 10%. During this same period, Ontario’s increased by 3.4%, BC’s increased by 4.6% and Saskatchewan’s declined, but only by 3.9%.
While Alberta’s real GDP remains higher than the comparator provinces, the gap has narrowed since the 2013 JCC: Dr. Dahlby’s Report at pg 6-7 [TAB #13];

- Unemployment in Alberta rose sharply after the drop in oil prices, with unemployment peaking at 9% in November 2016. In 2018, Alberta continues to have a higher average unemployment rate than the 3 comparator provinces (6.6% in Alberta compared to 5.6% in Ontario, 4.9% in BC and 6.1% in Saskatchewan): Dr. Dahlby’s Report at pg 13 [TAB #13];

- Between 2000 and 2016, Alberta’s primary household income per capita (APHIPC) separated itself greatly from the other comparator provinces. However, in 2016, APHIPC dropped sharply, by 8.7%. In that same year, Ontario’s primary household income per capita increased by 1.7%, BC’s increased by 3.2% and Saskatchewan’s decreased by 3%: Dr. Dahlby’s Report at pg 14 [TAB #13];

- Similarly, average weekly earnings in Alberta peaked in 2014 before declines in 2015 and 2016 caused the gap between Alberta and the comparator provinces to narrow as those provinces’ average weekly earnings continued to rise: Dr. Dahlby’s Report at pg 16 [TAB #13].

154. The Finance Review of Post 2013 Economic Developments Report points out how the economic projections available at the time of the 2013 Commission hearings turned out to be drastically inaccurate in that the economic reality in Alberta of the last 4 years was starkly different, and much more negative, than had been anticipated and also that the Alberta economy performed very poorly in that period in comparison to that of Ontario. Of note are the following points:

- In 2015 and 2016, Alberta experienced its first back-to-back years of real GDP contractions since the early 1980s: Finance Review of Post 2013 Economic Developments Report at pg 1 [TAB #16];
• Budget 2014, the most recent budget that was available at the 2013 JCC hearings, projected annual growth rates of between 2.78 and 4.12% for real GDP, nominal GDP per capita, primary household income per capita and average weekly earnings between 2013 and 2017. In reality from 2013 to 2017, the following much lower annual growth rates were realized: real GDP at 0.82%; nominal GDP per capita decreased at 2.16%; primary household income per capita decreased at 0.27%; and average weekly earnings increased 0.50%: Finance Review of Post 2013 Economic Developments Report at pg 2, Chart 1 [TAB #16];

• In all of the same categories, the Ontario economy outperformed that of Alberta, with its real GDP increasing at an annual growth rate of 2.74% (cf. Alberta’s 0.82% increase), its nominal GDP per capita rising at an annual growth rate of 3.25% (cf. Alberta’s 2.16% decrease), its primary household income per capita rising at an annual growth rate of 2.96% (cf. Alberta’s 0.27% decrease) and its average weekly earnings rising at an annual growth rate of 1.92% (cf. Alberta’s 0.50% increase): Finance Review of Post 2013 Economic Developments Report at Chart 4 [TAB #16].

155. Dr. McMillan’s Report also makes reference to a number of very negative changes to the prevailing economic conditions in Alberta in the last 4 years:

• “Between 2007-08 and 2014-15, wellhead prices averaged $79.88 (Cdn) per barrel. The drop in oil prices result in the Alberta price falling to an average of $58 (Cdn) per barrel...”: Dr. McMillan’s Report at pg 2.

• Total capital expenditures in the conventional oil and natural gas sectors dropped from a higher of $60.6 billion in 2014 to $36.5 billion in 2015 and $26.6 billion in 2016: Dr. McMillan’s Report at pg 4.

• Outside of the oil and gas sector, Dr. McMillan’s Report states that total capital expenditures dropped between 2014 and 2016 by 4.7%: Dr. McMillan’s Report at pg 9. [But note that in his response to Dr. McMillan’s Report, Dr. Dahlby stated
that, when focused on private sector non-energy investment, the decline in capital expenditures was actually 9.5%. And further that this difference in figures is a result of the Alberta government’s choice to actually increase investment during the recession: Dr. Dahlby’s Rebuttal Report, pg 3 [TAB #14];

- In summary, Dr. McMillan states that the “abrupt fall in oil prices dramatically changed the course of the Alberta economy and its effects were widespread and uneven.”: Dr. McMillan’s Report, pg 27

156. As is evident from the above, Alberta’s economy severely underperformed over the last 4 years, both in respect to the economic projections available to the 2013 Commission and in comparison to the economies of the comparator provinces referenced in the expert reports.

The Financial Position of the Government

157. Along with the significant negative changes to the Alberta economy, the financial position of the Alberta government has deteriorated significantly since the release of the 2013 Commission Report.

158. Dr. Dahlby’s Report pointed to some of those negative fiscal changes, including as follows:

- At the beginning of the 2013 JCC’s mandate, Alberta still had net positive financial assets. But “by 2017-18, the province’s negative net financial assets, or net debt, stood at $19.3 billion”: Dr. Dahlby’s Report, pg 19 [TAB #13];

- Dr. Dahlby further noted that Alberta’s net financial assets decreased by $51 billion between 2008-09 and 2017-18, representing “a decline in the per capita wealth of Albertans of just under $12,000”: Dr. Dahlby’s Report, pg 19 [TAB #13].
159. The Finance Review of Post 2013 Economic Developments Report also described the very significant deterioration in the fiscal condition of the Alberta government as a result of the sudden and severe recessionary conditions of the last few years:

- “Alberta’s revenues fell dramatically in 2015-16 following the collapse of global oil prices”, specifically “…by over $6.8 billion in 2015-16 (an almost 14% decline), as resource revenues plummeted from $8.9 billion to $2.8 billion in one year”: Finance Review of Post 2013 Economic Developments Report at pg.7, including Chart 8 [TAB #16];

- As a result of those factors, Alberta has in the last few years experienced “…multibillion-dollar budget deficits that are expected to persist until 2023-24” such that Alberta’s “…balance sheet has deteriorated dramatically since 2013-14”. Specifically, “Alberta will have new debt of almost $11,000 per person by 2020-21, compared to $3,200 per capita in net financial assets in 2013-14”. So, while in “…2013-14, Alberta was the only province whose financial assets exceeded its debt … by the end of 2016-17, it moved to a position of a net debtor (i.e., Alberta saw its debt exceed its financial assets)”: Finance Review of Post 2013 Economic Developments Report at pgs 6 to 9 [TAB #16];

- While “Alberta’s net debt per capita is still the lowest in the country …it has been increasing faster than any other province, and is expected to continue to do so in the near to medium term.”: Finance Review of Post 2013 Economic Developments Report at pgs. 8 to 10, including Charts 9 -10 [TAB #16].

160. The Finance Review of Post 2013 Economic Developments Report also provides some key information about the overall strategy the Alberta government has adopted in response to the especially severe recessionary conditions of the last few years. That includes the following:

- Since the drastic drop in oil prices started in 2014, “the province has placed a priority on protecting essential programs and services, and jobs, for Albertans.
The outcome was expenses far exceeding government revenues”: Finance Review of Post 2013 Economic Developments Report at pg 6 [TAB #16];

- Moving forward, the Alberta government is focusing on containing costs, including public sector compensation. These containment efforts include negotiating “labour contracts with teachers, doctors and nurses to assist in cost containment and in maintaining service levels within a fiscally sustainable framework.”: Finance Review of Post 2013 Economic Developments Report at pg 7 [TAB #16].

- Alberta “... continued to sustain programs and services for Albertans during the recent recession and subsequent recovery, in an effort to protect front-line services and jobs, despite a severe drop in revenues that have not yet fully recovered”: Finance Review of Post 2013 Economic Developments Report at pg.8, including Chart 8 [TAB #16].

161. Dr. McMillan’s Report also discusses how the Alberta fiscal landscape has substantially deteriorated in the last few years, stating that the “deep recession and only gradual recovery has put the Alberta government in an awkward financial situation”: Dr. McMillan’s Report at pg 30.

162. Some of the fiscal issues that Dr. McMillan highlights in that regard are:

- Per capita total revenues for the Alberta government decreased by 18% in just two years – from 2014-15 to 2016-17 – a fall attributed mainly to the fall in resource revenues: Dr. McMillan’s Report at pg 30;

- Making the same point as Dr. Dahlby does regarding net financial assets, but in per capita terms, Dr. McMillan notes that, at its peak (2008-09), Alberta’s net financial assets amount to $8,816 per person but by 2017-18, the per capita net financial assets had dropped to negative $4,449: Dr. McMillan’s Report at pg 31.
163. Dr. McMillan’s Report also looks at a longer-term perspective of Alberta’s fiscal situation, with some emphasis as to how Alberta has responded to previous recessions or downturns. However it is submitted that, in doing so, Dr. McMillan has downplayed the relative severity and lasting impact of the Alberta recession of the last few years. Notably, in this regard, Catherine Rothrock commented that Dr. McMillan’s “...characterization of Alberta’s economic turnaround in 2017 as "substantial" fails to recognize the magnitude and duration of the recession in 2015 and 2016” and she then goes on to provide some supportive details in that regard: The Finance Rebuttal Report, pg. 1. [TAB #18].

164. Further in regard to the issue of Dr. McMillan seeking to minimize the relative severity of this very recent Alberta recession, again in response to a specific related comment in Dr. McMillan’s Report, Catherine Rothrock stated the following: The Finance Rebuttal Report, pg. 1 to 2, [TAB #18]:

(Dr. McMillan’s) conclusion that Alberta’s current fiscal position is "not entirely new" understates the significance of the recent and continuing unfavourable provincial fiscal situation.

As noted in the second paragraph on page 42 of (Dr. McMillan’s Report), Alberta is "in the fourth year of low Resource revenue and with little prospect of significant improvement (i.e. looking at low resource Revenues in the long term)." In addition, as noted in the last paragraph on page 34 of (Dr. McMillan’s Report), Alberta’s "projected nadir of net financial assets of about -90 percent" (of total provincial revenue) "is well below the earlier low of -49 percent." By this important measure, as evidenced in Figure 23 on page 34 of (Dr. McMillan’s Report), Alberta’s projected net financial asset position is nearly twice as bad as during the previous major low in the 1990s.

165. In further contrast to Dr. McMillan’s apparent view on this issue, certain reports from Alberta Treasury Board and Finance provide details as to how this most recent Alberta recession has had more substantial and longer lasting negative impacts on Alberta’s fiscal situation then many previous recessionary periods. Note that pages 3-8 of these reports are scheduled to be published at the end of October 2018.

166. Some of the relevant points from these reports are:

• The Alberta Activity Index, a weighted average of 9 monthly economic indicators, shows that the most recent recession was both the deepest and longest when
compared to the recessions in 1982-1983, 1986 and 2009: InFocus Reports at pg. 6 [TAB #24];

- As Dr. Dahlby’s Report and Dr. McMillan’s Report each note, Alberta’s fiscal situation is highly reliant on oil and gas revenues. As such, it is relevant that the decline and recovery of the price of oil since the fall in 2014 has been more drawn-out than in the previous recessions: InFocus Reports at pg. 6-7 [TAB #24];

- After a wave of oil sands capital investment fueled the economy between 2010 and 2014 and contributed three quarters of domestic demand growth during that period, private investment coming out of the current recession is expected to contribute just half of growth moving forward. Much of this lag is due to the completion of large oil sands projects prior to the recession which have not been followed with new projects: InFocus Reports [TAB #24].

167. These reports thus indicate that the 2014 recession was deeper than the three previous ones noted. And the referenced lagging economic indicators specifically show that, in contrast to the relatively quick recoveries from the noted previous recessions, Alberta’s economy has not yet recovered from the severe recession beginning in 2014.

168. It is submitted that, as a result, it would be inappropriate to base conclusions regarding Criterion G on how Alberta’s economic and fiscal situation has responded to previous recessions or downturns. Rather, it is more appropriate for this Commission in evaluating Criterion G, to look closely at the effects of the recent recession, including the current indications of a lingering severely deteriorated economic and fiscal situation.

169. Dr. McMillan’s Report also contains a lengthy section entitled “Alberta’s Fiscal Situation: An Interprovincial Perspective”, which compares the fiscal situation in Alberta to a number of other provinces. It is, again, important to remember in this regard that Criterion G is focused on the economy and fiscal situation in Alberta. Criterion G is specifically not focused on a
comparison between Alberta’s economic and fiscal situation to those of other provinces. As noted above, the relevance of any such comparison is really only in respect of Criterion E.

170. Just like with the overall economy, the fiscal situation in Alberta has clearly deteriorated suddenly and severely from what the 2013 Commission foresaw, based on the predictive economic information available to it. While Alberta’s fiscal situation in the very long term may remain relatively strong, the current evidence clearly indicates that this very recent Alberta recession has had substantial negative impacts on Alberta’s current fiscal situation, which may well be long lasting.

Current Economic and Financial Projections and the Inherent Uncertainties of Those Projections

171. The discussion above focused on the economic and fiscal conditions in Alberta in the last few years and presently. The following is a discussion of the current economic and financial projections available going forward and what weight can be given to those projections.

172. Some such projections are available from various sources including: the 2018 Budget; Dr. Dahlby’s Report; Dr. McMillan’s Report; and the Finance Review of Post 2013 Economic Developments Report. However, the most concise summary of those projections is found in the Finance Economic Outlook Report prepared by Catherine Rothrock [TAB #17].

173. We will not here review the specific projections respecting either Real Primary Household Income Per Capita (ARPHIPC) or the Consumer Price Index (Alberta CPI) as those projections are referenced in our discussions of Criterion F and H, respectively.

174. Like the recent publications of Alberta Treasury Board and Finance referenced above, The Finance Economic Outlook Report emphasizes the relative severity of the recent Alberta recession. For instance, it states that: “Given the depth of the downturn, the recovery has been drawn out”. It goes on to discuss projections that are made in the context of the “lingering
effects of the recession and oil price decline”: The Finance Economic Outlook Report at pg 1, [TAB #17].

175. These projections include the following: The Finance Economic Outlook Report, [TAB #17]:

- Real GDP will not surpass pre-recession levels until 2019, half way through the mandate of this Commission, and nominal GDP will not surpass pre-recession levels until 2020, three years into the mandate;

- Corporate profits are not forecast to return to pre-recession levels;

- The USD/CDN exchange rate is expected to appreciate to around $0.80, weighing on export revenue and nominal GDP growth;

- While oil prices are recovering, oil and gas investment is projected to only modestly increase and is projected to remain one-third below the 2014 level throughout the mandate of this Commission;

- The unemployment rate will not move near to pre-recession levels until the end of the mandate of this Commission in 2021.

176. Table 1 of the Finance Economic Outlook Report summarizes, in percentage terms, the changes expected to a number of key economic indicators through to the end of this Commission’s mandate. As can be readily seen, many of these economic indicators are not expected to recover from the “hits” that they took in 2015 and 2016 until the end, or close to the end, of this Commission’s mandate: The Finance Economic Indicators Table at p. 5 of The Finance Economic Outlook Report [TAB #17].

177. Regarding the weight to be given to these current economic projections, it is important to note the reference of the 2013 Commission to the “waxing and waning” of Alberta’s
economy due primarily to the periodic sudden changes in oil prices. As set out herein, the severe and sudden deterioration in the Alberta economy in the last 4 years is a stark illustration of how the many uncertainties inherent to Alberta’s resource based economy can quickly render any economic projections unreliable. What is clear is that there is now in Alberta much economic uncertainty facing the province moving forward.

178. The Finance Review of Post 2013 Economic Developments Report illustrates in some detail how the Alberta economy from 2013 to the present fell drastically short of the performance expectations set out in Budget 2014 in a good number of ways. The economy, contrary to those expectations, suddenly went in to and remained in a state of “waning”, for much of that time period. For instance, that Report indicates as follows: Finance Review of Post 2013 Economic Developments Report at pg 2, Chart 1 [TAB #16]:

- In Budget 2014, real GDP was projected to grow at an annual rate of 4.12% for 2013-2017. In hindsight, real GDP only grew by an annual rate of 0.82% during that same period;

- In Budget 2014, nominal GDP per capita was projected to grow at an annual rate of 2.78% for 2013-2017. In hindsight, it contracted at an annual rate of 2.16% during that same period;

- In Budget 2014, primary household income per capita (APHIPC) was projected to grow at an annual rate of 3.59% for 2013-2017. In hindsight, it contracted at an annual rate of 0.27% during that same period;

- In Budget 2014, average weekly earnings were projected to grow at an annual rate of by 3.47% for 2013-2017. In hindsight, it only grew at an annual rate of 0.50% during that same period.

50The 2013 Commission here borrowed Dr. McMillan’s language to describe the Alberta economy.
179. Looking forward, the 2018 Budget Documents refer to a number of key assumptions upon which the various prognostications were made. The revenue assumptions are largely predicated on substantial increases in projected energy prices, tax revenue, and investment income. Therefore, all of these assumptions are very optimistic: Fiscal Plan – Budget 2018, [AFE #12, p. 14].

180. Somewhat in contrast to those general prognostications, the Revenue section of the 2018 Fiscal Plan contains a detailed discussion of the various economic risks and uncertainties the GOA faces in respect to predicting its revenue. Such includes the following: Fiscal Plan – Budget 2018, [AFE #12, p. 54]:

Alberta relies heavily on revenue that is volatile and unpredictable, including non-renewable resources, corporate income tax and investment income. Since 2004-05, these have accounted for up to 55% of total revenue, but in 2017-18 they are estimated at only 24%. This revenue is linked to factors such as energy prices, equity markets, exchange and interest rates, geopolitical events, global economic swings and weather, which are all unpredictable and can fluctuate rapidly. The decline in resource revenue and corporate income tax relative to 2014-15 was directly tied to the collapse in oil prices, while investment income has been elevated with strong market returns over the last few years.

The degree of revenue uncertainty means the Alberta government must assess the degree of risk associated with its revenue outlook and spending decisions. [Emphasis Added.]

181. The Revenue section of the 2018 Fiscal Plan then goes on to list a number of specific serious risks that need to be taken into account, including as follows: Fiscal Plan – Budget 2018, [AFE #12, p. 55-56]:

- **Global and US Economies:** The 2018 Fiscal Plan notes that growth “in China continues to decelerate from its recent rapid rates” and that “[w]eaker-than-forecast global growth would harm Alberta’s revenue forecast, as oil prices would remain lower for longer.”

- **Energy Prices:** Among other risks related to energy prices, the 2018 Fiscal Plan notes “[w]ithout sufficient pipeline capacity, Alberta’s growing bitumen production is being transported by more costly and less safe rail, increasing the light-heavy differential, lowering prices for producers and government revenue.”
• **Interest Rates:** With interest rates rising, the 2018 Fiscal Plan states that “[r]ising rates pose risks for indebted households, consumer spending and the government, as substantial borrowing is planned, and higher rates make borrowing or refinancing of debt more expensive.”

• **Exchange Rates:** With changing exchange rates, the 2018 Fiscal Plan states that “[c]hanges in the exchange rate affect the profitability of energy producers, which can affect investment and government resource revenue as energy prices and contracts are mainly in US dollars.”

182. In addition, the 2018 First Quarter Fiscal Update noted the following under the heading of Risks to the Outlook: The 2018 First Quarter Fiscal Update, pg. 13, at [AFE #11]:

• Monetary policy in advanced economies could tighten faster than anticipated, putting pressure on heavily indebted emerging economies. This would be a drag on global growth;

• Growing oil supplies or slowing demand globally could put downward pressure on oil prices;

• As oil production is expected to outstrip capacity starting this year, prolonged market access issues could widen the differential, impacting incomes and investment;

• The threat of protectionist trade policies pose direct risks to the trade outlook and indirect risks related to lower global growth.

183. After noting that the 2018 Budget projects an increase in non-renewable resource revenues from $4.5 billion in 2017-18 to $10.4 billion in 2023-23, Dr. Dahlby’s Report lists a number of key vulnerabilities faced by Alberta in these projections: Dr. Dahlby’s Report at pg 28, [TAB #13]:

69
• The “vagaries of oil prices” as noted above;

• The “progress of pipeline construction”, a vulnerability which has taken a front seat since the decision of the Federal Court of Appeal regarding the Trans Mountain Pipeline in Tsleil-Waututh Nation v Canada (Attorney General)51;

• “[N]egative shocks to the economy, such as slower economic growth, higher interest rates and the developing trade wars between the United States, China, the European Union, Mexico and Canada.”;

• Dr. Dahlby’s Report puts in context how these developing trade wars could affect Alberta by citing a UBS Global Research which “estimated that an all-out trade war between the US and China could reduce global economic growth by one percentage point” which could result in “driving the price [of oil] down $15 per barrel”, which would reduce the Government of Alberta’s revenues by about $4 billion per year.”

184. The following passage from Dr. Dahlby’s Report sums up how these vulnerabilities could especially impact the fiscal situation in Alberta: Dr. Dahlby’s Report at pg 28, [TAB #13]:

In order to gauge the vulnerability of the government’s fiscal plan to the projected growth in resource revenue, we have modelled a scenario in which total revenues grow at the same projected rate as nominal GDP. Under this revenue projection, total revenues are only slightly lower in 2019-20 and 2020-21, but the revenues are significantly lower in the following two years and $4.4 billion dollars lower in 2023-24. Given the lower revenues and the same operating and capital expenditures, the province would run a fiscal deficit in 2023-24 of $4.7 billion. Alberta’s net financial debt would increase to $68.3 billion and would continue to rise after that.

185. The Minister submits that, in consideration of Criterion G, the reality of the severe recession conditions in Alberta in the last 4 years, and the substantial drastic negative and longer terms effects of same, are key to keep in mind when assessing the prevailing economic conditions in Alberta and the overall state of the economy.

51 2018 FCA 153 [copy is not attached]
186. Further, as discussed above, this Commission in assessing the longer term state of the economy should recognize that there are significant risks inherent to the volatile Alberta economy which makes reliance on the economic predictive information available at any time especially uncertain and so some overall caution is called for.

187. The following is one recent and significant example of how suddenly such Alberta economic projections can change. The Federal Court of Appeal decision on the Trans Mountain pipeline was released the same week as the 2018 First Quarter Fiscal Update. As a result, the impact of any resulting delay in the expansion of pipeline capacity was not taken into consideration by that report or in the further evidence before this Commission. Based on the evidence of Dr. Dahlby [Dr. Dahlby’s Report at pg 28, TAB #13] and Catherine Rothrock [The Finance Economic Outlook Report at pg 4, TAB #17], a prolonged delay in the expansion of pipeline capacity would have a very negative impact on the current projections.

Specific Consideration of Criterion H - The Alberta Cost of Living Index and the Position of the Judges Relative to its Increases or Decreases, or Both.

188. Criterion H is “the Alberta cost of living index and the position of the judges relative to its increases or decreases, or both”.

189. The precise wording of Criterion H is significant in that it refers specifically to the judges’ position relative to the changes in the Alberta Cost of Living Index. As is noted below, that requires reference to the Alberta Consumer Price Index (Alberta CPI).

The Alberta Consumer Price Index (Alberta CPI) is the Appropriate Alberta Cost of Living Index

190. The standard and appropriate statistical measure to utilize to ensure that Alberta judicial salaries are not eroded by the effects of inflation is the Alberta Consumer Price Index (Alberta CPI).
191. In reference to the equivalent to Criterion H, the 2009 Commission expressly noted that “Changes in the cost of living are a factor we need to consider in formulating our compensation recommendations for judges and masters” and further added the following: 2009 Report pg. 25 [JBA #20]:

The effects of inflation are important to bear in mind; they were singled out as a consideration by the late Chief Justice Lamer in the PEI Reference (at [1997] 3 S.C.R. 3, paragraphs 135, 174 and 195) in the context of stipulating that independent judicial compensation commissions, to be effective, needed to convene and assess pay levels regularly, in order to guard against the erosion of judicial salaries because of inflation.

192. As noted above, the 2009 Commission made a specific recommendation “… to utilize changes in the Alberta Consumer Price Index to trigger (annual judicial) salary adjustments.”\(^{52}\) In making such recommendation the 2009 Commission further specifically noted the following: 2009 Report pgs. 35-36 [JBA #20]:

The more obvious way to have salaries track changes in the cost of living is to tie future pay adjustments to the rate of inflation of consumer prices. This is why we recommend using the rate of change to the Alberta All-Items Consumer Price Index as a mechanism to establish future salary increases for judges and masters. This statistic truly measures the incremental cost of living over time.

193. As is also noted above, in making such recommendation the 2009 Commission had expressly declined to follow the Ontario practice of “… adopting the mechanism (for annual judicial salary adjustments) of tracking increases in the Industrial Aggregate Income Index for Canada”. The 2009 Commission also expressly noted that the tracking of changes in the Industrial Aggregate Income Index of a specific jurisdiction is basically the equivalent of tracking changes in the reported data for the Average Weekly Earnings (AWE) in that jurisdiction: 2009 Report p. 35 [JBA #20].

194. In reference to Criterion H, the 2013 Commission noted the Minister’s observation that the 2009 Commission had made a specific recommendation to utilize changes in the Alberta CPI

\(^{52}\) See paragraph 83 above.
to trigger annual judicial salary adjustments and the 2013 Commission further noted the following: 2013 Report, pgs. 35 - 36 [JBA #22]:

The Minister submits that the most reasonable and appropriate statistical measure to utilize in order to ensure that judicial salaries are not eroded by the effects of inflation is the Alberta CPI. CPI, as noted in the Minister’s documents, is calculated by reference to the cost of a fixed basket of goods. The Minister references in that regard the Alberta Treasury Board and Finance document ... entitled "Comparisons of Various Indicators Used to Measure Wage and Earnings Growth":

Many contracts that provide for cost-of-living adjustments use the growth in the consumer price index as the benchmark indicator. The CPI basket of goods and services reflects the consumption of goods and services at the national, provincial and some cases the city level. Wages that rise with the CPI ensure that purchasing power remains constant and are not subject to the disturbances caused by indexing to other earnings and wage measures.

Summary of Alberta CPI Data For Certain Specific Years

195. The Finance Economic Indicators Table includes the following information respecting changes in Alberta CPI in certain specific timeframes. For instance, the following is therein noted. [The Finance Economic Indicators Table at p. 5 of The Finance Economic Outlook Report, TAB #17]:

- During the period of 2010 to 2017 the Alberta CPI increased each year at the following respective rates - 1.0% in 2010, 2.4% in 2011, 1.1% in 2012, 1.4% in 2013, 2.6% in 2014, 1.1% in 2015, 1.1% in 2016, and1.6% in 2017;

- For the period of 2018 to 2022 the forecast Alberta CPI increases for each respective year are as follows - 2.3% in 2018, 1.9% in 2019, 2.0% in 2020, 2.0% in 2021, and 2.0% in 2022.

Comparison of Alberta Judicial Salary Increases and Alberta CPI Increases for 2013 to 2017

196. As noted above, the 2009 Commission made a specific recommendation “… to utilize changes in the Alberta Consumer Price Index to trigger (annual judicial) salary adjustments.”

53 See paragraph 75 above.
197. As also noted above, the 2013 Commission expressly rejected the submission of the Association that it “should consider implementing the IAI for Alberta, as a built in method to ensure proper adjustments to salaries”. A stated reason by the 2013 Commission for doing so was because it agreed with the 2009 Commission that “…the IAI index does not measure changes in the cost of living (i.e. changes in the cost of purchasing goods and services) but rather reflects changes in total earnings received by workers”.

54

198. But the 2013 Commission opted to recommend judicial salary increases based on specific fixed percentages, as opposed to “relying strictly on the CPI increases for Alberta, as occurred in the 2009 Commission”. The Commission stated that it had done so “...considering all 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 Report, pgs. 46-47 [JBA #22].

199. The specific recommendations made by the 2013 Commission were summarized as follows: 2013 Report, p. 40 [JBA #22].

We recommend the following increases from the current salary of $263,739.00:

<table>
<thead>
<tr>
<th>YEARS (April 1 to March 31)</th>
<th>INCREASES</th>
<th>SALARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013-2014</td>
<td>3.5%</td>
<td>$273,000</td>
</tr>
<tr>
<td>2014-2015</td>
<td>2.5%</td>
<td>$279,825</td>
</tr>
<tr>
<td>2015-2016</td>
<td>2.5%</td>
<td>$286,821</td>
</tr>
<tr>
<td>2016-2017</td>
<td>2.5%</td>
<td>$293,991</td>
</tr>
</tbody>
</table>

200. It is however also notable that the 2013 Commission did specifically refer to the Alberta CPI “predictions” as follows: 2013 Report, p. 35 [JBA #22]:

The predictions for Alberta CPI, as provided by Statistics Canada are: 2.6% for 2014; 2.5% for 2015; 2.1% for 2016; and 2.0% for 2017.

54 See paragraph 83 above.
201. Accordingly, although, as noted immediately above, the 2013 Commission clearly stated that it was not “relying strictly on the CPI increases” in making its salary recommendations, it certainly does appear as if the Commission considered the above noted Alberta CPI “predictions” as an important, and likely a key, factor in regard to the substance of those recommendations.

202. In retrospect, it is obvious that the CPI “predictions” accepted by the 2013 Commission when it made its judicial salary recommendations (as noted above) proved to be overly optimistic, especially for the years of 2015 and 2016. A comparison of the CPI “predictions” accepted by the 2013 Commission (as noted above in pgh. 200) and the actual Alberta CPI for the years of 2013 to 2017 (as also noted above in pgh. 195) is as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>JCC’s CPI Predictions</td>
<td>1.4%</td>
<td>2.6%</td>
<td>2.5%</td>
<td>2.1%</td>
<td>2.0%</td>
<td>11.1%</td>
</tr>
<tr>
<td>Actual CPI</td>
<td>1.4%</td>
<td>2.6%</td>
<td>1.1%</td>
<td>1.1%</td>
<td>1.6%</td>
<td>8.1%</td>
</tr>
</tbody>
</table>

REVIEW AND CONSIDERATION OF CRITERIA (I) AND (J)

Criterion I – The Nature of the Jurisdiction of Judges

203. Since the 2013 Commission issued its final report:

- There has been no significant change to the jurisdiction of the provincial court, although civil judges in Edmonton and Calgary will soon have a role in triaging files to determine if less complex matters can follow the simplified trial resolution track. Though not a jurisdictional change, this gives judges a new tool to hear high volume / low complexity civil matters in a summary way. Also, civil judges will soon have the express authority to conduct binding JDR processes;

- There has been a minor change to the jurisdiction of Masters in Chambers: they may now hear applications after a Form 37 has been filed (indicating readiness for trial).\(^{55}\)

\(^{55}\) Notice to the Profession and Public NP#2016-10 December 8, 2016 [TAB #25]
204. Pursuant to ss. 9.2 of the Provincial Court Act (PCA), every Provincial Court Judge has jurisdiction throughout Alberta to exercise statutory powers and perform statutory duties arising under certain legislation. This includes the PCA, the Criminal Code of Canada, other federal and provincial legislation creating criminal or quasi-criminal offences, and federal and provincial legislation relating to young persons and families and civil disputes. The Masters’ jurisdiction arises from ss. 9-11 of the Court of Queen’s Bench Act.

205. All criminal cases start in Provincial Court, and 95% conclude there. The Provincial Court also presides over many traffic, regulatory and bylaw enforcement hearings as well as civil cases involving landlord and tenant disputes and claims up to $50,000, with some limits as to subject matter. The Provincial Court also hears family and child protection cases.

206. The Provincial Court sits in 71 communities across Alberta: there are 21 base points offering all common court services, and smaller circuit points where the court sits on certain specified days. Although all Provincial Court Judges can carry out any of the functions of a Provincial Court Judge anywhere within the province, for administrative purposes upon appointment judges are assigned to one of nine divisions, each of which is headed by an Assistant Chief Judge.

207. Masters are appointed to sit in either Edmonton or Calgary and do so daily. They also hold regular sittings in eight other communities, and will sit upon request in another.

208. The jurisdictions of the Provincial Court and the Court of Queen’s Bench are different. Though not as pronounced today as in the past, the differences between the respective jurisdictions continue to be significant and meaningful.

209. Constitutionally, superior courts such as the Court of Queen’s Bench are courts of inherent jurisdiction, while provincial courts derive their powers from statute. Unlike Justices of

---

56 *PCA* [JBA #9]
57 *Court of Queen’s Bench Act* [JBA #10]
58 Judicial Information, Judges and Justices of the Peace, and Judicial Appointments [AFE #4]
59 Judicial Information, Judges and Justices of the Peace, and Judicial Appointments [AFE #4]
the Court of Queen’s Bench, Provincial Court judges cannot hear appeals from provincial court decisions, preside over jury trials, or deal with civil matters claiming over $50,000.00. They cannot hear estate matters, matrimonial property and divorce proceedings, class proceedings, or judicial reviews. They cannot preside over claims alleging malicious prosecution or defamation, among other things. The Court of Queen’s Bench deals with the most complex and serious criminal matters.

**Criterion J - The Level of Increases or Decreases, or both, Provided to Other Programs and Persons Funded by the Government**

210. The Minister’s Compensation Proposal is consistent with Alberta’s overall economic measures aimed at recovering from the recent economic downturn and balancing its budget by 2023-24. These overall economic measures include restraint on public sector salary spending and, in the case of large public sector unions, reopening bargaining in 2019.

**Alberta’s overall economic measures include restraint on spending on public sector compensation**

211. Alberta’s push towards recovery is aimed at furthering the larger public interest.

212. Although the Alberta economy is recovering from recessionary conditions, it has a way to go. One of the Alberta Government’s fiscal priorities is a commitment to return its budget to balance by 2023-24. One of its strategies to achieve that goal is to take a comprehensive approach to managing spending, including public sector compensation.

213. Prudent management of public sector compensation is a key aspect of the government’s plan, in part because public sector compensation is one of government’s two largest areas of spending. In fact, it accounts for over half of the province’s operating budget.  

---

60 PCA s. 9.6(2), [JBA #9]  
Binding law permits an approach of no increase to judicial compensation as part of an overall economic measure of restraint on spending.

214. To briefly recap the law as stated by the Supreme Court of Canada, decisions about allocating public resources belong to the legislature and executive branches of government. In making these difficult decisions the legislative and executive branches are constitutionally permitted to change or freeze judicial remuneration. This can be done as part of an overall economic measure aimed at some or all persons paid from public funds, as long as that the government goes through the commission process first. 62

215. The Supreme Court of Canada also says there is nothing inherently irrational about including judges in across-the-board measures affecting substantially every person paid from the public purse; such measures are typically connected with the government’s overall fiscal priorities and aimed at furthering the larger public interest. It would damage the reputation of the judiciary and the administration of justice if the public were to believe that judges were exempt from taking on a share of the burden in difficult economic times. The constitutional guarantee of a minimum acceptable level of judicial remuneration should not be used to shield the Courts from the effects of deficit reduction. 63

Recent Alberta unionized public sector wage settlements reflect Alberta’s overall economic measure of restraint on spending

216. Unionized public sector wages in Alberta have been generally flat in 2017 and 2018. This includes wages for workers in health care and education and the provincial public service. Through the collective bargaining process, these unions have either agreed to settlements or have entered memoranda of agreement that are subject to ratification. 64

217. The Thompson Report includes a chart showing unionized public sector percentage wage increases in Alberta from 2014-2021 in a number of public sector employee groups, and a

62 PEI Reference at paras 133, 166, 176 [JBA #1]; Bodner at para 20 [JBA #2]
63 PEI Reference at paras 184, 196 [JBA #1]
64 Unionized Public Sector Percentage Wage Increases in Alberta, Alberta Labour, September 30, 2018 authored by Dave Thompson, Labour Relations Advisor (the “Thompson Report”) [TAB #26]
summary providing greater detail about the past, current and upcoming bargaining processes in key components of the public sector.

218. The Thompson Report shows:

- that unionized health care employees and the provincial public service are receiving no wage increases for 2017 and 2018, with the caveat that the provincial public service and some health care sector staff entered into memoranda of agreement that are still subject to ratification;

- that through facilitated negotiations between the government of Alberta and the non-union Alberta Medical Association, Alberta physicians have agreed to no compensation increases for 2018-19 or 2019-20;

- that through a province-wide agreement, teachers received no increases in 2016 or 2017, and should soon return to bargaining.

Recent Alberta non-unionized public sector wages reflect Alberta’s overall economic measure of restraint on spending

219. Government of Alberta non-union (management, opted out and excluded) employees have not received salary increases since 2015. This includes legal officers such as Crown prosecutors and other government lawyers, senior officials, and Deputy Ministers. Their salaries have been frozen since 2016 and will remain so at least until September 30, 2019. 65

220. Salaries paid to all non-bargaining unit staff of public agencies, boards and commissions governed by the Alberta Public Agencies Governance Act are also subject to restraint until September 30, 2019.66 This follows Alberta’s significant restraint-based reforms to the rules

---

65 Public Sector Wage Increases 2003-2019 as at October 5, 2018, [AFE #8]
66 Salary Restraint Regulation, AR 6/2018 and Salary Restraint Regulation Fact Sheet, [TABS #27 and 28]
around compensation payable to the highest paid top executives of agencies, boards and commissions, including college and university presidents.\textsuperscript{67}

**SUMMARY OF RELEVANT CONCLUSIONS BASED ON ANALYSIS OF ALL THE CRITERIA**

**Conclusions Based on Consideration of Criterion (E)**

**Current Alberta Judicial Salary Still in Highest Range**

221. It is notable that if the 2016-2017 salary for Alberta Provincial Court Judges of $293,991 remained at that level for 2017-2018 such would still be the highest judicial salary in all of the provinces for that year, ranking only behind the salary of Federally Appointed Judges. And if the Alberta judicial salary remained at such level for 2018-2019 it would still be the third highest judicial salary in all the provinces for that year, ranking only behind the judicial salaries in Ontario and Saskatchewan (and the salary of Federally Appointed Judges): The Judges Comparative Salaries Table in The Judicial Compensation Charts [TAB#12].

222. Furthermore, the 2016-2017 salary for Alberta Provincial Court Judges of $293,991 equated to 93.6\% of the 2016-2017 salary for Federally Appointed Judges. And if the Alberta judicial salary remained at such level for 2017-2018 it would still equate to 93.2\% of the 2017-2018 salary for Federally Appointed Judges. Both of those percentages are in keeping with the percentage “gap” between the respective salaries of Alberta provincial judges and Federally Appointed Judges as endorsed by the 2009 and 2013 Commissions: The Comparison to Federal Judicial Salaries Chart in The Judicial Compensation Charts\textsuperscript{68} [TAB #12].

\textsuperscript{67} GoA News Releases: “Government reins in agency CEO pay and benefits”, February 24, 2017; “Cutting excessive post-secondary salaries”, April 10, 2018, [TAB #29]; Compensation Regulation Handbook, [TAB #31]

\textsuperscript{68} Note that the Alberta/Federal comparison percentage figure for 2016/17 in the The Comparison to Federal Judicial Salaries Chart is rounded off to 94\% but the actual precise calculation would be 93.6\%, and comparing the Alberta judicial salary for 2016/17 to the Federal salary for 2017/18 the actual precise calculation would be 93.2\%.
The Recent Commission Practice of Recommending Alberta Judicial Salaries be at “Approximate Parity” with Ontario Judicial Salaries Should Be Abandoned

223. As was discussed in some detail above, previous Alberta Commissions have recognized a linkage between the respective salaries for Alberta and Ontario provincial court judges. The 2009 Commission referred to that linkage as one of “approximate parity”. But, as was also noted above, the 2009 Commission also expressly remarked that Alberta should not simply base its judicial compensation on that in Ontario and both the 2009 and 2013 Commissions emphasized that the basis for the setting of Alberta judicial compensation should be one “made in Alberta”. 69

224. The 2013 Commission basically agreed that approximate parity between Alberta and Ontario should be maintained but also noted that there “…should not be a hard and fast rule to keep salaries at say, 95% of those of Ontario Provincial Courts judges”. The 2013 commission also emphasized the need for a “made in Alberta” recommendation. In that regard, it further noted the significant differences between the “large manufacturing based” Ontario economy and that of Alberta which “…depends to a large extent on its fluctuating natural resource revenues.” It very notably also expressly rejected the Association’s submission that it “…consider implementing the IAI for Alberta, as a built in method to ensure proper adjustments to salaries”. 70

225. As also noted above, both the 2009 Commission and the 2013 Commission rejected the notion that Alberta judicial salary increases should be, at least in part, based on the application of some sort of formula similar to the approach taken within the Ontario Mechanism for Annual Judicial Salary Adjustments. 71

226. But there are now several additional very cogent reasons for this Commission to abandon, at least for the present, the practice developed in recent Alberta commissions of

69 See paragraphs 72 to 74 and 86 above.
70 See paragraphs 81 to 83 above.
71 See paragraphs 84 to 85 above.
making recommendations concerning Alberta judicial salaries with the objective of maintaining “approximate parity” with Ontario judicial salaries. We will refer to those immediately below.

This Commission Should Expressly Disavow the Current Ontario Reliance on The Ontario Mechanism For Annual Judicial Salary Adjustments Now Newly Combined With A Unexplained Formulaic Linkage To Salaries for Federally Appointed Judges.

227. The Ontario Mechanism For Annual Judicial Salary Adjustments was described in some detail above. In a nutshell, it involves the implementation of annual mandatory statutorily prescribed salary adjustments for Ontario provincial judges in lock step with changes over a specific year in the Industrial Aggregate Index for Canada (IAI Canada). As was also discussed above, both the 2009 Commission and the 2013 Commission expressly rejected the idea that Alberta should adopt a system similar to The Ontario Mechanism for Annual Judicial Salary Adjustments to effect annual judicial salary adjustments. This was clearly illustrative of the key importance that those Commissions placed on the objective of reaching a distinctive “made in Alberta” recommendation in respect to judicial salary adjustments.72

228. As also referenced above, the First Kaplan Commission Report, which contained binding recommendations for the compensation of Ontario judges for the period of April 1, 2010 to March 31, 2014, provides a good illustration of how the Ontario Mechanism For Annual Judicial Salary Adjustments works in actual practice and also why it should have no relevance for Alberta. As noted, the First Kaplan Commission Report merely confirmed that the aforenoted annual mandatory statutorily prescribed salary adjustments for Ontario provincial judges would represent the judicial salary increases for that four year period.73

229. As has been noted above, both the 2009 Commission and the 2013 Commission emphasized the importance of a “made in Alberta” basis for a recommendation for any adjustments of judicial salaries in Alberta. The First Kaplan Commission Report would of course

72 See paragraphs 76 to 79 and 83 to 86 above.
73 See paragraphs 79 to 80 above.
have been of little or no relevance in that regard simply because of its simple rubber stamping of The Ontario Mechanism for Annual Judicial Salary Adjustments for purposes of the determination of adjustments to Ontario judicial salaries for the years of 2010 to 2014.

230. However, it is submitted that this Commission should not just consider the Second Kaplan Commission Report, issued by the 2018 Ontario Commission, as irrelevant to the determination of any specific recommendations for adjustments to judicial salaries in Alberta. Rather this Commission should, for the reasons set out below, also view the Second Kaplan Commission Report as grounds for a re-evaluation of the recent Alberta Commission practice of formulating judicial salary recommendations, at least to some appreciable degree, on the objective of maintaining “approximate parity” of Alberta judicial salaries with Ontario judicial salaries.

231. As noted above, the Second Kaplan Commission Report made binding recommendations for adjustments to Ontario judicial salaries for, respectively, the years of 2014 to 2018 and 2018 to 2022. A review of the Second Kaplan Commission Report makes it clear that the 2018 Ontario Commission has very recently and suddenly embarked on a radical new path in regard to the determination of Ontario judicial salaries for the period of 2018 to 2022. Such principally involved an unexplained formulaic linkage to the salaries of the federally appointed judiciary. It is far from clear what the specific rationale of the 2018 Ontario Commission was in taking that path, as its determinations followed on the also unexplained joint submissions of the Ontario government and the Ontario provincial judges.74

232. A clear illustration of what a radical change the Second Kaplan Commission Report represents to the previous approach of Ontario Commissions is to compare its approach to that of the 2001 Ontario Commission. As noted above, the majority of the 2001 Ontario Commission in dealing with the issue of the proposed salary parity between Ontario provincial judges and

74 See the detailed review of the Second Kaplan Commission Report beginning at paragraph 105 above.
federally appointed judges clearly rejected the parity idea and further added that “...neither do we recommend any formulaic linkage to the salaries of the federally appointed judiciary” (emphasis added). The 2001 Ontario Commission went on (in the quoted extract) to provide some rationale for its position, including that “…each level of judicial remuneration should be determined on its own merits” and “…that the two groups of judges are paid by different levels of government, whose fiscal abilities and priorities are different”.75

233. What is clear is that the 2018 Ontario Commission has endorsed a method for determination of Ontario judicial salaries which the 2001 Ontario Commission had expressly said should be avoided. Although the 2018 Ontario Commission in the Second Kaplan Commission Report did not recommend salary “parity”, in stark contrast to the above noted position taken by the 2001 Ontario Commission, it recommended a “formulaic linkage to the salaries of the federally appointed judiciary”. And the 2018 Ontario Commission did this with no substantive explanation of its rationale.

234. As noted above, the 2003 Commission, in rejecting the Association’s argument that the compensation of Alberta Provincial Court Judges should be “broadly equivalent” to that of federally appointed judges, agreed that recommending a salary already set by a federal Commission “would be tantamount to surrendering jurisdiction to a body responsible to Parliament and abdicating responsibility to make a decision faithful to local conditions”. (emphasis added)76

235. It is submitted that this Commission should similarly proceed on the basis that it will not “abdicate its responsibility” to make Alberta judicial salary recommendations based on its consideration of all of the specific criteria in a manner “faithful to local conditions”. That would certainly mean that this Commission should not either recommend a salary “already set by a

75 See paragraph 97 above.

76 See paragraph 94 above.
federal Commission” or adopt the new practice of the 2018 Ontario Commission to make
judicial salary recommendations based on some unexplained “formulaic linkage” to the
salaries of the federally appointed judiciary.

236. It is further submitted that the afore noted determination of the 2018 Ontario
Commission to base Ontario judicial salary recommendations on some unexplained “formulaic
linkage” to the salaries of the federally appointed judiciary is cause for this Commission to now
re-evaluate if there are still reasonable grounds to support the notion of maintaining
“approximate parity” between the judicial salaries in Alberta and Ontario. The Minister would
further submit that such determination of the 2018 Ontario Commission is by itself sufficient
cause to abandon such notion, at least for the present.

This Commission Should Give Considerable Weight to the Relatively Severe Short and Medium
Term Negative Effects of the Recent Alberta Recession on the Overall Alberta Economy and the
Financial Position of the Government of Alberta in Comparison to the Much More Stable and
Positive Performance of the Ontario Economy in the Same Time Period.

237. It was specifically asserted above that having regard to the wording of each of the Criteria
“...essentially the only relevance of any such comparison of the prevailing economic conditions
and the overall state of the economy in Alberta with that of any other province would be in
respect to Criterion E”. 77

238. Such a comparison of the recent respective performances of the Alberta and the Ontario
economies is germane to the issue of whether this Commission should continue on with the
recent Alberta Commission practice of seeking to maintain “approximate parity” of Alberta
judicial salaries with Ontario judicial salaries.

239. We have above, in respect of Criterion G, reviewed in some detail the pertinent expert
opinions respecting such a comparison. That section of this submission and the referenced expert

77 See paragraph 150 above.
reports should be reviewed. We are here only going to repeat some very basic expert opinions and conclusions in this regard.\textsuperscript{78}

240. As noted above, Dr. Dahlby concluded the following in regard to a comparison of the recent respective performances of the Alberta and the Ontario economies:\textsuperscript{79}

- Between 2014 and 2016 (the most recent year that annual statistics are available), Alberta’s real GDP declined by 10% while Ontario’s increased by 3.4%;

- Unemployment in Alberta peaked at 9% in November 2016 and in 2018 Alberta continues to have a higher average unemployment rate than Ontario (6.6% in Alberta compared to 5.6% in Ontario);

- In 2016, Alberta’s primary household income per capita (APHIPC) dropped sharply by 8.7% while Ontario’s primary household income per capita increased by 1.7%.

241. Catherine Rothrock concluded the following in regard to a comparison of the recent respective performances of the Alberta and the Ontario economies:\textsuperscript{80}

- In 2015 and 2016, Alberta experienced its first back-to-back years of real GDP contractions since the early 1980s and “Alberta’s real GDP grew at an average annual rate of only 0.8% during the period 2013 to 2017”, whereas Ontario’s real GDP grew at an average annual rate of 2.7% during that same period;

- In the period of 2013 to 2017 Alberta primary household income per capita (APHIPC) grew at an average annual rate 0.27% and its average weekly earnings are estimated to have increased at an average annual rate of 0.50%. That is

\textsuperscript{78} This detailed discussion starts at paragraph 151.
\textsuperscript{79} See paragraph 153 above.
\textsuperscript{80} See paragraph 154 above and the Finance Review of Post 2013 Economic Developments Report at pgs. 1 and 3-5, [TAB #16]
compared to Ontario’s primary household income per capita rising at an annual growth rate of 2.96% and Ontario’s average weekly earnings rising at an annual growth rate of 1.92% in that same period.

242. Further in regard to the significance of a comparison of the above noted respective unemployment rates in Alberta and Ontario, Catherine Rothrock had this to say in response to the statement in Dr. McMillan’s Report that “Ontario’s unemployment rate has been lower than Alberta’s since 2015 and is expected to be about equal over the next few years”: The Finance Rebuttal Report. Pg. 1 [TAB #18]:

... (that paragraph) fails to acknowledge that this is unusual, given the structure of Alberta’s labour market compared with Ontario.

The (McMillan) report does not consider that Alberta has a larger share of its population in the prime work age (25-54) compared with Ontario. This age cohort is less likely to be unemployed and has higher overall labour participation. As a result, all else being equal, Alberta’s unemployment rate should be lower than Ontario’s. In fact, Alberta’s unemployment rate has been lower than Ontario’s since 1991. This changed in 2015 when Alberta plunged into a deep recession and the unemployment rate jumped above that of Ontario. Despite the recovery in the economy and improvement in the labour market, Alberta’s unemployment rate continues to be elevated and remains higher than Ontario’s but the gap between the two provinces has narrowed.

Further, given the depth of the recession and the prolonged recovery, we do not expect Alberta’s unemployment rate to move back to pre-recession rates until 2021, which is when we expect the economy to reach full employment. ...In contrast, Ontario’s economy is now at full employment.

243. Furthermore Catherine Rothrock included the following very notable points in discussing the relative impact of the “lower oil prices” experienced in recent years on the respective economies of Alberta and Ontario: Finance Review of Post 2013 Economic Developments Report at pgh 3 [TAB #16];

As a net energy importer, lower oil prices help the Ontario economy by reducing production costs and the costs of consumer goods. On the other hand, as a net energy exporter, Alberta’s economy is hurt by lower oil prices due to a reduction in the value of oil exports and resource royalties. By stimulating Ontario’s exports, a more competitive Canadian dollar and a strengthening US economy generally support Ontario’s growth.

While a lower dollar also benefit Alberta’s economy by boosting revenue, considerably lower oil prices outweighed the economic benefits to Alberta in 2015 and 2016.
244. As detailed in the same report, and referenced above, it is clear that there has been a very significant deterioration in the fiscal condition of the Alberta government as a result of the sudden and severe recessionary conditions of the last few years. By contrast, it is also clear that Ontario did not in that period suffer from any sort of comparable recessionary conditions. 81

This Commission Should Maintain the Historically Recognized Salary “Gap” with Federally Appointed Judges and Should be Wary of Statutorily Prescribed Annual Salary Increases for Federally Appointed Judges

245. As was noted above, most if not all of the previous Alberta Commissions had specifically recognized the validity of maintaining the traditional “gap” between the respective salaries of federal and provincial judges. As also noted above, that has also consistently been the view of previous commissions in other provinces and court challenges to that principle have not been successful. 82

246. As was also noted above, the amount of that “gap” has varied from time to time but from 2009 to 2017 the salaries for Alberta Provincial Court Judges have averaged approximately 93% of the salaries of federally-appointed Judges. [Also see the Table entitled “Judicial Compensation in Alberta – Comparison to Federal”, included in the Judicial Compensation Charts [AFE #5].

247. However, it is also very clear from both the 2009 and the 2013 Alberta Commission Reports that those Commissions were not endorsing the suggestion that there be any sort of fixed linkage such that Alberta judicial salaries would necessarily be set as a specific percentage of the salaries of federally-appointed Judges. 83

248. It should also be noted in making any comparison in any specific time frame between the salaries of federally-appointed judges and the salaries of Alberta Provincial Court judges that the same complicating factor exists in doing so as exists in comparing the salaries of Ontario

81 See discussion above starting at paragraph 159.
82 See detailed discussion beginning at paragraph 87 above.
83 See for instance, paragraphs 93 to 95 above.
Provincial Court judges and the salaries of Alberta Provincial Court judges. Federally-appointed judges, like the Ontario Provincial Court judges, are entitled to statutorily prescribed annual salary increases. In the case of the federally-appointed judges, those prescribed increases are computed in accordance with the Industrial Aggregate Index for Canada (IAI Canada) to a maximum of 7%.

249. To reiterate the wording of the 2003 Commission, as referenced above, for an Alberta Commission to merely recommend a salary already set by a federal Commission “would be tantamount to surrendering jurisdiction to a body responsible to Parliament”. That same reasoning would of course apply in respect of an annual salary increase for Federally Appointed Judges, which was statutorily prescribed in federal legislation. That is, an Alberta Commission should certainly not recommend an increase in Alberta judicial salaries based on salary increases for Federally Appointed Judges statutorily prescribed in federal legislation.

250. Until the issuance in 2018 of the Second Kaplan Commission Report, it appeared that such was generally representative of the view of the Ontario Commissions as well. For instance, as noted above, the 2001 Ontario Commission had clearly rejected the suggestion of parity between the salaries of Ontario Provincial Court Judges and the salaries of federally-appointed Judges. Very notably, at the same time the 2001 Ontario Commission added that it would not “…recommend any formulaic linkage to the salaries of the federally appointed judiciary” and that “… each level of judicial remuneration should be determined on its own merits, having regard to the criteria pursuant to which an independent Commission makes its recommendations”.85

251. So, as discussed above, the 2018 Ontario Commission has clearly taken a very divergent path on these important matters from that of its predecessors. Although the Second Kaplan Commission Report did not recommend “parity” it clearly has, in stark contrast to the above

84 See paragraph 94 above.
85 See paragraph 97 above.
noted position taken by the 2001 Ontario Commission, now recommended a “formulaic linkage to the salaries of the federally appointed judiciary”. It is submitted, for reasons set out above, that this Commission should not follow Ontario’s path in this regard.

Conclusions Based on Consideration of Criteria (F) and (H)

2013 Commission Recommendations for Alberta Judicial Salary Percentage Increases Based on Overly Optimistic Economic Predictions

252. As noted above, the 2013 Commission expressly referred to and accepted for its purposes certain specific “predictions” concerning expected Alberta CPI increases for each of the years from 2014 to 2017. As also noted above, although the 2013 Commission clearly stated that it was not “relying strictly on the CPI increases” in making its salary recommendations, it certainly appears as if the Commission considered the above noted Alberta CPI “predictions” as an important, and likely a key, factor in regard to the substance of those recommendations.86

253. As also there noted, those accepted Alberta CPI predictions proved to be overly optimistic, notably for the years of 2015 and 2016.87 Furthermore, the actual percentage increases in Alberta judicial salaries for the period of April 1, 2013 to March 31, 2017 substantially exceeded the actual increases in Alberta CPI for the years of 2013 to 2017.

254. In that regard, for a quick comparison of the respective annual growth rates in the years 2013 to 2017 for Alberta CPI (1.59%) and Alberta Primary Household Income Per Capita (-0.27) with the annual rate of increases to Alberta Judicial Salaries (2.75%) one can refer to Chart 6 in The Finance Review of Post 2013 Economic Developments Report [TAB #16].88

86 See paragraphs 197 to 201 above.
87 For exact specifics see the Table in paragraph 202 above.
88 Chart 6 also set the respective annual average growth rates in 2013 to 2017 for similar economic indicators in Ontario in comparison to the average annual increase in Ontario Judicial Salaries.
255. Also in that regard, Dr. Dahlby noted as follows: Dr. Dahlby’s Report, pages 4 and 17-18 [TAB #13]:

Judicial salaries increased by 11.5 percent between March 2013 and March 2017, while the Alberta consumer price index increased by 6.8 percent. Taking into account the increase in the cost of living, real judicial salaries increased by 4.4 percent between March 2013 and March 2017. Real average weekly earnings in Alberta declined by 4.8 percent over this period.

256. Although there is no specific indication in its Report that the 2013 Commission, in making its salary recommendations, directly took into account the economic data and predictions placed before it in respect to Criterion (F), there is a specific reference therein to such data as follows: 2013 Report, p. 30 [JBA #22]:

The Minister’s materials includes a document published by Alberta Treasury which shows the growth in percentage household income on an inflation adjusted basis, the Alberta Real Primary Household Income Per Capita (the "ARPHIPC"). The reported and projected growth for ARPHIPC for 2013 was 2.7%; and for 2014, 1.4%. Further projections are as follows: for 2015-1.0%, for 2016-1.3% and for 2017-1.1%. The Minister relies on the statistics for the ARPHIPC as the most appropriate measure for this criterion.

257. There is included above a summary of the specific data now reported and predicted (as the case may be) by Alberta Treasury and Finance for the years from 2010 to 2022 in regard to the percentage growth (or decrease) in, respectively, the Alberta Real Primary Household Income Per Capita (ARPHIPC) and the Alberta Real Primary Household Income.

258. A quick comparison of the above noted data for the “reported and projected growth for ARPHIPC” for the years 2013 to 2017 as was available to the 2013 Commission with the current confirmed Alberta Treasury and Finance data for ARPHIPC discloses the following notable differences:

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 JCC’s ARPHIPC data</td>
<td>2.7%</td>
<td>1.4%</td>
<td>1.0%</td>
<td>1.3%</td>
<td>1.1%</td>
</tr>
<tr>
<td>Actual ARPHIPC data</td>
<td>2.2%</td>
<td>1.0%</td>
<td>0.3%</td>
<td>-9.7%</td>
<td>1.6%</td>
</tr>
</tbody>
</table>

89 See paragraph 139 above. As therein noted, complete details of the Alberta Treasury and Finance data in this regard are set out in The Finance Economic Indicators Table at p. 5 of The Finance Economic Outlook Report. [TAB #17]
259. Based on the foregoing, it is immediately clear that, just as was the case with respect to the “Alberta CPI predictions” available to and accepted by the 2013 Commission, the data for the “reported and projected growth for ARPHIPC” for the years 2013 to 2017 available to the 2013 Commission was overly optimistic, again notably for the years of 2015 and (especially) 2016.

Review of the 2013 Justices of the Peace Compensation Commission - the Post 2014 Sudden and Sharp Decline in Alberta Economic Conditions Expressly Noted and Salary Recommendations Tempered Accordingly


261. The Society of Justices of the Peace in Alberta (the JPs) proposed to the 2013 JPCC that it recommend salary percentage increases to their salaries identical to those that had been recommended by the 2013 Commission in 2015 for judicial salary increases: 2013 JPCC Report, p. 13 [TAB #11].

262. It is notable that the 2013 JPCC rejected the JPs said proposal and instead recommended salary increases for the JPs in each of the four years in question at a lesser percentage than the 2013 Commission had recommended for the judges some two years earlier: 2013 JPCC Report, p. 28 [TAB #11].

263. A specific comparison of the annual percentage salary increases recommended respectively by the 2013 JCC for judges (in February of 2015) and by the JPCC for JPs (in June of 2017), for each of the four years from 2013-2014 to 2016-2017 is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
<th>2016-17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compound Salary Growth 2013-14 to 2016-17</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

90 Amended March 18, 2015
264. In respect to the making of its recommendations the 2013 JPCC noted that it was “...guided by the factors set out in the Regulation” but then went on to add the following in respect of its rationale: 2013 JPCC Report, p. 27 [TAB #11]:

   In assessing the overall compensation to be paid to JP’s over the last four years, however, we must also be mindful of the economic conditions in Alberta over the period of our mandate. The prosperity Alberta enjoyed in 2013 through to part of 2015 has unfortunately declined in the last two years. In keeping with the requirements of the Regulation, we must consider the overall economic picture in Alberta since the last Commission in making our recommendations. [Emphasis Added.]

265. As part of its review and assessment of the recent declining condition of the Alberta economy, the 2013 JPCC in 2017 specifically noted the following with regard to one of the key Economic Indicators, namely changes in the Alberta CPI: 2013 JPCC Report, p. 25 [TAB #11]:

   The cost of living index, which is also a factor for our consideration under the regulation, show the following percentage increases for the four year period of this Commission: 2013 1.4%; 2014 2.6%; 2015 1.1%; 2016 1.2%.

266. It is thus apparent that the said Alberta CPI estimates from the “cost of living index” which the 2013 JPCC in 2017 referred to were updated from those which the 2013 Commission in 2015 had been provided with. A specific comparison of the CPI “predictions” accepted by the 2013 Commission in 2015 (as noted above) and the CPI data provided to the 2013 JPCC in 2017 for the years of 2013 to 2016 (as also noted above) is as follows:

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 JCC CPI predicted data</td>
<td>1.4%</td>
<td>2.6%</td>
<td>2.5%</td>
<td>2.1%</td>
</tr>
<tr>
<td>2013 JPCC CPI actual data</td>
<td>1.4%</td>
<td>2.6%</td>
<td>1.1%</td>
<td>1.2%</td>
</tr>
</tbody>
</table>

---

91 See the table included in paragraph 202 above. Upon reference to that data taken from The Finance Economic Indicators Table at p. 5 of The Finance Economic Outlook Report, one can confirm that the Alberta CPI data provided to the 2013 JPCC for these four years (2013 to 2016) was identical to the confirmed “actual” CPI data for those years.

92 For a summary of the Alberta CPI data which the 2013 Commission had specifically referred to see paragraph 200 above.
Also, as part of its review and assessment of the recent declining condition of the Alberta economy, the 2013 JPCC in 2017 specifically noted the following with regard to other of the key Economic Indicators, including recent declines in respect to Alberta Average Weekly Earnings and in “household per capita income”, and to “job losses” in a “variety of industries”: 2013 JPCC Report, pgs. 23 to 25 [TAB #11]:

The GOA notes, based on the above AWE statistics through to the end of 2016, that there was a decline in the AWE of 1.9% in 2016 and the trend in the AWE in real terms is downward. The chart also illustrates that there is also a general decline in real terms in household per capita income during this four year period. Further, Statistics Canada reports show declines in a variety of industries for the period 2014-2016 including construction, real estate, finance and insurance—a much broader decline than just the oil sector. The point of the GOA is that the general trend is that any gains from 2013 and 2014 have been lost throughout all sectors of the economy.

All the above statistical analysis reinforces with our Commission that although the oil and gas sector may be beginning to show signs of life, there is as yet little indication of a trend towards a sustained recovery in the broader economy of Alberta.

...We agree with the GOA that the statistical data confirms Alberta’s economy spiralled beginning in 2015 with the drop in the price of oil. The effect on the economy has been particularly challenging in a province like Alberta whose economic infrastructure is tied so closely to the oil and gas industry. Albertans nevertheless continue to prosper when compared with the citizens of the other provinces. But the job losses over the last two years have had a significant effect on the economy and must be considered as a tempering factor when assessing the compensation for the mandated period.

Conclusions Based on Consideration of Criterion (G)

This Commission Can and Should Make Salary Recommendations Based in Part on Evaluation of the Stated Rationale for the Salary Increase Recommendations of the 2013 Commission

268. The Supreme Court in Bodner93 stated the following with respect to the judicial compensation commission process, in paragraphs 14-15:

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.

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

93 Bodner [JBA #2]
269. The British Columbia Court of Appeal recently considered the issue of a change in economic data in the context of the time between the issuance of a commission report and the government response to that report. The Court commented as follows, in paragraphs 34-36:

In British Columbia, the JCC process allows the parties to put forward their position in the context of stated financial circumstances based on projections. Although there could be a dramatic unforeseen change within the time provided for the Legislature’s response that seriously affects the JCC’s report, the risk is limited. To permit reconsideration based on circumstances two years after the JCC recommendation risks making those recommendations meaningless or impossible to analyze. Judicial review should not have that result. There are other difficulties.

The 2013 JCC process began with the Legislature’s position on the 2010 recommendations, which had accepted a small salary increase. It was appropriate to do so. The process is ongoing (Bodner at paras 14 and 15). Sometimes, the result may be to over-compensate judges based on unforeseen financial circumstances that subsequently develop, as, arguably, was the case in 2007. Because the accepted 2007 salary levels were based on an optimistic financial forecast that changed, no increase was sought or recommended for 2010. On other occasions the compensation may fall short.

Subsequent commissions can and do address these situations. Although commissions may be informed by previous recommendations, each commission inquiry is a discrete event. The process followed in this case frustrates the scheme. The interjection of judicial review should not alter the basic framework and self-regulation of the process.

270. There has been recognition by commissions in several jurisdictions of the aforesaid principle that a commission can make salary recommendations which adjust for the recommendations of a previous commission that were “…based on an optimistic financial forecast that changed”. And in regard to a contrary factual scenario, the 2016 Quebec Commission determined that prior commissions had undercompensated in relation to inflation and that upward adjustments needed to be made to “catch up”.

94 Provincial Court Judges’ Association of British Columbia v British Columbia (Attorney General), 2015 BCCA 136 [extract at TAB #1]
271. The Report of the 2010 Judicial Compensation Commission for British Columbia provides the following comment on this issue, at page 26: 2010 Report of the Judicial Compensation Commission for British Columbia [TAB #7]:

For the purposes of its assessment the Commission has assumed that the Province will recover from its present economic circumstances and return to fiscal balance in 2013/14. The Commission does so recognizing that the difficulties of forecasting can be illustrated by the fact that the 2007 Commission felt confident in making its recommendations on the basis that there would be substantial budgetary surpluses to 2010/11. The 13.7% increase in judicial salaries which flowed from the 2007 Commission’s recommendations was based upon an economic forecast that was ultimately not borne out by actual events.

The Commission accepts that the global economic downturn has had a significant negative effect on the Government’s finances as compared to 2007. While the Commission is not bound by the Government’s “net zero” mandate, it is of the view that significant enhancements to judicial salaries and benefits are not supportable for the 2011/12 and 2012/13 fiscal years. However, the Commission has concluded that it is reasonable to expect that the Government will be in a position to support increases in the 2013/14 fiscal year which will ensure fair and reasonable compensation for Provincial Court Judges. [Emphasis Added]

272. Ultimately, the 2010 B.C. Commission recommended a salary freeze for the first two years and a cost of living adjustment for the final year of the mandate. While the 2010 B.C. Commission did not explicitly say this was a “hindsight adjustment”, it was strongly implied to be as such. And the aforenoted 2015 BCCA case referred to this as an instance case where the JCC had done a kind of “hindsight analysis”.

273. The parties before the 2016 B.C. Commission agreed that the economic and fiscal conditions in that province had remained fairly steady since the previous commission report had been issued and the 2016 B.C. Commission determined that salary increases were warranted. But the 2016 B.C. Commission also made the following comments applicable to our present discussion about possible salary adjustments being made by the next commission, at page 61: 2016 Report of the Judicial Compensation Commission for British Columbia [TAB #9]:

Both the PCJA and the Government agreed that fiscal and economic measures are steady and that the province is in a moderately comfortable position. There have been three successive surpluses. There are small predicted surpluses over the course of the Commission's mandate; they are small

95 This was in the context of a noted lag in BC judicial salaries following years of litigation.
surpluses and they depend in part on the Government’s policies of fiscal restraint. ...Now is the time for significant adjustment of judicial salaries.

If economic conditions and the Government’s financial position change from what is forecasted, then in three years’ time the Government can propose an adjustment. [Emphasis Added]

274. As noted above, the 2016 Quebec Commission determined that prior commissions had undercompensated in relation to inflation and that accordingly adjustments needed to be made to “catch up”. In its Report the following comments (English translation) were made, at pages 52-53): Report of the 2016 Quebec Commission [Extract at TAB #10]:

The Commission has noted that despite the efforts of the previous two Commissions, there has been a certain degree of erosion in the purchasing power of Quebec judges.

Like the Clair Commission, the current Commission notes the fact that previous salary increases by the Government have been insufficient to preserve the purchasing power of Quebec judges. Consequently, The Clair Commission decided it was necessary to adjust judicial salaries to compensate for this erosion of purchasing power in their decision.

275. The 2017 Provincial Court Commission of Saskatchewan dealt with some similar issues but came to a different conclusion on them than had either the 2010 B.C. Commission or the 2016 B.C. Commission: Report and Recommendations of the 2017 Provincial Court Commission of Saskatchewan [Extract at TAB #4].

276. The Government of Saskatchewan’s position on these issues before the 2017 Saskatchewan Commission is summarized as follows, at paragraphs 119-121: Report and Recommendations of the 2017 Provincial Court Commission of Saskatchewan [Extract at TAB #4]:

While the Government acknowledges that projected increases in the cost-of-living can be a relevant consideration, the Government also notes that increases recommended by the Zakreski Commission, the Hood Commission and the Hodson Commission all exceeded the increases in the SCPI for the three year periods covered by each of those three reports. The fact that the salary increases recommended by those commissions outpaced the cost of living over the past nine years is “a significant factor which this Commission should take into account in approaching the questions of salaries”.

The Government notes that “[c]ommissions try to predict what may happen in the future, and take that into account in setting a cost-of-living component for salary increase”. However, the Government suggests that it is also appropriate to “look backwards from time to time, to see if the methodology used to calculate a cost-of-living component was accurate. The Government
respectfully submits that doing so now indicates that the salary increases awarded to the judiciary over the past three commissions cycles have over-compensated for inflation”. [Emphasis Added]

277. The Commission responded to the Government of Saskatchewan’s said submissions as follows, at paragraphs 176-183: Report and Recommendations of the 2017 Provincial Court Commission of Saskatchewan [Extract at TAB #4]:

While we accept the Government’s submission that it is appropriate for a compensation commission to “look backwards from time to time”, we do not agree that simply because economic conditions and other influencing factors may have evolved differently from those projected by the previous commission or commissions, that this Commission should second guess or make “correction” to adjust for such resulting differences.

We do not see the function of this Commission as attempting to predict with certainty what economic conditions may exist in the future, but rather to judiciously consider the evidence presented to us by the parties and make reasoned recommendations to the best of our ability taking into account such evidence.

It is the view of this Commission that the Hodson Commission, the Hood Commission and other commissions before them have made reasonable salary recommendation based on all the evidence available and presented to them.

Notwithstanding the submission of the Government, we are not convinced, on the basis of the evidence provided to us, that “salary increase awarded to the judiciary over the past three commission cycles have overcompensated for inflation” [...] or that previous commissions have in any respect “failed to set compensation and benefits at the appropriate level due to particular circumstances” within the context of the statement made by the Supreme Court of Canada. (para. 15, New Brunswick Reference).

In fact, if this Commission is satisfied that predecessor commissions have conducted a thorough review of judicial compensation and in the absence of demonstrated change, only minor adjustment may be necessary, as indicated by the Supreme Court of Canada in the same Reference.

Notwithstanding the foregoing however, we do not suggest nor do we accept that this Commission is simply to “rubber stamp” the recommendations of previous commissions, and most recently the Hodson Commission.

As stated in the Report of the Hood Commission: “this would abdicate our responsibility under the Act and wrongful ignore the jurisprudence. The mandate of this Commission is to ‘inquire into and make recommendations’ regarding the matters set out in the Act. This means that this Commission cannot rest on the laurels of its predecessors. Rather this Commissioner must complete a full analysis of the issues before it. To this extent, there is ‘fresh analysis’, but it is made against the backdrop of building upon the work, rationale and recommendations of previous commissions. [Emphasis Added]

278. In considering carefully those comments made by the 2017 Saskatchewan Commission in respect to the described position of the Government of Saskatchewan, some important points
should be noted which will: highlight the general understanding of the 2017 Saskatchewan Commission in respect to these issues; serve to distinguish the position taken by the Minister herein from that taken by the Government of Saskatchewan; and illustrate that its stated criticism of the Government of Saskatchewan would not be applicable to the Minister’s position in this case.

279. In regard to the general understanding of the 2017 Saskatchewan Commission in respect to these issues, the following points included in the above noted comments made of the 2017 Saskatchewan Commission are especially notable:

- A Commission cannot simply “rubber stamp” the recommendations of previous commissions, and instead must complete a full analysis of the issues before it;
- But such a “fresh analysis” is to be made “against the backdrop of building upon the work, rationale and recommendations of previous commissions”;
- It is appropriate for a Commission to “look backwards from time to time”;
- If a Commission is satisfied that “predecessor commissions have conducted a thorough review of judicial compensation and in the absence of demonstrated change, only minor adjustment may be necessary”.

280. In regard to factors that distinguish the position taken by the Minister herein from that taken by the Government of Saskatchewan, the following points included in the above noted comments made of the 2017 Saskatchewan Commission are especially notable:

- The Government of Saskatchewan was specifically critical of the methodology used by the previous commissions to accurately calculate a cost-of-living component;
The Government of Saskatchewan was suggesting that the Commission should second guess or make “correction” of decisions of previous commissions.

281. It is submitted that the position of the Minister taken herein is something quite different from the above noted position of the Government of Saskatchewan taken at the 2017 Saskatchewan Commission, as follows:

- The Minister is not suggesting that the 2013 Commission employed the wrong methodology in completing its tasks or that this Commission should in any way “second guess” or “correct” the decisions of the 2013 Commission;

- To the contrary, the Minister is suggesting that the 2013 Commission, although it employed the correct methodology (e.g., by relying on the most reliable economic indicators, including those to predict future changes in the Alberta CPI and the ARPHIPC), made recommendations based on those predictive economic indicators which “in hindsight” have been clearly proven as markedly inaccurate.

282. As stated above, the Minister is not critical in any respect of the 2013 Commission and is not suggesting that this Commission “second guess” anything the 2013 Commission did. The Minister’s argument on this issue merely recognizes that the reliance of any commission upon even the most widely used predictive economic indicators can prove to be inaccurate. Following from that is the further submission that in such a scenario the next commission can and should rightfully consider making adjustments in its own salary recommendations for the period moving forward to adjust for the demonstrated inaccuracy of such predictive economic indicators. Depending on the circumstances, those adjustments could be up or down. It is submitted that this argument is fully in keeping with the above noted directions of the SCC in
Bodner and would be consistent with the conclusions reached by both the 2010 B.C. Commission and the 2016 B.C. Commission.

This Commission Should Make Salary Recommendations Bearing in Mind Previous Over Compensation Resulting from the Reliance of the 2013 Commission on Overly Optimistic Economic Indicators

283. The sort of scenario referred to above in the noted 2015 BCCA decision is similar to what occurred subsequent to the issuance of the 2013 Commission Report. As discussed above in some detail, the 2013 Commission relied on an understanding of the relatively positive general state of the Alberta economy, and expressly in respect to same specifically referred to predictive economic data, which proved to be overly optimistic, most notably for the years of 2015 and 2016.96 That specific predictive data relied upon by the 2013 Commission and which proved to be too positive included data related to both Alberta CPI and to Alberta Real Primary Household Income Per Capita (the "ARPHIPC").

284. Also included above is a discussion respecting the more moderate salary adjustment recommendations (on a percentage basis) made by the 2013 JPCC (in its 2017 report) in comparison to those made by the 2013 Commission (in its 2015 report), both in respect of the same four year period.97 The discussion includes reference to the stated rationale of the 2013 JPCC for its lower percentage recommendations in relation to the “recent declining condition of the Alberta economy”. That discussion includes reference to comments of the 2013 JPCC specifically in regard to the less positive predictive data respecting Alberta CPI (i.e., in comparison to the CPI predictive data which the 2013 Commission had been provided with). And it also included reference to comments of the 2013 JPCC in regard to other general indicia of the noted the statistical data which “…confirms (that) Alberta’s economy spiralled beginning in 2015 with the drop in the price of oil”.

96 This detailed discussion starts at paragraph 252 above.
97 This detailed discussion starts at paragraph 260 above.
285. It is submitted that, based on the above noted points, this Commission should determine that, viewed in hindsight, the salary increases recommended by the 2013 Commission for the years of 2015-2016 and 2016-2017, although based on proper economic predictive data, proved to be excessive having regard to the actual economic indicators data and the “prevailing economic conditions” in those time periods. It is further submitted that this Commission should therefore make salary recommendations “going forward” (i.e., starting at April 1, 2017) to “adjust” for the resulting judicial over compensation in the aforementioned previous years.

This Commission Should Make Salary Recommendations Bearing in Mind the Past, Present, and Anticipated Future Negative Effects of the Recent Alberta Recession and the Inherently Volatile and Uncertain Nature of Alberta’s Economy Looking Ahead

286. As detailed above, there is abundant evidence that the recent sudden and unexpected Alberta recession of the last several years was very severe, including in respect to both its shorter term and longer term negative effects on the “prevailing economic conditions in Alberta and the overall state of the economy”. That is clear from all the relevant expert reports, including Dr. McMillan’s Report. There is specific information in both Dr. Dahlby’s report and The Finance Review of Post 2013 Economic Developments Report providing details in this regard.

287. There is, as was also summarized above, a strong basis to conclude that this recent Alberta recession has had more substantial and longer lasting negative impacts on Alberta’s fiscal situation then many previous recessionary periods. The Finance Economic Outlook Report emphasized the relative severity of the recent Alberta recession and that “the recovery has been drawn out”.

98 See the detailed discussion of these matters, starting at paragraph 151 above.
99 See paragraph 155 above.
100 See paragraphs 153 and 154 above.
101 See the detailed discussion of these matters, starting at paragraph 163 above.
102 See paragraph 174 above.
Furthermore, it is also clear that such recession and its significant negative effects on the overall Alberta economy also resulted in significant deterioration in the financial position of the Alberta government. That is clear from all the relevant expert reports, including Dr. McMillan’s Report. There is specific information in both Dr. Dahlby’s report and The Finance Review of Post 2013 Economic Developments Report providing details in this regard.

There is discussion above relating to the relative severity of the recent Alberta recession, including the suggestion that Dr. McMillan has minimized the relative severity of this very recent Alberta recession. This includes reference to the specific opinion of Catherine Rothrock to that end, supported by the data she has referenced, and reference to two (soon to be published) reports from Alberta Treasury Board and Finance.

Based on the foregoing, it is therefore submitted that, as noted above, in the end, it is appropriate for this Commission in evaluating Criterion G, to look closely at the effects of the recent recession, including the current indications of a lingering severely deteriorated economic and fiscal situation.

There is also discussion above relating to the current economic and financial projections available looking to the future and how reliable (or not) those projections may be.

As stated above, The Finance Review of Post 2013 Economic Developments Report noted that “... the economic projections available at the time of the 2013 Commission hearings turned...”
out to drastically inaccurate in that the economic reality in Alberta of the last 4 years was starkly
different, and much more negative, than had been anticipated”.¹⁰⁹

293. That same conclusion can be drawn from the above detailed analysis of the comparison
of the substantial difference in the economic data and projections (for the period of 2013 to
2017) available to the 2013 Commission in early 2015 with those available to the 2013 JPCC in
2017, and the resultant notable difference in the respective percentage salary increase
recommendations made by each of those commissions.¹¹⁰

294. For reasons discussed above, the reliability of available economic projections is inherently
more unreliable in respect to a volatile resource based economy like that of Alberta.¹¹¹ This is
referred to above as the “waxing and waning” of Alberta’s economy due primarily to the periodic
sudden changes in oil prices. As an illustration of that, and as noted above, the Finance Review
of Post 2013 Economic Developments Report illustrated in detail how the Alberta economy from
2013 to the present fell drastically short of the performance expectations set out in Budget
2014.¹¹²

295. It is specifically noted above that the revenue assumptions made in the 2018 Budget
Documents “are largely predicated on substantial increases in projected energy prices, tax
revenue, and investment income” and that all of these assumptions are optimistic, especially
having regard to the “various economic risks and uncertainties the GOA faces in respect to
predicting its revenue” (those risks are identified in the 2018 Budget Documents).¹¹³

¹⁰⁹ See paragraph 154 above.
¹¹⁰ See the detailed discussion of these matters, at paragraphs 252 to 267 above.
¹¹¹ See the detailed discussion of these matters, at paragraphs 177 to 187 above.
¹¹² See paragraph 178 above.
¹¹³ See paragraphs 179 to 182 above.
296. It is also specifically noted above that Dr. Dahlby’s Report identified a number of key vulnerabilities faced by Alberta in making these types of revenue projections.\textsuperscript{114}

297. Overall, as noted above, in respect of this Commission’s specific consideration of Criterion G, it is submitted that the following factors should be kept foremost in mind: \textsuperscript{115}

- The reality of the severe recession conditions in Alberta in the last 4 years, and the substantial drastic negative and longer terms effects of same; and

- The significant risks inherent to the volatile Alberta economy which makes reliance on the economic predictive information available at any time especially uncertain such that overall caution in considering judicial compensation increases is called for.

Conclusions Based on Consideration of Criterion (J)

Alberta is balancing its obligations to meet all of its financial obligations with respect for the JCC process and the administration of justice

298. Alberta’s fiscal policy is prudent and in the public interest. Going forward, all Albertans, not just those whose salaries come from public funds, stand to benefit from careful decision-making around when to spend, and when to hold the line. For example, careful financial management means that increased funding can be made available for key programs like Legal Aid, which has been chronically underfunded.\textsuperscript{116}

299. As it reviews the parties’ arguments under Criterion J, Alberta urges the Commission to consider how important it is that judges share in the broad spending restraints that other persons and programs funded by government presently face. This approach is consistent with preserving respect for the administration of justice as well as for the Commission process.

\textsuperscript{114} See paragraphs 183 to 184 above.
\textsuperscript{115} See paragraphs 185 to 186 above.
\textsuperscript{116} GoA News Release: “Ensuring Albertans have access to justice”, Oct 11, 2018, TAB #30
RESPONSE TO APJA’S ACTUARIAL EVIDENCE

Notable Conclusions from the Moore Rebuttal Report

300. Counsel for the APJA provided counsel for the Minister with a copy of a September 24, 2018 actuarial report authored by Andre Sauve and indicated that the APJA intended to rely upon such report to support the Association’s position on salary (“the Sauve Report”).\(^{117}\) In response to same, counsel for the Minister obtained an actuarial report authored by William Moore, dated October 5, 2018 (“the Moore Rebuttal Report”). A copy of the Moore Rebuttal Report is included at TAB #20. A copy of William Moore’s Professional Resume is included at TAB #21. Copies of those documents have been provided to APJA counsel.

301. There is reference in the Moore Rebuttal Report, at page 7, to a document referred to as “the Provincial Family Court Judges Benefits Survey published December 31, 2017 by the Nova Scotia Pension Services Corporation”. That document will be referred to herein as “the 2017 Nova Scotia Judicial Pension Benefits Survey” and a copy of same is included at TAB #22. There is also reference in the Moore Rebuttal Report, at page 8, to a document referred to as “a report prepared by AON Hewitt in 2011 on total compensation analysis for 13 Canadian jurisdictions”. That document will be referred to herein as “the 2011 AON Hewitt Report” and a copy of same is included at TAB #23. Copies of those documents have been provided to APJA counsel.

302. William Moore in the Moore Rebuttal Report referred specifically to the Sauve Report as “the Expert Report”. He specifically endorsed the accuracy of three specific tables contained in the Sauve Report and he also agreed with the following conclusion taken from the Sauve Report: The Moore Rebuttal Report, pages 7 -8, [TAB #20]:

\(^{117}\) A copy of the Sauve Report is included as an attachment to the APJA Written Submission.
These results show that the judicial compensation arrangement in Alberta is competitive for judges appointed at younger ages but is less competitive for judges appointed at older ages.  

303. William Moore then stated that “...there is one area where the Expert Report could be improved and there are some additional points related to the value of Alberta judicial pensions that should be considered”. In specific regard to where the Sauve Report could be improved, there is discussion in the Moore Rebuttal Report under the heading of “Scope of Comparator Group”. The following comments are there set out: The Moore Rebuttal Report, pages 8-9, [TAB #20]:

The Expert Report provides results and conclusions based on only four judicial pension plans, including Alberta. Earlier reports that compared Canadian judicial compensation considered most, if not all, of the Canadian federal, territorial and provincial jurisdictions. ... To illustrate, I have extracted data from a report prepared by AON Hewitt in 2011 on total compensation analysis for 13 Canadian jurisdictions. I have adjusted the compensation value for Alberta to reflect the 100% cost of living benefit added to the plan provisions effective April 1, 2009.

This AON Hewitt report is based on salary data circa 2010 and slightly different economic and demographic assumptions and methodology for the compensation value than the Expert Report. Nevertheless, the following table illustrates the importance of considering the broader national picture of judicial pension plans. [Emphasis added.]

304. The “following table” referred to immediately above and the following specific conclusion, based on data in that table, are then set out: The Moore Rebuttal Report, page 9, [TAB #20]:

The Expert Report places the ranking of the Alberta Judges Pension Plan at the bottom of the limited comparator group. Since the AON Hewitt report is now seven years old and increases in cash compensation have not been uniform over the comparator group, it would not be appropriate to use the results to suggest a specific ranking in the 2018. Nevertheless, the fact that the Alberta ranking was in the middle of the pack in 2011 is meaningful, particularly since there does not appear to have been any material changes to the provisions of the judicial pension plans in the interim. [Emphasis added.]

118 This statement, quoted in the Moore Rebuttal Report, is set out at page 5 of the Sauve Report.
305. William Moore, in regard to the above noted “additional points related to the value of Alberta judicial pensions” then, under the heading of “Total Compensation of Alberta Judges Appointed at Younger Ages”, stated the following: The Moore Rebuttal Report, page 9, [TAB #20]:

The Expert Report correctly notes that the compensation value of the pension entitlement for Alberta Judges appointed at younger ages is competitive with the rest of the comparator group. The following table illustrates the total compensation value of the Judicial pension plans for the comparator group based on salaries in 2017 for appointments at ages 40 and 45.

The table illustrates that the Alberta Judges Pension Plans provide a competitive pension for judges appointed relatively early in career (e.g. age 40 and 45). The compensation value of future pension entitlements for Alberta Judges appointed at age 40 ranks second behind federally appointed judges. At appointment age 45, the compensation value of future pension entitlements for Alberta Judges is not as competitive as at appointment age 40 but still ranks third and is comparable to the values in Ontario and Saskatchewan. [Emphasis Added.]

306. The “following table” referred to immediately above and a “graphic” to further illustrate the above noted points relating to Total Compensation of Alberta Judges Appointed at Younger Ages are then set out: The Moore Rebuttal Report, page 10, [TAB #20].

307. In addition, William Moore offered the following very notable related opinions: The Moore Rebuttal Report, pages 3 and 11, [TAB #20]:

As discussed later in this report, increasing the cash compensation of Alberta Judges to adjust for an observed disparity in the compensation value of pension entitlements is not the most effective means to deal with the disparity. ...

Any salary increase that is granted effective in 2017 will disproportionately benefit Alberta Judges appointed at younger ages. The total compensation of Alberta Judges appointed at younger ages is already competitive. If the average salary increase of 12.9% were granted (as reported on page 6 of the Expert Report), the total compensation of Alberta Judges appointed at age 40, would exceed the total compensation of federally appointed judges appointed at age 40. ...

Because the Alberta Judges Pension Plans do not include plan design features to enhance the pensions for Judges appointed later in career, the total compensation of Judges appointed at older ages will always be less competitive than the total compensation for Judges appointed at younger ages. Across the board Increases [sic] in cash compensation cannot correct or eliminate the disparity in total compensation between Judges appointed at older ages and Judges appointed at younger ages. [Emphasis Added.]
308. William Moore, under the heading of “Adequacy of Pensions Provided to Alberta Judges”, also included a specific table effectively illustrating that “pensions payable to Alberta Judges retiring in 2018 remain generous”: The Moore Rebuttal Report, page 11, [TAB #20].

“Alberta’s Tax Advantage” – General After Tax Comparison of Judicial Salaries in Select Provinces

309. The Sauve Report, on page 6, included a Table entitled “Salary Increases” under the following descriptive sentence - *The following salary increases would be required as at April 1, 2017 for the total compensation of judges in Alberta to be equal to the total compensation of judges in the indicated jurisdictions.*

310. The “indicated jurisdictions” compared to Alberta in the Sauve Report in regard to pension valuation and total compensation were Federal, Ontario, and Saskatchewan. The basic conclusion was that the total compensation of Alberta judges lagged behind each of the indicated jurisdictions in varying amounts. The Minister is given to understand that the APJA will be arguing that the alleged variances in overall judicial compensation in the indicated jurisdictions as identified in the Sauve Report should be used as a basis for increasing Alberta judicial salaries.

311. **Assuming that is the position of the APJA and that this Commission seriously considers that argument it is submitted that this Commission should be very careful to make sure it has a complete understanding of the “entire picture” in this regard. It is submitted that the analysis set out in the Sauve Report does not provide a basis for such a complete understanding because it did not take into account the effect of taxes in each of the other jurisdictions on take home pay in comparison to those in Alberta. In other words, the analysis in the Sauve Report in comparing judicial compensation in several jurisdictions completely ignores the fact that Alberta's judges enjoy a significant "tax advantage" over judges in those other jurisdictions.**

312. There is a section in Dr. McMillan’s Report where he refers to "Alberta's Tax Advantage". That includes specific discussions of that "Tax Advantage" at what Dr. McMillan refers to as at
"The Family Level". Dr. McMillan refers to an analysis in Budget 2018 which he describes as follows [Dr. McMillan's Report, pgs. 51-52]:

That analysis estimates the taxes paid by families with two children across the provinces for four levels of family income. The analysis covers the major taxes facing households and reports the amounts paid of personal income tax, provincial sales tax, health premiums, payroll tax, fuel tax and net carbon charges.

313. Dr. McMillan included a specific Table, entitled Comparative Tax Advantage to Alberta Families, 2018 which contains some specific dollar figures coming out of that analysis about which Dr. McMillan commented further, as follows [Dr. McMillan's Report, pg. 51-52]:

Table 2 below summarizes the evidence by reporting the amount by which the sum across those taxes is lower in Alberta; that is, the tax advantage to Alberta families. Alberta reports an advantage over every other province for each family income class ($35,000, $75,000, $100,000 and $200,000). The advantages are considerable, even at the lowest income level. Compared to the other two low tax effort provinces the advantages range from $1031 to $3927 over British Columbia and from $1209 to $3450 over Saskatchewan. The advantages over Ontario range from $1296 to $7158 across the income groups. [Emphasis Added.]

314. It is clear that Dr. McMillan’s conclusions confirm that Alberta Provincial Court Judges would have, in general terms at least, a "tax advantage" over their colleagues in the other Canadian jurisdictions. But Dr. McMillan’s conclusions are not based on any data and calculations specific to persons in the income range of Alberta’s judges in comparison to persons in that same income range in other provinces.

315. Specifically in response to the Sauve Report and based on the Minister’s above noted understanding that the APJA will be arguing that the conclusions in the Sauve Report should be used as a basis for increasing Alberta judicial salaries, the Minister obtained a more specific “after tax income” comparison analysis from the Tax Policy Branch of Alberta Treasury Board and Finance. That analysis is entitled “An Interprovincial Comparison of Judges’ Salary” (“The TBF Interprovincial Tax Comparison for Judges”). A copy of The TBF Interprovincial Tax Comparison for Judges is included at TAB #32.
316. The TBF Interprovincial Tax Comparison for Judges contains detailed comparative tax analyses in respect to several different identified scenarios for judges in Alberta, British Columbia, Saskatchewan and Ontario, each based on assuming a judicial salary of $293,991. The other applicable specific Assumptions utilized are identified and described (see page 5).

317. The TBF Interprovincial Tax Comparison for Judges examines in total eight different scenarios. Each of the following four basic scenarios are utilized twice with, firstly, the additional factor of Including Pension Contributions (the charts on pages 1 and 2) and, then, with the additional factor of Without Including Pension Contributions (the charts on pages 3 and 4):

- Judge is not married / Effect of estimated sales tax included;
- Judge is not married / Sales tax not included;
- Judge is married / Spouse earns no income / Effect of estimated sales tax include;
- Judge is married / Spouse earns no income / Sales tax not Included.

318. Notably, with respect to each of the eight identified scenarios in The TBF Interprovincial Tax Comparison for Judges there is included a chart that sets out the calculated amount of “Salary Required in Other Provinces for the Same After Tax Salary $293,991 Salary in Alberta”. 119

319. For instance, the following conclusions are set out on page 2 of The TBF Interprovincial Tax Comparison for Judges in regard to the scenario identified therein as Married Couples / Sales tax not included / Pension Contributions Included. Judges in each of the following provinces would have to earn the following respective amounts in additional salary. This is expressed in

119 The $293,991 salary figure used in all the calculations was chosen for comparison purposes as it was the Alberta judicial salary for the year of 2016/17.
120 For full details of all the calculations in all the scenarios, please refer directly to The TBF Interprovincial Tax Comparison for Judges, [TAB #32]
each case both as a Salary Differential amount and as a Percentage Increase Required to receive the same after tax income as an Alberta Provincial Court judge:  

- British Columbia - Salary Differential $21,167 / Percentage Increase Required 7.2%;  
- Ontario - Salary Differential $29,455/ Percentage Increase Required 10.0%;  
- Saskatchewan - Salary Differential $2,684/ Percentage Increase Required 0.9%.

320. The Minister would thus submit that the analysis in the Sauve Report in comparing judicial compensation in several jurisdictions and its conclusions do not provide a complete understanding of the “entire picture” in this regard. As noted above, that is because the Sauve Report does not contain an after tax salary comparison of judicial compensation in the various jurisdictions selected therein. To the contrary, the analysis and conclusions in The TBF Interprovincial Tax Comparison for Judges does provide specific after tax salary comparisons of judicial compensation in a number of identified scenarios in the select provinces.  

321. Based on the conclusions set out in The TBF Interprovincial Tax Comparison for Judges in respect of such an after tax salary comparison of judicial compensation in the various select provinces it is clear that Alberta judges do enjoy a real and calculable advantage over their colleagues in the other provinces. It is submitted that this has to be taken into account in any comparison of judicial compensation in the different provinces in order for this Commission to have a complete understanding of the “entire picture”.

121 This information is set out in the “bottom chart” on page 2 of The TBF Interprovincial Tax Comparison for Judges. Obviously, this is only one example. Please also note from reference to the “middle chart” on page 2 of the calculated that the after tax salaries of judges in the other jurisdictions would in all cases flag behind those of Alberta to an even greater extent if the calculation included reference to Sales Taxes.
THE MINISTER’S COMPENSATION PROPOSAL

General Comments

322. The Minister supports a principled approach to determining appropriate judicial compensation in Alberta and any adjustments thereto. That approach involves duly considering all of the Criteria, as discussed in detail above.

323. A straightforward “formulaic approach”, involving some sort of simple numerical comparison of compensation payable to certain other Canadian judges, is to be avoided. It is above all imperative that this Commission should fulfill its obligation to complete an assessment of the Criteria having regard to the unique Alberta situation. In other words, above all, this Commission’s recommendations must represent a “made in Alberta” balancing of the various Criteria.

324. And in regard to designing a “made in Alberta” recommendation, the Minister would emphasize that in the present circumstances the Economic and Financial Criteria should be considered by this Commission to be of special significance. Full discussion of each of the Economic and Financial Criteria, and of the significance of same, is set out above.

The Minister’s Proposed Joint Submission

325. On June 18, 2018, Counsel for the Minister provided counsel for the APJA with the details of a Proposed Joint Submission to this Commission (“the Minister's Proposed Joint Submission”). Amongst other things, the Minister's Proposed Joint Submission included the following proposed terms:

- There would be no judicial salary increases for the first two years of this Commission’s mandate (starting April 1, 2017); and

- The determination of judicial salary issues for the last two years of this Commission’s mandate (starting April 1, 2019), as well as of any other
issues the parties would like considered, would be made at a Commission hearing to be held on a specified mutually agreeable date in the fall of 2019 or later.

326. The APJA rejected the Minister's Proposed Joint Submission.

327. A main rationale behind the Minister's Proposed Joint Submission included some of the points noted above herein in regard to the Minister’s argument that the 2013 Commission recommendations for judicial salary percentage increases were largely based on, what is now clear, were overly optimistic economic predictions.\textsuperscript{122}

328. One clear example of the foregoing, also specifically discussed above, is a comparison of the considerable differences in the annual percentage salary increases recommended respectively by the 2013 Commission for judges (in February of 2015) and by the 2013 JPCC for JPs (in June of 2017) for each year in the same four year period from 2013-2014 to 2016-2017. As detailed above, a main reason for such differences was that the 2013 JPCC had access to predictive economic data updated some two years from that which the 2013 Commission had to rely upon, and which data more accurately reflected the prevailing economic conditions in Alberta for the entire four year period.\textsuperscript{123}

329. As reviewed in considerable detail above, it also appears very clear that, especially between 2014 and the present time, there has been tremendous volatility in Alberta’s “prevailing economic conditions” and resultant significant negative changes in the “overall state of the Alberta economy” and “the financial position of the Government”.\textsuperscript{124}

\textsuperscript{122} For details see paragraphs 252 to 259 above.
\textsuperscript{123} For details see paragraphs 260 to 267 above.
\textsuperscript{124} For details see the lengthy discussion starting at paragraph 151 above.
330. There is also detailed discussion above in respect to the economic and financial projections for Alberta available going forward and, related to that, how in Alberta there are now many uncertainties facing the province moving forward, which make those projections especially unreliable at present. 125

331. To put it all of the above in simple terms, the main rationale behind the Minister's Proposed Joint Submission was to allow the parties and this Commission access to updated predictive economic data and other relevant information in respect specifically to the issue of this Commission’s recommendations of the appropriate judicial compensation for the last two years of this Commission’s mandate.

**Details of the Minister’s Compensation Proposal**

**Salary**

332. The basics of the Minister’s present position on judicial salary is set out above, in paragraph 1.

333. Discussion of the reasons for the Minister’s present overall position on judicial salary is set out above in regard to many of the specific Criteria.

334. Immediately above, there is discussion of the rationale behind the Minister's Proposed Joint Submission which related in part specifically to the issue of recommendations respecting to judicial salary for the last two years of this Commission’s mandate. As also noted there, the APJA rejected the Minister's Proposed Joint Submission.

---

125 For details see the lengthy discussion starting at paragraph 171 above.
Professional Allowance

335. The Minister is agreeable to an increase to the judges’ annual professional allowance from $3,750 to $4,500, effective April 1, 2017.

Reduction in the Age of Eligibility for Part-time Service

336. The Minister is agreeable an amendment to the eligibility for part-time service from 60 to 55 years of age as at April 1, 2017.

Judicial Indemnity

337. The Minister understands that the APJA has proposed the following:

The 2013 Commission recommended a judicial indemnity policy, the precise wording of which was the subject of an agreement between the judges and the government. That recommendation was accepted by the government.

With a view to avoiding any future disagreement, misunderstanding or confusion about that recommendation and the constitutional obligations of government relating to that indemnity, the Provincial Court Judges and Masters in Chambers Compensation Regulation should include a clause to the effect that:

“The government shall indemnify judges consistent with any Judicial Indemnity that has been or is recommended by a Judicial Compensation Commission and accepted by Government from time to time.”

338. The judicial indemnity recommended by the 2013 Commission was implemented after the proposed joint submission was delivered. The indemnity is found in Ministerial Order 80/2017, which includes the following wording:

... the Crown shall indemnify Alberta Provincial Court Judges and Masters in Chambers in accordance with the attached Appendix, which consists of terms and conditions recommended by the 2013 Alberta Judicial Compensation Commission that are binding on the Crown.

339. The noted Appendix contains the agreed-upon wording which was included in the 2013 Commission Report.
340. Section 7(1)(e) of the Financial Administration Act permits indemnities if the indemnity is in writing and is specifically authorized by an Act or a regulation made under the Financial Administration Act or any other Act. The judicial indemnity is authorized by section 12(2) of the Indemnity Authorization Regulation, which also authorizes the Minister to make a revised judicial indemnity if new terms and conditions are recommended by a Commission and accepted by the Lieutenant Governor in Council, which makes the recommendation binding on the Crown.

341. For the above noted reason, the Minister is of the view that there is no need to include reference to the indemnity in yet another regulation as proposed by APJA.

THE ASSOCIATION’S SALARY INCREASE PROPOSAL SHOULD BE REJECTED

342. The Minister understands that the Association’s judicial salary increase proposal (the Association’s Judicial Salary Increase Proposal) is that the annual salary for puisne judges should be increased as follows:

- effective April 1, 2017, to $296,382;
- effective April 1, 2018, to $302,304;
- effective April 1, 2019, to 94.5% of the salary of a federally appointed judge; and
- effective April 1, 2020, to 95% of the salary of a federally appointed judge.

343. The Minister is of the view that the Association’s Judicial Salary Increase Proposal should be rejected by this Commission for reasons specifically including the following.

344. It is submitted that the Association’s Judicial Salary Increase Proposal is primarily based on applying to Alberta the recommendations of the 2018 Ontario Commission, and thus if the Association’s Judicial Salary Increase Proposal was accepted by this Commission it would essentially mean that recommended changes to Alberta judicial salaries would be based on the combination of the application of a system similar to the Ontario Mechanism for Annual Judicial
Salary Adjustments and an arbitrary formulaic linkage to the salaries of federally appointed judges.

345. Above is a review and analysis of the Second Kaplan Commission Report, issued by the 2018 Ontario Commission, which included the following information:  

- Details of the recommended Ontario judicial salary increases in the four year period from April 1, 2014 to March 31, 2017, which simply endorsed, for each year, the statutorily imposed salary increases based on the IAI (Canada) index. [As also noted above, such salary increases were, as noted above, already statutorily prescribed as part of the Ontario Mechanism for Annual Judicial Salary Adjustments.]

- A verbatim reproduction of the specific details of the recommendations for Ontario judicial salary increases in the four year period from April 1, 2018 to March 31, 2022.  

346. Upon even a cursory comparison of the Association’s Judicial Salary Increase Proposal with the recommendations of the 2018 Ontario Commission in the Second Kaplan Commission Report respecting Ontario judicial salaries, it is very clear that the Association’s Judicial Salary Increase Proposal is substantially modelled on and seeks to basically adopt the recommendations of the Second Kaplan Commission Report relating to Ontario judicial salaries. That is evident from the Table immediately below.

126 This review and analysis is set out above in a section entitled Review and Analysis of the 2018 Report of the Ninth and Tenth Ontario Provincial Judges Remuneration Commissions, starting at paragraph 105 above.

127 This “verbatim reproduction” of the details of the recommendations for Ontario judicial salary increases in the period from April 1, 2018 to March 31, 2022 is set out above at paragraph 111.
### Table 4

**Judicial Salary Comparison Chart**

The Association’s Judicial Salary Increase Proposal and the Recommendation of the 2018 Ontario Commission

<table>
<thead>
<tr>
<th>Year</th>
<th>APJA’s Proposal for Alberta Salaries</th>
<th>2018 Ontario Commission Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Salary</td>
<td>% Increase</td>
</tr>
<tr>
<td>2017/18</td>
<td>$296,382</td>
<td>0.81%</td>
</tr>
<tr>
<td>2018/19</td>
<td>$302,304</td>
<td>2%</td>
</tr>
<tr>
<td>2019/20</td>
<td>?</td>
<td>?</td>
</tr>
<tr>
<td>2020/21</td>
<td>?</td>
<td>?</td>
</tr>
</tbody>
</table>

347. As is evident from the above Table, if the Association’s Judicial Salary Increase Proposal was accepted by this Commission, such would effectively mean that this Commission would be choosing to endorse, both:

- The application of some sort of automatic annual salary increase to Alberta judicial salaries based on something similar to The Ontario Mechanism for Annual Judicial Salary Adjustments; and

- The utilization of some sort of specific formulaic linkage to salaries for federally appointed judges.

348. It should further be noted from the above Table that if the Association’s Judicial Salary Increase Proposal was recommended by this Commission, at this point in time it would not be possible to know what the specific judicial salaries would be for Alberta judges for either 2019/20 or 2020/21. The salary for 2019/20 would depend on application of the percentage increase in the IAI (Canada) for the preceding year (not yet determinable) and the salary for 2020/21 would depend on completion of the next Federal Commission, which is now scheduled to start in June
of 2020, and on the issuance of its recommendations for federal judicial salaries. That is, of course, because the Association’s Judicial Salary Increase Proposal would simply follow the lead of the 2018 Ontario Commission in adopting a specific formulaic linkage to salaries for federally appointed judges. So, in other words, the Association’s Judicial Salary Increase Proposal would have this Commission tie Alberta judicial salaries for 2020/21 to a fixed percentage of a federal judicial salary that will be determined by the Federal Commission in 2020 or thereafter. It is submitted that such would clearly amount to what the 2003 Commission warned would “would be tantamount to surrendering jurisdiction to a body responsible to Parliament and abdicating responsibility to make a decision faithful to local conditions”.

349. There is discussion above of the previous rejections by both the 2009 Commission and the 2013 Commission of the APJA’s suggestions of the adoption in Alberta of a system similar to The Ontario Mechanism for Annual Judicial Salary Adjustments to effect annual judicial salary adjustments and also respecting the stated emphasis of both those Commissions on the importance of a “made in Alberta” basis for a recommendation for any adjustments of judicial salaries in Alberta.

350. There is also a specific submission above, with supporting argument, that this Commission should view the Second Kaplan Commission Report as grounds for a re-evaluation of the recent Alberta Commission practice of formulating judicial salary recommendations, at least to some appreciable degree, on the objective of maintaining “approximate parity” of Alberta judicial salaries with Ontario judicial salaries. That should be reviewed, but in a nutshell, that argument suggests that re-evaluation should occur because the 2018 Ontario Commission had suddenly “embarked on a radical new path in regard to the determination of Ontario judicial

---

128 See the Puisne Judge Salaries Across Canada 2005 – 2022, AFE #5 and The Status of Judicial Compensation Processes in Canada as at September 11, 2018, AFE #6
129 See paragraphs 94 and 234 above.
130 See discussion starting at paragraph 227 above.
131 See discussion starting at paragraph 230 above.
salaries for the period of 2018 to 2022”, principally by endorsing “an unexplained formulaic linkage to the salaries of the federally appointed judiciary”.

351. In that regard it was further submitted above, that this Commission should not “abdicate its responsibility” to make Alberta judicial salary recommendations based on its consideration of all of the specific criteria in a manner “faithful to local conditions”. And it was also expressly argued above that such responsibility “would certainly mean that this Commission should not either recommend a salary “already set by a federal Commission” or adopt the new practice of the 2018 Ontario Commission to make judicial salary recommendations based on some unexplained “formulaic linkage” to the salaries of the federally appointed judiciary”. 132

352. Furthermore, it is submitted that the Association’s Judicial Salary Increase Proposal cannot be justified by reference to any of the other Criteria either, as per the discussions of each of those Criteria set out above.

**COSTING OF THE PARTIES’ COMPENSATION PROPOSALS**

**Background to the Costing Calculations**

353. Obviously, any increase to judicial compensation or benefits (including increases to salary, improved pension benefits, or improved other benefits) carries with it an increased “cost”.

354. Having regard to its overall obligations, and in specific relation to some of the Criteria, it is important that where it is feasible and practicable the Commission have accurate information as to the specifics of the associated “cost” related to any proposed judicial compensation changes that the Commission is considering.

132 See paragraphs 235 to 236 above.
355. Regarding the government pension contribution figures below, an actuarial valuation of the Judges’ Pension Plans as of March 31, 2017\(^{133}\) (the “Valuations”) was recently completed which found that the normal cost (the amount needed to pay for current pension benefits) is expected to increase over the next four years.

356. The Judges’ contribution to the pension plans is set at 7% of their salary by section 11(1) of Schedule I (for the registered plan) and Schedule 2 (for the unregistered plan) of the Provincial Judges and Masters in Chambers Registered and Unregistered Pension Plans Regulation.

357. With the Judges’ contribution remaining at 7%, the Valuations calculated that, in order to meet the increased normal costs of the judges’ current pension benefits, the government’s contribution rates would have to increase as follows:

- For the registered plan, the government’s contribution would need to increase from 17.75% of the judges’ capped salary to 19.56%; and
- For the unregistered plan, the government’s contribution would need to increase from 7% + 42.86% to 7% + 43.25%.

358. The Ministerial Order No. 12/2018 signed by the Honourable Minister Joe Ceci dated August 29, 2018, attached as Tab #36, provided that the government would increase its contributions to the pensions plans by the amounts recommended in the Valuations. This increased government contribution has been factored into the costing analysis below.

\(^{133}\) See Actuarial Valuation as at March 31, 2017 for Provincial Court Judges and Masters in Chambers Registered Pension Plan [\text{TAB #34}] and Actuarial Valuation as at March 31, 2017 for Provincial Court Judges and Masters in Chambers Unregistered Pension Plan, [\text{TAB #35}]
Calculation of the Cost of the Minister’s Compensation Proposal

359. Table 5 sets out a calculation of the total salary and benefit costs attributable to the Minister’s Compensation Proposal. The base figures and assumptions underlying the calculations set out below can be found at TAB #37.

<table>
<thead>
<tr>
<th>Year</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
<th>2020-21</th>
<th>Total 2017-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary</td>
<td>41,085,252</td>
<td>41,085,252</td>
<td>41,085,252</td>
<td>41,085,252</td>
<td></td>
</tr>
<tr>
<td>Per diems</td>
<td>1,700,400</td>
<td>1,700,400</td>
<td>1,700,400</td>
<td>1,700,400</td>
<td></td>
</tr>
<tr>
<td>Professional Allowance</td>
<td>684,000</td>
<td>684,000</td>
<td>684,000</td>
<td>684,000</td>
<td></td>
</tr>
<tr>
<td>Government pension contribution</td>
<td>12,474,072</td>
<td>12,818,506</td>
<td>12,663,191</td>
<td>12,503,605</td>
<td></td>
</tr>
<tr>
<td>LTDI</td>
<td>225,969</td>
<td>225,969</td>
<td>225,969</td>
<td>225,969</td>
<td></td>
</tr>
<tr>
<td>Health and Dental</td>
<td>720,200</td>
<td>720,200</td>
<td>720,200</td>
<td>720,200</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>56,960,743</td>
<td>57,305,176</td>
<td>57,149,861</td>
<td>56,990,276</td>
<td>228,406,056</td>
</tr>
</tbody>
</table>

360. As per Table 5, if the Minister’s Compensation Proposal was recommended and implemented, the total projected salary and benefit costs for the four years of this Commission’s mandate would be $228,406,056.

Calculation of the Cost of the Association’s Compensation Proposal

361. The Minister understands that the Association’s judicial compensation proposal regarding salary (the Association’s Compensation Proposal) is that the salary for judges be increased to $296,382 effective April 1, 2017, $302,304 effective April 1, 2018, 94.5% of the salary of a federally appointed judge effective April 1, 2019 and 95% of the salary of a federally appointed judge effective April 1, 2020.

362. Table 6 sets out a calculation of the total salary and benefit costs attributable to the Association’s Compensation Proposal. The base figures and assumptions underlying the calculations set out below can be found at TAB #37.
Table 6
Projected Salary and Benefit Costs for the Association’s Compensation Proposal

<table>
<thead>
<tr>
<th>Year</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
<th>2020-21</th>
<th>Total 2017-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salary</td>
<td>41,419,394</td>
<td>42,246,994</td>
<td>43,567,841</td>
<td>45,006,498</td>
<td></td>
</tr>
<tr>
<td>Per diems</td>
<td>1,785,655</td>
<td>1,821,335</td>
<td>1,878,278</td>
<td>1,940,301</td>
<td></td>
</tr>
<tr>
<td>Professional Allowance</td>
<td>570,000</td>
<td>570,000</td>
<td>570,000</td>
<td>570,000</td>
<td></td>
</tr>
<tr>
<td>Government pension contribution</td>
<td>12,623,091</td>
<td>13,340,666</td>
<td>13,779,024</td>
<td>14,266,061</td>
<td></td>
</tr>
<tr>
<td>LTDI</td>
<td>227,807</td>
<td>232,358</td>
<td>239,623</td>
<td>247,536</td>
<td></td>
</tr>
<tr>
<td>Health and Dental</td>
<td>720,200</td>
<td>720,200</td>
<td>720,200</td>
<td>720,200</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>57,346,147</td>
<td>58,931,553</td>
<td>60,754,966</td>
<td>62,750,596</td>
<td>239,783,261</td>
</tr>
</tbody>
</table>

363. For the last two years of the calculations in Table 6, the same projected indexed growth rate used for the 2016 Report of the Judicial Compensation and Benefits Commission for federally appointed judges has been used and applied to the salaries of the federally appointed judges’ salary as of April 1, 2018 ($321,600).\(^{134}\)

364. These projections would result in a judicial salary of $311,756 as of April 1, 2019 and $322,050 as of April 1, 2020. These projections would be subject to change based on the actual indexed growth rate and the recommendations of the 2020 Report of the Judicial Compensation and Benefits Commission.

365. As per Table 6, if the Association’s Compensation Proposal was recommended and implemented, the total projected salary and benefit costs for the four years of this Commission’s mandate would $239,783,261.

\(^{134}\) See February 26, 2016 Letter from the Office of the Chief Actuary to Ms. Adair Crosby, TAB #33.
Comparison of the Cost of the Compensation Proposals

366. Table 7 provides a comparison between the Minister’s Compensation Proposal and the Association’s Compensation Proposal.

<table>
<thead>
<tr>
<th>Year</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
<th>2020-21</th>
<th>Total 2017-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minister’s Proposal</td>
<td>56,960,743</td>
<td>57,305,176</td>
<td>57,149,861</td>
<td>56,990,276</td>
<td>228,406,056</td>
</tr>
<tr>
<td>Association’s Proposal</td>
<td>57,346,147</td>
<td>58,931,553</td>
<td>60,754,966</td>
<td>62,750,596</td>
<td>239,783,261</td>
</tr>
</tbody>
</table>

Comparison

| Total Difference | 385,405 | 1,626,376 | 3,605,105 | 5,760,320 | 11,377,206 |
| Percentage Difference | 0.68% | 2.84% | 6.31% | 10.11% | 4.98% |

367. As per Table 6, the Association’s Compensation Proposal, when compared to the Minister’s Compensation Proposal, would increase the total costs to the Government during the four years of this Commission’s mandate by $11,377,206, an increase of 4.98%. In 2020-21, the last year of this Commission’s mandate, the Association’s Compensation Proposal would increase the costs by $5,760,320 during that one year, an increase of 10.11%.

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

Counsel for The Minister of Justice and Solicitor General in and for the Province of Alberta

For:  
William C. Olthuis

For:  
Kate Bridgett

For:  
Josh T. de Groot

125