

SUBMISSION OF

**THE SOCIETY OF THE JUSTICES OF THE
PEACE IN ALBERTA**

to the

**2017 JUSTICES OF THE PEACE
COMPENSATION COMMISSION**

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INTRODUCTION

1. The Society of Justices of the Peace in Alberta represents all but one of the Justices of the Peace (“JPs”) in Alberta. While most of the JPs are assigned to Calgary or Edmonton, one is assigned to each of Lethbridge, Medicine Hat, Grande Prairie and two in Red Deer. In 2013, a full complement involved a total of 47 JPs, including 13 full-time JPs (6 in Calgary and 7 in Edmonton) and 34 part-time JPs. In recent years, however, there have been fewer JPs because of significant delays in filling vacancies. Currently there are 42 JPs, including 9 full-time, 9 part-time and 24 ad hoc JPs.
2. The mandate of this 2017 Justices of the Peace Compensation Commission (“2017 JPCC”) is to make recommendations to the Minister concerning what is appropriate remuneration for JPs of the Provincial Court of Alberta (also referred to as the “Provincial Court” or the “Court”) for the four-year period from April 1, 2017 to March 31, 2021. The Society of Justices of the Peace in Alberta (the “Society”) provides the following submissions to assist the Commission with this task.
3. Part I provides an overview of the legal and legislative framework and the role of JPs and judicial compensation commissions generally. As set out in Part I, this is the fifth Justice of the Peace Compensation Commission in Alberta, and follows reviews that were conducted in each of 2000, 2006, 2013, and 2016.
4. Part II of the Submission presents an overview of the role and jurisdiction of JPs within the justice system in Alberta and explains how the work of JPs is critical to the efficient and effective functioning of the justice system in Alberta.
5. Part III of the Submission outlines the factors which must be considered by this 2017 JPCC in light of the governing Regulation, decisions of past commissions in Alberta, and relevant decisions in other jurisdictions.
6. Finally, Part IV details the Society’s proposed recommendations for increased salaries, shift differential, the creation of special leave for family illness or injury, paid

education days for ad hoc JPs, amendments to permit ad hoc JPs to fill the role and perform the functions of Administrative JPs, and clarification on judicial attire.

PART I: HISTORY AND OVERVIEW OF THE COMMISSION PROCESS IN ALBERTA: LEGAL AND LEGISLATIVE FRAMEWORK

Justices of the Peace Compensation Commissions: An Overview

7. Alberta was one of the first jurisdictions to establish an independent compensation commission process for JPs. Although some jurisdictions still have yet to establish a commission process for JPs, Alberta's JPCC process was established as part of the amendments to the *Judicature Act* in 1998.

2000 JPCC Report, Hearing Exhibit Binder , **Tab 9**, page 2

8. The adoption of a compensation commission process was part of an extensive reform undertaken in Alberta which was designed, at least in part, to ensure the independence of the courts of Alberta in keeping with the Supreme Court of Canada's direction in *PEI Reference*.

Reference re Remuneration of Judges of The Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of the Provincial Court of Prince Edward Island; R. v. Campbell; R. v. Ekmecic; R. v. Wickman; Manitoba Provincial Judges' Association v. Manitoba (Minister of Justice), [1997] 3 S.C.R. 3, (hereinafter referred to as "*PEI Reference*"), Hearing Exhibit Binder , **Tab 12**

9. The decision in *PEI Reference* was a major turning point in the history of the courts in Canada, as it underscored the importance of judicial independence and defined the protections necessary to ensure the financial security of judges. Lamer CJC, who wrote for the majority, described the three aspects of judicial independence which include financial security, administrative independence and security of tenure. According to Lamer CJC, an independent, objective and effective compensation commission process is necessary to ensure financial security for judges.

10. In its more recent decision in *Conférence des juges de paix magistrats du Québec v. Quebec (Attorney General)*, 2016 SCC 39, [2016] S.C.J. No. 39 ("*Quebec JPs*"), the Supreme Court of Canada affirmed the principles established in *PEI Reference* and confirmed its decision in *Ell v. Alberta*, [2003] S.C.J. No. 35, that the principles apply equally to Justices of the Peace:

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

Conférence des juges de paix magistrats du Québec v. Québec (Attorney General), 2016 SCC 39, [2016] S.C.J. No. 39, Hearing Exhibit Binder, **Tab 14**, para 31-32

11. As the Supreme Court of Canada reiterated in its 2005 decision, in a case referred to as *Bodner*, the financial security aspect of judicial independence embodies three requirements: (1) judicial salaries can be maintained or changed only by recourse to an independent commission; (2) there can be no negotiations between the judiciary and the government over compensation; and (3), judicial salaries may not fall below a minimum level.

Provincial Court Judges' Assn. of New Brunswick v. New Brunswick (Minister of Justice); Ontario Judges' Assn. v. Ontario (Management Board); Bodner v. Alberta; Conférence des juges du Québec v. Québec (Attorney General); Minc v. Québec (Attorney General), 2005 SCC 44, (hereinafter "*Bodner*"), Hearing Exhibit Binder, **Tab 11**, para 8

12. In *PEI Reference*, as well as in *Bodner*, the Supreme Court of Canada outlined the flexible requirements for JCC processes, which must be independent, objective and effective. Regarding the rationale for the requirement of independence, Lamer CJC explained in *PEI Reference* that the constitutional function of the commissions is to serve as an "institutional sieve, to prevent the setting or freezing of judicial remuneration from being used as a means to exert political pressure through the economic manipulation of the judiciary."

PEI Reference, supra, Hearing Exhibit Binder, **Tab 12**, para 170

13. On the requirement of objectivity, Lamer CJC explained that the JCCs must make their recommendations by reference to "objective criteria, not political expediencies" and present "an objective and fair set of recommendations dictated by the public interest".

PEI Reference, supra, Hearing Exhibit Binder, **Tab 12**, para 173

14. As for the requirement of effectiveness, Lamer CJC wrote that it was to be guaranteed by the Government's obligation not to freeze or change compensation until it had received a report of a salary commission, the requirement for regular reviews to avoid the possibility of erosion due to increases in the cost of living, and that the JCC report must have a "meaningful effect" on the determination of judicial compensation. While the effectiveness requirement could mean that the commission's report is binding on government, a variety of models would be consistent with judicial independence. Where the JCC recommendations were not binding, the government could refuse to implement the recommendations if it gave legitimate reasons and could justify its decision, if necessary in a court of law.

PEI Reference, supra, Hearing Exhibit Binder, **Tab 12**, paras 174-175, 180-183

15. The effectiveness of the JCCs across Canada became an issue almost from the very moment the *PEI Reference* decision was released. In many jurisdictions, governments decided for various reasons not to follow the recommendations of their JCCs. The relevant judges' associations (or association of justices of the peace) then challenged those government decisions based on the principles outlined in *PEI Reference*. Indeed, litigation arose in almost every jurisdiction across Canada. Many of these cases proceeded before the relevant Court of Appeal, including in Alberta.

16. In 2005, the Supreme Court of Canada issued its decision in *Bodner*, which involved cases from four jurisdictions, Alberta, Ontario, Quebec and New Brunswick. In all of the cases, issues had arisen from the failure of a government to implement a compensation commission report.

17. The Alberta facts before the Court in *Bodner* related to the Government's failure to implement all of the recommendations of the 2000 JPCC, which had made recommendations regarding appropriate compensation for Alberta's JPs for the fiscal years 1998 through 2002. The common issue in all of the cases was essentially "what is the appropriate test to be applied by a reviewing court to a government's response to the recommendations of a JCC?"

Bodner, supra, Hearing Exhibit Binder, **Tab 11**

18. In *Bodner*, the Court reiterated that the commission process is necessary in order to ensure the financial security of the judiciary. Further, it rejected Alberta's argument that the judicial independence of JPs did not warrant the same degree of constitutional protection that is provided by an independent, objective commission. In response to the GOA's argument in that regard, the Court stated:

We disagree. As recognized in the Commission's report, at pp.7-18, Justices of the Peace in Alberta exercise an important judicial role. Their function has expanded over the years and requires constitutional protection. See *Ell*, paras. 17-27, per Major J. In any event, Alberta has already provided an independent commission process through the *Justices of the Peace Compensation Commission Regulation*. This process must be followed.

Bodner, supra, Hearing Exhibit Binder, **Tab 11**, para 121

19. The Court described the focus of a compensation commission as being "on identifying the appropriate level of remuneration for the judicial office in question." The Court clearly enunciated that the task of a compensation commission is unique. It emphasized, "the process is neither adjudicative interest arbitration nor judicial decision making". Rather, a JPCC must focus on what is appropriate remuneration for judges in light of all the relevant objective factors. In this process, the relevant factors are the criteria identified in the *Justices of the Peace 2017 Compensation Commission Regulation*, AR 61/2017 (hereinafter called the '*Commission Regulation*'). These are discussed in detail below.

Bodner, supra, Hearing Exhibit Binder, **Tab 11**, para 14

Commission Regulation, Hearing Exhibit Binder, **Tab 2**, s. 13

20. *Bodner* clarified the test to be applied by a reviewing court when a government fails to implement the recommendations of a Commission Report, emphasizing that its purpose is to depoliticize the setting of judicial compensation. According to that decision, a reviewing court must apply the following test to a government's response to a commission's recommendations:

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

2. Do the government's reasons rely upon a reasonable factual foundation?
3. Viewed globally, has the commission process been respected and have the purposes of the commission – preserving judicial independence and depoliticizing the setting of judicial remuneration – been achieved?

Bodner, supra, Hearing Exhibit Binder , **Tab 11**, para 31

History of Justices of the Peace Compensation in Alberta

21. From 1991 to March 31, 1998, compensation was determined unilaterally by Government and set out in the *Justices of the Peace Regulation*. After the decision in *PEI Reference*, a compensation commission process was created in 1998. Since that time, a pattern of delay has permeated the JPCC processes in Alberta and shows no signs of abating. In the Society's view, the ongoing delay described below has compromised the effectiveness of the process.

2000 JPCC

22. The first Justices of the Peace Compensation Commission in Alberta ("2000 JPCC") was chaired by Harry G. Schaefer, F.C.A. and made its report on February 29, 2000. The Commission noted it was "breaking new ground" in making its report, since Alberta was "in the vanguard" in establishing an independent commission to make recommendations about compensation for JPs.

2000 JPCC Report, Hearing Exhibit Binder, **Tab 9**, page 7

23. The 2000 JPCC made recommendations for the five-year period of April 1, 1998 to March 31, 2003. It recommended significant increases in the salaries paid to full-time Sitting and Presiding JPs, and an additional payment of 10% of salary each year in lieu of pension. The 2000 JPCC also recommended that JPs receive four weeks of vacation and devised a per diem formula for part-time JPs. According to the 2000 JPCC, its recommendations were for compensation equal to two thirds of the compensation paid to a Provincial Court Judge.

24. The Government accepted the bulk of the recommendations made by the 2000 JPCC, including the recommendations for pay in lieu of pension and increased vacation,

but rejected the level of the salary increases. While the Government accepted that some salary increase was needed, it imposed salary increases that were considerably lower than the figures the 2000 JPCC had recommended.

Order in Council 174/2000, Hearing Exhibit Binder, **Tab 10**

25. Certain of the affected JPs challenged the legitimacy of the Government's response to the recommendations, and sought judicial review of the Order-in-Council 174/2000. The JPs were successful at first instance and on appeal, but the Government's decision was upheld by the Supreme Court of Canada in the *Bodner* decision, with costs to the Government.

Bodner, supra, Hearing Exhibit Binder, **Tab 11**

2006 JPCC

26. Following receipt of the decision in *Bodner* in July 2005, the 2006 Justices of the Peace Compensation Commission ("2006 JPCC") was constituted with a mandate to make recommendations for the period April 1, 2003 to March 31, 2008. In the aftermath of lengthy litigation between the parties, the Associations representing the Sitting and Presiding JPs and the Government resolved to make a joint submission to the 2006 JPCC. Given the lack of contested issues, a single Commissioner was appointed: David Tettensor, Q.C.

27. The Commissioner found the fact of a joint submission to be a relevant factor and his recommendations were consistent therewith. The recommendations included increased salaries and per diem rates, the creation of a shift differential for Presiding JPs working evening or night shifts, and the establishment of a long-term disability benefit for full-time JPs.

28. The recommendations also contemplated that all other compensation, including vacation entitlement, benefits, and allowance paid in lieu of pension to full-time JPs, be maintained at the same level as in place at March 31, 2003 and as approved in the 2000 Justices of the Peace Compensation Order.

2006 JPCC Report, Hearing Exhibit Binder, **Tab 7**, pages 22-23

29. The recommendations of the 2006 JPCC were fully implemented by the Government through Order in Council 105/2007.

Order in Council 105/2007, Hearing Exhibit Binder, **Tab 8**

2009 JPCC

30. The appointment of the 2009 JPCC was significantly delayed. The 2009 JPCC's mandate was April 1, 2008 to March 31, 2013 but the hearing did not occur until August 2013, after the 2009 JPCC's mandate had already expired. The 2009 JPCC presented its report to the Minister of Justice and Solicitor General on November 6, 2013.

31. There had been a complete turnover in the complement of JPs since the 2000 JPCC made its report. As a result, there was some delay in forming the Society following the appointment of an almost entirely new complement in 2009. Nonetheless, from April 2011 onward, the Society asked repeatedly for the 2009 JPCC to be conducted. Despite those efforts, it was not conducted until after the conclusion of the period of its mandate, almost a full seven years after the 2006 JPCC's report was issued.

32. The 2009 JPCC made retroactive recommendations for significant increases in salary (including per diem rates), shift differentials, vacation, professional allowances, and an increased amount of compensation in lieu of pension.

33. The 2009 JPCC also adopted the joint proposal by the Society and the Government that each full-time and part-time JP should receive an annual professional allowance of \$2,000 to cover conference books, memberships, the purchase of judicial attire and home security systems.

2009 JPCC Report, Hearing Exhibit Binder, **Tab 5**

34. By Order in Council 104/2014, the Government accepted all of the recommendations made by the 2009 JPCC, which were implemented by Order in Council 225/2014.

Order in Council 104/2014, Hearing Exhibit Binder, **Tab 6**

2013 JPCC

35. The 2013 JPCC was established pursuant to Alberta Regulation 34/2013, *Justices of the Peace 2013 Compensation Commission Regulation*. Although the 2013 JPCC's mandate was April 1, 2013 to March 31, 2017, the complete panel for the 2013 JPCC was not appointed until July 19, 2016. The hearings before the 2013 JPCC did not commence until January 2017, and the 2013 JPCC issued its final Report on July 20, 2017, after the period of its mandate had expired.

36. The 2013 JPCC made recommendations for increased salaries, paid "Christmas closure" days for full-time JPs, a change in the formula used for calculating the *per diem* rate paid to part-time JPs, increased shift differentials, an increased professional allowance, paid education days for part-time JPs, reimbursement for certain costs associated with judicial attire, the terms of a Judicial Indemnity, and a creation of a salary differential for Administrative JPs. The Commission also recommended that JPs' travel and subsistence expenses should be reimbursed pursuant to the expense policy that applied to others within the justice system. Finally, the 2013 JPCC recommended that "Ad Hoc JPs should be paid like other part-time JPs, including having access to a professional allowance".

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**

37. The recommendations of the 2013 JPCC were fully implemented by the Government (with a revision to the implementation date of the Judicial Indemnity) through Order in Council 387/2017.

Order in Council 387/2017, Hearing Exhibit Binder, **Tab 4**

The Role and Jurisdiction of the 2017 JPCC

38. This 2017 JPCC has been mandated to make recommendations in respect of the four year period from April 1, 2017 to March 31, 2021. It is tasked with making fair and appropriate recommendations for compensation, dictated by the public interest, in light of the factors set out in the *Commission Regulation*.

Commission Regulation, Hearing Exhibit Binder, **Tab 2**, s. 13

39. In *Bodner*, the Court stated that the appropriate starting point for a subsequent commission is the date of the last report. It continued:

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

Bodner, supra, Hearing Exhibit Binder, **Tab 11**, paras 14-15

PART II: OVERVIEW OF THE ROLE AND JURISDICTION OF JUSTICES OF THE PEACE WITHIN THE ALBERTA JUSTICE SYSTEM

40. JPs have long played an essential role within Alberta's justice system, a fact which has been acknowledged by past Commissions. Following amendments to the governing legislation in 2012, and further evolution of the role since that time, the work of JPs has become even more crucial to the efficient functioning of the system. JPs have endured an increasing workload over the period of this JPCC's mandate and, given the failure to fill vacancies within the JP complement, the Court has been using ad hoc JPs, often on a near full-time basis, in order to meet the work demands. The pressures of the high volume of work are exacerbated by the challenges of the evening and night shift work.

2000 JPCC Report, Hearing Exhibit Binder, **Tab 9**, page 7

2009 JPCC Report, Hearing Exhibit Binder, **Tab 5**, page 13

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, pages 17-19

41. The jurisdiction exercised by JPs is described below. The description includes a brief summary of the changes over time, as these must be understood in considering past JPCC Reports. The current circumstances are then considered, including the shift schedules and work in the Hearing Offices, and the increased use of ad hoc JPs.

Pre-1998

42. Before 1991, JPs were appointed by the Lieutenant Governor in Council, and then were eligible to hold office until the age of 70, subject to removal by the Lieutenant Governor in Council at any time. In 1991, the *Justice of the Peace Act* was amended to provide that JPs could only be removed on the recommendation of the Justices of the Peace Review Council, following a review of complaints made in respect of lack of competence, misbehaviour, neglect or inability to perform the duties of a JP.

43. The 1991 Amendments also created two categories of JPs, namely "sitting" and "non-sitting". Sitting JPs, who were permitted to preside over trials of less serious offences in Provincial Court, were required to be members of the Law Society of Alberta and to have other related experience. Non-sitting JPs performed only some judicial

functions (other than hearing trials), and various administrative tasks. The only qualification required of a non-sitting JP was Canadian citizenship.

1998 Amendments

44. In 1998, significant amendments were made to the *Justice of the Peace Act* to ensure the independence and impartiality of Alberta's JPs, and to heighten their qualifications in order to promote a stronger and independent judiciary. The amendments, proclaimed in force February 1, 1999, created three categories of JPs: Presiding, Sitting and Non-Presiding. Non-Presiding JPs were not legally trained and therefore performed only non-judicial administrative tasks.

45. The amendments required that Sitting and Presiding JPs be deemed qualified by an independent Judicial Council, which unanimously agreed on minimum qualifications of membership in the Law Society of Alberta, and at least five years of related experience. Certain categories of persons were excluded from eligibility for appointment based on conflict of interest concerns. The amendments also established that an independent commission would make recommendations regarding compensation for Sitting and Presiding JPs.

46. Of the many Non-Sitting JPs appointed prior to the amendments, only a small proportion met the new requirements for appointment as Presiding JPs. Three of those who lacked the requisite qualifications, and who were therefore only offered positions as Non-Presiding JPs, brought an application to the Alberta Court of Queen's Bench for a declaration that their removal from office contravened their constitutionally required security of tenure and independence. The chambers judge granted the application and declared the provision to be of no force and effect as it applied to them. The Court of Appeal for Alberta upheld the finding of the chambers judge and the Government appealed that decision.

Ell v. Alberta, [2003] S.C.J. No. 35, Hearing Exhibit Binder, **Tab 13**, para 12

47. Justice Major delivered the judgment for the Supreme Court of Canada, concluding that there had been no breach of judicial independence as the overall purpose of the amendments was to strengthen the qualifications and independence of Alberta's JPs.

Ell v. Alberta, supra, Hearing Exhibit Binder, **Tab 13**, para 52

48. Of the 28 Sitting JPs who were serving at the time of the amendments, only seventeen were found to be qualified to continue in office on 10-year terms. The Court of Queen's Bench eventually confirmed that the 10-year term for these continuing JPs commenced on February 1, 1999.¹ The result was that the terms of a great number of JPs expired on January 31, 2009, creating a need to fill many JP positions simultaneously. As a result, many within the complement of JPs who were appointed in 2009 have now had their terms expire. As discussed below, most of these have been reappointed in an ad hoc capacity and other vacancies simply remain unfilled.

2012 Amendments

49. By amendments proclaimed into force on July 1, 2012, there became only one category of "justice of the peace" in the *Justice of the Peace Act*. The Sitting and Presiding categories of Justices of the Peace were effectively abolished and the former Presiding JPs became empowered to do all the duties of the former Sitting JPs.²

Justice of the Peace Act, R.S.A. 2000, c.J-4, Hearing Exhibit Binder, **Tab 1**, s.1(b.1), (c)

50. As detailed below, the duties of JPs include both provincial and municipal offence matters, which are dealt with at Court and in circuit locations throughout the province, and preliminary criminal and emergency family matters, which are dealt with at the Hearing Offices in Edmonton and Calgary.

¹ Alberta (Assn. of Sitting Justices of the Peace) v. Alberta (Justice), [2008] A.J. No. 1403 at paras 11, 16

² Non-Presiding JPs continue to have limited responsibility to perform non-judicial administrative tasks. However, as their compensation is not subject to a JPCC process, we do not refer to them further below.

51. The 2009 JPCC explained that:

[s]ince amalgamation of the sitting and presiding streams in 2012, JPs all rotate day, afternoon and night shifts. They are assigned to circuit duties approximately once or twice a month.

2009 JPCC Report, Hearing Exhibit Binder, **Tab 5**, page 6

52. Pursuant to the legislation, all JPs are expected to perform both “sitting” and “presiding” duties.³ All JPs are expected to preside in Provincial and Municipal Offence (“Traffic”) Courts, including travel to circuit points, and also fill the various shifts in the Hearing Offices including the evening, weekend and holiday shifts. While this could change in the future, night shifts are currently performed only by JPs in the Calgary Hearing Office.

(i) Provincial and Municipal Offence Court

53. JPs hear a broad range of matters and apply a myriad of legal principles in hearing provincial and municipal offences, although traffic-related matters form many of the matters heard by JPs in this court setting. Pursuant to section 3(1) of the *Justice of the Peace Regulation*, Alta. Reg. 6/1999 as amended, JPs have jurisdiction to hear, try and determine matters arising under numerous statutes, including but not limited to:

- the *Animal Protection Act*
- provisions of the *Gaming, Liquor and Cannabis Act* that relate to liquor or cannabis matters
- the *Fisheries (Alberta) Act*
- the *Forests Act*
- the *Occupational Health and Safety Act* (for which a specific penalty is set out in Parts 16 and 17 of the *Procedures Regulation*)
- the *Petty Trespass Act*

³ One JP is assigned to each of the regional courts in Grande Prairie, Lethbridge, Medicine Hat and two in Red Deer. Generally, these JPs do not perform Hearing Office duties, although the full-time JP in Grande Prairie may assume bail duties.

- the *Railway Safety Act (Canada)*
- the *Security Services and Investigators Act*
- the *Tobacco and Smoking Reduction Act*
- the *Traffic Safety Act*
- the *Wildlife Act*
- the *Environmental Protection and Enhancement Act*
- section 20 of the *Youth Justice Act* (refusal to comply with youth sentence)
- the *Residential Tenancies Act*
- the Insurance Act (for which a specific penalty is set out in Part 15 of the *Procedures Regulation*)

54. JPs also have jurisdiction to hear, try and determine matters arising under various provincial regulations, as well as any bylaws of a municipality, or any orders made by the Minister of Municipal Affairs respecting improvement districts or special areas.

55. Section 3(2) of the *Justice of the Peace Regulation* generally restricts JPs from determining the following types of matters⁴:

- i. any complaint or information that involves the death of any person,
- ii. any complaint or information that involves a determination whether any rights under the *Canadian Charter of Rights and Freedoms* have been infringed or denied,
- iii. any issue relating to the constitutional validity of any law, or
- iv. any complaint or information that involves a determination of any aboriginal or treaty rights.

⁴ Under the *Constitutional Notices Regulation*, a JP may continue to hear a proceeding involving the types of matters listed above if notice has not been given under that Regulation or the *Judicature Act* and neither the Crown nor the accused requests that the matter be transferred to a Provincial Court Judge.

56. However, the existence of Section 3(2) does not mean that "... Justices of the Peace have any lesser responsibility to respect and protect the Constitutional rights of persons appearing before them."

2000 JPCC Report, Hearing Exhibit Binder, **Tab 9**, page 14

57. As noted by the 2000 JPCC, when presiding over trials under these statutes "Justices of the Peace are essentially trial judges adjudicating upon offences" and "[t]rials are conducted in the same manner as in Provincial Court."

2000 JPCC Report, Hearing Exhibit Binder, **Tab 9**, page 15

58. This trial work routinely involves consideration of joint submissions, the entering of guilty pleas and hearing submissions on sentencing, making sentencing decisions, hearing various court applications (i.e. adjournment requests, requests to set aside convictions, applications to cancel a warrant, time to pay fine requests, etc.), determining monetary penalties, time in custody, and other tasks that mirror those of a PCJ. A JP will often hear multiple trials in one day.

59. The decisions made by JPs have a significant impact on Albertans in that JPs may impose fines and terms of imprisonment under various statutes. Fine amounts can vary significantly. A JP's jurisdiction to impose sentences of imprisonment ranges from a term not exceeding six months under the *Traffic Safety Act*, to up to two years under the *Dangerous Goods Transportation and Handling Act* or the *Wildlife Act*.

Court Locations

60. JPs have jurisdiction throughout Alberta, meaning they can be assigned to various court locations. Like Provincial Court judges in Alberta, JPs also perform circuit work, travelling from their main court location to smaller communities. The following are some of the current circuit points:

- From Calgary: Airdrie, Didsbury, Cochrane, Canmore, Okotoks, Turner Valley, Strathmore
- From Edmonton: Leduc, Sherwood Park, Edson, Hinton, Boyle, St. Albert, Morinville, Fort Saskatchewan, Stony Plain

- From Red Deer: Fort McMurray, Ponoka, Wetaskiwin, Rocky Mountain House, Camrose
- From Grande Prairie: Peace River, High Prairie, Slave Lake
- From Lethbridge: Fort MacLeod
- From Medicine Hat: Brooks

Justice of the Peace Act, s.2, Hearing Exhibit Binder, **Tab 1**

61. Circuit courts are often very busy, with extremely lengthy dockets and multiple trials occurring per day. Due to the high number of matters heard, these courts are often “standing room only” and court can run for the majority of the day without a break.

62. There are other circuit points in Alberta that do not have special sittings for the Provincial and Municipal matters generally assigned to JPs. In these communities, the duties of a JP are undertaken by Provincial Court judges in the course of their own circuit assignments. This underscores the appropriateness of PCJs as a comparator for JPs.

Unique Challenges of Presiding in Traffic Court

63. Persons appearing before JPs are most often without counsel and are in situations where emotions run high. The 2000 JPCC recognized that in performing their judicial functions, JPs face unique challenges that require the application of a special skill set:

In “Traffic Court” the decision making is more removed from the accused’s initial contact with the law yet the impartiality and fairness expected of the judicial officer is no less important. The Commission has heard that most people appearing in this Court are not represented by counsel and thus are not acquainted with the rules of evidence or courtroom procedures, yet often feel quite passionately about their predicament. Traffic Court may often be a person’s only encounter with the justice system.

The role of the Justice of the Peace demands balance, fairness and impartiality within an inherently adversarial system often without the involvement of key players, namely professional advocates. In order to ensure that justice is both done and perceived to be done in uniquely challenging circumstances, a Justice of the Peace must continually draw upon considerable tact, diplomacy and maturity.

2000 JPCC Report, Hearing Exhibit Binder, **Tab 9**, page 26

64. It is the JPs responsibility to ensure that unrepresented individuals understand the trial process and that they are not prejudiced by a lack of experience or understanding. It is often the case that significant guidance is necessary, particularly in cases involving evidentiary issues where individuals seek to introduce hearsay or other inappropriate evidence, or do not understand how to introduce evidence properly. Given the stakes, it is critical that individuals understand how to put forward their positions properly. JP's must ensure that a proper balance is struck between the rights of the individuals and the fairness of the process.

65. The volume of cases heard is high and has grown in recent years. Minister of Justice Kathleen Ganley wrote to the Society on September 14, 2016 noting a 15.3% increase in tickets challenged and 29.1% increase in set-aside applications since 2014/15.

Letter from Minister of Justice to Society President, September 14, 2016, Society's Documents, **Tab 1**

(ii) Preliminary Criminal Matters and Emergency Matters (Hearing Offices)

66. A significant proportion of the duties of JPs include preliminary criminal and emergency matters dealt with in the Hearing Offices. These offices are situated in Edmonton and Calgary. The Calgary office in particular operates 24 hours/day, 7 days/week and 365 days/year. No other jurisdiction in Canada provides the same service to its citizens.

67. Sittings at Hearing Offices are assigned exclusively to JPs. During these sittings, JPs deal with a wide range of preliminary criminal and quasi-criminal matters. According to the Universal Bail Protocol, a JP in the Calgary or Edmonton Hearing Office can run a bail from any circuit point in Alberta, depending on need.

68. The Hearing Office Review Committee ("HORC") was struck in 2015 to "conduct an internal review of current Hearing Office processes with a view towards identification, documentation and gap analysis of best practices". On October 21, 2015, the HORC issued its Report entitled *Hearing Office Review Committee Discussion Document*

(hereinafter referred to as the “HORC Report”). A copy is at **Tab 26** of the Hearing Exhibit Binder.

69. As explained in the HORC Report, services provided by the Hearing Offices are divided into three categories:

Priority 1 Applications:

- Emergency Protection Orders (under the Protection Against Family Violence Act);
- Apprehension orders under various legislative authorities (including the Child, Youth & Family Enhancement Act (“CYFEA”), the Protection of Sexually Exploited Children Act (“PSECA), the Drug Endangered Children Act (“DECA”), applications under the Missing Persons Act;
- Various warrant and production order applications (including Feeney warrants, blood warrants);

Priority 2 Applications:

- Judicial interim release (bail) hearings for new arrests;
- Northern Alberta bail hearings that are returnable to a Hearing Office to be heard by a JP;
- Six-day remands for out-of-province warrants;
- Taking pleas and assessing penalties on outstanding warrants for provincial and municipal offences;
- Administrative releases;

Priority 3 Applications:

- Summonses, warrant applications, subpoenas and other administrative applications that are not urgent in nature.

HORC Report, Hearing Exhibit Binder, **Tab 26**, pages 10-12

70. Certain of the work involved in these categories of applications is explained below.

Judicial Interim Release Hearings

71. Judicial Interim Release hearings occur when a person charged with a crime is not released by the arresting officer or officer in charge. Any detained person has the right

to be taken before a justice without unreasonable delay, and within 24 hours where a justice is available (*Criminal Code*, s.503).

72. The Judicial Interim Release process is governed by Part XVI of the *Criminal Code*, which sets out the legal framework for when bail may or may not be granted and conditions that can be imposed upon release. Judicial Interim Release hearings require extensive knowledge of criminal law. The JP must determine whether there are grounds to detain accused persons in custody prior to their trial or to release them on some basis that will manage any risk of the accused not attending court or re-offending. JPs are therefore required to render decisions which may be subject to significant public scrutiny.

73. The *Alberta Bail Review: Endorsing a Call For Change* (the “Irving Report”) was published in February 2016 and a copy forms **Tab 25** in the Hearing Exhibit Binder. The Irving Report was ordered in response to the tragic fatal shooting of RCMP Constable David Matthew Wynn and wounding of Auxiliary Constable Derek Walter Bond by Shawn Maxwell Rehn in 2015. In her Report, Nancy Irving described the significance of the bail stage of criminal proceedings:

... all court decisions are properly subject to public scrutiny and criticism, which can at times be vitriolic and ill-informed, making the job of decision makers even less enviable.

The bail system can also suffer from a perception that bail hearings are less weighty and perhaps less consequential than other steps in the judicial process. The rules of evidence are more relaxed, the burden of proof is less onerous, and bail hearings do not generally involve the testimony of witnesses and experts. Most who work in the bail system, however, would be more likely to agree with the prosecutor who told this Review “a proper show cause hearing needs to have the same sense of importance and urgency as a murder prosecution”. The stakes for the accused and the public can be that high.

Irving, Nancy, *Alberta Bail Review: Endorsing a Call for Change*, February 29, 2016, Hearing Exhibit Binder, **Tab 25**, page 1

74. When releasing an accused person, a JP is required to consider a wide range of possible combinations of release conditions including: curfews, reporting requirements, no-contact or conditions on contact with certain persons, relinquishing of passports,

abstaining from alcohol and drugs, attending treatment programs, weapons restrictions, and prohibitions on travel outside of a specified jurisdiction.

75. In addition to adult bail applications, JPs also hear youth bail applications, which requires the application of provisions under the *Youth Criminal Justice Act*. In many cases, parent(s) or guardians of the applicant are present for these hearings, and JPs will have to address their additional comments and concerns.

76. The decision made by a JP has serious consequences for an accused person's liberty and for the protection of Albertans. In *Alberta v. Ell*, the Supreme Court of Canada underscored the significance of decisions made by "hearing officers" noting, in particular, the importance of bail hearings:

... Professor Friedland commented upon the importance of bail hearings in *Detention before Trial: A Study of Criminal Cases Tried in the Toronto Magistrates' Courts* (1965), at p. 172:

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

Ell v. Alberta, supra, Hearing Exhibit Binder, **Tab 13**, para 24 per Major J.

77. The type and number of bail hearings handled through the Hearing Offices has remained significant over the last number of years. It is common for a JP to hear between 15 and 30 judicial interim release requests on any given day or evening shift.

78. The HORC Report also noted that there has also been a substantial increase in the number of domestic violence cases in Alberta. Bail hearings in domestic violence charges take longer, involve more paperwork, and often police will charge an individual criminally and also pursue an Emergency Protection Order at the same time. This has also contributed to a high workload for JPs at the Hearing Offices.

HORC Report, Hearing Exhibit Binder, **Tab 26**, pages 29-30

79. The HORC Report and the recommendations made in the Irving Report resulted in considerable changes to the bail hearing process in Alberta. Previously, police officers acted as bail presenters and represented the Crown at bail hearings, despite the fact that no authority to represent the Crown had been delegated to police, and no agency relationship existed in this regard. Following the implementation of the recommendations in the Irving Report, Crown Prosecutors replaced police presenters at Hearing Office Bail Hearings (i.e., the Crown Prosecutor is provided with the Information setting out the criminal charges and criminal record, and the police recommendation on release and conditions).

80. The introduction of Crown Counsel and Duty Counsel has meant that opposing counsel are more frequently making submissions at bail hearings before JPs. Indeed, there are Duty Counsel at every hearing unless declined by the accused. This has meant a more adversarial process in some cases, and that the legal arguments being advanced before JPs are more complex and sophisticated. Reference to Supreme Court of Canada precedents and judicial interim release case law is more prevalent, including legal considerations such as the *Gladue* factors for aboriginal offenders.

81. Moreover, court clerks are now in attendance to assist with bail hearings. The result is that the bail hearings before JPs are equivalent to the process and submissions made before a Provincial Court Judge.

82. These developments have strengthened the bail hearing process as a whole, but have also resulted in increased time pressures for JP's. On the one hand, the frequency of joint submissions has increased. On the other, more technical and complex submissions are heard, and many cases are being heard on the cusp of the accused spending 24 hours in custody. As a result, the hearing of judicial interim release applications is more challenging than in the past.

Warrants and Production Orders

83. In addition to issuing warrants for arrest, Justices of the Peace also issue various forms of warrants that directly impact on the personal privacy of individuals. These include search warrants, blood warrants and so-called "*Feeney* warrants" (which are

warrants to enter a dwelling house and arrest an accused). Jurisdiction to do so is derived from the *Criminal Code* and also applies to provincial statutes.⁵

84. The impact on the rights of individuals who are subject to a warrant issued by a JP is significant, and the decision whether to issue a warrant is often made in “real time” in a fast-paced environment and in situations where time is of the essence. In these circumstances, balancing high expectations, time, fairness and being impartial are of utmost importance. With regard to the powers of (at the time) Presiding JPs to issue search warrants, Justice Major wrote:

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

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

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

Ell v. Alberta, supra, Hearing Exhibit Binder **Tab 13**, para 25

85. The volume and complexity of applications for Search Warrants and Production Orders has significantly increased over time. The HORC Report explained:

The increase in volume and complexity of time-sensitive applications has put a strain on the operations and increased turnaround times. Production Orders have increased significantly over the past year, and the recent legislative changes (Bill C-13 – March 2015), have resulted in the standard length of the Information to Obtain a Production Order to be over 30 pages long. Search Warrants, Tracking Warrants, Production Orders and other applications of this sort have become more complex and it takes much longer to read these documents for consideration of warrant issuance.

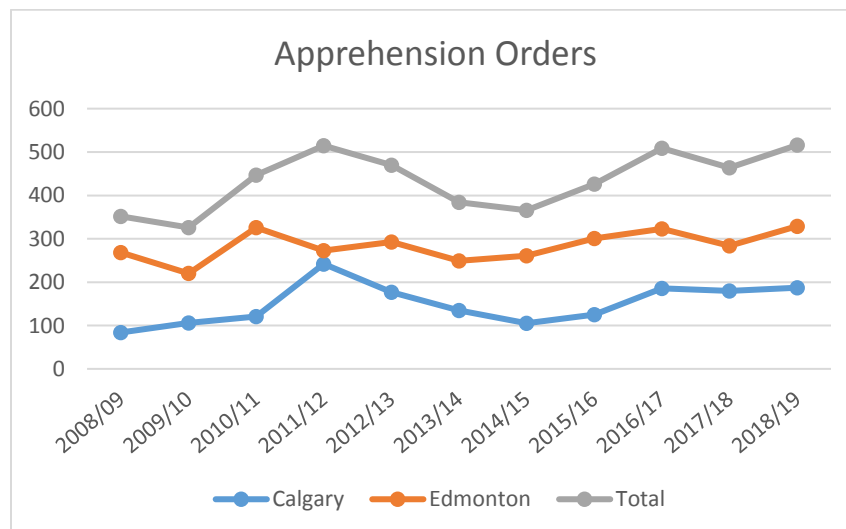
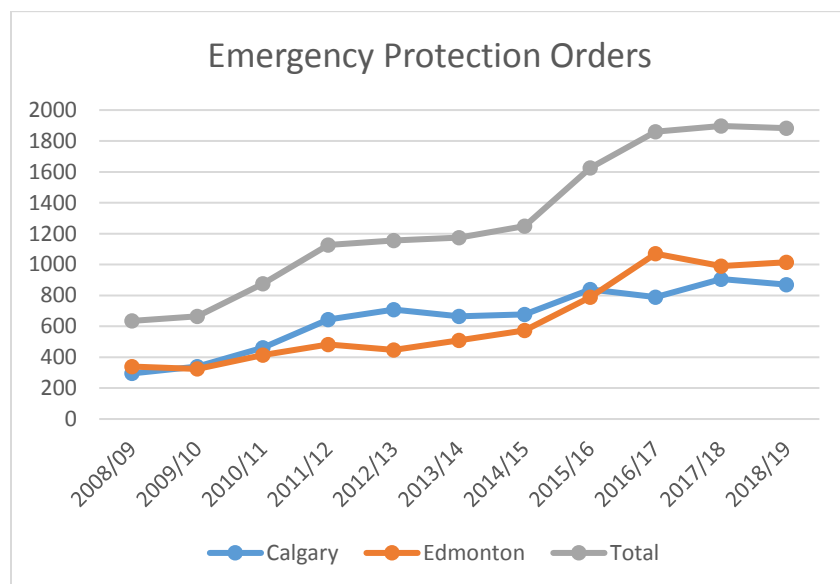
HORC Report, Hearing Exhibit Binder, **Tab 26**, page 27

⁵ Section 3 of the *Provincial Offences Procedure Act* adopts and applies the *Criminal Code* provisions for warrants.

Emergency Protection Orders and Apprehension of Children Orders

86. JPs are also responsible for determining applications related to situations of family violence where immediate protection is required, and for the apprehension of children where the safety of a child is at risk. For obvious reasons, the decisions made by JPs in their application can have serious consequences for all involved.

87. While there is some fluctuation, the graph below shows that the overall trend is an increase in the number of Emergency Protection and Apprehension Orders since 2009/10.



Increased Use of Ad Hoc JPs

88. The *Justice of the Peace Act* was amended in 2011 to permit the appointment of ad hoc JP's. Sections 7.2(1) and 7.2(3) of the *Justice of the Peace Act* permit the Chief Judge to approve a JP who has completed their ten-year term to continue in office as an ad hoc JP for a term of one year. Section 7(7) of the *Act* permits an ad hoc JP to be approved to continue in office until the earlier of a maximum of 5 years, or age 75.

Justice of the Peace Act, Hearing Exhibit Binder, **Tab 1**

89. The number of ad hoc JPs has greatly increased in recent years: at the time of the 2013 JPCC, i.e., in 2016, there was one ad hoc JP. That number has now risen to 24. The Government has not taken steps to appoint part-time JPs to replace those whose term expired, preferring instead to delay that necessity for up to five years by re-appointing former part-time JPs to successive one-year ad hoc terms. As a result, many ad hoc JPs are working 4 days per week, with a few exceptions, and are frequently called on to cover additional absences. On occasion, ad hoc JPs work 5-6 consecutive shifts in a row, particularly during the summer.

90. As ad hoc JPs are available only for a maximum of five one-year terms, the significant use of ad hoc JPs at the present time highlights the looming need to recruit a significant number of full-time or part-time JPs in the coming years. The Society's preferred alternative, of course, is for the ten-year term limit to be dropped in favour of JPs being granted security of tenure, to a defined mandatory retirement age (i.e., age 70, as for Provincial Court judges).

Shift Work

91. In Calgary, JPs are assigned to work on a rotation of day, afternoon, evening and night shifts, including weekends and statutory holidays. There are sittings 24 hours a day, 365 days per year.

92. At the Calgary Hearing Office, the current shifts and number of JPs scheduled to fill them are as follows:

- 00:00 – 08:00 (night shift) (1 JP)

- 08:00 – 16:00 (day shift) (2-3 JPs)
- 16:00 – 24:00 (evening shift) (2-3 JPs)

93. Where JP availability allows, a third JP is scheduled (0800-1600, 1600-2400 and/or 1400-2200). Although the work is certainly not limited to these types of applications, the main function of the third JP is to handle priority 1 applications (i.e., urgent applications) so that other JPs on shift do not need to interrupt their scheduled hearings.

94. Every effort and consideration is made to equitably distribute the “more desirable” (usually traffic court) and “less desirable” (i.e. night shifts in the Hearing Office) shifts.

95. The Edmonton Hearing Office has a different schedule. While this may change in the future, there have been no night shifts in Edmonton since summer 2016. The current shift schedule and number of JPs scheduled to fill them are:

- 08:00 – 16:00 (2-3 JPs)
- 16:00 – 24:00 (2-3 JPs)

96. While there is a need for a third JP on most shifts, most shifts only have two because of a lack of availability of JPs. One is typically assigned Edmonton Police Service bail hearings, while the other completes the rural bail hearings. If a third JP is present, they generally work on Search Warrants, Emergency Protection Orders, Child Apprehension Orders and other priority 1 applications.

97. There is a further “straddle shift” from 11:00-19:00, where one of the two JPs is not available. Like in Calgary, their main purpose is to handle priority 1 applications (i.e. urgent applications) so that JPs do not need to interrupt their scheduled hearings. Again, their work is certainly not limited to those applications and they will assist with other Judicial Interim Release hearings as necessary.

98. The Society continues to advocate for the abolition of the night shift entirely because of the hardships it imposes on those who work them, the impact of the requirement to work night shifts on attracting the best candidates to the position, as well

as concerns about the quality of late-night hearings. While the Government had some time ago advised that its position on whether a night shift should continue was under review, there are no active discussions being held and no changes appear to be forthcoming.

99. Whatever changes the Court decides to make in the future, the JPs who worked those shifts in the years commencing April 1, 2017 did so with a legitimate expectation that appropriate compensation for that work would be determined through this process. A further increase in the shift differential for the night shifts is one of the issues raised by the Society in Part IV below.

Irving Report, Hearing Exhibit Binder, **Tab 25**, page 10

Conclusion

100. Both the 2009 and 2013 JPCC recognized the evolution in the role of JPs and the increasing importance of JPs in an over-burdened justice system. As the pressures on the justice system in Alberta continue to build, the role of JPs within that system is properly recognized to be essential. The Society respectfully submits that this 2017 JPCC should finally account for the unique and important role of JPs in recommending fair and reasonable compensation based on the relevant factors outlined below.

PART III: FACTORS FOR CONSIDERATION

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

102. The *Commission Regulation* provides that the Commission “shall consider” the following criteria in making its recommendations:

- i. the constitutional law of Canada;
- ii. the need to maintain the independence of the justices;
- iii. the unique nature of the role of justices;
- iv. the need to attract qualified applicants;
- v. the compensation other justices of the peace in Canada receive;
- vi. increases and decreases, as applicable, in the Alberta real primary household income per capita;
- vii. the need to provide fair and reasonable compensation for justices in light of prevailing economic conditions in Alberta and the overall state of the economy, including the financial position of the Government;
- viii. the Alberta cost of living index and the position of the justices relative to its increases or decreases, or both;
- ix. the nature of the jurisdiction of justices;
- x. the level of increases or decreases, or both, provided to other programs and persons funded by the Government;
- xi. any other factors considered by the Commission to be relevant to the matters in issue.

103. Each criterion is addressed in turn.

(a) The Constitutional Law of Canada

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

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

PEI Reference, Hearing Exhibit Binder, **Tab 12**, para 130

105. Judicial independence is important because it serves important societal goals, including the maintenance of public confidence in the impartiality of the judiciary and the perception that justice will be done in individual cases.

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

PEI Reference, *supra*, Hearing Exhibit Binder, **Tab 12**, para 146

107. The solution identified in *PEI Reference* was to require recourse to an independent, objective and effective commission, which would identify and consider objective criteria upon which to base recommendations about appropriate judicial

compensation. This was confirmed by the Court in *Bodner*, which also confirmed that an independent commission process is required for Alberta JPs. As the Court also stated in *Bodner*: “The commission process is an ‘institutional sieve’ (*PEI Reference*, at paras 170, 185 and 189) – a structural separation between the government and the judiciary”.

Bodner, supra, Hearing Exhibit Binder, **Tab 11**, para 14

See also *Conférence des juges de paix magistrats du Québec*, Hearing Exhibit Binder, **Tab 14**, paras. 31-35

108. The protection and preservation of judicial independence is the very *raison d’être* of the JPCC. As such, it must be fundamental to its considerations. This underscores the need for recommendations which should be understood to be independent and objective or, in other words, based on objective criteria rather than primarily political considerations.

109. This criterion supports comparisons with other members of the judiciary within Alberta, including particularly Provincial Court Judges. As discussed below, past Commissions and the Government itself have accepted that Provincial Court Judges are an important consideration. The criterion also underscores the limitations of comparisons with public sector employees, to whom these constitutional principles do not apply.

(b) The Need to Maintain the Independence of the Justices

110. The second criterion also invites consideration of constitutional law principles surrounding the concept of judicial independence. The 2006 JPCC stated that “[t]he nature and level of compensation are key; Justices of the Peace must receive fair remuneration for their independence to be maintained.” The 2009 JPCC considered that “the need to maintain the independence of JPs is only heightened when they serve more often as the face of justice (particularly criminal and family law).”

2006 JPCC, Hearing Exhibit Binder, **Tab 7**, page 16 (underlining added)

2009 JPCC, Hearing Exhibit Binder, **Tab 5**, page 13

2013 JPCC, Hearing Exhibit Binder, **Tab 3**, page 15

111. The 2013 JPCC explained that “[t]he goal, in the end, must be that our recommendations demonstrate in the eye of the public sufficient financial security for the JP’s to assure their judicial independence going forward.” As noted, Lamer CJC stated in the *PEI Reference* case that one aspect of financial security is that judicial salaries must not be allowed to fall below a minimum level. This was confirmed in *Bodner* and in the *Quebec JPs* case.

112. To be clear, however, the task for the JPCC is not to identify that minimum level that is sufficient or adequate to protect judicial independence. Rather, the task of the JPCC is to recommend compensation that is “appropriate”, based on its consideration of the relevant factors.

Bodner, Hearing Exhibit Binder, **Tab 11**, para 67

113. This criterion highlights the distinction between the judiciary, on the one hand, and other persons who are paid by the public purse. While salaries for Government employees are driven by political considerations and the strength of their bargaining power, compensation for members of the judiciary, including JPs, must be fairly determined based on objective factors, not political expediencies. This is of particular importance for this 2017 JPCC and is discussed in further detail when considering the level of increases or decreases, or both, provided to other programs and persons funded by the Government.

(c) The Unique Nature of the Role of JPs

114. According to subsection 13(c) of the Commission Regulation, the JPCC is obliged to consider “the unique nature of the role of justices”.

115. In 2013, the 2009 JPCC recognized that this factor has:

... particular meaning in Alberta in that [JPs] are increasingly becoming a vital and integrated part of the Province’s criminal justice system. Steps are being taken ... to make use of JP’s in a way that enhances overall service to the public and to accused persons. Where possible, matters that might previously have awaited a Provincial [C]ourt appearance are now being dealt with more expeditiously by utilizing JP’s sitting around the clock and often using modern video technology.

2009 JPCC Report, Hearing Exhibit Binder, **Tab 5**, page 13

116. The 2013 JPCC echoed the 2009 JPCC's observation, pointing to the fact that JPs:

now appear gowned before the public similar to any other member of the judiciary, are often the first point of contact for members of the public exposed to the justice system in Alberta.

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, page 17

117. The 2013 JPCC also highlighted the 2009 JPCC's conclusions about the similarities between JPs and Provincial Court judges:

From the public perception, when they grant a controversial order, it is just as significant as if it had been granted by a Provincial Court Judge. The level of public scrutiny is the same and the need for appearance of justice and of independence are equally the same. This in turn places obligations on the incumbents in terms of their private lives.

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, pages 16-17

118. The 2013 JPCC further acknowledged the important role that JPs play in Alberta's court system:

For many citizens, appearances before the JP's in Traffic Court, as noted, will often be their only encounter with a presiding judicial official. At the same time, we also ask JP's to do shift work in hearing offices where they not only hear bail applications but also render decisions on a myriad of other judicial matters such as child protection orders. Their work in these important areas is critical to a high-functioning judicial system.

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, page 27

119. Chaired by former Justice of the SCC, The Honourable Thomas Cromwell, the recent 2019 BC JCC Final Report explained the significance of the Judges and Judicial Justices ("JJ's") in that province. Despite the differences between Alberta JPs and the JJs in BC which are detailed below, the following comments by the 2019 BC JCC's apply

equally to the role and jurisdiction of JPs in Alberta alongside Alberta's Provincial Court Judges:

Judges and judicial justices must be and be seen by the parties and the public to be independent. By independent, we mean free of any inappropriate influence from any source, including the government. This is important not only because the judiciary makes vital decisions every day that impact our lives- who goes to jail and who remains free; who is guilty of a serious crime and who is not; who keeps custody of their children and who does not. It is also important because the government is often one of the parties to matters before the court.

British Columbians need and want highly competent people to fill this unique and important role....

Report of the 2019 BC Judicial Compensation Commission, Society's Documents, **Tab 2**, page 4

120. Within Alberta, the work performed by JPs is most comparable to that of Provincial Court Judges, given the unique functions performed by judicial officers, not to mention their shared areas of jurisdiction.

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

122. Like judges, JPs are bound by ethical principles which restrict the activities in which they can engage in their personal lives. They must accept certain restrictions on their activities, including volunteer or political work, and must maintain a delicate balance between the requirements of judicial office and the legitimate demands of the JP's personal and family life. As such, they must isolate themselves both socially and physically in certain respects and avoid activities that would not elicit adverse notice if carried out by other members of the community.

123. A further unique aspect of the judiciary generally, both individually and collectively, is that they are precluded from negotiating their own compensation. Lamer CJC stated plainly in *PEI Reference*:

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

PEI Reference, supra, Hearing Exhibit Binder, **Tab 12**, para 186

124. Two decades before the role of JPs was transformed into what it is today, the Government acknowledged that the role and responsibilities of JPs are “important and significant in the administration of justice” (Order in Council 174/2000, Hearing Exhibit Binder, **Tab 10**, page 9). While it clearly recognized that JPs are not civil servants, the Government maintained in its response to the 2000 JPCC recommendations that JPs “should be paid salaries commensurate with those salaries that ‘tough decision makers’ within government are being paid”. The 2013 JPCC considered this fact and determined that the work of a JP is as demanding as the work performed by managers and senior legal officers within Government.

2013 JPCC, Hearing Binder, **Tab 3**, page 26

125. As detailed below, the Society’s salary proposals would ensure that JPs salaries are within the range of salaries of those “tough decision makers”. While these comparators are useful to consider in order to examine how JP salaries are situated within the Alberta context, it is nonetheless critical to appreciate the uniqueness and importance of the role of JPs in determining appropriate compensation.

(d) The Need to Attract Qualified Applicants

126. This criterion should be considered in light of the comments of the Honourable Deputy Chief Judge (“DCJ”) Lefever to the 2009 JPCC about the need to attract the best qualified applicants to JP positions:

To try and get the best possible candidates has always been my objective. I want talented individuals. I want dedicated individuals. I want individuals who see being a justice of the peace a career choice, not a parking spot for a period of time while they decide what to do with the rest of her life. I don’t

want the transitory individual. I don't want the person who's just flitting by while they get on with something else.

I say that because the decisions they make are so fundamental to the rights of individuals, when you consider they make decisions on the liberty of someone. They make decisions on apprehensions of children, which ultimately might turn out to be a life sentence. They make decisions on emergency protection orders, the result of which is often to require one party of a relationship to leave the home of that relationship without the ability to go back. They make very, very fundamental decisions. I don't want the lightweights.

2009 JPCC Report, Hearing Exhibit Binder, **Tab 5**, pages 5-6

127. These comments were repeated in the 2013 JPCC's Report.

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, pages 6-7

128. In considering the criterion identified in s. 13(d) of the *Commission Regulation*, the Society contends that the Commission should weigh the following points: the relevance of the Commission process itself; the significance, if any, to be drawn from statistics about the number of applicants; retention concerns, given the number of JPs who have left prior to the expiration of their term; the disincentive of the ten-year term; the need to attract applicants who exceed the minimum qualifications; the disincentive of the requirement for shift work; and the need to ensure that enough highly qualified candidates can be attracted in order that a full complement of JPs can be appointed. These points are discussed in turn.

The Relevance of the Commission Process Itself

129. First, the very existence of a Commission process contemplated by the Supreme Court of Canada as being both (a) meaningful and effective and (b) grounded in good faith on the part of government, in and of itself ought to attract more applicants. Qualified applicants consider the process that is in place which will from time to time review and adjust the level of judicial remuneration, and whether that process has been meaningful and effective in practice. It is not merely the level of compensation which attaches to the office of a JP at the time of appointment which will attract the qualified candidate, it is the

legitimate expectation that it will be regularly, meaningfully, and effectively reviewed and adjusted by government acting in good faith.

130. The assurance that such a process should offer to potential applicants is severely compromised by the extraordinary pattern of delay that has plagued the JPCC process in Alberta. The 2009 JPCC made recommendations in November 2013 for the period April 1, 2008 to March 31, 2013. During that entire five year period, potential applicants could only be told that appropriate compensation would be fairly determined in due course.

131. The same was true of the period beginning April 1, 2013, as the 2013 JPCC was delayed so significantly that, by the time they were implemented, the recommendations were entirely retroactive. In the meantime, JPs endured a four-year wage freeze while they waited for their compensation to be fairly determined. The 2013 JPCC raised concerns about the delay in the commission process:

We agree that it is not in the interests of any of the participants in this process to be tasked with having to retroactively address outstanding compensation issues, which is the central focus of this Commission. One of the important functions of a Commissions, if it is to be “meaningful and effective”, is to depoliticize and thus add credibility to the process for setting judicial remuneration. This should occur in act and in appearance. Some of that is lost when unexplained delays, beyond the control of the JP’s, occur in setting up a Commission over a time when delay may seem prejudicial to those whose salaries remain frozen until the process concludes. We understand that the 2017 Alberta Judicial Compensation Commission is expected to be appointed shortly. This may in turn speed up the process of appointment for the next JP’s compensation commission.

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, page 16

132. The Commission’s expressed optimism for a quick turnaround on the appointment and establishment of this 2017 JPCC proved to be for naught. To compound things, and despite the significant delay in appointing the Commission, the Minister has identified July 6, 2020 as the date when the Report is to be submitted. As a result, the recommendations are unlikely to be implemented until the third quarter of the fourth and last year of this Commission’s mandate.

133. The 2005 Newfoundland & Labrador Salary and Benefits Tribunal considered the impact of what had then been, a ten-year delay in the determination of Judges' salaries:

This means, among other things, that, for a prolonged period the Court was effectively unable to get the "bang for its buck" in attracting new members to the Bench.

Excerpt from Steele Tribunal Report, May 2006, Society's Documents, **Tab 3**, para 22

134. Alberta is similarly losing "bang for its buck" in attracting applicants, given the repeated delays in conducting the JPCC process. In order that potential applicants and existing JPs can have continued confidence in the Commission process, it is essential that this JPCC ensure that, to the greatest extent possible, the effectiveness of the process is not compromised by the delay.

The Number of Applicants

135. The mere counting of the number of applicants is not in itself particularly meaningful. The focus must always be on whether the Court is able to attract and retain the best possible candidates for the judicial position in question.

136. Governments routinely assert at judicial compensation commission hearings that there are available applicants who would accept an appointment, and usually attach a number to those assertions. However, the number is just a number. For some lawyers, a JP appointment may be the only realistic prospect of increasing their remuneration, and for others, the opportunity to exercise power and control makes the prospect of becoming a JP attractive. While these individuals will be counted in the pool of applicants, that does not mean they are qualified. It may also be that the numbers of applicants in a given year includes the same individuals more than once, to the extent they submitted their application to more than one posting.

137. The available data shows a small number of recommended candidates from which the Lieutenant Governor in Council selects JPs for appointment, despite a number of postings during each of the periods shown below.

Year*	2008	2009	2012	Apr 1/15 – Mar 31/16	Apr 1/16 – Oct 13/16	Oct 14/16- March 31/17	April 1/17- March 31/18	April 1/18- March 31/19	April 1/19-current
Applicants	unknown	unknown	42	21	23	44 ⁶	35 ⁷	36 ⁸	--
Interviewed	57	60	23	10	12	24	32	15	--
Recommended for Appointment	40	32	11	4	4	17	18	16	--
Appointed	23	24	4	2	2	7	6	0	--

*There were no competitions for the appointment of JPs in 2010, 2011, 2013 or 2014.

138. As noted, there are currently 24 ad hoc JPs, meaning that they have already completed their initial ten-year term, and have been reappointed for one or more one-year terms in an ad hoc capacity. As the ad hoc status can only continue for a maximum of 5 years, there is a looming need to recruit a significant number of JPs to replace the ad hoc JPs who time out of the position, or choose not to accept all five years, as well as existing full-time and part-time JPs who elect to retire at or before the conclusion of their term.

139. The following chart shows the number of applicants who responded to specific JP vacancy notices published during the last four years (the data relating to the February 6, 2015 through April 22, 2016 postings were provided by Government for the 2013 JPCC process):

⁶ Recruitment notices were posted on November 16, 2016 as follows:

- Calgary - 1 full-time and 2 part-time positions;
Edmonton - 2 full-time and 3 part-time positions.

⁷ Recruitment notices were posted on September 19, 2017 as follows:

Calgary - Full-time and part-time positions
Edmonton - Full-time and part-time positions

⁸ Recruitment notices were posted on December 17, 2018 as follows:

- Calgary - Full-time and part-time positions
Edmonton – 1 Full-time and 1 part-time position

	Feb 6, 2015	Feb 6, 2015	Nov 16, 2015	Nov 16, 2015	April 22, 2016	Nov 16, 2016	Nov 16, 2016	Sept 19, 2017	Sept 19, 2017	Dec 17, 2018	Dec 17, 2018
Location	Edmonton	Calgary	Edmonton	Grande Prairie	Grande Prairie / Northern Region	Calgary	Edmonton	Calgary	Edmonton	Calgary	Edmonton
# of JP vacancies	<u>1 full time</u>	<u>1 part time</u>	<u>1 full time & 1 part time</u>	<u>1 part time</u>	<u>1 full-time</u>	<u>1 full time</u> <u>2 part time</u>	<u>2 full time</u> <u>3 part time</u>	<u>Several full time and part time</u>	<u>1 full time</u> <u>1 part time</u>	<u>Several full time and part time</u>	<u>Several full time and part time</u>
# applications	14	7	22	0	2 (one ineligible)	15	29	25	10	23	13
# applicants interviewed	6	4	11	n/a	1	11	13	19	6	8	7
# recommended	2	2	3	0	1	7	10	11	7	11	5
# appointed	1	1	1 (PT), 0 (FT)	0	1	3	4	3	3	0	0

140. As set out above, a number of recent vacancies have not been filled through the posting and appointment process. For example, while five (5) positions were posted in Edmonton in the November 16, 2016 posting, only four (4) JPs were appointed. Further, full time and part time positions were posted for both Calgary and Edmonton on December 17, 2018. Despite this, no appointments were made.

141. It is clear from these statistics that the number of recommended candidates has left little room for the exercise of discretion in selecting a candidate. The reasons for the failure to appoint any JPs following the December 17, 2018 posting are unknown to the Society.

142. The compensation paid to JPs is surely among the factors contributing to the small number of highly qualified applicants. As argued elsewhere, another factor may well be the working conditions of JPs. As this 2017 JPCC can only affect the compensation, it is essential that this Commission recommend fair and reasonable remuneration for JPs that is sufficiently generous to encourage the best qualified applicants to apply for an appointment when vacancies are announced.

Retention Concerns

143. Since 2016, when the 2013 JPCC conducted its analysis, nine JPs, or approximately 20% of the total number of current JPs have left their positions. None of the nine JPs retired coincident with the expiration of their term. The departure of the nine JPs who left during this Commission's mandate supports a retention concern.

Attraction/Retention Statistics, Hearing Exhibit Binder, **Tab 19**

144. Of the nine JPs who left, one was appointed as a Provincial Court Judge mid-way through their ten-year term. While an appointment to the position of Provincial Court Judge demonstrates that JPs are highly qualified, it also reveals that the salary and working conditions as a JP was not sufficient to retain this person in their position.

145. The Society has obtained statements from five of the nine JPs who left their position during the Commission's mandate as to why they left. It is clear that shift work and other realities of the job played a role in their decision to leave. What follows are the explanations provided by five of the nine JPs who left the positions since 2016.

(a) Jill Taylor:

"I left because of the shift work and realization that the 10 year rule would impede my career options. The uncertainty of work after the term was very tenuous."

(b) Jackie Clark:

"After my husband retired in 2015, I decided to continue part-time as long as I was enjoying the work. By 2017, when I retired, I found that I was no longer enjoying the work and felt it was time to retire."

As far as the shift work goes, I found the midnight shifts fine when I started, but each year they became harder to do. By April 2015 I provided DCJ McLellan and William Shiplett a doctors note indicating that for health reasons, I was no longer able to work midnight shifts.... My doctor had been recommending this for a year prior to my decision. The reason I resisted was because I wanted to be a team player and do my share of midnight shifts. If midnight shifts continue to be a part of the JP Schedule, then JP's should be compensated for this in accordance with what other professionals who work midnight shifts receive.

The other issue I wish to comment on is JP's working on statutory holidays, especially Christmas Day. Does the JP Office really need to be open for Christmas? If so, once again the compensation for this should be comparable to what other professionals who work Christmas and other statutory holidays receive."

(c) Carla Murray:

“... In early 2019, I made the difficult decision to resign my appointment to the Provincial Court and return to private practice at a law firm, Code Hunter LLP. This decision was motivated by various factors, including:

- **Remuneration:** *it was very easy for me to replace the compensation that I received as a Justice of the Peace with my salary and benefits in private practice. I have accepted a lifestyle role at my firm, which means that it is abnormal for me to work later than 4 pm on business days and I do not work on weekends. I am still paid more than what I was paid as a Justice of the Peace. My compensation in private practice will only increase as I rebuild my practice. I note that I could have also replaced my Justice of the Peace compensation working at an in house legal counsel job, but a return to private practice was a better fit for me.*
- **Health concerns:** *I resigned my appointment as a Justice of the Peace when I was 44 years old. I was and am in excellent physical health according to my family physician and other health care providers. At a routine exam with my family doctor when I was still a Justice of the Peace, I disclosed that I was required to work shift work, including evenings and nights. My family doctor asked me to reconsider sitting as a Justice of the Peace due to the tremendous evidence of the impact of shift work on otherwise healthy individuals and the serious impact that she feared that shift work would have on me long term. She referred me to a sleep physician to assist me to come up with a sleep management strategy to reduce possible health impacts on me. The sleep physician shared the concerns of my family physician and urged me to reconsider continuing on as a Justice of the Peace.*

(d) Joann Schwager:

“... I left because the shift work was taking its toll on my well-being. Jumping from several kinds of shifts within a week, weekends and statutory holidays, became untenable.

If I can offer any recommendations on how to organize shift work, there should be a consistent schedule designed with the workers' well-being, much the same as nurses, air traffic controllers, and the like.

Another recommendation would be that the longer the JP's tenure, the more she or he should be able to phase out midnight shifts, along the same lines as seniority earns in other shift workers. At the very least, the compensation for shifts should be significant, to allow some freedom in trading shifts or giving away shifts when need be.

All this being said, I did enjoy the work immensely until I was no longer able to do so.”

(e) John Booth:

“I completed my initial 10 term of appointment in January of 2019. I applied for and was appointed to a one-year appointment as an ad hoc Justice of the Peace in the Edmonton court. For some time prior to my reappointment the Edmonton Hearing

Office became increasingly short staffed as government (both the current government and the previous government) had not appointed any new Justices of the Peace in Edmonton. I do not know the reasons for this but as Justices of the Peace left – some retired, some resigned, some were appointed as Provincial Court Judges – new Justices of the Peace were not appointed.

In Edmonton, full time Justices of the Peace are given priority to work weekday, day time shifts so fewer and fewer part time Justices of the Peace were left to work weekends and evenings. The low numbers of part time Justices of the Peace that were available to work over the summer of 2019 finally meant that either courts would have to be closed or the ability of part time Justices of the Peace to control their schedules be removed. Rather than closing courts administration elected to remove the ability of Justices of the Peace to control their schedules. Shift schedules were imposed without input from Justices of the Peace. As there would have been a significant impact upon my family and personal commitments, I elected to resign my position with the court at the end of May 2019.

For the first ten-years of my initial appointment, and for the first 6 months of my first ad hoc appointment, I was able to accommodate working evenings and weekends when I was able to control my schedule by making myself unavailable to work as I chose. When the numbers of Justices of the Peace dropped to extreme levels over the summer of 2019 the administrative response was to remove the ability of part time Justices of the Peace to control their schedules. This was the immediate reason for my resignation.

I would summarize my reasons for leaving as follows:

- *Shift work per se was not my reason for leaving. When I had control over my schedule, I could balance the requirements of shift work with my family and personal commitments and I had done so for ten and a half years.*
- *The immediate reason for leaving was the loss of control over my schedule so that I could no longer accommodate personal and family concerns.*
- *The background to loss of control over scheduling was that new Justices of the Peace had not been appointed to replace those who had left so that by June of 2019 the only way to keep all courts running was to remove the ability of part time Justices of the Peace to control their schedules.”*

Compilation of Statements From Former JPs, Society’s Documents, **Tab 4**

146. These nine departures were not all replaced. While the reasons are unknown, the Society understands that there are currently 8 vacant JP positions in Alberta.

147. Compounding the deterioration of working conditions caused by the unfilled vacancies is the fact that a number of JPs have medical restrictions that prohibit night

shift work. The combined result is a staffing problem that puts a tremendous amount of pressure on the remaining JPs, including ad hoc JPs. In some cases, part-time JPs are required to work in excess of a full-time schedule, sometimes without consecutive days off. Additionally, ad hoc JPs routinely work full-time or close to full-time schedules.

148. That approximately 20% of the existing workforce has left before their terms expired, since 2016, demonstrates that the current compensation for Alberta JPs is simply not sufficient to retain JPs in the position. Particularly given the challenges of shift work and the ten-year appointment limits, increases in compensation are necessary to encourage existing JPs to remain in the position.

149. The Deputy Chief Judge underscored to the 2009 JPCC the importance of setting compensation at a level that will attract *and* retain excellent candidates and reduce the likelihood that JPs will leave their positions for financial reasons. The departure of a significant number of JPs before the expiry of their terms, during the period of this JPCC's mandate, supports the Society's request for increased compensation.

Ten-year Term is a Disincentive to Recruitment

150. Under s.7(1) of the Act, a JP is appointed for a 10 year term. The limited term of a JP's appointment makes it less attractive to potential applicants and thereby affects the ability of the Court to attract the best applicants to JP positions.

151. Past JCC's, and the Government, have previously accounted for the potentially detrimental impact of the 10-year term in determining appropriate compensation. The 2000 JPCC found it appropriate to consider the difficulties inherent in returning to practice after 10 years as a factor in making its compensation recommendation:

A prospective applicant for a ten-year Justice of the Peace position assumes a long term commitment. The position also requires a law degree and at least five years' experience. The net result is that a lawyer either effectively terminates his or her law practice to assume a full time position or carves a part time position out of an existing practice. In the former case, prospective applicants are effectively asked to take the position of Justice of the Peace during the years that are statistically the most lucrative for a lawyer and then return to practice 10 years later or not at all. At the very least, any graduated income through practice is deferred for a minimum of

10 years. In the case of a part time Justice of the Peace, the commitment would have less impact on the person's practice. However, part time positions have their own unique impacts as set out in the next section.

2000 JPCC Report, Hearing Exhibit Binder, **Tab 9**, pages 32-33

152. In responding to the recommendations of the 2000 JPCC, the Government noted the 2000 JPCC's "speculation" about a disadvantage resulting from the 10-year term, but nonetheless took the position that its modified salaries took that into account. The Government reasoned:

2. Recognizes the disadvantages of 10-year term: It is noted that there was no evidence before the Commission showing that there is a negative impact on the lifetime income of a person serving a 10-year term as a justice of the peace. It is also noted that both the Supreme Court of Canada in the case of *Valente v. The Queen* and Mr. Justice Forsythe in *Alberta Provincial Judges' Association v. Alberta* identified the requirement to serve as a judge until retirement as a factor justifying salaries at such a level so that the judge is not left vulnerable upon his or her retirement. The 10-year term avoids that consequence. However, to the extent that there may be a disadvantage as was speculated by the Commission, the modified annual salaries as provided for in this Order are set at a level that is significantly in excess of salaries of Crown Counsel (an appropriate comparator in the opinion of the Commission) with more than 10 years' experience and above the minimum salary for Directors and Chief Crown Prosecutors. Also, the levels of the modified salaries recognizes both of the observations of the Commission respecting the perceived disadvantages of the 10-year term. Firstly, that in the private practice of law there is an increase in compensation as experience increases, and therefore an adjustment is appropriate to what might be considered an appropriate salary for a lawyer of 5 years to reflect the acquisition of experience over the 10-year term. Secondly, the existence of the maximum 10-year term requires the office holders to re-establish themselves in the practice at the conclusion of the term. This is not unique to Justices of the Peace as lawyers in private practice, contract employees and Crown employees have no tenure of any sort (a point not noted by the Commission), but the level of salaries proposed reflects a significant increment over salaries for 5-year lawyers and provides some recognition of this factor.

Order in Council 174/2000, Hearing Exhibit Binder, **Tab 10**, pages 8-9

153. The ten-year term may have been more palatable when it was more realistic for a part-time JP to maintain a part-time legal practice, to which the JP could return at the

conclusion of the term. However, the *Justice of the Peace Act* was amended in 2011 to prohibit a JP from practicing criminal or family law, appearing in Provincial Court, representing a client against government, or representing government. These restrictions create a significant disincentive for a lawyer with a criminal or family law practice who would otherwise be an excellent candidate for a part-time JP position.

154. Adding further difficulty to the ten-year term is the fact that, in accordance with section 4(7) of the *Justice of the Peace Act*, and section 5 of the *Alberta Regulation 6/99*, a JP must undergo a six month “cooling off” period following the expiration of their term as a JP, during which time the individual cannot be employed by the Government of Alberta or appointed to a Provincial agency. This further reduces the attractiveness of a JP position to potential applicants.

155. Salaries must be high enough to attract lawyers who are qualified for the unique role of a JP, despite the significant limitations on their ability to supplement their income through the continued practice of law. As discussed below, the practice limitations in Alberta are more onerous than in other jurisdictions.

156. The 2013 JPCC noted that the existence of the ten-year term was one of the factors that individual lawyers must weigh before applying for a position as a JP, and one of the factors that continued to justify maintaining Alberta JPs as the highest paid among JPs across the country.

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, page 20, 26

157. The impact of the ten-year term is significant and was cited in some of the explanations set out above as to why certain JPs left their position. The opportunity cost of the 10 year term has been taken into account by the Society in its proposals for increased compensation that will help attract prospective applicants and retain existing JPs.

The Need to Attract Applicants with Greater Than the Minimum Qualifications

158. Successful candidates for JP positions have qualifications that far exceed the minimum requirement of five years of practicing experience. In fact, there have been no JP appointments made at the five-year mark, and most have closer to twenty years, or more, of experience as a lawyer before being appointed. As it is clearly the goal of the Court and the Government to continue to attract highly qualified candidates, it is more useful to look for comparators in more senior lawyers than lawyers with only five years at the Bar.

159. One reality is that there is little time for training upon appointment. The Irving Report quoted the Chief Judge on this point:

The Chief Judge also said the demands on the Hearing Offices have been growing rapidly, and when new JPs are hired “there is a push” to get them working as soon as possible, leaving little time for initial training. Overall, he said, “we do our best”.

Irving Report, Hearing Exhibit Binder, **Tab 25**, page 45

160. For all these reasons, it is imperative JP salaries be set at a level that will continue to attract the best qualified candidates who will be able to step into the important work with little training, to the benefit of the Court and Albertans generally. With the needs of the Court in mind, compensation should be set at a level which will attract senior practitioners, including particularly those with experience in criminal and family law.

Shift Work is a Disincentive to Attraction and Retention

161. As noted, Alberta is the only province where the Hearing Office operates around the clock, on every day of the year. It is the only jurisdiction in Canada where JPs are required to be physically present in the courthouse 24/7. Alberta’s Hearing Office model is unique and puts a particular strain on Alberta’s JPs. The impact has been compounded by the prolonged failure to ensure a full complement of JPs.

162. The personal and health impacts of shift work, and particularly night shifts, are significant. The 2009 JPCC referred to a study which showed that:

Older people have a more difficult time than younger people in dealing with sleep hour adjustments. Whether older or younger, the effects of having to change one's personal clock and readjust sleep patterns are challenging to anyone. And probably more so for an older demographic like the JP's. We heard in that regard from the Society during the course of the oral hearing that finding a substitute JP to work a night shift is challenging.

2009 JPCC Report, Hearing Exhibit Binder, **Tab** ___, page ___

163. That study was cited again in the 2013 JPCC, after the JPCC noted that "it is understandable that JP's would want the night shift abolished."

2013 JPCC, Hearing Exhibit Binder, **Tab 3**, page 19

164. The 2013 JPCC elaborated further, stating:

... The significance of the shift work aspect of the JP's duties cannot be understated. The expectation is that JP's will bring the skill sets required of a judicial officer to the Hearing Office at whatever time of the day or night they are scheduled to work. The members of the judiciary presiding in court rooms in Alberta, by contrast, work a regular day shift. They are not subject to the scheduling dynamics of JP's whose lives must constantly adjust to the ongoing changes in their working schedules.

Shift work, in addition to being a central aspect of the unique nature of the role of JP's, is also an important factor when considering attracting qualified applicants to the JP position. Judge McLellan referred to the shift work issue and how it affects recruitment in her brief to the Commission at paragraphs 19 and 20:

(19) The number of applicants has not been large and it is difficult for me to state the reasons. I certainly know that the rigours of shift work are always an important consideration and some candidates at interviews recognize that as a realistic challenge. The number of applicants was not as great as I would have liked. Some candidates were interviewed twice (having applied at earlier interview sessions in 2016).

(20) Last week, a Calgary part-time Justice of the Peace resigned. She was appointed July 2009 and has therefore been a Justice of the Peace for approximately seven and a half years. She told me that she is 60 years old and no longer feels that she can [do] shift work.

The spectre of having to do shift work, as noted by Judge McLellan, is a key consideration for any prospective applicant when one considers both the unique

nature of the role of the JP's as well as the need to attract qualified applicants. Having to work shift work and committing oneself to a 10-year appointment are clearly significant factors that individual lawyers must weigh before applying for a position as a JP. The compensation levels, particularly on both the salary and shift differential components, must be attractive enough to ensure there is a qualified pool of applicants for the JP's positions.

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, pages 19-20

165. The 2013 JPCC also distinguished JP's from managers and senior legal officers within Government, given the prevalence of shift work for JPs:

The JP's in Alberta are clearly faced with having to make "tough decisions" on each of their shifts. Moreover, we underline once again that these tough decision-makers must adjust their lives on an ongoing basis to a shift schedule. This is a particular aspect of JP's work that is not required of most managers and senior legal officers. That is not to say that senior managers or legal officers do not put in a long day but their schedules are first and foremost centred around typical business hours, not a 24/7 judicial service like JP's are asked to perform. Accordingly, we view the work of the JP's, with its ongoing shift work requirement and the need to make "tough decisions" on every shift, as demanding as the work performed by managers and senior legal officers.

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, page 26

166. In order to recruit highly qualified lawyers from private and public practice, JP salaries and benefits must be at a level that is perceived by prospective candidates as sufficient compensation for the work of the position, including shift work. It must also be fair and reasonable for those who have performed that work through 3 of the 4 years of this JPCC's mandate, on the understanding that this JPCC would, in due course, make meaningful recommendations concerning appropriate compensation for their work.

2009 JPCC Report, Hearing Exhibit Binder, **Tab 9**, page 15

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, page 19

Ensuring Enough Qualified Candidates are Recruited and Retained

167. As noted, nine JPs left their positions since the previous 2013 JPCC. This has caused significant strain and tremendous pressure on the current complement of JPs,

many of whom notionally occupy only an ad hoc status but have been working close to full-time hours. It is essential that the JPCC recommend compensation that will attract a sufficient number of excellent candidates such that the Government can move forward quickly with appointments once it sees fit to do so.

168. Prior to the 2013 JPCC's hearings, on July 29, 2016, the Society wrote to the Minister of Justice and Solicitor General regarding the unfilled JP vacancies and described the situation as "desperate". The Society's President recounted part-time JPs taking on the equivalent of full-time shifts (and sometimes more), JPs delaying vacations and medical appointments, and many JPs experiencing burnout.

Letter to Minister of Justice from Society President, July 29, 2016, Society's Documents, **Tab 5**

169. The Society's President noted the reference in the Irving Report to the "unrelenting" pressures of the bail system and continued:

Alberta's JPs are engaged in the "daunting task" of meeting tight deadlines and finding the right balance between public safety and individual rights. We submit it is increasingly difficult to exercise the good judgment and discretion required when JPs are over worked and exhausted.

Letter to Minister of Justice from Society President, July 29, 2016, Society's Documents, **Tab 5**

170. The Minister responded almost two months later, acknowledging that JPs have been dealing with an increasing number of matters and expressing appreciation for the hard work, dedication, and flexibility JPs have shown in dealing with the increase in volume and other factors that have placed increased demands on them.

Letter from Minister of Justice to Society President, September 14, 2016, Society's Documents, **Tab 1**

171. Despite that expression of appreciation three years ago, little action has been taken over the years that have followed and there continue to be a significant number of unfilled vacancies.

172. The deterioration in JPs' working conditions must be considered to be a disincentive to those who might consider applying to be appointed as a JP. It is also a disincentive to the retention of those who remain.

173. The Society has taken into account the particular need to attract a sufficient pool of applicants to enable the Lieutenant Governor in Council to appoint highly qualified JPs in the coming years. As noted, this is particularly important given that the reappointment limits of the 24 ad hoc JPs will soon be reached. It is hoped that the Government will act soon to relieve the extraordinary pressure that has been endured by the existing complement in recent years. While the JPCC cannot influence that outcome, it can and fairly should take into account the limited number of applicants, and the pressures caused by the ongoing unfilled vacancies, in determining appropriate retroactive compensation for those who have worked diligently throughout the last three years in anticipation of this JPCC's recommendations.

(e) The Compensation Other Justices of the Peace in Canada Receive

174. Section 13(e) of the *Commission Regulation* requires consideration of "the compensation other justices of the peace in Canada receive". Given the differences in work performed by JPs in other jurisdictions, the differing qualifications required of JPs in some other jurisdictions, and the failure, thus far, of certain other jurisdictions to provide for compensation that is determined based on the recommendations of an independent commission, the inter-jurisdictional comparisons should be given limited weight. For a host of reasons, it continues to be appropriate for Alberta JPs to be the highest paid JPs in Canada.

175. Two decades ago, the 2000 JPCC concluded that "little guidance" can be obtained from a comparative analysis of salaries for Justices of the Peace in other jurisdictions. It explained:

Little guidance is found in a comparative analysis of salaries for Justices of the Peace in other jurisdictions. It appears that several jurisdictions do not have Justices of the Peace. Some provinces have lay Justices of the Peace whereas other jurisdictions require a law degree. And, in some jurisdictions the functions performed by Alberta's Justices of the Peace are performed

by Provincial Court Judges. In short, the requirements, scope of duties and functions of Justices of the Peace appear to vary significantly across the country. The second reason that a comparison to Justices of the Peace in other jurisdictions is of limited value is the fact that none of the salary ranges provided to this Commission are the product of an independent Commission.

2000 JPCC Report, Hearing Exhibit Binder, **Tab 9**, page 30

176. Even taking into account that much has changed since 2000 for JPs in Alberta and across the country, these points remain apt today.

177. In 2006, the Minister's submission in support of the joint submission noted that "the proposed increases would result in Alberta Justices of the Peace receiving the highest compensation in Canada". The 2006 JPCC considered the criterion as follows, noting the Minister's acknowledgement of the difficulties in comparing with JPs with other jurisdictions:

The Minister acknowledges, and the Associations concur, that comparability to other jurisdictions suffers limitations. Roles and responsibilities vary across Canada, as do qualifications. Only two other provinces shown in the chart comparing the appointment, duties, salary and benefits of Justices of the Peace in other Canadian jurisdictions require legal training – Quebec and Nova Scotia. The Minister points out that the salaries recommended by the Minister and the Associations would result in Alberta justices of the peace receiving the highest compensation in Canada.

2006 JPCC Report, Hearing Exhibit Binder, **Tab 7**, pages 7 and 17

178. The 2013 JPCC similarly considered it to be justified for Alberta JPs to be the highest paid in the country. It explained:

In terms of the compensation paid to other JP's in other jurisdictions, it is still the case that Alberta, along with British Columbia, Quebec and Nova Scotia (who employ only part-time JP's) are the only provinces that require JP's to be legally trained. Ontario, for example, does not. The argument that Alberta JP's compensation should continue to exceed that paid in other jurisdictions centres around the fact that Alberta JP's must be legally trained and have five years of experience. Alberta also offers a 24/7 hearing service, which includes round-the-clock bail application hearings. These factors, along with the commitment to a 10-year appointment, continue to justify the case for maintaining Alberta JP's as the highest paid in the country.

179. What follows is a comparative analysis which demonstrates that Alberta's JPs are distinguishable from other JPs across Canada.

Lower Qualifications, Different Duties, and a Lack of an Independent Compensation Commission

180. In some jurisdictions, JPs are still not required to have legal training despite that they perform at least some judicial functions. While the requirements do seem likely to change in the future, the following jurisdictions do not require legal training for their JPs:

- Manitoba
- Northwest Territories
- Prince Edward Island
- Nunavut
- Ontario
- Yukon.

181. The absence of a requirement for legal training in these jurisdictions is a significant distinction which affects the level of compensation that is necessary to attract applicants. Unlike in the above jurisdictions, qualified candidates in Alberta are necessarily qualified lawyers.

182. In addition to not having a requirement that JPs be legally trained, several jurisdictions still have not implemented an independent commission process to determine JP compensation. That further distinguishes those jurisdictions as comparators.

183. Manitoba is one such jurisdiction where there is neither a requirement for JPs to be legally trained nor an independent commission to determine their compensation. There are also significant differences in the work performed by JPs in Manitoba as compared with JPs in Alberta.

184. In Manitoba there is no overnight shift at a centralized location like the Hearing Offices. Rather, there is only one JP who is on call from 11:00 pm to 7:00 am. Only emergent search warrant applications are dealt with during this time, and very strict rules

are in place. All other applications are heard before 11 pm on weekdays and weekends. Also, while Manitoba JPs do preside over trials of summary conviction matters, in practice they do not impose prison sentences. Not only do JPs in Alberta work 24 hours a day, but they are empowered to impose prison terms of up to two years under various pieces of legislation.

HORC Report, Hearing Exhibit Binder, **Tab 26**, Appendix 26, Jurisdictional Review - Justice of the Peace Services

Hearing Office Jurisdictional Scan November 2019, Society's Documents, **Tab 6**

Gélinas & Brosseau, *Judicial Justice of the peace and Judicial Independence in Canada* (2016), Review of Constitutional Studies, Volume 20, Issue 2 (2016), Forthcoming, available at SSRN: <http://ssrn.com/abstract=2795791>, Society's Documents, **Tab 7**, page 11 (Gélinas & Brosseau)

185. Northwest Territories does not require its JPs to have legal training and does not use an independent commission to set their compensation. Furthermore, JPs in the Northwest Territories are paid only on a fee for service basis at an hourly rate, which makes any meaningful comparison difficult. They are also generally “on call” rather than being at the office ready to deal with impending issues.

186. There are significant differences in their duties and jurisdiction as well. In the Northwest Territories, the chief judge has restricted JPs from dealing with summary conviction matters if the maximum penalty includes imprisonment exceeding six months or a fine exceeding \$5,000. By comparison, Alberta JPs may impose much greater fines as well as prison sentences. Under the *Forests Act*, for instance, a fine of up to \$1,000,000 can be imposed upon a corporation, and under the *Dangerous Goods and Transportation Handling Act*, a term of imprisonment of up to two years can be imposed for a second offence.

Gélinas & Brosseau, Society's Documents, **Tab 7**, page 14

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187. PEI also does not require JPs to have legal training and has no independent commission process for their compensation. Only one position in PEI is paid a salary set by the Provincial Government, while all others are paid on a fee for service basis. There has also recently been a reduction in JP's duties with respect to search and *Feeney*

warrants, which are now heard by Provincial Court Judges, and Child Protection matters are dealt with by the Supreme Court and a separate Child Protection department.

HORC Report, Hearing Exhibit Binder, **Tab 26**, Appendix 26, Jurisdictional Review
- Justice of the Peace Services

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188. The Society understands that legislation will be introduced in PEI that will require JPs to be legally trained in the future. However, that legislation is not currently in force.

Hearing Office Jurisdictional Scan November 2019, Society's Documents, **Tab 6**

189. Nunavut does not require JPs to have legal training. While two full-time JPs in Nunavut do have legal training, the vast majority (approximately 25-30) are part-time community JPs who are not legally trained and are paid on a fee for service basis at an hourly rate. The hourly rates provided to JP's are prescribed by Commissioners in Council. Much of the work is "on call" to hear applications and requests for warrants.

190. Accordingly, as there is no requirement for legal training, significant differences in the duties or the manner in which duties are performed, and the absence of an independent Commission to determine the compensation, the compensation paid to JPs in Manitoba, PEI, the Northwest Territories, and Nunavut is not a useful consideration for this 2017 JPCC.

191. While Ontario does not require JPs to have legal training, it does use an independent commission to determine JP salaries. The majority of the 6th Ontario JPCC in 2015 recommended significant salary increases, amounting to a 16.4% increase over 2011-2014, with salaries rising to \$135,221 in 2014. This recommendation was rejected by the Ontario government, which decision was upheld following an application for judicial review brought by the Association of Justices of the Peace of Ontario. The Government adopted the minority recommendation, which was for salary increases equal to the percentage change in the Industrial Aggregate Index for each of the years in question.

192. One of the reasons advanced by the Ontario Government for rejecting the majority recommendation was that, unlike JPs in Alberta and Quebec, Ontario JPs do not need to be legally trained.⁹

193. Another important difference between Ontario and Alberta is that in Ontario, bail applications are not heard outside of regular court hours during the week, and only from 9:30 am until 4:30 pm on the weekend and holidays. While there is a “tele-warrant” service that operates 24 hours per day, this is fundamentally different from the range of services provided at Alberta Hearing Offices 24/7, 365 days a year.

HORC Report, Hearing Exhibit Binder, **Tab 26**, Appendix 26, Jurisdictional Review
- Justice of the Peace Services

Hearing Office Jurisdictional Scan November 2019, Society’s Documents, **Tab 6**

194. It is reasonable that compensation paid to JPs in Alberta is higher than that paid to Ontario JPs given both the higher minimum qualifications and the differences in their duties.

195. Yukon JPs are not legally trained. Since August 2013, there have only been part-time JPs in the Yukon, whose hourly rates are determined based on the recommendations an independent commission.¹⁰

196. A second difference is that bail applications are typically only heard during regular business hours during the week and from 10:00 a.m. until completion on the weekends. While Yukon JPs are available for warrants outside of those hours,¹¹ the lack of bail hearing duties outside these hours is a significant difference from the schedule in Alberta. Another difference is that Yukon JPs are not empowered to impose penal sentences in excess of 90 days.

Hearing Office Jurisdictional Scan November 2019, Society’s Documents, **Tab 6**

⁹ The Association of Justices of the Peace of Ontario/L’Association des Juges de Paix de L’Ontario v. Her Majesty the Queen in Right of Ontario, 2016 ONSC 6001, para 37

¹⁰ Pay rates for hourly-rated JP’s for 2016-2019 were proposed by way of joint recommendation by the parties and approved by the 2016 Yukon Judicial Compensation Commission in January 2019.

¹¹ Territorial Court Act, S.Y., c.217, s.56(2)(a)

197. In Saskatchewan, the *Justice of the Peace Act* requires only that candidates are resident in Saskatchewan, although “Senior JPs” are legally trained as matter of policy, while others are generally not.¹² Only Senior JPs are assigned trial and case management work, while other JPs may perform judicial functions like judicial interim release hearings and search warrant consideration. In practice, only judges conduct bail hearings during regular court hours and very few bail hearings take place outside of regular court hours.

HORC Report, Hearing Exhibit Binder, **Tab 26**, Appendix 26, Jurisdictional Review
- Justice of the Peace Services

Hearing Office Jurisdictional Scan November 2019, Society’s Documents, **Tab 6**

198. Another feature of JP work in Saskatchewan is that a part-time JP’s ability to carry on a legal practice is not as limited as in Alberta. In Saskatchewan section 5 of the *Justices of the Peace Act* provides that unless otherwise provided by law, a justice of the peace shall not, during his or her term of office:

- i. practise criminal law;
- ii. act as legal counsel for or against the Government of Saskatchewan or the Government of Canada; or
- iii. be in a position of a conflict with his or her duties as a justice of the peace.

199. This is much less restrictive than s.10.1(b) of Alberta’s *Justice of the Peace Act*, which prohibits a part-time JP from practicing family law or appearing as counsel on any matter in Provincial Court, and prohibits the practice of criminal law or representing a client in a matter for or against the government.

¹² *Justices of the Peace Act*, 1988, SS 1988-89, c. J-5.1, s. 4. Courts of Saskatchewan website: <http://sasklawcourts.ca/index.php/home/provincial-court/justices-of-the-peace>. Only Senior Justices of the Peace, as a matter of hiring policy, are required to have prior experience as lawyers.

Nova Scotia, British Columbia and Quebec

200. Aside from Alberta, the only jurisdictions which do require legal training for JPs and determine their salary by an independent commission are Nova Scotia, British Columbia and Quebec. However, important distinctions still remain.

201. In Nova Scotia, there are no full-time JPs, despite that the legislation allows for full-time appointments. Part-time JPs are paid on an hourly basis and it is fully expected that they will supplement their income through other means. In this regard, the 2014 Nova Scotia Commission stated:

... It is indeed expected, and the actual fact, that virtually all of Nova Scotia's presiding justices of the peace will engage in the practice of law or in other remunerative activities, in order to maintain an adequate livelihood for themselves and their families. Thus, the rate of remuneration for presiding justices of the peace in the Province has not historically been, nor is expected to be in the near future, sufficient to constitute the sole basis for their personal financial security. For the purposes of this Report and its Recommendations, the Commission accepts this state of affairs as a given, and assumes that it is constitutionally viable.

2014 Nova Scotia JP Remuneration Commission Report, Society's Documents, **Tab 8**, para 21

202. The same cannot be said of Alberta JPs. Clearly, a full-time JP derives his or her livelihood from holding office as a JP. Moreover, not only are most part-time (and even ad hoc) JPs working full-time or near full-time hours, but the restrictions on practice for part-time JPs make it practically very difficult for most lawyers who the Court would be seeking to attract for a JP appointment, to continue a successful legal practice. As noted elsewhere, DCJ Lefever spoke to the 2009 JPCC about seeking out candidates who can walk into the duties with little training. Generally, this will mean a candidate with a background in criminal or family law, both of which a JP is prohibited from practicing once appointed.

203. A further distinction is that JPs in Nova Scotia deal with bail matters only for purposes of remanding over to the Provincial Court for hearings. They do not conduct bail hearings.

Hearing Office Jurisdictional Scan November 2019, Society's Documents, **Tab 6**

204. Moreover, Nova Scotia JPs do not perform their functions 24 hours per day. The Centre is open from 9 a.m. until 9 p.m., and a JP is available overnight by telephone if required. However, the Nova Scotia *Justices of the Peace Regulations, NS Reg 51/2002* specifically provides at section 7(2) that the various duties of presiding JPs may be performed between 9 p.m. of one day and 9 a.m. of the following day (i.e. overnight) only when, in the opinion of the presiding justice of the peace, it is not reasonable to wait until 9 a.m. of the next day to deal with the matter.

HORC Report, Hearing Exhibit Binder, **Tab 26** Appendix 26, Jurisdictional Review
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205. The context for Alberta JPs is clearly different from the situation for JPs in Nova Scotia, and supports the Society's proposals for compensation that exceeds that paid to JPs in Nova Scotia.

206. The general duties of JPs in British Columbia and Quebec are similar to those of Alberta JPs in that they include such things as: presiding over judicial interim release show cause hearings, making determinations in warrant applications and presiding over trials of provincial and municipal offences. However, there are important differences in the manner in which these duties are fulfilled as well as in the scope of the jurisdiction.

207. One significant difference is that Judicial Justices ("JJs") in BC do not have jurisdiction to impose sentences of imprisonment.¹³ As discussed above, Alberta JPs are empowered to order imprisonment under a variety of provincial statutes. Furthermore, BC JJs do not preside over Emergency Protection Order or Apprehension Order applications. As discussed above, this is a significant aspect of an Alberta JP's jurisdiction.

208. Another difference is the manner in which preliminary criminal duties are carried out and, in particular, the operation of the Justice Centre in British Columbia compared with the operation of the Hearing Offices in Alberta.

¹³ *Provincial Court Act*, RSBC 1996, c 379, s.2.1(e)

209. The BC Justice Centre does not operate 24 hours a day. Instead of the night shift worked in the Hearing Office by a JP in Alberta, a JJ in BC serves on an on-call basis from home. Moreover, there is an 11:00 p.m. cut off for bail applications, and the night shift appears to be only for the purpose of search warrant and arrest warrant applications. The Quebec system is similar to BC in this regard: JPs maintain a home office and work after regular hours on an on-call basis from home. In Quebec, only non-contested bail hearings are heard on a 24-hour per day basis.

HORC Report, Hearing Exhibit Binder, **Tab 26**, Appendix 26, Jurisdictional Review
- Justice of the Peace Services

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210. Since 2007, BC has had ten-year term appointments like in Alberta¹⁴. JJs appointed prior to 2007 are not subject to term limits. In Quebec, JPs are appointed until age 70. Perhaps due to their longer service, JPs in both these other jurisdictions participate in a pension plan (whereas in Alberta, the JPs receive a payment of 13.1% of salary in lieu of pension).

Provincial Court Act, RSBC 1996, c 379, s. 30.2 and 30.3

Courts of Justice Act, RSQ, c T-16, s. 165

211. In British Columbia, there is no statutory requirement for a law degree but, since 2007, the Judicial Council has required both a law degree and five years of practicing experience as a requirement to be eligible for appointment as a JJ. In Quebec, the *Courts of Justice Act*, RSQ, c T-16, s. 162 requires that presiding justices of the peace have at least ten-years of legal practice.

Report of the 2019 BC Judicial Compensation Commission, Society's Documents, **Tab 2**, page 13

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¹⁴ On October 7, 2019, the BC Government introduced legislation, Bill 35 *the Miscellaneous Amendments Act (No. 2)*, 2019, which would permit *per diem* judicial justices to be re-appointed on a part-time basis for a subsequent 10 year term.

212. Finally, BC imposes fewer restrictions on the continued legal practice of a part-time JJ. Section 34(2) of the BC *Provincial Court Act* prohibits a part time JJ from practicing criminal law, acting as counsel for or against government, or being in a position of conflict. As noted above, part-time JPs in Alberta are further limited in that they are also prohibited from practicing family law or appearing in the Provincial Court.

213. For the foregoing reasons, a comparison with the compensation paid to JPs in either of BC or Quebec is of only limited value.

214. Despite the many differences that continue to exist among the jurisdictions, this 2017 JPCC is obliged to consider this criterion according to the *Commission Regulation*. Of all the jurisdictions, BC and Quebec are most comparable but significant differences remain. For reasons set out above, it continues to be appropriate for Alberta JPs to be paid the highest compensation among JPs in Canada. The details of relevant aspects of compensation are discussed below.

(f) Increases or decreases, as applicable, in the Alberta real primary household income per capita

215. Subsection 13(f) of the *Commission Regulation* calls for consideration of the growth and decline in real primary household income per capita in Alberta. This is the first time that this statistic has been a specified consideration in the Regulation governing an Alberta JPCC, although this indicator was considered by the 2013 JPCC.

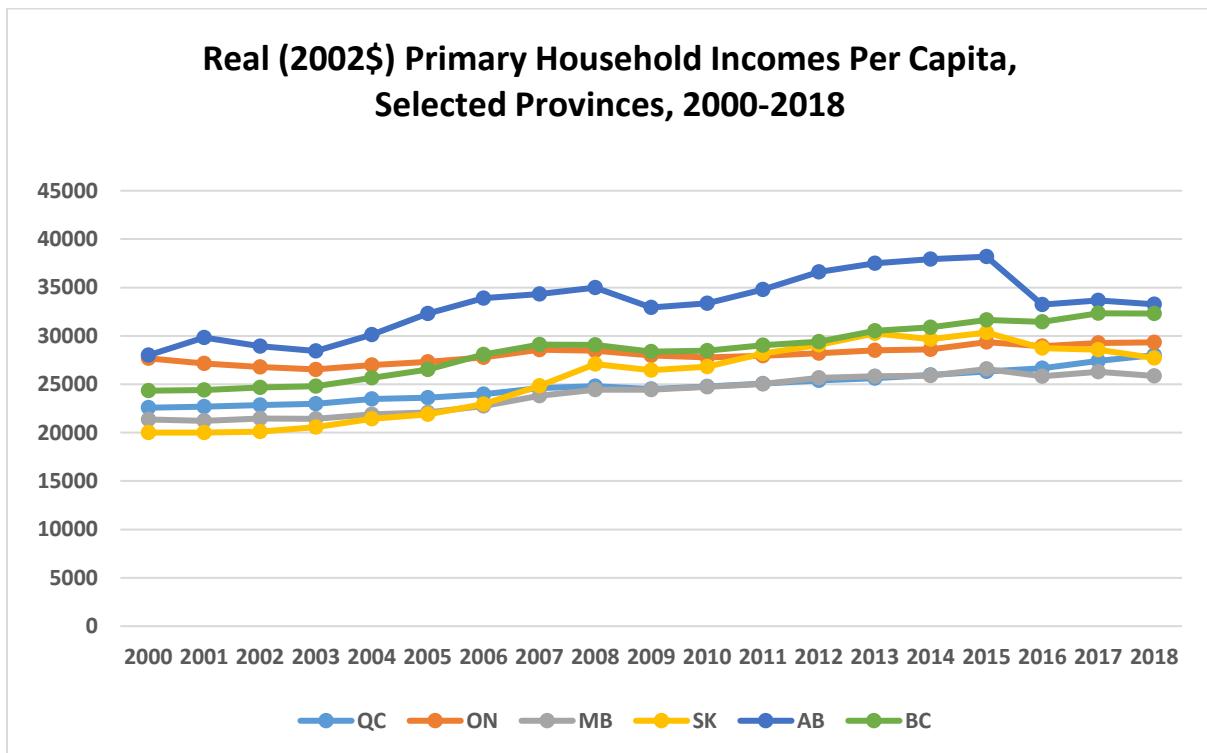
216. As discussed in detail in the next section, the Society retained Dr. Melville L. McMillan, Professor Emeritus in the Department of Economics at the University of Alberta, to prepare a Report on the economic and fiscal circumstances of Alberta. The “2019 McMillan Report” forms **Tab 9** in the Society’s Documents. Attached as **Tab 10** in the Society’s Documents is the *Curriculum Vitae* of Dr. McMillan.

217. The 2019 McMillan Report explains that primary household incomes per person in Alberta have exceeded those in every other province since 2000. As shown in Figure 14 of the McMillan Report, the premium over other provinces continues to be significant, despite being reduced by the recent recession. The 2019 McMillan Report concludes:

Thus, the recession in Alberta has resulted in the premium of Alberta's primary household incomes per person relative to those in other provinces being reduced but that premium is still considerable (perhaps substantial). In addition, if incomes recover as well as the Alberta government expects, the premium relative to Ontario will be about 15 per cent and relative to British Columbia about 9 per cent.

2019 McMillan Report, Society's Documents, **Tab 9**, page 23

218. Figure 14 in the 2019 McMillan Report does not reflect the changes in the cost of living as revealed through changes in the Consumer Price Index ("CPI"). The following graph presents the same data, adjusted to 2002 dollars, to reflect the changes in the cost of living.



219. The Government's Economic Outlook Fiscal Plan 2019-23, which formed part of its 2019 Budget, contains the following forecasts with respect to primary household incomes per capita for the years within this 2017 JPCC's mandate. As the criterion in the Commission Regulation calls for consideration of "real" data, the forecasted CPI adjustments are also shown, with the real figure being the difference between the two.

	2017	2018	2019	2020
Primary Household Income (% change)	3.0%	4.5%	3.2%	4.3%
Consumer Price Index (% change)	1.6%	2.4%	1.7%	1.8%
Real Primary Household Income Change	1.4%	2.1%	1.5%	2.5%

220. As is detailed in Part IV below, the Society’s proposed salary adjustment for the 2017 fiscal year is higher than the 2017 increase in real primary household incomes, by a substantial margin. However, the Society’s proposed adjustments for the 2018, 2019, and 2020, are well below the known and anticipated real increases.

(g) The Need to Provide Fair and Reasonable Compensation for Justices in Light of Prevailing Economic Conditions in Alberta and the Overall State of the Economy, Including the Financial Position of the Government

221. The focus of this criterion is the need to provide fair and reasonable compensation for JPs in light of the prevailing economic and fiscal conditions in Alberta. Given the role of the JPCC as an “institutional sieve”, the purpose of which is to depoliticize the setting of judicial remuneration, it is essential that the economic and fiscal conditions be considered objectively and not through the lens of the Government’s political decisions.

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

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

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

2013 JCC Report, Joint Book of Authorities, **Tab 17**, page 42

224. Reporting in July 2017, the 2013 JPCC shared in this view. After setting out the various factors, the Commission stated:

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. Our recommendations, in short, must reflect a balancing act, one we hope to have achieved after a review of the written briefs, after hearing the parties through submissions at the hearing and through our own deliberations.

2013 JPCC Report, Joint Book of Authorities, **Tab 3**, page 27

225. After two years of deterioration in 2015 and 2016, the Alberta economy began a recovery in 2017. While the pace of recovery slowed in 2018 and paused in 2019, there are signs of improvements in various economic measures. The 2019 McMillan Report describes the state of the Alberta economy and the finances of the Government with a focus on the years at issue for this 2017 JPCC. It compares Alberta’s fortunes with those of other Canadian provinces, in particular Ontario as well as British Columbia and Saskatchewan, its closest neighbours. A national perspective is also provided by reference to the Canadian average for many of the statistics.

2019 McMillan Report, Society’s Documents, **Tab 9**

226. The analysis below highlights the most significant parts of Dr. McMillan’s analysis and goes on to explain how the information should assist this 2017 JPCC in making its recommendations regarding appropriate compensation for JPs.

227. With respect to the current situation, the 2019 McMillan Report observes:

- the extended post 2000 economic boom in Alberta came to an abrupt halt with the recession in 2015 and 2016, a recession from which the province experienced a turnaround and substantial recovery in 2017, but a recovery that halted in 2019. While recovery and growth have been delayed, those are expected to be renewed, and the provincial government has a positive outlook and predicts that the economy “is set to expand at a solid pace” (pages 1, 34-36);
- despite the setbacks, the Alberta economy has emerged still leading the other provinces in per capita GDP by considerable margins and GDP per capita is expected to continue to be 40 to 60 per cent greater than that of most other provinces, including those in Western Canada (pages 1, 12, 71);
- while employment dropped substantially during the recession in 2016, it began recovery during 2017 and, as of April 2018, exceeded mid-2015 peak levels (page 16);
- average weekly earnings in Alberta remain the highest in Canada and 11% greater than those in Ontario, the second largest (page 24);
- while population growth slowed between 2014 and 2019 due to the economic setback, growth was still 90 per cent of that in British Columbia, Manitoba and Ontario. Future population growth is expected to improve with the Conference Board of Canada projecting growth of 6.7% by 2023, which exceeds the pace elsewhere (page 29)

2019 McMillan Report, Society's Documents, **Tab 9**

228. This 2017 JPCC is mandated to make recommendations for the period April 1, 2017 to March 31, 2021. Accordingly, to the extent that predictions are available and reliable, it is important to consider not only what has already occurred, but also predictions for this and the following year. Detailed information on the current forecasts is set out in the McMillan Report. Dr. McMillan concludes:

- the 2017 turnaround of the Alberta economy is not complete but the economy is moving ahead and is expected to herald continued growth (page 11);
- real GDP is expected to continue its long-term growth. The Conference Board of Canada predicts that by 2023, per capita GDP is expected to be 10.5 per cent greater than in 2000, while the Alberta Government predicts 15.3 per cent (page 11);

- By 2021, nominal GDP is expected to return to 2012-2015 levels and the 2014 peak by 2023 (page 9)
- Real GDP is expected to be 9.8 per cent greater in 2020 than in 2000, and 13.4 per cent by 2023 (page 9);
- based on the Alberta Government's own predictions, primary household incomes per person will be greater than in every other province, and about 15 per cent greater than in Ontario and 9 per cent greater than in BC (page 23);
- average weekly earnings, average income per employee and primary household income in Alberta are the highest in Canada and the traditional premiums or differentials as compared with other provinces, albeit somewhat reduced, are expected to persist (pages 71-72);
- Alberta's population is expected to grow by 6.7 per cent by 2023, leading Western Canada (page 29); and
- unemployment is projected to resume a downward path in 2020 and is predicted to be similar to Ontario in 2022, and a major improvement over those of the recession levels.

2019 McMillan Report, Society's Documents, **Tab 9**

229. In summary, Dr. McMillan explains that:

The recession reduced, but did not eliminate, the economic advantages that have characterized Alberta for some time. GDP per capita is still the highest among the provinces at 40 to 60 per cent greater than in the other four most western provinces. Similarly, an Alberta premium remains for earnings. That premium, however, is declining somewhat relative to British Columbia and Ontario thanks to strong economies posted there while Alberta struggled. For example, average weekly earnings, average income per employee and primary household income in Alberta are the highest and, for example, exceed those in Ontario by 10 to 15 per cent. Thus, the traditional premiums or differentials, although somewhat reduced, continue to be considerable and they are expected to persist.

2019 McMillan Report, Society's Documents, **Tab 9**, page 71-72

230. The 2019 Alberta Budget confirms that the Government shares the positive economic outlook of other forecasters cited in the 2019 McMillan Report. Budget 2019 states:

“As the economy moves from recovery into expansion, private domestic demand will underpin Alberta’s growth.”

“Growth is set to resume at a solid pace beyond 2019, as lower corporate income tax rates and easing market access constraints lead to a broad-based improvement in investment. This will support a stronger labour market and population growth.”

“After slowing in 2019, the Alberta economy is set to expand at a solid pace. Stronger private domestic demand and solid exports will underpin growth.”

Budget 2019 Fiscal Plan 2019-23, Hearing Exhibit Binder, **Tab 27**, page 27, 34, 35

Financial Position of Alberta

231. The 2019 McMillan Report considers the Alberta Government’s finances and fiscal situation from two perspectives: within Alberta and in comparison with the situation in other provinces.

232. Dr. McMillan considers the province’s expenditures and revenues in some detail and the fiscal developments are summarized beginning at page 36. Dr. McMillan explains that, despite considerable reductions in revenues, the provincial government still leads all provinces in its fiscal capacity.

2019 McMillan Report, Society’s Documents, **Tab 9**, page 64

233. Alberta’s fiscal advantage is summarized beginning at page 64 in McMillan’s Report. Dr. McMillan sets out the following key points.

- Thus, despite the ravages of the recession, Alberta remains the province with the greatest fiscal capacity- that is, although reduced, Alberta’s fiscal capacity is still 40 per cent greater than the average and still about 20 percentage points greater than any other province (page 64).
- Clearly, Alberta is some way from realizing the net debt levels of most provinces (page 60).

- Alberta's net debt is small as a percentage of GDP and, more appropriately measured, modest as a percentage of government revenues. As a percentage of government revenues, Alberta's expected peak net debt only exceeds that today in British Columbia and Saskatchewan and it is well within manageable proportions (pages 69 and 70).
- Alberta maintains a more or less average level of per capita program expenditures, which is noteworthy, perhaps remarkable, given the relatively high cost of production inputs (page 57)
- Alberta's high fiscal capacity has created a large tax advantage for Albertans (page 70).

2019 McMillan Report, Society's Documents, **Tab 9**

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

- despite the substantial loss in resource revenues and the recession's broader negative impacts on the provincial government's revenues, Alberta's relative fiscal capacity has only slipped from being 55 per cent greater than the provincial average to 41 per cent greater than the average, and still about 20 percentage points greater than any other province (page 64).
- tax capacities from personal income, consumption and property taxes (i.e. without resource revenues and business taxes) are themselves sufficient to provide Alberta with a well above average fiscal capacity (page 73).
- with respect to net debt relative to GDP, the percentage in Alberta was 8.0 per cent of GDP in 2018-19, or 55 per cent of provincial government revenue, each of which is substantially less than the figures for other provinces (page 60).
- although debt has increased sharply in Alberta, it is projected to peak soon and it is well within the provincial government's capacity to manage (page 61).
- provincial expenditures per capita are mid-range and close to the average of those in other provinces, despite Alberta operating in a high cost economy. In relative terms, Alberta's spending is quite moderate (page 73).

2019 McMillan Report, Society's Documents, **Tab 9**

235. In comparison with other provinces, Dr. McMillan notes that “one suspects that taxpayers and governments in most, if not all, provinces would gladly accept Alberta’s fiscal issues and willingly trade positions.”

2019 McMillan Report, Society’s Documents, **Tab 9**, page 74

236. The 2019 McMillan Report highlights Alberta’s very significant tax advantage or, in other words, the additional taxes that Alberta individuals and businesses would pay if Alberta had the same tax system as in each of the other provinces. Under any other province’s tax system, Albertans would pay at least \$13.4 billion dollars more in taxes. That advantage may become even greater given the provincial governments’ announced plans to reduce major provincial taxes further and to repeal the carbon tax.

2019 McMillan Report, Society’s Documents, **Tab 9**, page 47

237. The sheer scale of Alberta’s tax advantage is revealed by the fact that if Alberta adopted a tax system equivalent to that of another province with the next lowest taxes, it would balance its budget and still maintain a tax advantage over all other provinces (page 66). As a result, Dr. McMillan concludes:

“Alberta does not have a difficult fiscal problem. The provincial governments have been in a position to address its fiscal challenges with a combination of cuts and additional revenues and still maintain a fiscal advantage over all other provinces. None of the last several governments have ventured in that direction. Alberta has a political problem. Alberta’s world has changed from what it was ten, even five, years ago and that has drastically undermined resource revenues as a source of provincial funds. The political problem is the need to convey the unpleasant implications to Albertans. The UCP may have been supported by many in the mistaken belief that it would not implement its platform budget or that cuts would not hurt. Those appears to have been a mistaken assumption. Thus, put simply, Alberta’s problem is not a fiscal problem but a political problem.”

2019 McMillan Report, Society’s Documents, **Tab 9**, page 74

238. Overall, the 2019 McMillan Report concludes:

- the 2017 turnaround of the Alberta economy is far from complete, but the economy is moving ahead and is expected to herald continued growth (page 11,71);

- since 2018, employment exceeds 2014 previous levels, and unemployment is expected to regain its downward path in 2020 (page 71);
- earnings and incomes are showing improvement, and the activity index is flirting with 2014 peaks (page 71);
- the recession reduced but did not eliminate the economic advantages that have characterized Alberta for some time (page 71);
- GDP per capita is still the highest among the provinces and 40 to 60 per cent greater than in the other four western provinces (page 71);
- average weekly earnings and average income per employee as well as primary household income in Alberta are the highest in the country (page 71);
- provincial expenditures per capita are mid-range and close to the national average, and low compared to household incomes. Alberta's spending is quite moderate (page 73);
- Alberta's fiscal capacity remains high. In 2018-19, its capacity is 40 per cent greater than the average province. Alberta still has the greatest fiscal capacity of any province and it is 20 percentage points greater than the 2nd ranked province (page 73); and
- Alberta's fiscal capacity has meant a large tax advantage for Albertans (page 73).

2019 McMillan Report, Society's Documents, **Tab 9**

239. The criterion identified in section 13(g) of the *Commission Regulation*, is focused on the need to provide fair and reasonable compensation for JPs. As Dr. McMillan explains, when viewed within its Canadian context, the apparently "dramatic transformation of the provincial government's fiscal condition may appear ominous. However compared to other provinces, the situation would be considered fairly benign." Despite its current challenges, Alberta remains the envy of its neighbour jurisdictions across the country.

2019 McMillan Report, Society's Documents, **Tab 9**, page 74

240. The financial position of the Government is clearly such that it enjoys much latitude in making its policy choices about how to improve the current fiscal position. While the Government has chosen, in the 2019 Budget, to make “targeted reductions” and to constrain expenditures, it is clear from the 2019 McMillan Report that other choices are available. It is not the role of a JPCC to assess or critique the Government’s choices as they relate to the economy generally, but nor is the JPCC bound by those choices. Rather, the 2017 JPCC must consider what is fair and reasonable compensation for JP’s in light of the prevailing conditions and all of the other objective criteria identified in the Commission Regulation.

241. Most important for this 2017 JPCC is that economic circumstances are clearly improving and the Government continues to have substantial fiscal capacity, and therefore flexibility, particularly as compared with other jurisdictions. While the Government has chosen to follow the path set out in its 2019 Budget, a government’s political choices cannot dictate the recommendations of this JPCC. When it comes to the setting of judicial compensation, Government must make its decision in light of the recommendations of the independent and objective JPCC.

242. The Society addresses Professor Dahlby’s Report below, in the section on the level of increases or decreases or both provide to other programs and persons funded by Government, and will comment on it in further detail in its Reply Brief.

(h) The Alberta Cost of Living Index and the Position of the Justices Relative to its Increases or Decreases, or Both

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

Commission Regulation, Hearing Exhibit Binder, **Tab 2**, s.13(h)

PEI Reference, *supra*, Hearing Exhibit Binder, **Tab 12**, para 174

244. This aspect of the effectiveness requirement has not been adhered to in Alberta, at least historically, in that there was a six year gap before the 2000 and 2006 Commissions and a further seven year gap before the 2009 JPCC reported in 2013. A further four year gap occurred before the 2013 JPCC reported in 2017. By the time this JPCC’s recommendations are addressed by Government, JPs will have endured an effective four-year freeze in their compensation. As such, this criterion is of considerable importance.

245. Changes in the cost of living are most often discussed in reference to the Consumer Price Index (‘CPI’) statistics published by Statistics Canada and are also forecast by major financial institutions and provincial Governments. The CPI tracks changes in the cost of a fixed basket of consumer goods on a monthly basis. Accordingly, percentage increases in the CPI is a way to measure the rate of inflation.

246. The percentage changes in the Consumer Price Index in Alberta, both historical and forecasted, are shown below.

CPI – All items					
Year	2017	2018	2019 (forecast)	2020 (forecast)	2021 (forecast)
Alberta % * change	1.6%	2.4%	1.7%	1.8%	1.9%

* Figures for Alberta are from 2019-23 Fiscal Plan (Alberta Budget 2019 documents), Hearing Exhibit Binder, **Tab 27**

247. Albertans have or will have endured varying levels of increases in the costs of consumer goods in each of the years within the mandate of this JPCC. From a practical perspective, this means that the value of the 2016 JP salary has eroded because of increases in the cost of living. The Society’s salary proposal would increase JP’s 2017 compensation in real terms, meaning beyond simply the increases in the CPI, and would mirror the CPI increases in the later years. Those proposals are based on all of the relevant factors, including the need to attract and retain qualified candidates to the position and to finally appropriately compensate JPs for the important and unique work they perform.

(i) The Nature of the Jurisdiction of Justices

248. The nature of the JPs' jurisdiction is detailed in Part II above. Given the breadth of work now performed by JPs, the Court is fortunate to have considerable flexibility in utilizing JPs to improve the efficiency of the justice system as a whole. JPs have also taken on a greater proportion of the judicial duties that used to be performed by Provincial Court Judges, representing a qualitative shift in their work.

249. The fundamental decisions made by JPs support the Society's request for compensation that will ensure the ability of the Court to attract and retain the best possible qualified candidates. A continual supply of a sufficient number of highly qualified candidates for appointment is particularly important given the number of unfilled vacancies, and the need to attract new JPs upon the expiration of existing terms.

2009 JPCC, Hearing Exhibit Binder, **Tab 5**, page 13

(j) The Level of Increases or Decreases, or Both, Provided to Other Programs and Persons Funded by the Government

250. Subsection 13(j) of the *Commission Regulation* obliges this 2017 JPCC to consider "the level of increases or decreases, or both, provided to other programs and persons funded by the Government". The criterion refers to the level of increases or decreases provided to other programs and persons funded by the Government and not to the actual salary levels of public servants.

251. As noted previously, the Government of Alberta has adopted an approach that, with few exceptions, either freezes or decreases the amount of funding provided to programs and persons paid by the public purse.

252. Dr. McMillan provided a "Rebuttal Report" in January 2020 entitled "McMillan Response to the Dahlby Report on the Alberta Economy and the Government of Alberta's Finances and Fiscal Situation." In his Rebuttal Report, McMillan responded to Section 3 of the Dahlby Report on Alberta's finances and fiscal situation. McMillan is critical of the Dahlby Report's limitations on focusing solely on the expenditure side of the Alberta Budget and excluding consideration of revenue, a strategy the Government itself has

implemented in the recent budget. McMillan then provides a broader assessment of Alberta's fiscal strategy, explaining that:

- the Alberta Government has chosen to solve the deficit problem by using a single approach, namely holding expenditures constant through 2020-2023;
- a combination of population growth and inflation will diminish real per capita expenditures by 14.7% between 2018-19 and 2022-23;
- planned expenditures for the various ministries, include significant cuts in certain areas (i.e., Treasury Board and Finance); and
- planned cuts will reduce Alberta's program expenditures to low of 18.24% of household incomes, a level never before seen in Alberta;

253. McMillan raises concerns about the strategy being utilized by Alberta to reduce the deficit and balance the budget. In brief, he notes:

- the expenditure cutting approach to balancing the budget assumes that Albertans prefer to take the loss of resource revenues entirely in reduced provincial services (or increased costs of municipal and school/education services);
- Budget 2019, in addition to reducing expenditures, outlines a plan to reduce corporate income taxes from 12 to 8 per cent by 2022-23 in the hopes of stimulating investment and employment. That decision, however, makes balancing the budget more challenging, as the net cost of these reductions is \$2.4 billion or upwards of \$4.5 billion if the positive economic responses do not materialize.

254. McMillan contends that the decision to cut taxes seems to be an “untimely move” by a government with revenue problems, and particularly concerning due to the fact that the lost revenue per anticipated job created is large. Ultimately, McMillan describes this approach of reducing expenditures while cutting corporate taxes as a “grand experiment” that will take Albertans into “unfamiliar territory.”

255. In his Rebuttal Report, McMillan summarizes his findings from the 2019 McMillan Report regarding the fiscal position of Alberta, considered in the broader context:

To summarize, Alberta is in a quite, if not very, favourable position. Expenditures are moderate in per capita terms (especially when considering that Alberta is (still) a high wage economy) and expenditures are low relative to household incomes (i.e., the provincial government is small relative to the Alberta economy). Although debt has increased, debt is very low by all accounts and it is readily manageable. Alberta has the greatest fiscal (revenue generating) capacity and it has a huge tax advantage over all other provinces- that is, even at the extreme, deficits could be covered by tax increases alone and still leave large tax advantages over every other province. Yes, Alberta has a structural deficit at this time which must be addressed but it has a variety of options to do so.

McMillan Rebuttal Report, Society's Documents, **Tab 11**, page 7

256. The Government of Alberta's approach to expenditure reduction has also resulted in freezes in public sector wages. These are discussed further below in outlining the Society's proposed salaries. While it is clear that civil servants are facing freezes, and even arguments for reductions, JPs are not civil servants. The uniqueness of the JP role means that comparisons with civil servants must be approached with significant caution.

257. The level of the increases, or lack thereof, provided to public sector program and employee groups is only one of many considerations against which the Government's position about appropriate salaries for JPs can be tested. Even then, it must be recognized that pay for these other groups is not set in reference to the particular factors set out in the *Commission Regulation* that governs this process.

258. In the recent 2019 BC JCC, the Government submitted that the same wage increases provided to civil servants were also appropriate for PCJ's and Judicial Justices. The BC JCC rejected the BC Government's argument and offered several reasons to reject, for judicial justices, application of the results of collective bargaining with civil servants:

First, we find it significant that judges and judicial justices are unique in constitutional status and job function and are not equivalent to civil servants. They constitute a small, highly trained and highly skilled group with enormous power over their fellow citizens.

Second, judges and judicial justices cannot negotiate their terms of employment. They do not receive bonuses, step increases or promotions. A judicial officer of 1 day's experience receives the same remuneration as a colleague of 25 years' experience. They have none of the financial incentives available to civil servants. Judges cannot supplement their earnings from other sources.

...

For the reasons set out above we considered this factor, but we find it does not support the government's position of a 2% increase for judges and judicial justice as strongly as the government submits that it does. There are no positions among those paid out of public funds with duties that are truly comparable to the judges and judicial justices. Many others paid out of public funds have progressive compensation and the opportunity to earn additional income. Some paid from public funds, notably Crown Counsel, have consistently been given increases exceeding 2%.

Report of the 2019 BC Judicial Compensation Commission, Society's Documents, **Tab 2**, pages 23-24

259. For the same reasons, little weight should be given to the wages and funding provided to others funded by the Government.

(k) Any Other Factors Considered by the Commission to be Relevant to the Matters in Issue.

260. While it is not a separate factor *per se*, it is relevant to consider the Government's delay in conducting this JPCC process when determining how each of the other factors should affect the determination of appropriate compensation. Delay is also relevant to the crafting of the recommendations themselves, and the need for the recommendations to be expressly retroactive to April 1, 2017. As JPs have no control over the process and yet no alternative but to participate, it is essential that the JPCC ensures, to the extent possible, that the process remains effective.

PART IV: RECOMMENDATIONS

262. The Society details below each of its proposed recommendations for increases to the existing compensation for JPs. It focuses below on how its proposals are fair and appropriate in light of all the factors identified in the *Commission Regulation*.

1. Salary

Recommendations Sought:

- a) Effective April 1, 2017, the annual salary for JPs shall be increased to \$176,395;
- b) Effective April 1, 2018, 2019 and 2020, the annual salary for JPs shall be increased by the percentage change in the Alberta Consumer Price Index, over the preceding calendar year;
- c) The foregoing salaries shall be paid retroactively to their effective dates and shall apply to all who were full-time JPs for any portion of the relevant fiscal years, regardless of whether the JP left office prior to implementation of this JPCC's recommendations.

263. To be clear, no change is proposed to the per diem formula, nor to the 5% salary differentials paid to Administrative JPs.

264. Since April 1, 2016, full-time JPs have been paid a salary of \$151,813. The Society considers this salary to be woefully inadequate given the duties performed, particularly as compared with the duties performed by Provincial Court judges, and the significant contribution of JPs to the workings of the Alberta justice system.

265. For reasons that are detailed below, it is the Society's respectful submission that based on the respective roles of the two types of judicial officers and the attraction and retention factor, a special adjustment to 67% of the judges' salary would be fair and appropriate. However, in order to acknowledge the economic and fiscal circumstances in Alberta, the Society has modified its intended proposal considerably, to roughly 60% of judges' salaries. Nonetheless, the Society seeks a finding from this JPCC that, but for

the current economic and fiscal situation in Alberta, a special adjustment to a salary that amounts to 67% of judges' salaries would be justified. This is explained in further detail below.

266. The Society's proposed salaries are consistent with the constitutional law of Canada in that they are based on objective criteria, not political expediencies, and would maintain the independence of the JPs.

Bodner, supra, Hearing Exhibit Binder, **Tab 11**, para 121

267. The proposed salaries recognize and acknowledge the unique and critical role of JPs within Alberta's justice system. As detailed above, the role of JPs has evolved very significantly since the 2012 amendments described above. Particularly given the pressures created by the Supreme Court of Canada's decision in *R. v. Jordan* (which decreed a maximum period of 18 months from criminal charge to disposition), JPs are now a crucial escape valve to ensure a functioning justice system.

268. Due to the economic circumstances which prevailed at the time the 2013 JPCC conducted its analysis, it is respectfully submitted that these changes have not yet translated into fair compensation adjustments. While the Society recognizes that the present circumstances are also challenging, it is clear that a recovery is underway and that Alberta's circumstances remain highly favourable as compared with those of other jurisdictions. With respect, the Society's members cannot wait indefinitely, and deserve to receive compensation that fairly reflects their duties. Moreover, this is necessary in order to attract highly qualified candidates for the many existing and anticipated vacancies. For these reasons, the Society proposes a special adjustment for 2017 that is significant, though still modified in light of the current fiscal circumstances in Alberta.

269. Section 13(d) of the *Commission Regulation* requires consideration of "the need to attract qualified candidates". As discussed above, there will soon be a significant number of vacancies arising each year as ad hoc JPs reach the five-year limit of annual reappointments and must leave their positions. This is the reality at a time when recent vacancies have attracted few highly qualified candidates. It is imperative that

compensation be set at a level that can be reasonably expected to attract and retain highly qualified candidates to the position.

270. The Society's salary proposals are designed to maintain a reasonable relationship between the compensation paid to JPs and that received by suitable comparators. The comparators are discussed below.

Comparison to Other JPs

271. The chart at **Tab 22** of the Hearing Exhibit Binder compares the salaries of Justices of the Peace in certain Canadian jurisdictions. The Society's proposed salaries are appropriately higher than the salaries paid in all of the jurisdictions listed. As detailed above, there are important features of the duties and working conditions of Alberta JPs that justify that they should be more highly paid than JPs in other jurisdictions. These include the *requirement* for legal training, the comparatively broad jurisdiction of Alberta JPs, and the conditions in which Alberta JPs perform their duties.

272. Alberta JPs do not participate in a pension plan, unlike JPs in BC, Saskatchewan¹⁵, Manitoba, Quebec, and Ontario. Alberta JPs do receive 13.1% in lieu of pension, a figure which mirrors the Government's contributions for an employee covered by the Management Employees' Pension Plan. No analysis has been conducted of the value of the pension plans in place for JPs in other jurisdictions. However, given the "apples and oranges" nature of the comparison to at least some of the jurisdictions, a total compensation analysis would be of limited use in any event.

273. That Alberta JP salaries should be at the top of the range of JP salaries is consistent with the findings of past JPCCs, including the 2013 JPCC, and with the position advanced by the Government in the past about where Alberta's JP compensation ought to fall in comparison with that of JPs elsewhere across the country.

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, page 26; Also see 2006 JPCC Report, Hearing Exhibit Binder, **Tab 7**, pages 7 and 21; Also see 2000 Judicial Compensation Order, Hearing Exhibit Binder, **Tab 10**

¹⁵ A defined contribution plan applies to Senior JPs.

Comparison with Provincial Court Judges

274. That Alberta JP compensation should be at the top of the salaries of JPs across Canada is also supported by the fact that Alberta's Provincial Court judges' salaries have long been similarly situated vis-à-vis the salaries of judges in other jurisdictions. For the years within this 2017 JPCC's mandate, the 2017 JCC recommended judges' salaries that were the highest of those paid to Provincial Court judges in the country for 2017 and 2018, and that were expected to be slightly below the salaries of Ontario judges in 2019 and 2020. The Government of Alberta declined to implement those recommendations and implemented instead a four-year freeze at the 2016 salary. This decision is currently subject to a judicial review application, which is ongoing.

2017 JCC Report, Hearing Exhibit Binder, **Tab 15**, page 45; Judicial Compensation Order, Hearing Exhibit Binder, **Tab 16**

Table of Provincial Court Judges' Salaries, Society's Documents, **Tab 12**

275. Past JPCCs have accepted that the compensation paid to Provincial Court judges should be accorded "more weight" than the compensation paid to other senior government employees. Provincial Court judges in Alberta are an obvious comparator in that they are also judicial officers working in Alberta appointed by the provincial government. JPs share a portion of the jurisdiction exercised by Provincial Court judges, and their compensation is also determined by an independent commission that takes into account many of the same factors as are set out in this Commission's Regulation.

2006 JPCC, Hearing Exhibit Binder, **Tab 7**, page 20

276. Twenty years ago, the 2000 JPCC compared the duties and responsibilities of judges and JPs and concluded that compensation for JPs should be set at approximately two-thirds of judges' compensation as "this is a fair apportionment based on the relative degree of responsibility". The Government rejected the 2/3 relationship and imposed salaries that they were closer to 50% of judges' salaries.

2000 JPCC Report, Hearing Exhibit Binder, **Tab 9**, page 1

277. Since 2000, JPs' duties have evolved significantly. While the evolution of the duties was just beginning when the 2009 JPCC conducted its review, the 2009 JPCC

rejected the Government’s argument that “nothing of significance has occurred which justifies a change in that relationship” and recommended salaries that increased relative to judges’ salaries over the course of the JPCC’s mandate.

Year	2008/09	2009/10	2010/11	2011/12	2012/13
JP	\$117,480	\$125,000	\$129,375	\$134,550	\$139,932
PCJ	\$220,000	\$250,000	\$255,000	\$257,550	\$263,731
JP:PCJ	53.4%	50.0%	50.7%	52.2%	53.1%

278. While not articulated in the 2009 JPCC’s Report, the increased salary for JPs relative to that of judges in the later years likely reflected the amalgamation of the duties of the Sitting and Presiding JPs in 2012, and the comments of DCJ Lefever about the increasing dependence on JPs for efficiencies (and resulting cost savings) within the justice system. As set out above, DCJ Lefever spoke passionately before the Commission about the need to attract dedicated individuals who could walk into the important work with little training and make fundamental decisions that affect the liberty interests of Albertans.

2009 JPCC Report, Hearing Exhibit Binder, **Tab 5**, pages 5-6

279. Given the economic circumstances that prevailed at the time of the 2013 JPCC, the Society proposed simply to maintain the same relationship with judges’ salaries, by adopting the same percentage increases as had been implemented following the 2013 JCC. However, the 2013 JPCC recommended slightly lower percentages for JPs than the judges had received, causing the salary relationship to deteriorate. It explained its reasoning as follows:

Our decision, driven by the Province’s very difficult financial position, particularly over the last two years of our mandate, does not maintain the ratio between the JP’s and the Provincial Court Judges. However, that fact should not be viewed as an indication that the increased responsibilities of JP’s noted in 2013 are no longer persuasive of the increasing importance of JP’s responsibilities. Indeed, there was evidence put before us of an increasing complexity to the work JP’s now handle. It is only the very difficult economic position that has resulted in a reduction of that differential.

2013 JPCC, Hearing Exhibit Binder, **Tab 3**, page 21

280. Accordingly, while the 2013 JPCC signalled that, if anything, it was prepared to narrow the gap with judges' salaries based on the duties then performed by JPs, it declined to do so because of the economic circumstances.

281. It is clear from the McMillan Report that Alberta continues to deal with the impact of the dramatic drop in oil prices that precipitated the recession in 2015/16. However, much of this was already taken into account by the 2013 JPCC, which reported in 2017. To consider it again, would impose an undue burden on the JPs.

282. The Society respectfully submits that a much higher salary than it is proposing to this 2017 JPCC, is justified based on consideration of the factors, including the nature of the role of JPs, their working conditions, and attraction and retention. The Society takes the position that the JPs' salaries ought to equal two-thirds (67%) of judges' salaries. Indeed, the Society asks the JPCC to make a finding, in principle, that a fair comparison of the respective duties of JPs and judges warrants this scale of salary relationship.

283. To be clear, in the difficult fiscal situation that is ongoing in Alberta, the Society has modified its request to a salary that approximates 60% of judges' salaries. Assuming the recovery continues, the Society fully intends to make a proposal for 67% to the next JPCC.

284. The proposed salary for JPs and judges' salaries are compared below.

	2017/18	2018/19	2019/20	2020/21
JP	\$176,395	\$179,129	\$183,428	CPI
PCJ	\$293,991	\$293,991	\$293,991	\$293,991
JP:PCJ	60.0%	60.93%	62.39%	TBD
PCJ – as recommended by the 2017 JPCC	\$296,382	\$302,304	\$309,500	\$318,500
JP proposal : PCJ recommended salaries	59.5%	59.25%	59.27%	TBD

285. To be clear, the foregoing comparison is of salary alone. If the value of the judicial pension was considered, the percentage relationship would decrease considerably.

According to the expert actuarial report of Mr. André Sauvé, which was relied on by the Alberta Provincial Judges' Association in the 2017 JCC process, the compensation value of the judges' pension is 39.3% of the judicial salary. This compensation value dwarfs the 13.1% of the much lower salary paid to JPs, in lieu of pension. The following tables set out the comparison for the 2016 and 2017 calendar years, respectively.

2016	Salary	Pension Value	Total of Salary + Pension	% relationship to PCJ total compensation
PCJ	\$293,991	\$115,538 (39.3%)	\$409,529	
JPs	\$151,813	\$19,888 (13.1%)	\$171,701	42%

2017	Salary	Pension Value	Total of Salary + Pension	% relationship to PCJ total compensation
PCJ	\$293,991 (imposed by Government)	\$115,538 (39.3%)	\$409,529	
JP	\$176,395 (proposed)	\$23,108 (13.1%)	\$199,503	49%

286. The significant value of the judicial pension underscores that the Society's current salary proposal is very modest indeed.

Comparison to the Level of Increases Received by Programs and Persons Paid by the Provincial Purse

287. The current Government has identified the need to control the compensation of public sector workers as one of its preferred ways to address the government's fiscal concerns, in tandem with other initiatives, such as corporate tax cuts. These decisions are political. As Dr. McMillan's objective review makes clear, there are other approaches to Alberta's fiscal situation which would not place the burden on those paid by the public purse.

288. The Government has chosen to either freeze or, more recently, seek a rollback of public sector employees' wages. It is perhaps unsurprising then, that the six largest public

sector bargaining units in Alberta pursued interest arbitration, and either remain in interest arbitration, have recently received or will receive their interest arbitration award shortly.

289. In an Award dated January 10, 2020, Arbitrator Jones awarded members of the United Nurses of Alberta no wage increase in the third year of its collective agreement. The parties had pursued interest arbitration to determine wages as a result of a wage re-opener clause in the third year of its existing collective agreement. In coming to that determination, Arbitrator Jones relied on several factors that are irrelevant or inapplicable to this JPCC process. These are described below.

- The theory of “replication” was utilized in coming to a determination on the wage increase in year three, i.e. “achieving a result that would most likely replicate the result that would have been achieved by the parties themselves if they had succeeded in concluding a collective agreement, whether by a negotiated settlement or after industrial action.” (See Award, pages 19-20.) Replication is a concept that is foreign to the independent and objective JPCC process.
- Arbitrator Jones considered the fact that nurses had previously negotiated, in exchange for two years of 0% wage increases, Job Security provisions that prevented layoffs through the end of the collective agreement. Arbitrator Jones noted that “one needs to take into account tradeoffs that may have been made in other aspects of bargaining between these two parties- or between the other parties to collective agreements that are said to be comparable- in considering the issues involved in the arbitration process.” (See Award, page 20.) Of course, JPs are restricted from negotiating trade offs through collective bargaining, and layoff protection has no application in the judicial context.
- There were no meaningful comparable settlements to consider, and those that were loosely comparable had themselves settled for 0% wage increases. According to Arbitrator Jones, “there are no comparable settlements that would justify increases to nurses’ wages at this time.” (See Award, page 26.) While interest arbitrations focus on comparators, this JPCC must balance all of the factors set out in the governing legislation.

- As a result of the no layoff clause negotiated by the nurses, Arbitrator Jones determined there were no concerns about the continuity and stability of nurses' employment in Alberta, and therefore salaries did not need to be increased in order to recruit or retain nurses in Alberta. (See Award, page 27.) By contrast, there are recruitment and retention concerns for JPs in Alberta.
- The possibility of a further wage freeze was squarely within the contemplation of the parties when they negotiated the wage reopener. (See Award, page 28.)

Award of Arbitrator Jones between United Nurses of Alberta and Alberta Health Services, dated January 10, 2020, Society's Documents, **Tab 13**

290. On the same day he released the Nurses' Award, Arbitrator Jones also released an Award respecting Alberta teacher wages. Arbitrator Jones awarded 0% wage increases over the period at issue. In coming to that determination, Arbitrator Jones relied on many of the same considerations as he did in the Nurses arbitration, i.e., factors that are inapplicable to this 2017 JPCC process.

- The theory of "replication" was utilized in coming to a determination on the wage increase. Arbitrator Jones determined that "this result replicates the outcome which would have occurred if the parties had continued to negotiate and reached a settlement, either by agreement or after industrial action." (See Award, page 19, 27.)
- There were very few layoffs of teachers, and very little turnover in employment. There was no evidence of teachers leaving the profession for other occupations in Alberta or for teaching positions in other provinces. Salaries did not need to be increased in order to recruit or retain teachers in Alberta. (See Award, page 26.)
- There was an absence of any comparable collective agreement settlements containing salary increases. (See Award, page 27.)
- The non-monetary provisions which the teachers had negotiated into the collective agreement was a trade-off that had to be considered. (See Award, page 19, 27.)

- The parties would be embarking shortly on negotiating the next collective agreement, where they could test whether it would be appropriate to put in place a different result. (See Award, page 29.)

Award of Arbitrator Jones between Alberta Teachers' Association and Teachers' Employer Bargaining Association, dated January 10, 2020, Society's Documents, **Tab 14**

291. Wage increase determinations for other public sector employees remain to be determined, but the Society understands that some decisions are expected shortly.

292. While the Government has pursued wage freezes or rollbacks for public sector employees as part of its efforts to reduce expenditures, the Government has, at the same time, reduced corporate taxes. As Dr. McMillan points out, this means lost revenue of between \$2.4 and \$4.5 billion dollars to Government. This fact confirms the political nature of the decisions and approaches taken by this Government to address its fiscal concerns. In the circumstances, the weight to be afforded to those decisions must be minimal.

Salaries paid to Tough Decision Makers

293. In responding to the 2000 JPCC's recommendations, the Government reasoned that JPs should be paid salaries "commensurate with those salaries that 'tough decision makers' within the Government are being paid". The Government went on to note that:

(1) the modified salaries it substituted for those recommended by the 2000 JPCC were "significantly in excess of salaries of Crown Counsel ... with more than 10 years experience and above the minimum salary for Directors and Chief Crown Prosecutors"; and

(2) the modified salaries "fall into a range which is similar to that paid to senior government officials, including Chief Crown Counsel".

Order in Council 174/2000, Hearing Exhibit Binder, **Tab 10**, page 9

294. On average, the number of years of legal practice at the time of appointment greatly exceeds the five-year minimum. The average years of call for appointees has been much closer to 20 years. Appointment of such experienced counsel is consistent not only with the Government's comments in OIC 174/2000 above, but also with DCJ

Lefever's comments to the 2009 JPCC to the effect that it is important to appoint the best possible JP candidates.

2009 JPCC Report, Hearing Exhibit Binder, **Tab 5**, pages 5-6

295. JPs are not civil servants and different considerations go into determining their salaries as compared with the salaries of civil servants. Nonetheless, a comparison to the salaries paid to senior level Crown Counsel, including Chief Crown Counsel and Directors, provides some overall context within which the reasonableness of the Society's proposals can be gauged.

296. As noted in **Tab 24** of the Hearing Exhibit Binder ("Legal Officer Salary Grid"), most Criminal Justice Executive Directors and Chief Crown Prosecutors are in the Executive Management 1 (Legal) (EM1) class, and Regional Chief Crown Prosecutors are in the LO4 class. As seen in the table below, even after the Society's proposed salary increase to \$176,345, effective April 1, 2017, JP salaries would remain close to the LO3 (15+ years), in the range of the LO4 salaries, and in the mid-range of EM1 salaries. This is not to mention that these Crowns participate in a pension plan, the total value of which exceeds the 13.1% contribution that JPs receive in lieu of pension.

	LO3 15+ years	LO4	EM1	SJPA Full Time Salary Proposal
April 1, 2016- March 31, 2020	\$168,791.83	\$165,420.76 to \$181,952.09	\$150,381.93 to \$197,630.24	\$176,345

297. The above comparison demonstrates that the Society's proposed salaries are modest and reasonable, if not low, when situated in the context of the salaries paid to government lawyers who are within the pool of candidates that the Court would wish to attract to an appointment. The proposed increase would remedy the current situation wherein it is routine that Crown lawyers appearing before JPs to argue bail applications are paid significantly more than the JP making the decision.

298. In order to ensure that the Court can fill JP vacancies from an adequate pool of qualified candidates, the salaries payable to JPs must not be a disincentive to a senior Crown (or private bar) lawyer leaving his or her position to apply for a JP appointment.

The Need to Attract and Retain Qualified Candidates

299. As discussed above, the pool of recommended candidates following each JP vacancy notice is not significant, particularly considering that recent postings have been for the more populous areas of Calgary and Edmonton. It is well known that the working conditions of JPs have been exceedingly onerous over the period of this JPCC's mandate. It is important that those who have worked under these conditions with an effective four year salary freeze be reasonably compensated for their work in order to support their retention throughout their terms.

300. While many lawyers work long hours, being scheduled to work a series of shifts at the Hearing Office, including night shifts, is fundamentally different. JPs must be fairly compensated for that feature of their duties through a combination of salary and the applicable shift differentials.

301. Without appropriate compensation, there is a risk that the Court will be unable to attract the best qualified applicants to apply for the position. It also presents a risk for retention, as evidenced by the nine JPs who left in recent years before their terms expired. The work of JPs is of fundamental importance to the administration of justice in Alberta, and the workload of JPs has increased. An increase in salary is necessary to ensure that the Government can continue to fill vacancies with the highly qualified applicants who are so desperately needed to perform those duties.

Increases in the Cost of Living

302. The Society's proposals would mean a real increase for JPs above and beyond the increase in the cost of living in the first year of the JPCC's mandate. In the subsequent years, the proposal is in line with increases in the cost of living:

Year	Society's Proposed % Increase	Increase in CPI in preceding calendar year	Real increase
2017	16.19%	1.12%	15.07%
2018	1.55%	1.55%	0%
2019	2.4%	2.4%	0%
2020	CPI	CPI not yet calculated for 2019	0%

CPI Statistics Canada, Society's Documents, **Tab 15**

Economic Conditions of the Province

303. The economic conditions are detailed above and that discussion will not be repeated here. Particularly as compared with other jurisdictions, Alberta continues to have a strong fiscal capacity, despite its recent economic and fiscal challenges. The Society has taken the present conditions into consideration in formulating its proposal, and notes that this is but one of many factors that this JPCC must consider.

Conclusion on Salary

304. The salaries proposed by the Society for each of the years within this 2017 JPCC's mandate are reasonable and appropriate, given all of the criteria identified in the *Commission Regulation*. As noted above, while the increase for 2017 is well beyond a mere inflationary adjustment, the Society has modified its salary proposals considerably to reflect Alberta's current fiscal circumstances. The proposals seek to fairly acknowledge the important role and work of JPs within Alberta's justice system, but still acknowledge the present fiscal challenges. The salaries are demonstrably reasonable within the Alberta context, even despite the ongoing difficult economic circumstances that were first considered by the 2013 JPCC. The increased salaries will assist in attracting and retaining highly qualified individuals to fill the important role of JP and will also ensure that the relationship with the salaries of the JPs' best comparators, Alberta's Provincial Court judges, is fairly adjusted and then does not erode over the period of this JPCC's mandate.

2. Increase in Shift Differentials

Recommendations Sought:

- a) Effective April 1, 2017, the night shift differentials shall be changed to amount to the following percentages of the per diem amount: 30% for weekday shifts, 40% for weekend shifts, and 50% for holiday shifts; and effective April 1st of 2018, 2019, and 2020, these amounts should be increased by the percentage increase in the Consumer Price Index for Alberta, over the preceding calendar year;
- b) Effective April 1, 2017, the holiday day shift differentials shall be 30% of the per diem rate, and the holiday evening shift differentials shall be 40% of the per diem rate; and effective April 1st of 2018, 2019, and 2020, these amounts should be increased by the percentage increase in the Consumer Price Index for Alberta, over the preceding calendar year;
- c) Effective April 1, 2017, Friday evening shifts, which are currently assigned from 1600 to 2400 hours or from 1400 to 2200 hours, should be considered a weekend evening shift for the purpose of determining the applicable shift differential; and
- d) Effective April 1, 2017, and on each April 1st thereafter, the remaining shift differentials payable to JPs shall be adjusted based on the percentage increase in the Consumer Price Index for Alberta, over the preceding calendar year.

305. The shift differentials proposed by the Society for the period of this 2017 JPCC's mandate are shown in the table below. The figures set out below are calculated using the Society's salary proposal for 2017.

		2016 Rates	Effective April 1, 2017¹⁶	Effective April 1, 2018¹⁷	Effective April 1, 2019¹⁸	Effective April 1, 2020¹⁹
Weekday	evening	\$54.25	\$54.86 (CPI)	\$55.71 (CPI)	\$57.04 (CPI)	TBD (CPI)
	night	\$134.69	\$334.20 (30% of per diem)	\$339.38 (CPI)	\$347.53 (CPI)	TBD (CPI)

¹⁶ CPI for Alberta increased by 1.12% in 2016

¹⁷ CPI for Alberta increased by 1.55% in 2017

¹⁸ CPI for Alberta increased by 2.4% in 2018

¹⁹ The percentage increase in the CPI for Alberta in 2019 is not yet available, hence the To Be Determined ("TBD") numbers shown.

Weekend (including Friday, Saturday and Sunday evenings)	day	\$54.24	\$54.86 (CPI)	\$55.71 (CPI)	\$57.04 (CPI)	TBD (CPI)
	evening	\$82.45	\$83.37 (CPI)	\$84.67 (CPI)	\$86.70 (CPI)	TBD (CPI)
	night	\$188.94	\$445.60 (40% of per diem)	\$452.51 (CPI)	\$463.37 (CPI)	TBD (CPI)
Holiday	day	\$82.45	\$334.20 (30% of per diem)	\$339.38 (CPI)	\$347.53 (CPI)	TBD (CPI)
	evening	\$108.49	\$445.60 (40% of per diem)	\$452.51 (CPI)	\$463.37 (CPI)	TBD (CPI)
	night	\$243.19	\$557 (50% of per diem)	\$565.63 (CPI)	\$579.21 (CPI)	TBD (CPI)

306. The per diem-based calculations above reflect the Society’s salary proposal, of a salary of \$176,395, effective April 1, 2017, and the resulting per diem for that year of \$1114. The per diem formula is:

Full-time JP salary + 13.1% per cent (in lieu of pension) +20% for office and overhead supplement) + \$5,000 (benefits)

215.25

Special Adjustment to Night Shift Differentials

307. The Society proposes a special adjustment to the night shift differentials, to compensate for the extraordinary burden that is assumed by the JPs who perform this work.

308. With respect to the night shift, the 2013 JPCC referred to the personal challenges associated with night shifts:

It is understandable that JPs would want the night shifts abolished. Alberta is one of the only jurisdictions that offers a 24/7 service. The personal challenges of shift work, particularly the night shift, were noted in the 2009 Commission’s report at p.15:

Counsel for the Society tabled a study on the effects of night shifts on both the younger and older population. The study shows that older people have a more difficult time than younger people in dealing with sleep hour adjustments. Whether older or younger, the effects of having to change one’s personal clock and readjust sleep

patterns are challenging to anyone. And probably more so for an older demographic like the JP's. We heard in that regard from the Society in the course of the oral hearing that finding a substitute JP to work a night shift is challenging.

2013 JPCC Report, Hearing Exhibit Binder, **Tab 3**, page 19

309. As the 2013 JPCC noted, the Edmonton night shifts were cancelled in July 2016, as there were not enough JP's available to fill both the day and night shift schedules. Although this could change in the future, night shifts are currently operated only out of Calgary, where the JPs working the night shift provide service throughout Alberta, via teleconference.

310. The burden of night shift work is disproportionately placed on a small contingent of Calgary JPs not only because of the cancellation of the night shift in Edmonton, but also due to the fact that several Calgary JPs have been excused from working night shifts for medical reasons. The result is that night shift work in Calgary is now assigned to and completed by approximately 18 JPs, i.e., less than 50% of all JPs in Alberta.

311. Given that the significant burden of these particularly difficult shifts rests with these Calgary JPs, the Society again seeks a special adjustment for these night shift work assignments in order to acknowledge the difficult work performed. With respect, the adjustment of \$25 recommended by the 2013 JPCC did not adequately address the concerns of those who assume this burden in the interests of all Albertans.

312. The Society respectfully submits that fair compensation for the night shifts would be:

- i. week day night: 30% of the per diem rate
- ii. weekend night: 40% of the per diem rate
- iii. holiday night: 50% of the per diem rate

JPs Deserve Fair Compensation for the Rigors of Shift Work

313. As detailed above, Alberta is the only jurisdiction where JPs are available 24 hours per day, 365 days per year through the Hearing Office, and the only jurisdiction in Canada where JPs are required to be physically present in the courthouse 24/7. This 24 hour service is an important feature of Alberta's justice system, as noted in the HOCR Report:

... the committee found that in comparison to other jurisdictions, Alberta provides exceptional access to Justice of the Peace services to law enforcement agencies and members of the public, through two fully functional centralized offices. No other province or territory in Canada provides a full range of comprehensive services 365 days a year, 24 hours a day.

HOCR Report, Hearing Exhibit Binder, **Tab 26**, page 70

314. That "exceptional access" creates considerable disruption in the lives of JPs who work those shifts, including the loss of personal/family time on holidays. In making its recommendations for increases in the shift differentials, the 2009 JPCC recognized the "significant lifestyle change brought about by 24-hour/365 days-per-year shift work".

2009 JPCC Report, Hearing Exhibit Binder, **Tab 5**, pages 15 and 17

315. Beginning at paragraph 145 above, the Society has reproduced statements from a number of JPs who have left the position since 2016. Each of those JPs cited the challenges of shift work and the disruption it placed on their lives as a primary reason as to why they ultimately left the position.

Shift Work is a Disincentive to Attraction and Retention

316. The HOCR Report stated: "[i]t has been anecdotally reported that several otherwise qualified candidates declined to apply or subsequently withdrew their applications upon hearing of the shift work requirements of the position." Further: "[i]t is becoming increasingly difficult to fill JP midnight shifts, and straddle shifts".

HOCR Report, Hearing Exhibit Binder, **Tab 26**, page 31

317. The negative effect of shift work on recruitment efforts is confirmed by the concerns expressed by Crown attorneys when the prospect of shift work became an issue for them.

As Crown attorneys are among those who the Court would seek to attract for JP appointments, the concerns outlined below speak to the requirement of shift work being an impediment to attracting highly qualified candidates for JP appointments.

318. To further improve the judicial interim release application process, in May 2008, Alberta's Justice Minister told the Legislature of the Government's intention to have Crown prosecutors replace police presenters in Hearing Office bail hearings. A "Bail Project" was initiated in 2008-2009 in this regard, although it appears to have been short lived primarily due to fiscal constraints.

Irving Report, Hearing Exhibit Binder, **Tab 25**, page 35

319. Appendix D of the Irving Report provides further information about "The 2008-2009 ACPS [Alberta Crown Prosecution Service] Bail Project". It stated:

During the initiation of the project there was concern by Crown Prosecutors regarding the prospect of a sudden change to their working schedules. Prosecutors expressed concern about being required to work those hours and about their safety and security working downtown late at night. Ultimately the project ended before evening or overnight shifts were added.

Irving Report, Hearing Exhibit Binder, **Tab 25**, page 108

320. The Irving Report reported resistance from Crown attorneys to working the various shifts that are part of a 24-hour Hearing Office system. The Report indicated:

The Edmonton Police Service has a different take on the project. A PowerPoint presentation by a Staff Sergeant in the Investigation Management and Approval Centre Branch makes the following observations:

- Crowns unable to match work rate of police officers, creating delays
- Crowns complained about the "working conditions" in APU [Arrest Processing Unit]
- Crowns unwilling to work outside business hours
- Crowns were frustrated/surprised to find recommended bail conditions often being refused by the sitting justices

Irving Report, Hearing Exhibit Binder, **Tab 25**, page 35

321. Finally, in commenting more generally on the benefits of having Crown attorneys present at all bail hearings, the Irving Report noted:

Furthermore, the Hearing Offices currently work around the clock, every day of the year, as do the police. The federal and provincial Crown prosecution services operate, for the most part, during normal office hours. As their Associations made clear to the Review, most Crowns might not cherish the notion of shift work and would definitely seek extra compensation for evening and weekend assignments.

Irving Report, Hearing Exhibit Binder, **Tab 25**, page 36

322. The concerns voiced by Crown attorneys were respected, at least in part, as it was determined that judicial interim release application would no longer be heard during the night shift. JPs, on the other hand, continue to work day, evening and night shifts, 365 days a year. While bails are no longer heard during the night, JPs perform their myriad of other functions during those hours.

323. The Society's proposal for significant increases in the night and holiday shift differentials are designed to address not only the concerns of those who have worked the shifts during the period of this JPCC's mandate (some of whom resigned part-way through their terms because of the shift work), but also the Court's ability to recruit a sufficient number of qualified candidates despite what is, for now at least, an ongoing requirement for shift work.

Safety and Security Concerns Justify an Increase in the Night Shift Differential

324. As noted, one of the concerns raised by Crown attorneys during the 2008-2009 ACPS [Alberta Crown Prosecution Service] Bail Project was their personal safety and security while working downtown late at night. This remains a concern for JPs working the night shift. JPs are expected to hear in-person public applications during the night shift, with no one else present in the courtroom (including any sheriffs). Safety concerns have been raised but have been considered a low priority.

325. Additional concerns have been raised by JPs over the lack of anyone present in the courtroom to witness the interactions between a JP and an applicant. Leaving aside safety concerns, concerns have been raised about a JP being alone in a courtroom with

an applicant in the middle of the night, leaving them vulnerable to an allegation of impropriety against that JP without any witness to confirm or dispute the allegation. Concerns have been raised but no action has been taken to protect JPs.

326. Ongoing safety and security concerns further support increases in the night and holiday shift differential.

Public Employees Required to Work on Holidays Are Paid Higher Premiums

327. The Society's proposed shift differential for a Holiday night shift is 50% of the *per diem* rate paid to a part-time JP (and 40% and 30%, respectively, for a night shift on a weekend or weekday, and 40% and 30% respectively, for a Holiday evening or day shift). These proposals are reasonable when understood in the context of how civil servants are paid when, on rare occasions, they are required to work on a holiday.

328. "Holiday pay" for civil servants required to work on holidays is addressed by the AUPE Master Agreement. Employees in continuous operations who are required to work on a holiday are provided with a paid day off in lieu of the holiday, effectively a 100% premium. Other employees receive either their regular salary, plus time and one-half for all hours worked up to the equivalent of full normal daily hours and double time for additional hours worked thereafter, or, time and one-half for all hours worked up to the equivalent of full normal daily hours and double time for additional hours worked thereafter, plus a day off in lieu with pay. In either case, these employees effectively receive a 150% premium for working on a holiday.

Excerpt of AUPE Master Agreements, 2011 and 2014, Society's Documents, **Tab 16**

329. Under the Society's proposal, JPs working on a Holiday are entitled to, at most, a differential that represents 50% of the per diem rate during a night shift, and less when working a day (30%) or evening (40%) shift on a Holiday.

330. In summary, the significant increase proposed by the Society for the night and holiday shifts differential is justified by the grueling nature of night shift work, and the significant personal impact of holiday shift work, and their impact on attraction and

retention. This is important as an attraction and retention matter. The Society also proposes CPI-based increased shift differentials generally to ensure that the value of those differentials does not erode relative to the cost of living. Finally, it is fair and reasonable to consider that Friday evening shifts, which are currently assigned from 1600 to 2400 hours, or from 1400 to 2200 hours, are weekend evening shifts for the purpose of determining the applicable shift differential.

3. Special Leave

Recommendation Sought:

- a) Effective April 1, 2017, each full-time JP shall be entitled to 10 days of special leave per annum, which time shall include any related travel time, in order to deal with illnesses or injuries in the JP's immediate family (defined as spouse or benefit partner, parent, guardian, parent-in-law, grandparent, grandchild, son, daughter, step-child, and relatives who permanently reside with the JP); and
- b) To the extent such leave was taken on or after April 1, 2017, and vacation days were used by the full-time JP in question, the vacation bank should be restored, or payment made, at the option of the JP (unless since retired, in which case a payout shall occur).

331. The Society's recommendation would provide JPs with leave days to deal with illness or injury that impacts someone in their immediate family. At current, JPs may only take sick leave to deal for their own personal illnesses/injuries, not the illness or injury of a loved one.

332. Currently, in an unfortunate circumstance where a JP's family member becomes ill or injured, the JP is left with few options but to take vacation time to be with their family members. Many JPs have had to resort to this option in order to get the time off to be with their spouse, or young child, or another family member when they fell ill.

333. The addition of special leave days would permit JP's to take the time needed to assist their loved ones without reducing their earned vacation time. Requiring a JP to resort to using their earned vacation time to care for a family member defeats the intended purpose behind vacation time, i.e., to take a physical and mental break from work obligations and to relieve stress. There can be little relief from stress, or any sort of mental break, when vacation time must be taken to assist a family member in need of care.

334. The Society's proposal would provide JPs with the same benefit that is provided by the Government to civil servants. The AUPE Master Agreement provides public sector employees with ten (10) paid work days per calendar year to deal with illness within the immediately family, including travel time. The Society's proposal takes the definition of "immediately family" directly from the AUPE Master Agreement.

Excerpt of Article 38 of AUPE Master Agreement, 2018-2020, Society's Documents, **Tab 17**

4. Education Days

Recommendations Sought:

- a) Effective April 1, 2017, ad hoc JPs shall have access to up to 10 paid days for judicial education, like their full-time and part-time colleagues; and
- b) Effective April 1, 2017, days spent travelling for the purposes of attending judicial education shall count as a paid shift worked for all JPs.

335. Professional development is critical for members of the judiciary and equally so whether a JP works part-time, full-time or in an ad hoc capacity.

336. Full-time and part-time JPs are paid for up to 10 days of judicial education, as this is appropriately considered to be part of their expected duties. Up to six of these days are spent on educational conferences arranged through the Provincial Court itself. JPs may take up to a total of ten days to attend judicial education opportunities elsewhere subject to approval by the Deputy Chief Judge. Any days spent on approved judicial education are therefore considered "working days" for full-time or part-time JPs.

337. Because of the prolonged failure to ensure a full complement of JPs, with rare exceptions, ad hoc JPs are working close to full-time, if not more than full-time hours. These JPs have the same need for judicial education as their full-time or part-time colleagues. The one or two who do sit infrequently arguably also have a need for judicial education, in order to ensure that their knowledge and skills remain current. As such, it is in the public interest to fund judicial education for ad hoc JPs.

338. The failure to compensate JPs for travel time required to attend judicial education discourages their attendance at judicial education events, particularly for those who are

already working more frequently than they would prefer because of the chronic failure to appoint a full complement of JPs. As such, it is fair and reasonable to count the time spent in travel as a paid shift, for the purposes of full-time, part-time and ad hoc JPs.

339. The public interest demands that all members of the judiciary are highly educated and knowledgeable about recent legal developments, a point which was recently underscored in the Irving Report. As it is properly considered an obligation for all JPs, it is fair and appropriate that all JPs are compensated for their time.

5. Ad Hoc JPs Acting as Administrative JPs

Recommendation Sought:

- a) Effective upon implementation, *Alberta Regulation 6/99* shall be amended to permit ad hoc JPs to fill the role and perform the functions of Administrative JPs like their full-time and part-time colleagues.

340. Currently, *Alberta Regulation 6/99* to the *Justice of the Peace Act* defines an “administrative justice of the peace” as meaning “a full-time or a part-time justice of the peace to whom a judge or supernumerary judge of the Provincial Court has delegated administrative functions under section 9(2) of the Act.” There are currently no provisions within the Regulation permitting an ad hoc JP to fulfil the role of an Administrative JP.

341. Under section 6.1 of the Regulation, an Administrative JP receives an additional 5% of the salary payable to a full-time JP for performing administrative functions.

342. The Society’s proposal stems from a recent development in Edmonton that will undoubtedly occur elsewhere in the future, and more frequently as JPs reach the end of their ten-year terms. In Edmonton, the Administrative JP completed his ten-year term as a full-time JP, and he was subsequently approved to continue in office as an ad hoc JP in accordance with section 7.2(1) of the *Justice of the Peace Act*.

343. It was the desire of the now former Administrative JP to continue to perform administrative functions and to be designated as an Administrative JP (and thus to receive the 5% pay increase for performing administrative functions). The Society understands

that other JPs in Edmonton shared in the desire for this individual to continue on as Administrative JP in the Edmonton area.

344. As a matter of the administrative independence of the Provincial Court, it must be up to the Provincial Court to determine who is considered to be appropriate for the position of Administrative JP. If the Deputy Chief Judge sees fit to appoint an ad hoc JP as Administrative JP, the matter should end there and the legislation ought not to preclude that decision in the interests of the Court.

345. Unfortunately, the existing language within the Regulation does not permit this. The Regulation currently restricts who can be assigned to be Administrative JP by limiting the definition of a JP to a full-time or part-time JP only.

346. The Society is seeking an amendment to the existing language in the Regulation to ensure that Ad Hoc JPs gain the ability to fulfill the role and functions of an Administrative JP.

347. The Society's recommendation is also supported by the fact that the Government has not appointed any new JPs recently. As a result, the pool of potential replacements (those who wish to fulfill the role) will continue to shrink as existing JPs reach the end of their term and are disqualified from fulfilling the role of Administrative JP.

348. Further, ongoing reliance on large numbers of ad hoc JP's to fill shifts and assist with gaps as a result of continuing vacancies support their consideration as potential Administrative JPs.

349. There is no identifiable reason why an ad hoc JP, particularly one who may have previous experience as an Administrative JP, ought to be prohibited from consideration for the functions.

350. The Society's proposed recommendation is to either remove specific reference to full-time or part-time JPs in the definition of Administrative Justice of the Peace in the Regulation, thereby making reference to JPs more generally, or to add a reference to ad hoc JPs in the definition.

6. Judicial Attire

Recommendation Sought:

- a) Effective upon implementation, the Regulation which specifies the judicial attire to be purchased shall be amended to include an option for “or equivalent”, to contemplate that some JPs prefer to purchase a so-called “onesie”, as an alternative to the gown, waistcoat and shirts.

351. This proposal will ensure that there is adequate flexibility for JPs to purchase the type of gown that they would prefer. Indeed, if anything, it is a cost saving, as a onesie is less expensive than the alternative of a gown, waistcoat, pants/skirts and shirts.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF JANUARY, 2020.



SUSAN DAWES